

be twice the maximum number of children per child-care staff member established under division (B)(3) of this section if all the following criteria are met:

(a) At least one child-care staff member is present in the room.

(b) Sufficient child-care staff members are on the child day-care center premises to meet the maximum number of children per child-care staff member requirements established under division (B)(3) of this section.

(c) Naptime preparations are complete and all napping children are resting or sleeping on cots.

(d) The maximum number established under division (E)(2) of this section is in effect for no more than one and one-half hours during a twenty-four-hour day.

(F) The director of job and family services shall adopt rules pursuant to Chapter 119. of the Revised Code governing the operation of type A family day-care homes, including, but not limited to, parent cooperative type A homes, part-time type A homes, drop-in type A homes, and school child type A homes, which shall reflect the various forms of child day-care and the needs of children receiving child day-care. The rules shall include the following:

(1) Submission of a site plan and descriptive plan of operation to demonstrate how the type A home proposes to meet the requirements of this chapter and rules adopted pursuant to this chapter for the initial license application;

(2) Standards for ensuring that the physical surroundings of the type A home are safe and sanitary, including, but not limited to, the physical environment, the physical plant, and the equipment of the type A home;

(3) Standards for the supervision, care, and discipline of children receiving child day-care or publicly funded child day-care in the type A home;	46596 46597 46598
(4) Standards for a program of activities, and for play equipment, materials, and supplies, to enhance the development of each child; however, any educational curricula, philosophies, and methodologies that are developmentally appropriate and that enhance the social, emotional, intellectual, and physical development of each child shall be permissible;	46599 46600 46601 46602 46603 46604
(5) Admissions policies and procedures, health care policies and procedures, including, but not limited to, procedures for the isolation of children with communicable diseases, first aid and emergency procedures, procedures for discipline and supervision of children, standards for the provision of nutritious meals and snacks, and procedures for screening children and employees, including, but not limited to, any necessary physical examinations and immunizations;	46605 46606 46607 46608 46609 46610 46611 46612
(6) Methods for encouraging parental participation in the type A home and methods for ensuring that the rights of children, parents, and employees are protected and that the responsibilities of parents and employees are met;	46613 46614 46615 46616
(7) Procedures for ensuring the safety and adequate supervision of children traveling off the premises of the type A home while under the care of a type A home employee;	46617 46618 46619
(8) Procedures for record keeping, organization, and administration;	46620 46621
(9) Procedures for issuing, renewing, denying, and revoking a license that are not otherwise provided for in Chapter 119. of the Revised Code;	46622 46623 46624
(10) Inspection procedures;	46625

(11) Procedures and standards for setting initial and renewal license application fees;	46626 46627
(12) Procedures for receiving, recording, and responding to complaints about type A homes;	46628 46629
(13) Procedures for enforcing section 5104.04 of the Revised Code;	46630 46631
(14) A standard requiring the inclusion, on or after July 1, 1987, of a current department of job and family services toll-free telephone number on each type A home provisional license or license which any person may use to report a suspected violation by the type A home of this chapter or rules adopted pursuant this chapter;	46632 46633 46634 46635 46636 46637
(15) Requirements for the training of administrators and child-care staff members in first aid, in prevention, recognition, and management of communicable diseases, and in child abuse recognition and prevention;	46638 46639 46640 46641
(16) Procedures to be used by licensees for checking the references of potential employees of type A homes and procedures to be used by the director for checking the references of applicants for licenses to operate type A homes;	46642 46643 46644 46645
(17) Standards providing for the special needs of children who are handicapped or who require treatment for health conditions while the child is receiving child day-care or publicly funded child day-care in the type A home;	46646 46647 46648 46649
(18) Standards for the maximum number of children per child-care staff member;	46650 46651
(19) Requirements for the amount of usable indoor floor space for each child;	46652 46653
(20) Requirements for safe outdoor play space;	46654
(21) Qualifications and training requirements for	46655

administrators and for child-care staff members; 46656

(22) Procedures for granting a parent who is the residential 46657
parent and legal custodian, or a custodian or guardian access to 46658
the type A home during its hours of operation; 46659

(23) Standards for the preparation and distribution of a 46660
roster of parents, custodians, and guardians; 46661

(24) Any other procedures and standards necessary to carry 46662
out this chapter. 46663

(G) The director of job and family services shall adopt rules 46664
pursuant to Chapter 119. of the Revised Code governing the 46665
certification of type B family day-care homes. 46666

(1) The rules shall include procedures, standards, and other 46667
necessary provisions for granting limited certification to type B 46668
family day-care homes that are operated by the following adult 46669
providers: 46670

(a) Persons who provide child day-care for eligible children 46671
who are great-grandchildren, grandchildren, nieces, nephews, or 46672
siblings of the provider or for eligible children whose caretaker 46673
parent is a grandchild, child, niece, nephew, or sibling of the 46674
provider; 46675

(b) Persons who provide child day-care for eligible children 46676
all of whom are the children of the same caretaker parent. 46677

The rules shall require, and shall include procedures for the 46678
director to ensure, that type B family day-care homes that receive 46679
a limited certification provide child day-care to children in a 46680
safe and sanitary manner. With regard to providers who apply for 46681
limited certification, a provider shall be granted a provisional 46682
limited certification on signing a declaration under oath 46683
attesting that the provider meets the standards for limited 46684
certification. Such provisional limited certifications shall 46685

remain in effect for no more than sixty calendar days and shall 46686
entitle the provider to offer publicly funded child day-care 46687
during the provisional period. Except as otherwise provided in 46688
division (G)(1) of this section, prior to the expiration of the 46689
provisional limited certificate, a county department of job and 46690
family services shall inspect the home and shall grant limited 46691
certification to the provider if the provider meets the 46692
requirements of this division. Limited certificates remain valid 46693
for two years unless earlier revoked. Except as otherwise provided 46694
in division (G)(1) of this section, providers operating under 46695
limited certification shall be inspected annually. 46696

If a provider is a person described in division (G)(1)(a) of 46697
this section or a person described in division (G)(1)(b) of this 46698
section who is a friend of the caretaker parent, the provider and 46699
the caretaker parent may verify in writing to the county 46700
department of job and family services that minimum health and 46701
safety requirements are being met in the home. If such 46702
verification is provided, the county shall waive any inspection 46703
and any criminal records check required by this chapter and grant 46704
limited certification to the provider. 46705

(2) The rules shall provide for safeguarding the health, 46706
safety, and welfare of children receiving child day-care or 46707
publicly funded child day-care in a certified type B home and 46708
shall include the following: 46709

(a) Standards for ensuring that the type B home and the 46710
physical surroundings of the type B home are safe and sanitary, 46711
including, but not limited to, physical environment, physical 46712
plant, and equipment; 46713

(b) Standards for the supervision, care, and discipline of 46714
children receiving child day-care or publicly funded child 46715
day-care in the home; 46716

(c) Standards for a program of activities, and for play 46717
equipment, materials, and supplies to enhance the development of 46718
each child; however, any educational curricula, philosophies, and 46719
methodologies that are developmentally appropriate and that 46720
enhance the social, emotional, intellectual, and physical 46721
development of each child shall be permissible; 46722

(d) Admission policies and procedures, health care, first aid 46723
and emergency procedures, procedures for the care of sick 46724
children, procedures for discipline and supervision of children, 46725
nutritional standards, and procedures for screening children and 46726
authorized providers, including, but not limited to, any necessary 46727
physical examinations and immunizations; 46728

(e) Methods of encouraging parental participation and 46729
ensuring that the rights of children, parents, and authorized 46730
providers are protected and the responsibilities of parents and 46731
authorized providers are met; 46732

(f) Standards for the safe transport of children when under 46733
the care of authorized providers; 46734

(g) Procedures for issuing, renewing, denying, refusing to 46735
renew, or revoking certificates; 46736

(h) Procedures for the inspection of type B family day-care 46737
homes that require, at a minimum, that each type B family day-care 46738
home be inspected prior to certification to ensure that the home 46739
is safe and sanitary; 46740

(i) Procedures for record keeping and evaluation; 46741

(j) Procedures for receiving, recording, and responding to 46742
complaints; 46743

(k) Standards providing for the special needs of children who 46744
are handicapped or who receive treatment for health conditions 46745
while the child is receiving child day-care or publicly funded 46746

child day-care in the type B home;	46747
(1) Requirements for the amount of usable indoor floor space for each child;	46748 46749
(m) Requirements for safe outdoor play space;	46750
(n) Qualification and training requirements for authorized providers;	46751 46752
(o) Procedures for granting a parent who is the residential parent and legal custodian, or a custodian or guardian access to the type B home during its hours of operation;	46753 46754 46755
(p) Any other procedures and standards necessary to carry out this chapter.	46756 46757
(H) The director shall adopt rules pursuant to Chapter 119. of the Revised Code governing the certification of in-home aides. The rules shall include procedures, standards, and other necessary provisions for granting limited certification to in-home aides who provide child day-care for eligible children who are great-grandchildren, grandchildren, nieces, nephews, or siblings of the in-home aide or for eligible children whose caretaker parent is a grandchild, child, niece, nephew, or sibling of the in-home aide. The rules shall require, and shall include procedures for the director to ensure, that in-home aides that receive a limited certification provide child day-care to children in a safe and sanitary manner. The rules shall provide for safeguarding the health, safety, and welfare of children receiving publicly funded child day-care in their own home and shall include the following:	46758 46759 46760 46761 46762 46763 46764 46765 46766 46767 46768 46769 46770 46771 46772
(1) Standards for ensuring that the child's home and the physical surroundings of the child's home are safe and sanitary, including, but not limited to, physical environment, physical plant, and equipment;	46773 46774 46775 46776

(2) Standards for the supervision, care, and discipline of children receiving publicly funded child day-care in their own home;	46777 46778 46779
(3) Standards for a program of activities, and for play equipment, materials, and supplies to enhance the development of each child; however, any educational curricula, philosophies, and methodologies that are developmentally appropriate and that enhance the social, emotional, intellectual, and physical development of each child shall be permissible;	46780 46781 46782 46783 46784 46785
(4) Health care, first aid, and emergency procedures, procedures for the care of sick children, procedures for discipline and supervision of children, nutritional standards, and procedures for screening children and in-home aides, including, but not limited to, any necessary physical examinations and immunizations;	46786 46787 46788 46789 46790 46791
(5) Methods of encouraging parental participation and ensuring that the rights of children, parents, and in-home aides are protected and the responsibilities of parents and in-home aides are met;	46792 46793 46794 46795
(6) Standards for the safe transport of children when under the care of in-home aides;	46796 46797
(7) Procedures for issuing, renewing, denying, refusing to renew, or revoking certificates;	46798 46799
(8) Procedures for inspection of homes of children receiving publicly funded child day-care in their own homes;	46800 46801
(9) Procedures for record keeping and evaluation;	46802
(10) Procedures for receiving, recording, and responding to complaints;	46803 46804
(11) Qualifications and training requirements for in-home aides;	46805 46806

(12) Standards providing for the special needs of children 46807
who are handicapped or who receive treatment for health conditions 46808
while the child is receiving publicly funded child day-care in the 46809
child's own home; 46810

(13) Any other procedures and standards necessary to carry 46811
out this chapter. 46812

(I) To the extent that any rules adopted for the purposes of 46813
this section require a health care professional to perform a 46814
physical examination, the rules shall include as a health care 46815
professional a physician assistant, a clinical nurse specialist, a 46816
certified nurse practitioner, or a certified nurse-midwife. 46817

(J)(1) The director of job and family services shall ~~send~~ 46818
~~copies~~ do all of the following: 46819

(a) Send to each licensee notice of proposed rules to each 46820
licensee and each county director of job and family services and 46821
shall give governing the licensure of child day-care centers and 46822
type A homes; 46823

(b) Give public notice of hearings regarding the rules to 46824
each licensee ~~and each county director of job and family services~~ 46825
at least thirty days prior to the date of the public hearing, in 46826
accordance with section 119.03 of the Revised Code; ~~i~~ 46827

(c) Prior to the effective date of a rule, the director of 46828
job and family services shall provide copies, in either paper or 46829
electronic form, a copy of the adopted rule to each licensee and 46830
each county director of job and family services. 46831

(2) The director shall do all of the following: 46832

(a) Send to each county director of job and family services a 46833
notice of proposed rules governing the certification of type B 46834
family homes and in-home aides that includes an internet web site 46835
address where the proposed rules can be viewed; 46836

<u>(b) Give public notice of hearings regarding the proposed rules not less than thirty days in advance;</u>	46837
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<u>(c) Provide to each county director of job and family services an electronic copy of each adopted rule prior to the rule's effective date.</u>	46839
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<u>(3) The county director of job and family services shall send copies of proposed rules to each authorized provider and in-home aide and shall give public notice of hearings regarding the rules to each authorized provider and in-home aide at least thirty days prior to the date of the public hearing, in accordance with section 119.03 of the Revised Code. Prior to the effective date of a rule, the county director of job and family services shall provide copies of the adopted rule to each authorized provider and in-home aide.</u>	46842
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<u>(4) Additional copies of proposed and adopted rules shall be made available by the director of job and family services to the public on request at no charge.</u>	46851
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(K) The director of job and family services shall review all rules adopted pursuant to this chapter at least once every seven years.	46854
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(L) Notwithstanding any provision of the Revised Code, the director of job and family services shall not regulate in any way under this chapter or rules adopted pursuant to this chapter, instruction in religious or moral doctrines, beliefs, or values.	46857
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Sec. 5104.02. (A) The director of job and family services is responsible for the licensing of child day-care centers and type A family day-care homes, and for the enforcement of this chapter and of rules promulgated pursuant to this chapter. No person, firm, organization, institution, or agency shall operate, establish, manage, conduct, or maintain a child day-care center or type A	46861
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family day-care home without a license issued under section 46867
5104.03 of the Revised Code. The current license shall be posted 46868
in a conspicuous place in the center or type A home that is 46869
accessible to parents, custodians, or guardians and employees of 46870
the center or type A home at all times when the center or type A 46871
home is in operation. 46872

(B) A person, firm, institution, organization, or agency 46873
operating any of the following programs is exempt from the 46874
requirements of this chapter: 46875

(1) A program of child day-care that operates for two or less 46876
consecutive weeks; 46877

(2) Child day-care in places of worship during religious 46878
activities during which children are cared for while at least one 46879
parent, guardian, or custodian of each child is participating in 46880
such activities and is readily available; 46881

(3) Religious activities which do not provide child day-care; 46882

(4) Supervised training, instruction, or activities of 46883
children in specific areas, including, but not limited to: art; 46884
drama; dance; music; gymnastics, swimming, or another athletic 46885
skill or sport; computers; or an educational subject conducted on 46886
an organized or periodic basis no more than one day a week and for 46887
no more than six hours duration; 46888

(5) Programs in which the director determines that at least 46889
one parent, custodian, or guardian of each child is on the 46890
premises of the facility offering child day-care and is readily 46891
accessible at all times, except that child day-care provided on 46892
the premises at which a parent, custodian, or guardian is employed 46893
more than two and one-half hours a day shall be licensed in 46894
accordance with division (A) of this section; 46895

(6)(a) Programs that provide child day-care funded and 46896
regulated or operated and regulated by state departments other 46897

than the department of job and family services or the state board 46898
of education when the director of job and family services has 46899
determined that the rules governing the program are equivalent to 46900
or exceed the rules promulgated pursuant to this chapter. 46901

Notwithstanding any exemption from regulation under this 46902
chapter, each state department shall submit to the director of job 46903
and family services a copy of the rules that govern programs that 46904
provide child day-care and are regulated or operated and regulated 46905
by the department. Annually, each state department shall submit to 46906
the director a report for each such program it regulates or 46907
operates and regulates that includes the following information: 46908

(i) The site location of the program; 46909

(ii) The maximum number of infants, toddlers, preschool 46910
children, or school children served by the program at one time; 46911

(iii) The number of adults providing child day-care for the 46912
number of infants, toddlers, preschool children, or school 46913
children; 46914

(iv) Any changes in the rules made subsequent to the time 46915
when the rules were initially submitted to the director. 46916

The director shall maintain a record of the child day-care 46917
information submitted by other state departments and shall provide 46918
this information upon request to the general assembly or the 46919
public. 46920

(b) Child day-care programs conducted by boards of education 46921
or by chartered nonpublic schools that are conducted in school 46922
buildings and that provide child day-care to school children only 46923
shall be exempt from meeting or exceeding rules promulgated 46924
pursuant to this chapter. 46925

(7) Any preschool program or school child program, except a 46926
head start program, that is subject to licensure by the department 46927

of education under sections 3301.52 to 3301.59 of the Revised Code. 46928
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(8) Any program providing child day-care that meets all of the following requirements and, on October 20, 1987, was being operated by a nonpublic school that holds a charter issued by the state board of education for kindergarten only: 46930
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(a) The nonpublic school has given the notice to the state board and the director of job and family services required by Section 4 of Substitute House Bill No. 253 of the 117th general assembly; 46934
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(b) The nonpublic school continues to be chartered by the state board for kindergarten, or receives and continues to hold a charter from the state board for kindergarten through grade five; 46938
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(c) The program is conducted in a school building; 46941

(d) The program is operated in accordance with rules promulgated by the state board under sections 3301.52 to 3301.57 of the Revised Code. 46942
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(9) A youth development program operated outside of school hours by a community-based center to which all of the following apply: 46945
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(a) The children enrolled in the program are under nineteen years of age and enrolled in or eligible to be enrolled in a grade of kindergarten or above. 46948
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(b) The program provides informal child care and at least two of the following supervised activities: educational, recreational, culturally enriching, social, and personal development activities. 46951
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(c) The state board of education has approved the program's participation in the child and adult care food program as an outside-school-hours care center pursuant to standards established under section 3313.813 of the Revised Code. 46954
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(d) The community-based center operating the program is 46958
exempt from federal income taxation pursuant to 26 U.S.C. 501(a) 46959
and (c)(3). 46960

Sec. 5104.04. (A) The department of job and family services 46961
shall establish procedures to be followed in investigating, 46962
inspecting, and licensing child day-care centers and type A family 46963
day-care homes. 46964

(B)(1) The department shall, at least twice during every 46965
twelve-month period of operation of a center or type A home, 46966
inspect the center or type A home. The department shall inspect a 46967
part-time center or part-time type A home at least once during 46968
every twelve-month period of operation. The department shall 46969
provide a written inspection report to the licensee within a 46970
reasonable time after each inspection. The licensee shall display 46971
all written reports of inspections conducted during the current 46972
licensing period in a conspicuous place in the center or type A 46973
home. 46974

At least one inspection shall be unannounced and all 46975
inspections may be unannounced. No person, firm, organization, 46976
institution, or agency shall interfere with the inspection of a 46977
center or type A home by any state or local official engaged in 46978
performing duties required of the state or local official by 46979
Chapter 5104. of the Revised Code or rules adopted pursuant to 46980
Chapter 5104. of the Revised Code, including inspecting the center 46981
or type A home, reviewing records, or interviewing licensees, 46982
employees, children, or parents. 46983

Upon receipt of any complaint that a center or type A home is 46984
out of compliance with the requirements of Chapter 5104. of the 46985
Revised Code or rules adopted pursuant to Chapter 5104. of the 46986
Revised Code, the department shall investigate and may inspect a 46987
center or type A home. 46988

(2) If the department implements an instrument-based program 46989
monitoring information system, it may use an indicator checklist 46990
to comply with division (B)(1) of this section. 46991

(3) The department shall, at least once during every 46992
twelve-month period of operation of a center or type A home, 46993
collect information concerning the amounts charged by the center 46994
or home for providing child day-care services for use in 46995
establishing rates of reimbursement and payment pursuant to 46996
section 5104.30 of the Revised Code. 46997

(C) In the event a licensed center or type A home is 46998
determined to be out of compliance with the requirements of 46999
Chapter 5104. of the Revised Code or rules adopted pursuant to 47000
Chapter 5104. of the Revised Code, the department shall notify the 47001
licensee of the center or type A home in writing regarding the 47002
nature of the violation, what must be done to correct the 47003
violation, and by what date the correction must be made. If the 47004
correction is not made by the date established by the department, 47005
the department may commence action under Chapter 119. of the 47006
Revised Code to revoke the license. 47007

(D) The department may deny or revoke a license, or refuse to 47008
renew a license of a center or type A home, if the applicant 47009
knowingly makes a false statement on the application, does not 47010
comply with the requirements of Chapter 5104. or rules adopted 47011
pursuant to Chapter 5104. of the Revised Code, or has pleaded 47012
guilty to or been convicted of an offense described in section 47013
5104.09 of the Revised Code. 47014

(E) If the department finds, after notice and hearing 47015
pursuant to Chapter 119. of the Revised Code, that any person, 47016
firm, organization, institution, or agency licensed under section 47017
5104.03 of the Revised Code is in violation of any provision of 47018
Chapter 5104. of the Revised Code or rules adopted pursuant to 47019

Chapter 5104. of the Revised Code, the department may issue an 47020
order of revocation to the center or type A home revoking the 47021
license previously issued by the department. Upon the issuance of 47022
any order of revocation, the person whose license is revoked may 47023
appeal in accordance with section 119.12 of the Revised Code. 47024

(F) The surrender of a center or type A home license to the 47025
department or the withdrawal of an application for licensure by 47026
the owner or administrator of the center or type A home shall not 47027
prohibit the department from instituting any of the actions set 47028
forth in this section. 47029

(G) Whenever the department receives a complaint, is advised, 47030
or otherwise has any reason to believe that a center or type A 47031
home is providing child day-care without a license issued or 47032
renewed pursuant to section 5104.03 and is not exempt from 47033
licensing pursuant to section 5104.02 of the Revised Code, the 47034
department shall investigate the center or type A home and may 47035
inspect the areas children have access to or areas necessary for 47036
the care of children in the center or type A home during suspected 47037
hours of operation to determine whether the center or type A home 47038
is subject to the requirements of Chapter 5104. or rules adopted 47039
pursuant to Chapter 5104. of the Revised Code. 47040

(H) The department, upon determining that the center or type 47041
A home is operating without a license, shall notify the attorney 47042
general, the prosecuting attorney of the county in which the 47043
center or type A home is located, or the city attorney, village 47044
solicitor, or other chief legal officer of the municipal 47045
corporation in which the center or type A home is located, that 47046
the center or type A home is operating without a license. Upon 47047
receipt of the notification, the attorney general, prosecuting 47048
attorney, city attorney, village solicitor, or other chief legal 47049
officer of a municipal corporation shall file a complaint in the 47050
court of common pleas of the county in which the center or type A 47051

home is located requesting that the court grant an order enjoining 47052
the owner from operating the center or type A home. The court 47053
shall grant such injunctive relief upon a showing that the 47054
respondent named in the complaint is operating a center or type A 47055
home and is doing so without a license. 47056

(I) The department shall prepare an annual report on 47057
inspections conducted under this section. The report shall include 47058
the number of inspections conducted, the number and types of 47059
violations found, and the steps taken to address the violations. 47060
The department shall file the report with the governor, the 47061
president and minority leader of the senate, and the speaker and 47062
minority leader of the house of representatives on or before the 47063
first day of January of each year, beginning in 1999. 47064

Sec. 5104.30. (A) The department of job and family services 47065
is hereby designated as the state agency responsible for 47066
administration and coordination of federal and state funding for 47067
publicly funded child day-care in this state. Publicly funded 47068
child day-care shall be provided to the following: 47069

(1) Recipients of transitional child day-care as provided 47070
under section 5104.34 of the Revised Code; 47071

(2) Participants in the Ohio works first program established 47072
under Chapter 5107. of the Revised Code; 47073

(3) Individuals who would be participating in the Ohio works 47074
first program if not for a sanction under section 5107.16 of the 47075
Revised Code and who continue to participate in a work activity, 47076
developmental activity, or alternative work activity pursuant to 47077
an assignment under section 5107.42 of the Revised Code; 47078

(4) A family receiving publicly funded child day-care on 47079
October 1, 1997, until the family's income reaches one hundred 47080
fifty per cent of the federal poverty line; 47081

(5) Subject to available funds, other individuals determined 47082
eligible in accordance with rules adopted under section 5104.38 of 47083
the Revised Code. 47084

The department shall apply to the United States department of 47085
health and human services for authority to operate a coordinated 47086
program for publicly funded child day-care, if the director of job 47087
and family services determines that the application is necessary. 47088
For purposes of this section, the department of job and family 47089
services may enter into agreements with other state agencies that 47090
are involved in regulation or funding of child day-care. The 47091
department shall consider the special needs of migrant workers 47092
when it administers and coordinates publicly funded child day-care 47093
and shall develop appropriate procedures for accommodating the 47094
needs of migrant workers for publicly funded child day-care. 47095

(B) The department of job and family services shall 47096
distribute state and federal funds for publicly funded child 47097
day-care, including appropriations of state funds for publicly 47098
funded child day-care and appropriations of federal funds ~~for~~ 47099
~~publicly funded child day care~~ available under ~~Title XX of the~~ 47100
~~"Social Security Act," 88 Stat. 2337 (1974), 42 U.S.C.A. 1397, as~~ 47101
~~amended, and the child care block grant act, Title IV-A, and Title~~ 47102
XX. The department may use any state funds appropriated for 47103
publicly funded child day-care as the state share required to 47104
match any federal funds appropriated for publicly funded child 47105
day-care. 47106

(C) ~~The department may~~ In the use of federal funds available 47107
under the child care block grant act, all of the following apply: 47108

(1) The department may use the federal funds to hire staff to 47109
prepare any rules required under this chapter and to administer 47110
and coordinate federal and state funding for publicly funded child 47111
day-care. 47112

(2) Not more than five per cent of the aggregate amount of 47113
~~those~~ the federal funds received for a fiscal year may be expended 47114
for administrative costs. ~~The~~ 47115

(3) ~~The~~ department shall allocate and use at least four per 47116
cent of the federal funds for the following: 47117

~~(1)~~(a) Activities designed to provide comprehensive consumer 47118
education to parents and the public; 47119

~~(2)~~(b) Activities that increase parental choice; 47120

~~(3)~~(c) Activities, including child day-care resource and 47121
referral services, designed to improve the quality, and increase 47122
the supply, of child day-care. 47123

~~(D)~~(4) The department shall ensure that ~~any~~ the federal funds 47124
~~received by the state under the child care block grant act~~ will be 47125
used only to supplement, and will not be used to supplant, 47126
federal, state, and local funds available on the effective date of 47127
~~that~~ the child care block grant act for publicly funded child 47128
day-care and related programs. A county department of job and 47129
family services may purchase child day-care from funds obtained 47130
through any other means. 47131

~~(E)~~(D) The department shall encourage the development of 47132
suitable child day-care throughout the state, especially in areas 47133
with high concentrations of recipients of public assistance and 47134
families with low incomes. The department shall encourage the 47135
development of suitable child day-care designed to accommodate the 47136
special needs of migrant workers. On request, the department, 47137
through its employees or contracts with state or community child 47138
day-care resource and referral service organizations, shall 47139
provide consultation to groups and individuals interested in 47140
developing child day-care. The department of job and family 47141
services may enter into interagency agreements with the department 47142
of education, the board of regents, the department of development, 47143

and other state agencies and entities whenever the cooperative 47144
efforts of the other state agencies and entities are necessary for 47145
the department of job and family services to fulfill its duties 47146
and responsibilities under this chapter. 47147

The department may develop and maintain a registry of persons 47148
providing child day-care. The director may adopt rules pursuant to 47149
Chapter 119. of the Revised Code establishing procedures and 47150
requirements for the registry's administration. 47151

~~(F)~~(E)(1) The director shall adopt rules in accordance with 47152
Chapter 119. of the Revised Code establishing both of the 47153
following: 47154

(a) Reimbursement ceilings for providers of publicly funded 47155
child day-care; 47156

(b) A procedure for reimbursing and paying providers of 47157
publicly funded child day-care. 47158

(2) In establishing reimbursement ceilings under division 47159
~~(F)~~(E)(1)(a) of this section, the director shall do all of the 47160
following: 47161

(a) Use the information obtained under division (B)(3) of 47162
section 5104.04 of the Revised Code; 47163

(b) Establish an enhanced reimbursement ceiling for providers 47164
who provide child day-care for caretaker parents who work 47165
nontraditional hours; 47166

(c) For a type B family day-care home provider that has 47167
received limited certification pursuant to rules adopted under 47168
division (G)(1) of section 5104.011 of the Revised Code, establish 47169
a reimbursement ceiling that is the following: 47170

(i) If the provider is a person described in division 47171
(G)(1)(a) of section 5104.011 of the Revised Code, seventy-five 47172
per cent of the reimbursement ceiling that applies to a type B 47173

family day-care home certified by the same county department of 47174
job and family services pursuant to section 5104.11 of the Revised 47175
Code; 47176

(ii) If the provider is a person described in division 47177
(G)(1)(b) of section 5104.011 of the Revised Code, sixty per cent 47178
of the reimbursement ceiling that applies to a type B family 47179
day-care home certified by the same county department pursuant to 47180
section 5104.11 of the Revised Code. 47181

(3) In establishing reimbursement ceilings under division 47182
~~(F)~~(E)(1)(a) of this section, the director may establish different 47183
reimbursement ceilings based on any of the following: 47184

(a) Geographic location of the provider; 47185

(b) Type of care provided; 47186

(c) Age of the child served; 47187

(d) Special needs of the child served; 47188

(e) Whether the expanded hours of service are provided; 47189

(f) Whether weekend service is provided; 47190

(g) Whether the provider has exceeded the minimum 47191
requirements of state statutes and rules governing child day-care; 47192

(h) Any other factors the director considers appropriate. 47193

Sec. 5104.32. (A) Except as provided in division (C) of this 47194
section, all purchases of publicly funded child day-care shall be 47195
made under a contract entered into by a licensed child day-care 47196
center, licensed type A family day-care home, certified type B 47197
family day-care home, certified in-home aide, approved child day 47198
camp, licensed preschool program, licensed school child program, 47199
or border state child day-care provider and the county department 47200
of job and family services. A county department of job and family 47201
services may enter into a contract with a provider for publicly 47202

funded child day-care for a specified period of time or upon a 47203
continuous basis for an unspecified period of time. All contracts 47204
for publicly funded child day-care shall be contingent upon the 47205
availability of state and federal funds. The department of job and 47206
family services shall prescribe a standard form to be used for all 47207
contracts for the purchase of publicly funded child day-care, 47208
regardless of the source of public funds used to purchase the 47209
child day-care. To the extent permitted by federal law and 47210
notwithstanding any other provision of the Revised Code that 47211
regulates state or county contracts or contracts involving the 47212
expenditure of state, county, or federal funds, all contracts for 47213
publicly funded child day-care shall be entered into in accordance 47214
with the provisions of this chapter and are exempt from any other 47215
provision of the Revised Code that regulates state or county 47216
contracts or contracts involving the expenditure of state, county, 47217
or federal funds. 47218

(B) Each contract for publicly funded child day-care shall 47219
specify at least the following: 47220

(1) That the provider of publicly funded child day-care 47221
agrees to be paid for rendering services at the lowest of the rate 47222
customarily charged by the provider for children enrolled for 47223
child day-care, the reimbursement ceiling or rate of payment 47224
established pursuant to section 5104.30 of the Revised Code, or a 47225
rate the county department negotiates with the provider; 47226

(2) That, if a provider provides child day-care to an 47227
individual potentially eligible for publicly funded child day-care 47228
who is subsequently determined to be eligible, the county 47229
department agrees to pay for all child day-care provided between 47230
the date the county department receives the individual's completed 47231
application and the date the individual's eligibility is 47232
determined; 47233

(3) Whether the county department of job and family services, 47234

the provider, or a child day-care resource and referral service 47235
organization will make eligibility determinations, whether the 47236
provider or a child day-care resource and referral service 47237
organization will be required to collect information to be used by 47238
the county department to make eligibility determinations, and the 47239
time period within which the provider or child day-care resource 47240
and referral service organization is required to complete required 47241
eligibility determinations or to transmit to the county department 47242
any information collected for the purpose of making eligibility 47243
determinations; 47244

(4) That the provider, other than a border state child 47245
day-care provider or except as provided in division (B) of section 47246
3301.37 of the Revised Code, shall continue to be licensed, 47247
approved, or certified pursuant to this chapter ~~or sections~~ 47248
~~3301.52 to 3301.59 of the Revised Code~~ and shall comply with all 47249
standards and other requirements in this chapter ~~and those~~ 47250
~~sections~~ and in rules adopted pursuant to this chapter ~~or those~~ 47251
~~sections~~ for maintaining the provider's license, approval, or 47252
certification; 47253

(5) That, in the case of a border state child day-care 47254
provider, the provider shall continue to be licensed, certified, 47255
or otherwise approved by the state in which the provider is 47256
located and shall comply with all standards and other requirements 47257
established by that state for maintaining the provider's license, 47258
certificate, or other approval; 47259

(6) Whether the provider will be paid by the county 47260
department of job and family services or the state department of 47261
job and family services; 47262

(7) That the contract is subject to the availability of state 47263
and federal funds. 47264

(C) Unless specifically prohibited by federal law, the county 47265

department of job and family services shall give individuals 47266
eligible for publicly funded child day-care the option of 47267
obtaining certificates for payment that the individual may use to 47268
purchase services from any provider qualified to provide publicly 47269
funded child day-care under section 5104.31 of the Revised Code. 47270
Providers of publicly funded child day-care may present these 47271
certificates for payment for reimbursement in accordance with 47272
rules that the director of job and family services shall adopt. 47273
Only providers may receive reimbursement for certificates for 47274
payment. The value of the certificate for payment shall be based 47275
on the lowest of the rate customarily charged by the provider, the 47276
reimbursement ceiling or rate of payment established pursuant to 47277
section 5104.30 of the Revised Code, or a rate the county 47278
department negotiates with the provider. The county department may 47279
provide the certificates for payment to the individuals or may 47280
contract with child day-care providers or child day-care resource 47281
and referral service organizations that make determinations of 47282
eligibility for publicly funded child day-care pursuant to 47283
contracts entered into under section 5104.34 of the Revised Code 47284
for the providers or resource and referral service organizations 47285
to provide the certificates for payment to individuals whom they 47286
determine are eligible for publicly funded child day-care. 47287

For each six-month period a provider of publicly funded child 47288
day-care provides publicly funded child day-care to the child of 47289
an individual given certificates ~~of~~ for payment, the individual 47290
shall provide the provider certificates for days the provider 47291
would have provided publicly funded child day-care to the child 47292
had the child been present. County departments shall specify the 47293
maximum number of days providers will be provided certificates of 47294
payment for days the provider would have provided publicly funded 47295
child day-care had the child been present. The maximum number of 47296
days shall not exceed ten days in a six-month period during which 47297
publicly funded child day-care is provided to the child regardless 47298

of the number of providers that provide publicly funded child 47299
day-care to the child during that period. 47300

Sec. 5107.02. As used in this chapter: 47301

(A) "Adult" means an individual who is not a minor child. 47302

(B) "Assistance group" means a group of individuals treated 47303
as a unit for purposes of determining eligibility for and the 47304
amount of assistance provided under Ohio works first. 47305

(C) "Custodian" means an individual who has legal custody, as 47306
defined in section 2151.011 of the Revised Code, of a minor child 47307
or comparable status over a minor child created by a court of 47308
competent jurisdiction in another state. 47309

(D) "Guardian" means an individual that is granted authority 47310
by a probate court pursuant to Chapter 2111. of the Revised Code, 47311
or a court of competent jurisdiction in another state, to exercise 47312
parental rights over a minor child to the extent provided in the 47313
court's order and subject to residual parental rights of the minor 47314
child's parents. 47315

(E) "Minor child" means either of the following: 47316

(1) An individual who has not attained age eighteen; 47317

(2) An individual who has not attained age nineteen and is a 47318
full-time student in a secondary school or in the equivalent level 47319
of vocational or technical training. 47320

(F) "Minor head of household" means a minor child who is 47321
either of the following: 47322

(1) ~~A~~ Is married, at least six months pregnant, and a member 47323
of an assistance group that does not include an adult; 47324

(2) ~~A~~ Is married and is a parent of a child included in the 47325
same assistance group that does not include an adult. 47326

(G) "Ohio works first" means the program established by this 47327

chapter known as temporary assistance for needy families in Title 47328
IV-A. 47329

(H) "Payment standard" means the amount specified in rules 47330
adopted under section 5107.05 of the Revised Code that is the 47331
maximum amount of cash assistance an assistance group may receive 47332
under Ohio works first from state and federal funds. 47333

(I) "Specified relative" means the following individuals who 47334
are age eighteen or older: 47335

(1) The following individuals related by blood or adoption: 47336

(a) Grandparents, including grandparents with the prefix 47337
"great," "great-great," or "great-great-great"; 47338

(b) Siblings; 47339

(c) Aunts, uncles, nephews, and nieces, including such 47340
relatives with the prefix "great," "great-great," "grand," or 47341
"great-grand"; 47342

(d) First cousins and first cousins once removed. 47343

(2) Stepparents and stepsiblings; 47344

(3) Spouses and former spouses of individuals named in 47345
division (I)(1) or (2) of this section. 47346

(J) "Title IV-A" or "Title IV-D" means Title IV-A or Title 47347
IV-D of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 47348
301, as amended. 47349

Sec. 5107.30. (A) As used in this section: 47350

(1) "LEAP program" means the learning, earning, and parenting 47351
program. 47352

(2) "Teen" means a participant of Ohio works first who is 47353
under age ~~twenty~~ eighteen or is age eighteen and in school and is 47354
a natural or adoptive parent or is pregnant. 47355

(3) "School" means an educational program that is designed to lead to the attainment of a high school diploma or the equivalent of a high school diploma.

(B) The director of job and family services may adopt rules under section 5107.05 of the Revised Code, to the extent that such rules are consistent with federal law, to do all of the following:

(1) Define "good cause" and "the equivalent of a high school diploma" for the purposes of this section;

(2) Conduct ~~one or more special demonstration programs a~~ program titled the "LEAP program" and establish requirements governing the program. The purpose of the LEAP program is to encourage teens to complete school.

(3) Require every teen who is subject to LEAP program requirements to attend school in accordance with the requirements governing the program unless the teen shows good cause for not attending school. The department shall provide, in addition to the cash assistance payment provided under Ohio works first, an incentive payment, in an amount determined by the department, to every teen who is participating in the LEAP program and attends school in accordance with the requirements governing the program. The department shall reduce the cash assistance payment, in an amount determined by the department, under Ohio works first to every teen participating in the LEAP program who fails or refuses, without good cause, to ~~attend school in accordance with~~ meet the requirements governing the program.

(4) Require every teen who is subject to LEAP program requirements to enter into a written agreement with the county department of job and family services that provides all of the following:

(a) The teen, to be eligible to receive the incentive payment under division (B)(3) of this section, must ~~attend school in~~

~~accordance with~~ meet the requirements of the LEAP program~~.~~ 47387

(b) The county department will provide the incentive payment 47388
to the teen if the teen ~~attends school;~~ meets the requirements of 47389
the LEAP program. 47390

(c) The county department will reduce the cash assistance 47391
payment under Ohio works first if the teen fails or refuses 47392
without good cause to attend school in accordance with the 47393
requirements governing the LEAP program. 47394

~~(5) Evaluate the demonstration programs established under 47395
this section. In conducting the evaluations, the department of job 47396
and family services shall select control groups of teens who are 47397
otherwise subject to the LEAP program requirements. 47398~~

(C) A ~~teen~~ minor head of household who is participating in 47399
the LEAP program shall be considered to be participating in a work 47400
activity for the purpose of sections 5107.40 to 5107.69 of the 47401
Revised Code. However, the ~~teen~~ minor head of household is not 47402
subject to the requirements or sanctions of those sections, ~~unless 47403
the teen is over age eighteen and meets the LEAP program 47404
requirements by participating regularly in work activities, 47405
developmental activities, or alternative work activities under 47406
those sections. 47407~~

(D) Subject to the availability of funds, county departments 47408
of job and family services shall provide for LEAP participants to 47409
receive support services the county department determines to be 47410
necessary for LEAP participation. Support services may include 47411
publicly funded child day-care under Chapter 5104. of the Revised 47412
Code, transportation, and other services. 47413

Sec. 5107.37. ~~An~~ (A) Except as provided in division (B) of 47414
this section, an individual who resides in a county home, city 47415
infirmary, jail, or other public institution is not eligible to 47416

participate in Ohio works first. 47417

(B) Division (A) of this section does not apply to a minor 47418
child residing with the minor child's mother who participates in a 47419
prison nursery program established under section 5120.65 of the 47420
Revised Code. 47421

Sec. 5107.40. As used in sections 5107.40 to 5107.69 of the 47422
Revised Code: 47423

(A) "Alternative work activity" means an activity designed to 47424
promote self sufficiency and personal responsibility established 47425
by a county department of job and family services under section 47426
5107.64 of the Revised Code. 47427

(B) "Developmental activity" means an activity designed to 47428
promote self sufficiency and personal responsibility established 47429
by a county department of job and family services under section 47430
5107.62 of the Revised Code. 47431

(C) "High school equivalence diploma" means a diploma 47432
attesting to achievement of the equivalent of a high school 47433
education as measured by scores obtained on the tests of general 47434
educational development published by the American council on 47435
education. "High school equivalence diploma" includes a 47436
certificate of high school equivalence issued prior to January 1, 47437
1994, attesting to the achievement of the equivalent of a high 47438
school education as measured by scores obtained on tests of 47439
general educational development. 47440

(D) "Work activity" means the following: 47441

(1) Unsubsidized employment activities established under 47442
section 5107.60 of the Revised Code; 47443

(2) The subsidized employment program established under 47444
section 5107.52 of the Revised Code; 47445

(3) The work experience program established under section 47446

5107.54 of the Revised Code;	47447
(4) On-the-job training activities established under section 5107.60 of the Revised Code;	47448 47449
(5) The job search and readiness program established under section 5107.50 of the Revised Code;	47450 47451
(6) Community service activities established under section 5107.60 of the Revised Code;	47452 47453
(7) Vocational educational training activities established under section 5107.60 of the Revised Code;	47454 47455
(8) Jobs skills training activities established under section 5107.60 of the Revised Code that are directly related to employment;	47456 47457 47458
(9) Education activities established under section 5107.60 of the Revised Code that are directly related to employment for participants of Ohio works first who have not earned a high school diploma or high school equivalence diploma;	47459 47460 47461 47462
(10) Education activities established under section 5107.60 of the Revised Code for participants of Ohio works first who have not completed secondary school or received a high school equivalence diploma under which the participants attend a secondary school or a course of study leading to a high school equivalence diploma;	47463 47464 47465 47466 47467 47468
(11) Child-care service activities, including training, established under section 5107.60 of the Revised Code to aid another participant of Ohio works first assigned to a community service activity or other work activity;	47469 47470 47471 47472
(12) The education program established under section 5107.58 of the Revised Code that are operated pursuant to a federal waiver granted by the United States secretary of health and human services pursuant to a request made under former section 5101.09	47473 47474 47475 47476

of the Revised Code;	47477
(13) Except as limited <u>To the extent provided</u> by division (C)	47478
of section 5107.30 of the Revised Code, the LEAP program	47479
established under that section.	47480
Sec. 5107.60. In accordance with Title IV-A, federal	47481
regulations, state law, the Title IV-A state plan prepared under	47482
section 5101.80 of the Revised Code, and amendments to the plan,	47483
county departments of job and family services shall establish and	47484
administer the following work activities, in addition to the work	47485
activities established under sections 5107.50, 5107.52, 5107.54,	47486
and 5107.58 of the Revised Code, for minor heads of households and	47487
adults participating in Ohio works first:	47488
(A) Unsubsidized employment activities, including activities	47489
a county department determines are legitimate entrepreneurial	47490
activities;	47491
(B) On-the-job training activities, including training to	47492
become an employee of a child day-care center or type A family	47493
day-care home, authorized provider of a certified type B family	47494
day-care home, or in-home aide;	47495
(C) Community service activities including a program under	47496
which a participant of Ohio works first who is the parent,	47497
guardian, custodian, or specified relative responsible for the	47498
care of a minor child enrolled in grade twelve or lower is	47499
involved in the minor child's education on a regular basis;	47500
(D) Vocational educational training activities;	47501
(E) Jobs skills training activities that are directly related	47502
to employment;	47503
(F) Education activities that are directly related to	47504
employment for participants who have not earned a high school	47505
diploma or high school equivalence diploma;	47506

(G) Education activities for participants who have not 47507
completed secondary school or received a high school equivalence 47508
diploma under which the participants attend a secondary school or 47509
a course of study leading to a high school equivalence diploma, 47510
including LEAP participation by a minor head of household; 47511

(H) Child-care service activities aiding another participant 47512
assigned to a community service activity or other work activity. A 47513
county department may provide for a participant assigned to this 47514
work activity to receive training necessary to provide child-care 47515
services. 47516

Sec. 5108.01. As used in this chapter: 47517

(A) ~~"Assistance group" means a group of individuals treated~~ 47518
~~as a unit for purposes of determining eligibility for the~~ 47519
~~prevention, retention, and contingency program~~ "County family 47520
services planning committee" means the county family services 47521
planning committee established under section 329.06 of the Revised 47522
Code or the board created by consolidation under division (C) of 47523
section 6301.06 of the Revised Code. 47524

(B) "Prevention, retention, and contingency program" means 47525
the program established by this chapter and funded in part with 47526
federal funds provided under Title IV-A. 47527

(C) "Title IV-A" means Title IV-A of the "Social Security 47528
Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as amended. 47529

Sec. 5108.03. Under the prevention, retention, and 47530
contingency program, ~~a~~ each county department of job and family 47531
services shall ~~provide~~ do both of the following in accordance with 47532
the statement of policies the county department develops under 47533
section 5108.04 of the Revised Code: 47534

(A) Provide benefits and services that individuals need to 47535

overcome immediate barriers to achieving or maintaining self 47536
sufficiency and personal responsibility; 47537

(B) Perform related administrative duties. A county 47538
~~department shall provide the benefits and services in accordance~~ 47539
~~with either the model design for the program that the department~~ 47540
~~of job and family services develops under section 5108.05 of the~~ 47541
~~Revised Code or the county department's own policies for the~~ 47542
~~program developed under section 5108.06 of the Revised Code.~~ 47543

Sec. 5108.06 5108.04. Each county department of job and 47544
family services shall ~~either adopt the model design for a written~~ 47545
statement of policies governing the prevention, retention, and 47546
~~contingency program the department of job and family services~~ 47547
~~develops under section 5108.05 of the Revised Code or develop its~~ 47548
~~own policies for the program county. To develop its own policies,~~ 47549
~~a county department shall adopt a written statement of the~~ 47550
~~policies governing the program. The policies may be a modification~~ 47551
~~of the model design, different from the model design, or a~~ 47552
~~combination. The statement of policies shall be adopted not later~~ 47553
than October 1, 2003, and shall be updated at least every two 47554
years thereafter. A county department may amend its statement of 47555
policies to modify, terminate, and establish new policies. The 47556
county director of job and family services shall sign and date the 47557
statement of policies and any amendment to it. Neither the 47558
statement of policies nor any amendment to it may have an 47559
effective date that is earlier than the date of the county 47560
director's signature. 47561

A Each county department of job and family services shall 47562
~~inform~~ provide the department of job and family services ~~of~~ 47563
~~whether it has adopted the model design or developed its own~~ 47564
~~policies for the prevention, retention, and contingency program.~~ 47565
~~If a county department develops its own policies, it shall provide~~ 47566

~~the department~~ a written copy of the statement of policies and any 47567
amendments it adopts to the statement not later than ten calendar 47568
days after the statement or amendment's effective date. 47569

~~Sec. 5108.07 5108.05.~~ ~~The model design for the prevention,~~ 47570
~~retention, and contingency program that the department of job and~~ 47571
~~family services develops under section 5108.05 of the Revised Code~~ 47572
~~and policies for the program that a county department of job and~~ 47573
~~family services may develop under section 5108.06 of the Revised~~ 47574
~~Code shall establish~~ In adopting a statement of policies under 47575
section 5108.04 of the Revised Code for the county's prevention, 47576
retention, and contingency program, each county department of job 47577
and family services shall do all of the following: 47578

(A) Establish or specify eligibility requirements for 47579
~~assistance groups that apply for the program under section 5108.10~~ 47580
~~of the Revised Code, benefits~~ all of the following: 47581

(1) Benefits and services to be provided under the program ~~to~~ 47582
~~assistance groups, administrative~~ that are allowable uses of 47583
federal Title IV-A funds under 42 U.S.C. 601 and 604(a), except 47584
that they may not be "assistance" as defined in 45 C.F.R. 47585
260.31(a) but rather benefits and services that 45 C.F.R. 47586
260.31(b) excludes from the definition of assistance; 47587

(2) Restrictions on the amount, duration, and frequency of 47588
the benefits and services; 47589

(3) Eligibility requirements for the benefits and services; 47590

(4) Fair and equitable procedures for both of the following: 47591

(a) The certification of eligibility for the benefits and 47592
services that do not have a financial need eligibility 47593
requirement; 47594

(b) The determination and verification of eligibility for the 47595
benefits and services that have a financial need eligibility 47596

requirement. 47597

(5) Objective criteria for the delivery of the benefits and services; 47598
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(6) Administrative requirements, and other; 47600

(7) Other matters the department, in the case of the model design, or a county department, in the case of county policies, determine determines are necessary. 47601
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~~The model design and a county department's policies may establish eligibility requirements for, and specify benefits and services to be provided to, types of groups, such as students in the same class, that share a common need for the benefits and services. If the model design or a county department's policies include such a provision, the model design or county department's policies shall require that each individual who is to receive the benefits and services meet the eligibility requirements established for the type of group of which the individual is a member. The model design or county department's policies also shall require that the county department providing the benefits and services certify the group's eligibility, specify the duration that the group is to receive the benefits and services, and maintain the eligibility information for each member of the group receiving the benefits and services.~~ 47604
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~~The model design and a county department's policies may specify benefits and services that a county department may provide for the general public, including billboards that promote the prevention, and reduction in the incidence, of out of wedlock pregnancies or encourage the formation and maintenance of two parent families.~~ 47619
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~~The model design and a county department's policies must be consistent with~~ (B) Provide for the statement of policies to be consistent with all of the following: 47625
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(1) The plan of cooperation the board of county commissioners develops under section 307.983 of the Revised Code; 47628
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(2) The review and analysis of the county family services committee conducted in accordance with division (B)(2) of section 329.06 of the Revised Code; 47630
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(3) Title IV-A, federal regulations, state law, the Title IV-A state plan submitted to the United States secretary of health and human services under section 5101.80 of the Revised Code, and amendments to the plan. All benefits and services to be provided under the model design or a county department's policies must be allowable uses of federal Title IV A funds as specified in 42 U.S.C.A. 604(a), except that they may not be "assistance" as defined in 45 C.F.R. 260.31(a). The benefits and services shall be benefits and services that 45 C.F.R. 260.31(b) excludes from the definition of assistance. 47633
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(C) Either provide the public and local government entities at least thirty days to submit comments on, or have the county family services planning committee review, the statement of policies, including the design of the county's prevention, retention, and contingency program, before the county director signs and dates the statement of policies. 47643
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Sec. 5108.06. In adopting a statement of policies under section 5108.04 of the Revised Code for the county's prevention, retention, and contingency program, a county department of job and family services may specify both of the following: 47649
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(A) Benefits and services to be provided under the program that prevent and reduce the incidence of out-of-wedlock pregnancies or encourage the formation and maintenance of two-parent families as permitted by 45 C.F.R. 260.20(c) and (d); 47653
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(B) How the county department will certify individuals' 47657

eligibility for such benefits and services. 47658

Sec. 5108.07. (A) Each statement of policies adopted under section 5108.04 of the Revised Code shall include the board of county commissioners' certification that the county department of job and family services complied with this chapter in adopting the statement of policies. 47659
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(B) The board of county commissioners shall revise its certification under division (A) of this section if an amendment to the statement of policies that the board considers to be significant is adopted under section 5108.04 of the Revised Code. 47664
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Sec. 5108.09. When a state hearing under division (B) of section 5101.35 of the Revised Code or an administrative appeal under division (C) of that section is held regarding the prevention, retention, and contingency program, the hearing officer, director of job and family services, or director's designee shall base the decision in the hearing or appeal on the following: 47668
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~~(A) If the county department of job and family services involved in the hearing or appeal adopted the department of job and family services' model design for the program developed under section 5108.05 of the Revised Code, the model design:~~ 47675
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~~(B) If the county department developed its own policies for the program,~~ the county department's department of job and family services' written statement of policies adopted under section ~~5108.06~~ 5108.04 of the Revised Code and any amendments the county department adopted to the statement if the county department provides a copy of the statement of policies and all amendments to the hearing officer, director, or director's designee at the hearing or appeal. 47679
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~~Sec. 5108.10. An assistance group seeking to participate in the prevention, retention, and contingency program shall apply to a county department of job and family services using Eligibility for a benefit or service under a county's prevention, retention, and contingency program shall be certified in accordance with the statement of policies adopted under section 5108.04 of the Revised Code if the benefit or service does not have a financial need eligibility requirement.~~ 47687
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Eligibility for a benefit or service shall be determined in accordance with the statement of policies and based on an application containing information the county department of job and family services requires- 47695
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~~When if the benefit or service has a financial need eligibility requirement. When a county department receives an application for participation in the prevention, retention, and contingency program such benefits and services, it shall promptly make an investigation and record of the circumstances of the applicant in order to ascertain follow verification procedures established by the statement of policies to verify the facts surrounding the application and to obtain such other information as may be required. On completion of the investigation verification procedure, the county department shall determine whether the applicant is eligible to participate, for the benefits or services the applicant should receive, and the approximate date when participation is the benefits or services are to begin.~~ 47699
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Sec. 5108.11. (A) To the extent permitted by section 307.982 of the Revised Code, a board of county commissioners may enter into a written contract with a private or government entity for the entity to do either or both of the following for the county's prevention, retention, and contingency program: 47712
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(1) Certify eligibility for benefits and services that do not have a financial need eligibility requirement; 47717
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(2) Accept applications and determine and verify eligibility for benefits and services that have a financial need eligibility requirement. 47719
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(B) If a board of county commissioners enters into a contract under division (A) of this section with a private or government entity, the county department of job and family services shall do all of the following: 47722
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(1) Ensure that eligibility for benefits and services is certified or determined and verified in accordance with the statement of policies adopted under section 5108.04 of the Revised Code; 47726
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(2) Ensure that the private or government entity maintains all records that are necessary for audits; 47730
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(3) Monitor the private or government entity for compliance with Title IV-A, this chapter of the Revised Code, and the statement of policies; 47732
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(4) Take actions that are necessary to recover any funds that are not spent in accordance with Title IV-A or this chapter of the Revised Code. 47735
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Sec. 5108.12. Each county department of job and family services is responsible for funds expended or claimed under the county's prevention, retention, and contingency program that the department of job and family services, auditor of state, United States department of health and human services, or other government entity determines is expended or claimed in a manner that federal or state law or policy does not permit. 47738
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Sec. 5111.019. (A) ~~The~~ If sufficient funds are appropriated 47745

by the general assembly, the director of job and family services 47746
~~shall~~ may submit to the United States secretary of health and 47747
human services an amendment to the state medicaid plan to make an 47748
individual who meets all of the following requirements eligible 47749
for medicaid for the amount of time provided by division (B) of 47750
this section: 47751

(1) The individual is the parent of a child under nineteen 47752
years of age and resides with the child; 47753

(2) The individual's family income does not exceed one 47754
hundred per cent of the federal poverty guidelines; 47755

(3) The individual is not otherwise eligible for medicaid; 47756

(4) The individual satisfies all relevant requirements 47757
established by rules adopted under division (D) of section 5111.01 47758
of the Revised Code. 47759

(B) An individual is eligible to receive medicaid under this 47760
section for a period that does not exceed two years beginning on 47761
the date on which eligibility is established. 47762

~~(C) If approved by the United States secretary of health and 47763
human services and the director of job and family services, the 47764
director shall implement the medicaid plan amendment submitted 47765
under this section not sooner than July 1, 2000. If a federal 47766
waiver is necessary for the United States secretary to approve the 47767
amendment, the director of job and family services shall submit a 47768
waiver request to the United States secretary not later than 47769
ninety days after the effective date of this section. 47770~~

Sec. 5111.0112. The director of job and family services shall 47771
examine instituting a copayment program under medicaid. As part of 47772
the examination, the director shall determine which groups of 47773
medicaid recipients may be subjected to a copayment requirement 47774
under federal statutes and regulations ~~and which of those groups~~ 47775

~~are appropriate for a copayment program designed to reduce 47776
inappropriate and excessive use of medical goods and services. If, 47777
on completion of the examination, the director determines that it 47778
is feasible to institute such a copayment program, the director 47779
may seek approval from the United States secretary of health and 47780
human services to institute the copayment program. If necessary, 47781
the director may seek approval by applying for a waiver of federal 47782
statutes and regulations. If such approval is obtained, the 47783
director shall adopt rules in accordance with Chapter 119. of the 47784
Revised Code governing the copayment program. 47785~~

Sec. 5111.0113. Children who are in the temporary or 47786
permanent custody of a certified public or private nonprofit 47787
agency or institution or in adoptions subsidized under division 47788
(B) of section 5153.163 of the Revised Code are eligible for 47789
medical assistance through the medicaid program established under 47790
section 5111.01 of the Revised Code. 47791

Sec. 5111.02. (A) Under the medical assistance program: 47792

(1) Except as otherwise permitted by federal statute or 47793
regulation and at the department's discretion, reimbursement by 47794
the department of job and family services to a medical provider 47795
for any medical service rendered under the program shall not 47796
exceed the authorized reimbursement level for the same service 47797
under the medicare program established under Title XVIII of the 47798
"Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 301, as 47799
amended. 47800

(2) Reimbursement for freestanding medical laboratory charges 47801
shall not exceed the customary and usual fee for laboratory 47802
profiles. 47803

(3) The department may deduct from payments for services 47804
rendered by a medicaid provider under the medical assistance 47805

program any amounts the provider owes the state as the result of 47806
incorrect medical assistance payments the department has made to 47807
the provider. 47808

(4) The department may conduct final fiscal audits in 47809
accordance with the applicable requirements set forth in federal 47810
laws and regulations and determine any amounts the provider may 47811
owe the state. When conducting final fiscal audits, the department 47812
shall consider generally accepted auditing standards, which 47813
include the use of statistical sampling. 47814

(5) The number of days of inpatient hospital care for which 47815
reimbursement is made on behalf of a recipient of medical 47816
assistance to a hospital that is not paid under a 47817
diagnostic-related-group prospective payment system shall not 47818
exceed thirty days during a period beginning on the day of the 47819
recipient's admission to the hospital and ending sixty days after 47820
the termination of that hospital stay, except that the department 47821
may make exceptions to this limitation. The limitation does not 47822
apply to children participating in the program for medically 47823
handicapped children established under section 3701.023 of the 47824
Revised Code. 47825

(B) The director of job and family services may adopt, amend, 47826
or rescind rules under Chapter 119. of the Revised Code 47827
establishing the amount, duration, and scope of medical services 47828
to be included in the medical assistance program. Such rules shall 47829
establish the conditions under which services are covered and 47830
reimbursed, the method of reimbursement applicable to each covered 47831
service, and the amount of reimbursement or, in lieu of such 47832
amounts, methods by which such amounts are to be determined for 47833
each covered service. Any rules that pertain to nursing facilities 47834
or intermediate care facilities for the mentally retarded shall be 47835
consistent with sections 5111.20 to 5111.33 of the Revised Code. 47836

(C) ~~No health insuring corporation that has a contract to~~ 47837

~~provide health care services to recipients of medical assistance 47838
shall restrict the availability to its enrollees of any 47839
prescription drugs included in the Ohio medicaid drug formulary as 47840
established under rules adopted by the director. 47841~~

(D) The division of any reimbursement between a collaborating 47842
physician or podiatrist and a clinical nurse specialist, certified 47843
nurse-midwife, or certified nurse practitioner for services 47844
performed by the nurse shall be determined and agreed on by the 47845
nurse and collaborating physician or podiatrist. In no case shall 47846
reimbursement exceed the payment that the physician or podiatrist 47847
would have received had the physician or podiatrist provided the 47848
entire service. 47849

Sec. 5111.021. Under the medical assistance program, any 47850
amount determined to be owed the state by a final fiscal audit 47851
conducted pursuant to division (A)(4) of section 5111.02 of the 47852
Revised Code, upon the issuance of an adjudication order pursuant 47853
to Chapter 119. of the Revised Code that contains a finding that 47854
there is a preponderance of the evidence that the provider will 47855
liquidate assets or file bankruptcy in order to prevent payment of 47856
the amount determined to be owed the state, becomes a lien upon 47857
the real and personal property of the provider. Upon failure of 47858
the provider to pay the amount to the state, the director of job 47859
and family services shall file notice of the lien, for which there 47860
shall be no charge, in the office of the county recorder of the 47861
county in which it is ascertained that the provider owns real or 47862
personal property. The director shall notify the provider by mail 47863
of the lien, but absence of proof that the notice was sent does 47864
not affect the validity of the lien. The lien is not valid as 47865
against the claim of any mortgagee, pledgee, purchaser, judgment 47866
creditor, or other lienholder of record at the time the notice is 47867
filed. 47868

If the provider acquires real or personal property after 47869
notice of the lien is filed, the lien shall not be valid as 47870
against the claim of any mortgagee, pledgee, subsequent bona fide 47871
purchaser for value, judgment creditor, or other lienholder of 47872
record to such after-acquired property unless the notice of lien 47873
is refiled after the property is acquired by the provider and 47874
before the competing lien attaches to the after-acquired property 47875
or before the conveyance to the subsequent bona fide purchaser for 47876
value. 47877

When the amount has been paid, the provider may record with 47878
the recorder notice of the payment. For recording such notice of 47879
payment, the recorder shall charge and receive from the provider a 47880
base fee of one dollar for services and a housing trust fund fee 47881
of one dollar pursuant to section 317.36 of the Revised Code. 47882

In the event of a distribution of a provider's assets 47883
pursuant to an order of any court under the law of this state 47884
including any receivership, assignment for benefit of creditors, 47885
adjudicated insolvency, or similar proceedings, amounts then or 47886
thereafter due the state under this chapter have the same priority 47887
as provided by law for the payment of taxes due the state and 47888
shall be paid out of the receivership trust fund or other such 47889
trust fund in the same manner as provided for claims for unpaid 47890
taxes due the state. 47891

If the attorney general finds after investigation that any 47892
amount due the state under this chapter is uncollectable, in whole 47893
or in part, the attorney general shall recommend to the director 47894
the cancellation of all or part of the claim. The director may 47895
thereupon effect the cancellation. 47896

Sec. 5111.022. (A) As used in this section: 47897

(1) "Community mental health facility" means a community 47898

mental health facility that has a quality assurance program 47899
accredited by the joint commission on accreditation of healthcare 47900
organizations or is certified by the department of mental health 47901
or department of job and family services. 47902

(2) "Mental health professional" means a person qualified to 47903
work with mentally ill persons under the standards established by 47904
the director of mental health pursuant to section 5119.611 of the 47905
Revised Code. 47906

(B) The state medicaid plan for providing medical assistance 47907
under Title XIX of the "Social Security Act," 49 Stat. 620, 42 47908
U.S.C.A. 301, as amended, shall include provision of the following 47909
mental health services when provided by community mental health 47910
facilities described in division (B) of this section: 47911

(1) Outpatient mental health services, including, but not 47912
limited to, preventive, diagnostic, therapeutic, rehabilitative, 47913
and palliative interventions rendered to individuals in an 47914
individual or group setting by a mental health professional in 47915
accordance with a plan of treatment appropriately established, 47916
monitored, and reviewed; 47917

(2) Partial-hospitalization mental health services of three 47918
to fourteen hours per service day, rendered by persons directly 47919
supervised by a mental health professional; 47920

(3) Unscheduled, emergency mental health services of a kind 47921
ordinarily provided to persons in crisis when rendered by persons 47922
supervised by a mental health professional; 47923

(4) Subject to receipt of federal approval, assertive 47924
community treatment and intensive home-based mental health 47925
services. 47926

~~(B) Services shall be included in the state plan only when~~ 47927
~~provided by community mental health facilities that have quality~~ 47928
~~assurance programs accredited by the joint commission on~~ 47929

~~accreditation of healthcare organizations or certified by the 47930
department of mental health or department of job and family 47931
services. 47932~~

(C) ~~The comprehensive annual plan shall certify the 47933
availability of sufficient unencumbered community mental health 47934
state subsidy and local funds to match Title XIX federal medicaid 47935
reimbursement funds earned by the community mental health 47936
facilities. ~~Reimbursement for eligible services shall be based on 47937
the prospective cost of providing the services as developed in 47938
standards adopted as part of the comprehensive annual plan. 47939~~~~

(D) ~~As used in this section, "mental health professional" 47940
means a person qualified to work with mentally ill persons under 47941
the standards established by the director of mental health 47942
pursuant to section 5119.611 of the Revised Code. 47943~~

~~(E) With respect to services established by division (A) of 47944
this section, the The department of job and family services shall 47945
enter into a separate contract with the department of mental 47946
health under section 5111.91 of the Revised Code with regard to 47947
the component of the medicaid program provided for by this 47948
section. The terms of the contract between the department of job 47949
and family services and the department of mental health shall 47950
specify both of the following: 47951~~

~~(1) That the department of mental health and boards of 47952
alcohol, drug addiction, and mental health services shall provide 47953
state and local matching funds for Title XIX of the "Social 47954
Security Act," for reimbursement of services established by 47955
division (A) of this section; 47956~~

~~(2) How the community mental health facilities described in 47957
division (B) of this section will be paid for providing the 47958
services established by division (A) of this section. 47959~~

(E) Not later than May 1, 2004, the department of job and 47960

family services shall request federal approval to provide 47961
assertive community treatment and intensive home-based mental 47962
health services under medicaid pursuant to this section. 47963

(F) On receipt of federal approval sought under division (F) 47964
of this section, the director of job and family services shall 47965
adopt rules in accordance with Chapter 119. of the Revised Code 47966
establishing statewide access and acuity standards for partial 47967
hospitalization mental health services and assertive community 47968
treatment and intensive home-based mental health services provided 47969
under medicaid pursuant to this section. The director shall 47970
consult with the department of mental health in adopting the 47971
rules. 47972

Sec. 5111.025. (A) In rules adopted under section 5111.02 of 47973
the Revised Code, the director of job and family services shall 47974
modify the manner or establish a new manner in which the following 47975
are paid under medicaid: 47976

(1) Community mental health facilities for providing mental 47977
health services included in the state medicaid plan pursuant to 47978
section 5111.022 of the Revised Code; 47979

(2) Providers of alcohol and drug addiction services for 47980
providing alcohol and drug addiction services included in the 47981
medicaid program pursuant to rules adopted under section 5111.02 47982
of the Revised Code. 47983

(B) In modifying the manner, or establishing a new manner, 47984
for medicaid to pay for the services specified in division (A) of 47985
this section, the director shall include a provision for obtaining 47986
federal financial participation for the costs that each board of 47987
alcohol, drug addiction, and mental health services incurs in its 47988
administration of those services. Except as provided in section 47989
5111.92 of the Revised Code, the department of job and family 47990
services shall pay the federal financial participation obtained 47991

for such administrative costs to the board that incurs the 47992
administrative costs. 47993

(C) The director's authority to modify the manner, or to 47994
establish a new manner, for medicaid to pay for the services 47995
specified in division (A) of this section is not limited by any 47996
rules adopted under section 5111.02 or 5119.61 of the Revised Code 47997
that are in effect on the effective date of this section and 47998
govern the way medicaid pays for those services. This is the case 47999
regardless of what state agency adopted the rules. 48000

Sec. 5111.03. (A) No provider of services or goods 48001
contracting with the department of job and family services 48002
pursuant to the medicaid program shall, by deception, obtain or 48003
attempt to obtain payments under this chapter to which the 48004
provider is not entitled pursuant to the provider agreement, or 48005
the rules of the federal government or the department of job and 48006
family services relating to the program. No provider shall 48007
willfully receive payments to which the provider is not entitled, 48008
or willfully receive payments in a greater amount than that to 48009
which the provider is entitled; nor shall any provider falsify any 48010
report or document required by state or federal law, rule, or 48011
provider agreement relating to medicaid payments. As used in this 48012
section, a provider engages in "deception" when the provider, 48013
acting with actual knowledge of the representation or information 48014
involved, acting in deliberate ignorance of the truth or falsity 48015
of the representation or information involved, or acting in 48016
reckless disregard of the truth or falsity of the representation 48017
or information involved, deceives another or causes another to be 48018
deceived by any false or misleading representation, by withholding 48019
information, by preventing another from acquiring information, or 48020
by any other conduct, act, or omission that creates, confirms, or 48021
perpetuates a false impression in another, including a false 48022
impression as to law, value, state of mind, or other objective or 48023

subjective fact. No proof of specific intent to defraud is 48024
required to show, for purposes of this section, that a provider 48025
has engaged in deception. 48026

(B) Any provider who violates division (A) of this section 48027
shall be liable, in addition to any other penalties provided by 48028
law, for all of the following civil penalties: 48029

(1) Payment of interest on the amount of the excess payments 48030
at the maximum interest rate allowable for real estate mortgages 48031
under section 1343.01 of the Revised Code on the date the payment 48032
was made to the provider for the period from the date upon which 48033
payment was made, to the date upon which repayment is made to the 48034
state; 48035

(2) Payment of an amount equal to three times the amount of 48036
any excess payments; 48037

(3) Payment of a sum of not less than five thousand dollars 48038
and not more than ten thousand dollars for each deceptive claim or 48039
falsification; 48040

(4) All reasonable expenses which the court determines have 48041
been necessarily incurred by the state in the enforcement of this 48042
section. 48043

(C) ~~In~~ As used in this division, "intermediate care facility 48044
for the mentally retarded" and "nursing facility" have the same 48045
meanings given in section 5111.20 of the Revised Code. 48046

In addition to the civil penalties provided in division (B) 48047
of this section, the director of job and family services, upon the 48048
conviction of, or the entry of a judgment in either a criminal or 48049
civil action against, a medicaid provider or its owner, officer, 48050
authorized agent, associate, manager, or employee in an action 48051
brought pursuant to section 109.85 of the Revised Code, shall 48052
terminate the provider agreement between the department and the 48053
provider and stop reimbursement to the provider for services 48054

rendered for a period of up to five years from the date of 48055
conviction or entry of judgment. As used in this chapter, "owner" 48056
means any person having at least five per cent ownership in the 48057
medicaid provider. No such provider, owner, officer, authorized 48058
agent, associate, manager, or employee shall own or provide 48059
services to any other medicaid provider or risk contractor or 48060
arrange for, render, or order services for medicaid recipients 48061
during the period of termination as provided in division (C) of 48062
this section, nor, during the period of termination as provided in 48063
division (C) of this section, shall such provider, owner, officer, 48064
authorized agent, associate, manager, or employee receive 48065
reimbursement in the form of direct payments from the department 48066
or indirect payments of medicaid funds in the form of salary, 48067
shared fees, contracts, kickbacks, or rebates from or through any 48068
participating provider or risk contractor. The provider agreement 48069
shall not be terminated or reimbursement terminated if the 48070
provider or owner can demonstrate that the provider or owner did 48071
not directly or indirectly sanction the action of its authorized 48072
agent, associate, manager, or employee that resulted in the 48073
conviction or entry of a judgment in a criminal or civil action 48074
brought pursuant to section 109.85 of the Revised Code. Nothing in 48075
this division prohibits any owner, officer, authorized agent, 48076
associate, manager, or employee of a medicaid provider from 48077
entering into a medicaid provider agreement if the person can 48078
demonstrate that the person had no knowledge of an action of the 48079
medicaid provider the person was formerly associated with that 48080
resulted in the conviction or entry of a judgment in a criminal or 48081
civil action brought pursuant to section 109.85 of the Revised 48082
Code. 48083

~~Providers subject to sections 5111.20 to 5111.32 of the~~ 48084
~~Revised Code~~ Nursing facility or intermediate care facility for 48085
the mentally retarded providers whose agreements are terminated 48086
pursuant to this section may continue to receive reimbursement for 48087

up to thirty days after the effective date of the termination if 48088
the provider makes reasonable efforts to transfer recipients to 48089
another facility or to alternate care and if federal funds are 48090
provided for such reimbursement. 48091

(D) Any provider of services or goods contracting with the 48092
department of job and family services pursuant to Title XIX of the 48093
"Social Security Act," who, without intent, obtains payments under 48094
this chapter in excess of the amount to which the provider is 48095
entitled, thereby becomes liable for payment of interest on the 48096
amount of the excess payments at the maximum real estate mortgage 48097
rate on the date the payment was made to the provider for the 48098
period from the date upon which payment was made to the date upon 48099
which repayment is made to the state. 48100

(E) The attorney general on behalf of the state may commence 48101
proceedings to enforce this section in any court of competent 48102
jurisdiction; and the attorney general may settle or compromise 48103
any case brought under this section with the approval of the 48104
department of job and family services. Notwithstanding any other 48105
provision of law providing a shorter period of limitations, the 48106
attorney general may commence a proceeding to enforce this section 48107
at any time within six years after the conduct in violation of 48108
this section terminates. 48109

(F) The authority, under state and federal law, of the 48110
department of job and family services or a county department of 48111
job and family services to recover excess payments made to a 48112
provider is not limited by the availability of remedies under 48113
sections 5111.11 and 5111.12 of the Revised Code for recovering 48114
benefits paid on behalf of recipients of medical assistance. 48115

The penalties under this chapter apply to any overpayment, 48116
billing, or falsification occurring on and after April 24, 1978. 48117
All moneys collected by the state pursuant to this section shall 48118
be deposited in the state treasury to the credit of the general 48119

revenue fund.	48120
Sec. 5111.06. (A)(1) As used in this section:	48121
(a) "Provider" means any person, institution, or entity that furnishes medicaid services under a provider agreement with the department of job and family services pursuant to Title XIX of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 301, as amended.	48122 48123 48124 48125 48126
(b) "Party" has the same meaning as in division (G) of section 119.01 of the Revised Code.	48127 48128
(c) "Adjudication" has the same meaning as in division (D) of section 119.01 of the Revised Code.	48129 48130
(2) This section does not apply to any action taken by the department of job and family services under sections 5111.35 to 5111.62 of the Revised Code.	48131 48132 48133
(B) Except as provided in division (D) of this section, the department shall do either of the following by issuing an order pursuant to an adjudication conducted in accordance with Chapter 119. of the Revised Code:	48134 48135 48136 48137
(1) Enter into or refuse to enter into a provider agreement with a provider, or suspend, terminate, renew, or refuse to renew an existing provider agreement with a provider;	48138 48139 48140
(2) Take any action based upon a final fiscal audit of a provider.	48141 48142
(C) Any party who is adversely affected by the issuance of an adjudication order under division (B) of this section may appeal to the court of common pleas of Franklin county in accordance with section 119.12 of the Revised Code.	48143 48144 48145 48146
(D) The department is not required to comply with division (B)(1) of this section whenever any of the following occur:	48147 48148

(1) The terms of a provider agreement require the provider to have a license, permit, or certificate issued by an official, board, commission, department, division, bureau, or other agency of state government other than the department of job and family services, and the license, permit, or certificate has been denied or revoked.

(2) The provider agreement is denied, terminated, or not renewed pursuant to division (C) or (E) of section 5111.03 of the Revised Code;

(3) The provider agreement is denied, terminated, or not renewed due to the provider's termination, suspension, or exclusion from the medicare program established under Title XVIII of the "Social Security Act," and the termination, suspension, or exclusion is binding on the provider's participation in the medicaid program;

(4) The provider agreement is denied, terminated, or not renewed due to the provider's pleading guilty to or being convicted of a criminal activity materially related to either the medicare or medicaid program;

(5) The provider agreement is denied, terminated, or suspended as a result of action by the United States department of health and human services and that action is binding on the provider's participation in the medicaid program.

(E) The department may withhold payments for services rendered by a medicaid provider under the medical assistance program during the pendency of proceedings initiated under division (B)(1) of this section. If the proceedings are initiated under division (B)(2) of this section, the department may withhold payments only to the extent that they equal amounts determined in a final fiscal audit as being due the state. This division does not apply if the department fails to comply with section 119.07 of

the Revised Code, requests a continuance of the hearing, or does 48180
not issue a decision within thirty days after the hearing is 48181
completed. This division does not apply to nursing facilities and 48182
intermediate care facilities for the mentally retarded ~~subject to~~ 48183
~~sections as defined in section 5111.20 to 5111.32~~ of the Revised 48184
Code. 48185

Sec. ~~5111.08~~ 5111.071. Commencing in December, 1986, and 48186
every second December thereafter, the director of job and family 48187
services shall establish a dispensing fee, effective the following 48188
January, for licensed pharmacists who are providers under this 48189
chapter. The dispensing fee shall take into consideration the 48190
results of the survey conducted under section 5111.07 of the 48191
Revised Code. 48192

Sec. ~~5111.16~~ 5111.08. In accordance with subsection (g) of 48193
section 1927 of the "Social Security Act," 49 Stat. 320 (1935), 42 48194
U.S.C.A. 1396r-8(g), as amended, the department of job and family 48195
services shall establish an outpatient drug use review program to 48196
assure that prescriptions obtained by recipients of medical 48197
assistance under this chapter are appropriate, medically 48198
necessary, and unlikely to cause adverse medical results. 48199

Sec. 5111.082. The director of job and family services, in 48200
rules adopted under section 5111.02 of the Revised Code, may 48201
establish and implement a supplemental drug rebate program under 48202
which drug manufacturers may be required to provide the department 48203
of job and family services a supplemental rebate as a condition of 48204
having the drug manufacturers' drug products covered by the 48205
medicaid program without prior approval. If necessary, the 48206
director may apply to the United States secretary of health and 48207
human services for a waiver of federal statutes and regulations to 48208
establish the supplemental drug rebate program. 48209

If the director establishes a supplemental drug rebate program, the director shall consult with drug manufacturers regarding the establishment and implementation of the program.

If the director establishes a supplemental drug rebate program, the director shall exempt from the program and from prior authorization or any other restriction all of a drug manufacturer's drug products that have been approved by the United States food and drug administration and for which there is no generic equivalent for the treatment of either of the following:

(A) Mental illness, as defined in section 5122.01 of the Revised Code, including schizophrenia, major depressive disorder, and bipolar disorder;

(B) HIV or AIDS, both as defined in section 3701.24 of the Revised Code.

Sec. 5111.111. As used in this section, "home and community-based services" means services provided pursuant to a waiver under section 1915 of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 1396n, as amended.

The department of job and family services may place a lien against the property of a medical assistance recipient or recipient's spouse, other than a recipient or spouse of a recipient of home and community-based services, that the department may recover as part of the program instituted under section 5111.11 of the Revised Code. When medical assistance is paid on behalf of any person in circumstances under which federal law and regulations and this section permit the imposition of a lien, the director of job and family services or a person designated by the director may sign a certificate to the effect. The county department of job and family services shall file for recording and indexing the certificate, or a certified copy, in

the real estate mortgage records in the office of the county 48240
recorder in every county in which real property of the recipient 48241
or spouse is situated. From the time of filing the certificate in 48242
the office of the county recorder, the lien attaches to all real 48243
property of the recipient or spouse described therein for all 48244
amounts of aid which are paid or which thereafter are paid, and 48245
shall remain a lien until satisfied. 48246

Upon filing the certificate in the office of the recorder, 48247
all persons are charged with notice of the lien and the rights of 48248
the department of job and family services thereunder. 48249

The county recorder shall keep a record of every certificate 48250
filed showing its date, the time of filing, the name and residence 48251
of the recipient or spouse, and any release, waivers, or 48252
satisfaction of the lien. 48253

The priority of the lien shall be established in accordance 48254
with state and federal law. 48255

The department may waive the priority of its lien to provide 48256
for the costs of the last illness as determined by the department, 48257
administration, attorney fees, administrator fees, a sum for the 48258
payment of the costs of burial, which shall be computed by 48259
deducting from five hundred dollars whatever amount is available 48260
for the same purpose from all other sources, and a similar sum for 48261
the spouse of the decedent. 48262

Sec. 5111.151. (A) This section applies to eligibility 48263
determinations for all cases involving medical assistance provided 48264
pursuant to this chapter, qualified medicare beneficiaries, 48265
specified low-income medicare beneficiaries, qualifying 48266
individuals-1, qualifying individuals-2, and medical assistance 48267
for covered families and children. 48268

(B) As used in this section: 48269

(1) "Trust" means any arrangement in which a grantor transfers real or personal property to a trust with the intention that it be held, managed, or administered by at least one trustee for the benefit of the grantor or beneficiaries. "Trust" includes any legal instrument or device similar to a trust. 48270
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(2) "Legal instrument or device similar to a trust" includes, but is not limited to, escrow accounts, investment accounts, partnerships, contracts, and other similar arrangements that are not called trusts under state law but are similar to a trust and to which all of the following apply: 48275
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(a) The property in the trust is held, managed, retained, or administered by a trustee. 48280
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(b) The trustee has an equitable, legal, or fiduciary duty to hold, manage, retain, or administer the property for the benefit of the beneficiary. 48282
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(c) The trustee holds identifiable property for the beneficiary. 48285
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(3) "Grantor" is a person who creates a trust, including all of the following: 48287
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(a) An individual; 48289

(b) An individual's spouse; 48290

(c) A person, including a court or administrative body, with legal authority to act in place of or on behalf of an individual or an individual's spouse; 48291
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(d) A person, including a court or administrative body, that acts at the direction or on request of an individual or the individual's spouse. 48294
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(4) "Beneficiary" is a person or persons, including a grantor, who benefits in some way from a trust. 48297
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- (5) "Trustee" is a person who manages a trust's principal and income for the benefit of the beneficiaries. 48299
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- (6) "Person" has the same meaning as in section 1.59 of the Revised Code and includes an individual, corporation, business trust, estate, trust, partnership, and association. 48301
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- (7) "Applicant" is an individual who applies for medical assistance benefits or the individual's spouse. 48304
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- (8) "Recipient" is an individual who receives medical assistance benefits or the individual's spouse. 48306
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- (9) "Revocable trust" is a trust that can be revoked by the grantor or the beneficiary, including all of the following, even if the terms of the trust state that it is irrevocable: 48308
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- (a) A trust that provides that the trust can be terminated only by a court; 48311
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- (b) A trust that terminates on the happening of an event, but only if the event occurs at the direction or control of the grantor, beneficiary, or trustee. 48313
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- (10) "Irrevocable trust" is a trust that cannot be revoked by the grantor or terminated by a court and that terminates only on the occurrence of an event outside of the control or direction of the beneficiary or grantor. 48316
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- (11) "Payment" is any disbursement from the principal or income of the trust, including actual cash, noncash or property disbursements, or the right to use and occupy real property. 48320
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- (12) "Payments to or for the benefit of the applicant or recipient" is a payment to any person resulting in a direct or indirect benefit to the applicant or recipient. 48323
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- (13) "Testamentary trust" is a trust that is established by a will and does not take effect until after the death of the person who created the trust. 48326
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(C) If an applicant or recipient is a beneficiary of a trust, the county department of job and family services shall determine what type of trust it is and shall treat the trust in accordance with the appropriate provisions of this section and rules adopted by the department of job and family services governing trusts. The county department of job and family services may determine that the trust or portion of the trust is one of the following:

(1) A countable resource; 48336

(2) Countable income; 48337

(3) A countable resource and countable income; 48338

(4) Not a countable resource or countable income. 48339

(D)(1) A trust or legal instrument or device similar to a trust shall be considered a self-settled trust if all of the following apply:

(a) The trust was established on or after August 11, 1993. 48343

(b) The trust was not established by a will. 48344

(c) The trust was established by an applicant or recipient, spouse of an applicant or recipient, or a person, including a court or administrative body, with legal authority to act in place of or on behalf of an applicant, recipient, or spouse, or acting at the direction or on request of an applicant, recipient, or spouse. 48345
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(2) A trust that meets the requirements of division (D)(1) of this section and is a revocable trust shall be treated by the county department of job and family services as follows: 48351
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(a) The corpus of the trust shall be considered a resource available to the applicant or recipient. 48354
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(b) Payments from the trust to or for the benefit of the applicant or recipient shall be considered unearned income of the 48356
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applicant or recipient. 48358

(c) Any other payments from the trust shall be considered an 48359
improper transfer of resources and shall be subject to rules 48360
adopted by the department of job and family services governing 48361
improper transfers of resources. 48362

(3) A trust that meets the requirements of division (D)(1) of 48363
this section and is an irrevocable trust shall be treated by the 48364
county department of job and family services as follows: 48365

(a) If there are any circumstances under which payment from 48366
the trust could be made to or for the benefit of the applicant or 48367
recipient, including a payment that can be made only in the 48368
future, the portion from which payments could be made shall be 48369
considered a resource available to the applicant or recipient. The 48370
county department of job and family services shall not take into 48371
account when payments can be made. 48372

(b) Any payment that is actually made to or for the benefit 48373
of the applicant or recipient from either the corpus or income 48374
shall be considered unearned income. 48375

(c) If a payment is made to someone other than to the 48376
applicant or recipient and the payment is not for the benefit of 48377
the applicant or recipient, the payment shall be considered an 48378
improper transfer of resources and shall be subject to rules 48379
adopted by the department of job and family services governing 48380
improper transfers of resources. 48381

(d) The date of the transfer shall be the later of the date 48382
of establishment of the trust or the date of the occurrence of the 48383
event. 48384

(e) When determining the value of the transferred resource 48385
under this provision, the value of the trust shall be its value on 48386
the date payment to the applicant or recipient was foreclosed. 48387

(f) Any income earned or other resources added subsequent to the foreclosure date shall be added to the total value of the trust. 48388
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(g) Any payments to or for the benefit of the applicant or recipient after the foreclosure date but prior to the application date shall be subtracted from the total value. Any other payments shall not be subtracted from the value. 48391
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(h) Any addition of resources after the foreclosure date shall be considered a separate transfer. 48395
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(4) If a trust is funded with assets of another person or persons in addition to assets of the applicant or recipient, the applicable provisions of this section and rules adopted by the department of job and family services governing trusts shall apply only to the portion of the trust attributable to the applicant or recipient. 48397
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(5) The availability of a self-settled trust shall be considered without regard to any of the following: 48403
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(a) The purpose for which the trust is established; 48405

(b) Whether the trustees have exercised or may exercise discretion under the trust; 48406
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(c) Any restrictions on when or whether distributions may be made from the trust; 48408
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(d) Any restrictions on the use of distributions from the trust. 48410
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(6) The baseline date for the look-back period for transfers of assets involving a self-settled trust shall be the date on which the applicant or recipient is both institutionalized and first applies for medical assistance. The following conditions also apply to look-back periods for transfers of assets involving self-settled trusts: 48412
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(a) If a self-settled trust is a revocable trust and a 48418
portion of the trust is distributed to someone other than the 48419
applicant or recipient for the benefit of someone other than the 48420
applicant or recipient, the distribution shall be considered an 48421
improper transfer of resources. The look-back period shall be 48422
sixty months from the baseline date. The transfer shall be 48423
considered to have taken place on the date on which the payment to 48424
someone other than the applicant or recipient was made. 48425

(b) If a self-settled trust is an irrevocable trust and a 48426
portion of the trust is not distributable to the applicant or 48427
recipient, the trust shall be treated as an improper transfer of 48428
resources. The look-back period shall be sixty months from the 48429
baseline date. The transfer is considered to have been made as of 48430
the later of the date the trust was established or the date on 48431
which payment to the applicant or recipient was foreclosed. The 48432
value of these assets shall not be reduced by any payments from 48433
the trust that may be made from these unavailable assets at a 48434
later date. 48435

(c) If a self-settled trust is an irrevocable trust and a 48436
portion or all of the trust may be disbursed to or for the benefit 48437
of the applicant or recipient, any payment that is made to another 48438
person other than the applicant or recipient shall be considered 48439
an improper transfer of resources. The look-back period is 48440
thirty-six months from the baseline date. The transfer shall be 48441
considered to have been made as of the date of payment to the 48442
other person. 48443

(E) The principal or income from any of the following shall 48444
be exempt from being counted as a resource by a county department 48445
of job and family services: 48446

(1)(a) A special needs trust that meets all of the following 48447
requirements: 48448

(i) The trust contains assets of an applicant or recipient under sixty-five years of age and may contain the assets of other individuals. 48449
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(ii) The applicant or recipient is disabled as defined in rules adopted by the department of job and family services. 48452
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(iii) The trust is established for the benefit of the applicant or recipient by a parent, grandparent, legal guardian, or a court. 48454
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(iv) The trust requires that on the death of the applicant or recipient the state will receive all amounts remaining in the trust up to an amount equal to the total amount of medical assistance paid on behalf of the applicant or recipient. 48457
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(b) If a special needs trust meets the requirements of division (E)(1)(a) of this section and has been established for a disabled applicant or recipient under sixty-five years of age, the exemption for the trust granted pursuant to division (E) of this section shall continue after the disabled applicant or recipient becomes sixty-five years of age if the applicant or recipient continues to be disabled as defined in rules adopted by the department of job and family services. Except for income earned by the trust, the grantor shall not add to or otherwise augment the trust after the applicant or recipient attains sixty-five years of age. An addition or augmentation of the trust by the applicant or recipient with the applicant's own assets after the applicant or recipient attains sixty-five years of age shall be treated as an improper transfer of resources. 48461
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(c) Cash distributions to the applicant or recipient shall be counted as unearned income. All other distributions from the trust shall be treated as provided in rules adopted by the department of job and family services governing in-kind income. 48475
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(d) Transfers of assets to a special needs trust shall not be 48479

treated as an improper transfer of resources. Assets held prior to 48480
the transfer to the trust shall be considered as countable assets 48481
or countable income or countable assets and income. 48482

(2)(a) A qualifying income trust that meets all of the 48483
following requirements: 48484

(i) The trust is composed only of pension, social security, 48485
and other income to the applicant or recipient, including 48486
accumulated interest in the trust. 48487

(ii) The income is received by the individual and the right 48488
to receive the income is not assigned or transferred to the trust. 48489

(iii) The trust requires that on the death of the applicant 48490
or recipient the state will receive all amounts remaining in the 48491
trust up to an amount equal to the total amount of medical 48492
assistance paid on behalf of the applicant or recipient. 48493

(b) No resources shall be used to establish or augment the 48494
trust. 48495

(c) If an applicant or recipient has irrevocably transferred 48496
or assigned the applicant's or recipient's right to receive income 48497
to the trust, the trust shall not be considered a qualifying 48498
income trust by the county department of job and family services. 48499

(d) Income placed in a qualifying income trust shall not be 48500
counted in determining an applicant's or recipient's eligibility 48501
for medical assistance. The recipient of the funds may place any 48502
income directly into a qualifying income trust without those funds 48503
adversely affecting the applicant's or recipient's eligibility for 48504
medical assistance. Income generated by the trust that remains in 48505
the trust shall not be considered as income to the applicant or 48506
recipient. 48507

(e) All income placed in a qualifying income trust shall be 48508
combined with any countable income not placed in the trust to 48509

arrive at a base income figure to be used for spend down 48510
calculations. 48511

(f) The base income figure shall be used for post-eligibility 48512
deductions, including personal needs allowance, monthly income 48513
allowance, family allowance, and medical expenses not subject to 48514
third party payment. Any income remaining shall be used toward 48515
payment of patient liability. Payments made from a qualifying 48516
income trust shall not be combined with the base income figure for 48517
post-eligibility calculations. 48518

(g) The base income figure shall be used when determining the 48519
spend down budget for the applicant or recipient. Any income 48520
remaining after allowable deductions are permitted as provided 48521
under rules adopted by the department of job and family services 48522
shall be considered the applicant's or recipient's spend down 48523
liability. 48524

(3)(a) A pooled trust that meets all of the following 48525
requirements: 48526

(i) The trust contains the assets of the applicant or 48527
recipient of any age who is disabled as defined in rules adopted 48528
by the department of job and family services. 48529

(ii) The trust is established and managed by a nonprofit 48530
association. 48531

(iii) A separate account is maintained for each beneficiary 48532
of the trust but, for purposes of investment and management of 48533
funds, the trust pools the funds in these accounts. 48534

(iv) Accounts in the trust are established by the applicant 48535
or recipient, the applicant's or recipient's parent, grandparent, 48536
or legal guardian, or a court solely for the benefit of 48537
individuals who are disabled. 48538

(v) The trust requires that, to the extent that any amounts 48539

remaining in the beneficiary's account on the death of the 48540
beneficiary are not retained by the trust, the trust pay to the 48541
state the amounts remaining in the trust up to an amount equal to 48542
the total amount of medical assistance paid on behalf of the 48543
beneficiary. 48544

(b) Cash distributions to the applicant or recipient shall be 48545
counted as unearned income. All other distributions from the trust 48546
shall be treated as provided in rules adopted by the department of 48547
job and family services governing in-kind income. 48548

(c) Transfers of assets to a pooled trust shall not be 48549
treated as an improper transfer of resources. Assets held prior to 48550
the transfer to the trust shall be considered as countable assets, 48551
countable income, or countable assets and income. 48552

(4) A supplemental services trust that meets the requirements 48553
of section 1339.51 of the Revised Code and to which all of the 48554
following apply: 48555

(a) A person may establish a supplemental services trust 48556
pursuant to section 1339.51 of the Revised Code only for another 48557
person who is eligible to receive services through one of the 48558
following agencies: 48559

(i) The department of mental retardation and developmental 48560
disabilities; 48561

(ii) A county board of mental retardation and developmental 48562
disabilities; 48563

(iii) The department of mental health; 48564

(iv) A board of alcohol, drug addiction, and mental health 48565
services. 48566

(b) A county department of job and family services shall not 48567
determine eligibility for another agency's program. An applicant 48568
or recipient shall do one of the following: 48569

(i) Provide documentation from one of the agencies listed in division (E)(4)(a) of this section that establishes that the applicant or recipient was determined to be eligible for services from the agency at the time of the creation of the trust; 48570
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(ii) Provide an order from a court of competent jurisdiction that states that the applicant or recipient was eligible for services from one of the agencies listed in division (E)(4)(a) of this section at the time of the creation of the trust. 48574
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(c) At the time the trust is created, the trust principal does not exceed the maximum amount permitted. The maximum amount permitted in calendar year 2002 is two hundred fourteen thousand dollars. Each year thereafter, the maximum amount permitted is the prior year's amount plus two thousand dollars. 48578
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(d) A county department of job and family services shall review the trust to determine whether it complies with the provisions of section 1339.51 of the Revised Code. 48583
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(e) Payments from supplemental services trusts shall be exempt as long as the payments are for supplemental services as defined in rules adopted by the department of job and family services. All supplemental services shall be purchased by the trustee and shall not be purchased through direct cash payments to the beneficiary. 48586
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(f) If a trust is represented as a supplemental services trust and a county department of job and family services determines that the trust does not meet the requirements provided in division (E)(4) of this section and section 1339.51 of the Revised Code, the county department of job and family services shall not consider it an exempt trust. 48592
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(F)(1) A trust or legal instrument or device similar to a trust shall be considered a trust established by an individual for the benefit of the applicant or recipient if all of the following 48598
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<u>apply:</u>	48601
<u>(a) The trust is created by a person other than the applicant or recipient.</u>	48602 48603
<u>(b) The trust names the applicant or recipient as a beneficiary.</u>	48604 48605
<u>(c) The trust is funded with assets or property in which the applicant or recipient has never held an ownership interest prior to the establishment of the trust.</u>	48606 48607 48608
<u>(2) Any portion of a trust that meets the requirements of division (F)(1) of this section shall be an available resource only if the trust permits the trustee to expend principal, corpus, or assets of the trust for the applicant's or recipient's medical care, care, comfort, maintenance, health, welfare, general well being, or any combination of these purposes.</u>	48609 48610 48611 48612 48613 48614
<u>(3) A trust that meets the requirements of division (F)(1) of this section shall be considered an available resource even if the trust contains any of the following types of provisions:</u>	48615 48616 48617
<u>(a) A provision that prohibits the trustee from making payments that would supplant or replace medical assistance or other public assistance;</u>	48618 48619 48620
<u>(b) A provision that prohibits the trustee from making payments that would impact or have an effect on the applicant's or recipient's right, ability, or opportunity to receive medical assistance or other public assistance;</u>	48621 48622 48623 48624
<u>(c) A provision that attempts to prevent the trust or its corpus or principal from being counted as an available resource.</u>	48625 48626
<u>(4) A trust that meets the requirements of division (F)(1) of this section shall not be counted as an available resource if at least one of the following circumstances applies:</u>	48627 48628 48629
<u>(a) If a trust contains a clear statement requiring the</u>	48630

trustee to preserve a portion of the trust for another beneficiary 48631
or remainderman, that portion of the trust shall not be counted as 48632
an available resource. Terms of a trust that grant discretion to 48633
preserve a portion of the trust shall not qualify as a clear 48634
statement requiring the trustee to preserve a portion of the 48635
trust. 48636

(b) If a trust contains a clear statement requiring the 48637
trustee to use a portion of the trust for a purpose other than 48638
medical care, care, comfort, maintenance, welfare, or general well 48639
being of the applicant or recipient, that portion of the trust 48640
shall not be counted as an available resource. Terms of a trust 48641
that grant discretion to limit the use of a portion of the trust 48642
shall not qualify as a clear statement requiring the trustee to 48643
use a portion of the trust for a particular purpose. 48644

(c) If a trust contains a clear statement limiting the 48645
trustee to making fixed periodic payments, the trust shall not be 48646
counted as an available resource and payments shall be treated in 48647
accordance with rules adopted by the department of job and family 48648
services governing income. Terms of a trust that grant discretion 48649
to limit payments shall not qualify as a clear statement requiring 48650
the trustee to make fixed periodic payments. 48651

(d) If a trust contains a clear statement that requires the 48652
trustee to terminate the trust if it is counted as an available 48653
resource, the trust shall not be counted as an available resource. 48654
Terms of a trust that grant discretion to terminate the trust do 48655
not qualify as a clear statement requiring the trustee to 48656
terminate the trust. 48657

(e) If a person obtains a judgment from a court of competent 48658
jurisdiction that expressly prevents the trustee from using part 48659
or all of the trust for the medical care, care, comfort, 48660
maintenance, welfare, or general well being of the applicant or 48661
recipient, the trust or that portion of the trust subject to the 48662

court order shall not be counted as a resource. 48663

(f) If a trust is specifically exempt from being counted as an available resource by a provision of the Revised Code, rules, or federal law, the trust shall not be counted as a resource. 48664
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(g) If an applicant or recipient presents a final judgment from a court demonstrating that the applicant or recipient was unsuccessful in a civil action against the trustee to compel payments from the trust, the trust shall not be counted as an available resource. 48667
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(h) If an applicant or recipient presents a final judgment from a court demonstrating that in a civil action against the trustee the applicant or recipient was only able to compel limited or periodic payments, the trust shall not be counted as an available resource and payments shall be treated in accordance with rules adopted by the department of job and family services governing income. 48672
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(i) If an applicant or recipient provides written documentation showing that the cost of a civil action brought to compel payments from the trust would be cost prohibitive, the trust shall not be counted as an available resource. 48679
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(5) Any actual payments to the applicant or recipient from a trust that meet the requirements of division (F)(1) of this section, including trusts that are not counted as an available resource, shall be treated as provided in rules adopted by the department of job and family services governing income. Payments to any person other than the applicant or recipient shall not be considered income to the applicant or recipient. Payments from the trust to a person other than the applicant or recipient shall not be considered an improper transfer of assets. 48683
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Sec. 5111.16. (A) As part of the medicaid program, the 48692

department of job and family services shall establish a care management system. The department shall submit, if necessary, applications to the United States department of health and human services for waivers of federal medicaid requirements that would otherwise be violated in the implementation of the system. 48693
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The department shall implement the care management system in some or all counties and shall designate the medicaid recipients who are required or permitted to participate in the system. In the case of individuals who receive medicaid on the basis of being aged, blind, or disabled, as specified in division (A)(2) of section 5111.01 of the Revised Code, all of the following apply: 48698
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(1) Not later than July 1, 2004, the department shall designate a portion of the individuals for participation in the care management system. 48704
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(2) Individuals shall not be designated for participation unless they reside in a county in which individuals who receive medicaid on another basis have been designated for participation. 48707
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(3) If, pursuant to division (B)(2) of this section, the department requires or permits the individuals to obtain health care services through managed care organizations, the department shall select the managed care organizations to be used by the individuals through a request for proposals process. The department shall issue its initial request for proposals not later than December 31, 2003. 48710
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(B) Under the care management system, the department may do both of the following: 48717
48718

(1) Require or permit participants in the system to obtain health care services from providers designated by the department; 48719
48720

(2) Require or permit participants in the system to obtain health care services through managed care organizations under contract with the department pursuant to section 5111.17 of the 48721
48722
48723

Revised Code. 48724

(C) The director of job and family services may adopt rules 48725
in accordance with Chapter 119. of the Revised Code to implement 48726
this section. 48727

Sec. 5111.17. (A) ~~On receipt of a waiver from the United~~ 48728
~~States department of health and human services of any federal~~ 48729
~~requirement that would otherwise be violated, the~~ The department 48730
of job and family services may ~~establish in some or all counties a~~ 48731
~~managed care system under which designated recipients of medical~~ 48732
~~assistance are required to obtain health care services from~~ 48733
~~providers designated by the department.~~ 48734

~~(B) The department may enter into contracts with managed care~~ 48735
~~organizations to authorize, including health insuring~~ 48736
corporations, under which the organizations are authorized to 48737
provide, or arrange for the provision of, health care services to 48738
medical assistance recipients ~~participating in a~~ who are required 48739
or permitted to obtain health care services through managed care 48740
organizations as part of the care management system established 48741
under ~~this~~ section 5111.16 of the Revised Code. 48742

~~(C) For the purpose of determining the amount the department~~ 48743
~~pays hospitals under section 5112.08 of the Revised Code and the~~ 48744
~~amount of disproportionate share hospital payments paid by the~~ 48745
~~medicare program established under Title XVIII of the "Social~~ 48746
~~Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 301, as amended,~~ 48747
~~each managed care organization under contract with the department~~ 48748
~~to provide hospital services to participating medical assistance~~ 48749
~~recipients shall keep detailed records for each hospital with~~ 48750
~~which it contracts about the cost to the hospital of providing the~~ 48751
~~care, payments made by the organization to the hospital for the~~ 48752
~~care, utilization of hospital services by medical assistance~~ 48753
~~recipients participating in managed care, and other utilization~~ 48754

~~data required by the department.~~ 48755

~~(D)~~(B) The director of job and family services may adopt 48756
rules in accordance with Chapter 119. of the Revised Code to 48757
implement this section. 48758

Sec. 5111.171. (A) The department of job and family services 48759
may provide financial incentive awards to managed care 48760
organizations ~~that~~ under contract with the department ~~under~~ 48761
pursuant to section 5111.17 of the Revised Code ~~to provide health~~ 48762
~~care services to participating medical assistance recipients and~~ 48763
that meet or exceed performance standards specified in provider 48764
agreements or rules adopted by the department. The department may 48765
specify in a contract with a managed care organization the amounts 48766
of financial incentive awards, methodology for distributing 48767
awards, types of awards, and standards for administration by the 48768
department. 48769

(B) There is hereby created in the state treasury the health 48770
care compliance fund. The fund shall consist of all fines imposed 48771
on and collected from managed care organizations for failure to 48772
~~meet~~ meet performance standards or other requirements specified 48773
in provider agreements or rules adopted by the department. All 48774
investment earnings of the fund shall be credited to the fund. 48775
Moneys credited to the fund shall be used solely for the following 48776
purposes: 48777

(1) To reimburse managed care organizations that have paid 48778
fines for failures to meet performance standards or other 48779
requirements and that have come into compliance by meeting 48780
requirements as specified by the department; 48781

(2) To provide financial incentive awards established 48782
pursuant to division (A) of this section and specified in 48783
contracts between managed care organizations and the department. 48784

Sec. 5111.172. When contracting under section 5111.17 of the Revised Code with a managed care organization that is a health insuring corporation, the department of job and family services may require the health insuring corporation to provide coverage of prescription drugs for medicaid recipients enrolled in the health insuring corporation. In providing the required coverage, the health insuring corporation may, subject to the department's approval, use strategies for the management of drug utilization.

Sec. 5111.173. The department of job and family services shall appoint a temporary manager for a managed care organization under contract with the department pursuant to section 5111.17 of the Revised Code if the department determines that the managed care organization has repeatedly failed to meet substantive requirements specified in section 1903(m) of the "Social Security Act," 79 Stat. 286 (1965), 42 U.S.C. 1396b(m), as amended; section 1932 of the Social Security Act, 42 U.S.C. 1396u-2, as amended; or 42 C.F.R. 438 Part I. The appointment of a temporary manager does not preclude the department from imposing other sanctions available to the department against the managed care organization.

The managed care organization shall pay all costs of having the temporary manager perform the temporary manager's duties, including all costs the temporary manager incurs in performing those duties. If the temporary manager incurs costs or liabilities on behalf of the managed care organization, the managed care organization shall pay those costs and be responsible for those liabilities.

The appointment of a temporary manager is not subject to Chapter 119. of the Revised Code, but the managed care organization may request a reconsideration of the appointment. Reconsiderations shall be requested and conducted in accordance

with rules the director of job and family services shall adopt in 48815
accordance with Chapter 119. of the Revised Code. 48816

The appointment of a temporary manager does not cause the 48817
managed care organization to lose the right to appeal, in 48818
accordance with Chapter 119. of the Revised Code, any proposed 48819
termination or any decision not to renew the managed care 48820
organization's medicaid provider agreement or the right to 48821
initiate the sale of the managed care organization or its assets. 48822

In addition to the rules required to be adopted under this 48823
section, the director may adopt any other rules necessary to 48824
implement this section. The rules shall be adopted in accordance 48825
with Chapter 119. of the Revised Code. 48826

Sec. 5111.174. The department of job and family services may 48827
disenroll some or all medicaid recipients enrolled in a managed 48828
care organization under contract with the department pursuant to 48829
section 5111.17 of the Revised Code if the department proposes to 48830
terminate or not to renew the contract and determines that the 48831
recipients' access to medically necessary services is jeopardized 48832
by the proposal to terminate or not to renew the contract. The 48833
disenrollment is not subject to Chapter 119. of the Revised Code, 48834
but the managed care organization may request a reconsideration of 48835
the disenrollment. Reconsiderations shall be requested and 48836
conducted in accordance with rules the director of job and family 48837
services shall adopt in accordance with Chapter 119. of the 48838
Revised Code. The request for, or conduct of, a reconsideration 48839
regarding a proposed disenrollment shall not delay the 48840
disenrollment. 48841

In addition to the rules required to be adopted under this 48842
section, the director may adopt any other rules necessary to 48843
implement this section. The rules shall be adopted in accordance 48844
with Chapter 119. of the Revised Code. 48845

Sec. 5111.175. For the purpose of determining the amount the 48846
department of job and family services pays hospitals under section 48847
5112.08 of the Revised Code and the amount of disproportionate 48848
share hospital payments paid by the medicare program established 48849
under Title XVIII of the "Social Security Act," 79 Stat. 286 48850
(1965), 42 U.S.C. 1396n, as amended, a managed care organization 48851
under contract with the department pursuant to section 5111.17 of 48852
the Revised Code authorizing the organization to provide, or 48853
arrange for the provision of, hospital services to medicaid 48854
recipients shall keep detailed records for each hospital with 48855
which it contracts about the cost to the hospital of providing the 48856
services, payments made by the organization to the hospital for 48857
the services, utilization of hospital services by medicaid 48858
recipients enrolled in the organization, and other utilization 48859
data required by the department. 48860

Sec. 5111.20. As used in sections 5111.20 to ~~5111.32~~ 5111.34 48861
of the Revised Code: 48862

(A) "Allowable costs" are those costs determined by the 48863
department of job and family services to be reasonable and do not 48864
include fines paid under sections 5111.35 to 5111.61 and section 48865
5111.99 of the Revised Code. 48866

(B) "Capital costs" means costs of ownership and nonextensive 48867
renovation. 48868

(1) "Cost of ownership" means the actual expense incurred for 48869
all of the following: 48870

(a) Depreciation and interest on any capital assets that cost 48871
five hundred dollars or more per item, including the following: 48872

(i) Buildings; 48873

(ii) Building improvements that are not approved as 48874

nonextensive renovations under section 5111.25 or 5111.251 of the Revised Code;	48875 48876
(iii) Equipment;	48877
(iv) Extensive renovations;	48878
(v) Transportation equipment.	48879
(b) Amortization and interest on land improvements and leasehold improvements;	48880 48881
(c) Amortization of financing costs;	48882
(d) Except as provided in division (I) of this section, lease and rent of land, building, and equipment.	48883 48884
The costs of capital assets of less than five hundred dollars per item may be considered costs of ownership in accordance with a provider's practice.	48885 48886 48887
(2) "Costs of nonextensive renovation" means the actual expense incurred for depreciation or amortization and interest on renovations that are not extensive renovations.	48888 48889 48890
(C) "Capital lease" and "operating lease" shall be construed in accordance with generally accepted accounting principles.	48891 48892
(D) "Case-mix score" means the measure determined under section 5111.231 of the Revised Code of the relative direct-care resources needed to provide care and habilitation to a resident of a nursing facility or intermediate care facility for the mentally retarded.	48893 48894 48895 48896 48897
(E) "Date of licensure," for a facility originally licensed as a nursing home under Chapter 3721. of the Revised Code, means the date specific beds were originally licensed as nursing home beds under that chapter, regardless of whether they were subsequently licensed as residential facility beds under section 5123.19 of the Revised Code. For a facility originally licensed as a residential facility under section 5123.19 of the Revised Code,	48898 48899 48900 48901 48902 48903 48904

"date of licensure" means the date specific beds were originally licensed as residential facility beds under that section.

(1) If nursing home beds licensed under Chapter 3721. of the Revised Code or residential facility beds licensed under section 5123.19 of the Revised Code were not required by law to be licensed when they were originally used to provide nursing home or residential facility services, "date of licensure" means the date the beds first were used to provide nursing home or residential facility services, regardless of the date the present provider obtained licensure.

(2) If a facility adds nursing home beds or residential facility beds or extensively renovates all or part of the facility after its original date of licensure, it will have a different date of licensure for the additional beds or extensively renovated portion of the facility, unless the beds are added in a space that was constructed at the same time as the previously licensed beds but was not licensed under Chapter 3721. or section 5123.19 of the Revised Code at that time.

(F) "Desk-reviewed" means that costs as reported on a cost report submitted under section 5111.26 of the Revised Code have been subjected to a desk review under division (A) of section 5111.27 of the Revised Code and preliminarily determined to be allowable costs.

(G) "Direct care costs" means all of the following:

(1)(a) Costs for registered nurses, licensed practical nurses, and nurse aides employed by the facility;

(b) Costs for direct care staff, administrative nursing staff, medical directors, social services staff, activities staff, psychologists and psychology assistants, social workers and counselors, habilitation staff, qualified mental retardation professionals, program directors, respiratory therapists,

habilitation supervisors, and except as provided in division	48936
(G)(2) of this section, other persons holding degrees qualifying	48937
them to provide therapy;	48938
(c) Costs of purchased nursing services;	48939
(d) Costs of quality assurance;	48940
(e) Costs of training and staff development, employee	48941
benefits, payroll taxes, and workers' compensation premiums or	48942
costs for self-insurance claims and related costs as specified in	48943
rules adopted by the director of job and family services in	48944
accordance with Chapter 119. of the Revised Code, for personnel	48945
listed in divisions (G)(1)(a), (b), and (d) of this section;	48946
(f) Costs of consulting and management fees related to direct	48947
care;	48948
(g) Allocated direct care home office costs.	48949
(2) In addition to the costs specified in division (G)(1) of	48950
this section, for intermediate care facilities for the mentally	48951
retarded only, direct care costs include both of the following:	48952
(a) Costs for physical therapists and physical therapy	48953
assistants, occupational therapists and occupational therapy	48954
assistants, speech therapists, and audiologists;	48955
(b) Costs of training and staff development, employee	48956
benefits, payroll taxes, and workers' compensation premiums or	48957
costs for self-insurance claims and related costs as specified in	48958
rules adopted by the director of job and family services in	48959
accordance with Chapter 119. of the Revised Code, for personnel	48960
listed in division (G)(2)(a) of this section.	48961
(3) Costs of other direct-care resources that are specified	48962
as direct care costs in rules adopted by the director of job and	48963
family services in accordance with Chapter 119. of the Revised	48964
Code.	48965

(H) "Fiscal year" means the fiscal year of this state, as 48966
specified in section 9.34 of the Revised Code. 48967

(I) "Indirect care costs" means all reasonable costs other 48968
than direct care costs, other protected costs, or capital costs. 48969
"Indirect care costs" includes but is not limited to costs of 48970
habilitation supplies, pharmacy consultants, medical and 48971
habilitation records, program supplies, incontinence supplies, 48972
food, enterals, dietary supplies and personnel, laundry, 48973
housekeeping, security, administration, liability insurance, 48974
bookkeeping, purchasing department, human resources, 48975
communications, travel, dues, license fees, subscriptions, home 48976
office costs not otherwise allocated, legal services, accounting 48977
services, minor equipment, maintenance and repairs, help-wanted 48978
advertising, informational advertising, ~~consumer satisfaction~~ 48979
~~survey fees paid under section 173.55 of the Revised Code,~~ 48980
start-up costs, organizational expenses, other interest, property 48981
insurance, employee training and staff development, employee 48982
benefits, payroll taxes, and workers' compensation premiums or 48983
costs for self-insurance claims and related costs as specified in 48984
rules adopted by the director of job and family services in 48985
accordance with Chapter 119. of the Revised Code, for personnel 48986
listed in this division. Notwithstanding division (B)(1) of this 48987
section, "indirect care costs" also means the cost of equipment, 48988
including vehicles, acquired by operating lease executed before 48989
December 1, 1992, if the costs are reported as administrative and 48990
general costs on the facility's cost report for the cost reporting 48991
period ending December 31, 1992. 48992

(J) "Inpatient days" means all days during which a resident, 48993
regardless of payment source, occupies a bed in a nursing facility 48994
or intermediate care facility for the mentally retarded that is 48995
included in the facility's certified capacity under Title XIX of 48996
the "Social Security Act," 49 Stat. 610 (1935), 42 U.S.C.A. 301, 48997

as amended. Therapeutic or hospital leave days for which payment 48998
is made under section 5111.33 of the Revised Code are considered 48999
inpatient days proportionate to the percentage of the facility's 49000
per resident per day rate paid for those days. 49001

(K) "Intermediate care facility for the mentally retarded" 49002
means an intermediate care facility for the mentally retarded 49003
certified as in compliance with applicable standards for the 49004
medical assistance program by the director of health in accordance 49005
with Title XIX of the "Social Security Act." 49006

(L) "Maintenance and repair expenses" means, except as 49007
provided in division ~~(X)~~(Y)(2) of this section, expenditures that 49008
are necessary and proper to maintain an asset in a normally 49009
efficient working condition and that do not extend the useful life 49010
of the asset two years or more. "Maintenance and repair expenses" 49011
includes but is not limited to the cost of ordinary repairs such 49012
as painting and wallpapering. 49013

(M) "Nursing facility" means a facility, or a distinct part 49014
of a facility, that is certified as a nursing facility by the 49015
director of health in accordance with Title XIX of the "Social 49016
Security Act," and is not an intermediate care facility for the 49017
mentally retarded. "Nursing facility" includes a facility, or a 49018
distinct part of a facility, that is certified as a nursing 49019
facility by the director of health in accordance with Title XIX of 49020
the "Social Security Act," and is certified as a skilled nursing 49021
facility by the director in accordance with Title XVIII of the 49022
"Social Security Act." 49023

(N) "Operator" means the person or government entity 49024
responsible for the daily operating and management decisions for a 49025
nursing facility or intermediate care facility for the mentally 49026
retarded. 49027

(O) "Other protected costs" means costs for medical supplies; 49028

real estate, franchise, and property taxes; natural gas, fuel oil, 49029
water, electricity, sewage, and refuse and hazardous medical waste 49030
collection; allocated other protected home office costs; and any 49031
additional costs defined as other protected costs in rules adopted 49032
by the director of job and family services in accordance with 49033
Chapter 119. of the Revised Code. 49034

~~(O)~~(P) "Owner" means any person or government entity that has 49035
at least five per cent ownership or interest, either directly, 49036
indirectly, or in any combination, in any of the following 49037
regarding a nursing facility or intermediate care facility for the 49038
mentally retarded; 49039

(a) The land on which the facility is located; 49040

(b) The structure in which the facility is located; 49041

(c) Any mortgage, contract for deed, or other obligation 49042
secured in whole or in part by the land or structure on or in 49043
which the facility is located; 49044

(d) Any lease or sublease of the land or structure on or in 49045
which the facility is located. 49046

(2) "Owner" does not mean a holder of a debenture or bond 49047
related to the nursing facility or intermediate care facility for 49048
the mentally retarded and purchased at public issue or a regulated 49049
lender that has made a loan related to the facility unless the 49050
holder or lender operates the facility directly or through a 49051
subsidiary. 49052

~~(P)~~(O) "Patient" includes "resident." 49053

~~(Q)~~(R) Except as provided in divisions ~~(Q)~~(R)(1) and (2) of 49054
this section, "per diem" means a nursing facility's or 49055
intermediate care facility for the mentally retarded's actual, 49056
allowable costs in a given cost center in a cost reporting period, 49057
divided by the facility's inpatient days for that cost reporting 49058

period. 49059

(1) When calculating indirect care costs for the purpose of 49060
establishing rates under section 5111.24 or 5111.241 of the 49061
Revised Code, "per diem" means a facility's actual, allowable 49062
indirect care costs in a cost reporting period divided by the 49063
greater of the facility's inpatient days for that period or the 49064
number of inpatient days the facility would have had during that 49065
period if its occupancy rate had been eighty-five per cent. 49066

(2) When calculating capital costs for the purpose of 49067
establishing rates under section 5111.25 or 5111.251 of the 49068
Revised Code, "per diem" means a facility's actual, allowable 49069
capital costs in a cost reporting period divided by the greater of 49070
the facility's inpatient days for that period or the number of 49071
inpatient days the facility would have had during that period if 49072
its occupancy rate had been ninety-five per cent. 49073

~~(R)~~(S) "Provider" means a person or government entity that 49074
operates a nursing facility or intermediate care facility for the 49075
mentally retarded under a provider agreement. 49076

~~(S)~~(T) "Provider agreement" means a contract between the 49077
department of job and family services and a nursing facility or 49078
intermediate care facility for the mentally retarded for the 49079
provision of nursing facility services or intermediate care 49080
facility services for the mentally retarded under the medical 49081
assistance program. 49082

~~(T)~~(U) "Purchased nursing services" means services that are 49083
provided in a nursing facility by registered nurses, licensed 49084
practical nurses, or nurse aides who are not employees of the 49085
facility. 49086

~~(U)~~(V) "Reasonable" means that a cost is an actual cost that 49087
is appropriate and helpful to develop and maintain the operation 49088
of patient care facilities and activities, including normal 49089

standby costs, and that does not exceed what a prudent buyer pays 49090
for a given item or services. Reasonable costs may vary from 49091
provider to provider and from time to time for the same provider. 49092

~~(V)~~(W) "Related party" means an individual or organization 49093
that, to a significant extent, has common ownership with, is 49094
associated or affiliated with, has control of, or is controlled 49095
by, the provider. 49096

(1) An individual who is a relative of an owner is a related 49097
party. 49098

(2) Common ownership exists when an individual or individuals 49099
possess significant ownership or equity in both the provider and 49100
the other organization. Significant ownership or equity exists 49101
when an individual or individuals possess five per cent ownership 49102
or equity in both the provider and a supplier. Significant 49103
ownership or equity is presumed to exist when an individual or 49104
individuals possess ten per cent ownership or equity in both the 49105
provider and another organization from which the provider 49106
purchases or leases real property. 49107

(3) Control exists when an individual or organization has the 49108
power, directly or indirectly, to significantly influence or 49109
direct the actions or policies of an organization. 49110

(4) An individual or organization that supplies goods or 49111
services to a provider shall not be considered a related party if 49112
all of the following conditions are met: 49113

(a) The supplier is a separate bona fide organization. 49114

(b) A substantial part of the supplier's business activity of 49115
the type carried on with the provider is transacted with others 49116
than the provider and there is an open, competitive market for the 49117
types of goods or services the supplier furnishes. 49118

(c) The types of goods or services are commonly obtained by 49119

other nursing facilities or intermediate care facilities for the 49120
mentally retarded from outside organizations and are not a basic 49121
element of patient care ordinarily furnished directly to patients 49122
by the facilities. 49123

(d) The charge to the provider is in line with the charge for 49124
the goods or services in the open market and no more than the 49125
charge made under comparable circumstances to others by the 49126
supplier. 49127

~~(W)~~(X) "Relative of owner" means an individual who is related 49128
to an owner of a nursing facility or intermediate care facility 49129
for the mentally retarded by one of the following relationships: 49130

(1) Spouse; 49131

(2) Natural parent, child, or sibling; 49132

(3) Adopted parent, child, or sibling; 49133

(4) Step-parent, step-child, step-brother, or step-sister; 49134

(5) Father-in-law, mother-in-law, son-in-law, 49135
daughter-in-law, brother-in-law, or sister-in-law; 49136

(6) Grandparent or grandchild; 49137

(7) Foster caregiver, foster child, foster brother, or foster 49138
sister. 49139

~~(X)~~(Y) "Renovation" and "extensive renovation" mean: 49140

(1) Any betterment, improvement, or restoration of a nursing 49141
facility or intermediate care facility for the mentally retarded 49142
started before July 1, 1993, that meets the definition of a 49143
renovation or extensive renovation established in rules adopted by 49144
the director of job and family services in effect on December 22, 49145
1992. 49146

(2) In the case of betterments, improvements, and 49147
restorations of nursing facilities and intermediate care 49148

facilities for the mentally retarded started on or after July 1, 49149
1993: 49150

(a) "Renovation" means the betterment, improvement, or 49151
restoration of a nursing facility or intermediate care facility 49152
for the mentally retarded beyond its current functional capacity 49153
through a structural change that costs at least five hundred 49154
dollars per bed. A renovation may include betterment, improvement, 49155
restoration, or replacement of assets that are affixed to the 49156
building and have a useful life of at least five years. A 49157
renovation may include costs that otherwise would be considered 49158
maintenance and repair expenses if they are an integral part of 49159
the structural change that makes up the renovation project. 49160
"Renovation" does not mean construction of additional space for 49161
beds that will be added to a facility's licensed or certified 49162
capacity. 49163

(b) "Extensive renovation" means a renovation that costs more 49164
than sixty-five per cent and no more than eighty-five per cent of 49165
the cost of constructing a new bed and that extends the useful 49166
life of the assets for at least ten years. 49167

For the purposes of division ~~(X)~~(Y)(2) of this section, the 49168
cost of constructing a new bed shall be considered to be forty 49169
thousand dollars, adjusted for the estimated rate of inflation 49170
from January 1, 1993, to the end of the calendar year during which 49171
the renovation is completed, using the consumer price index for 49172
shelter costs for all urban consumers for the north central 49173
region, as published by the United States bureau of labor 49174
statistics. 49175

The department of job and family services may treat a 49176
renovation that costs more than eighty-five per cent of the cost 49177
of constructing new beds as an extensive renovation if the 49178
department determines that the renovation is more prudent than 49179
construction of new beds. 49180

Sec. 5111.206. (A) As used in this section, "nursing facility" has the same meaning as in section 5111.20 of the Revised Code. 49181
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(B) To the extent funds are available, the director of job and family services may establish the Ohio access success project to help medicaid recipients make the transition from residing in a nursing facility to residing in a community setting. The program may be established as a separate non-medicaid program or integrated into a new or existing Medicaid home and community-based services program established under a waiver approved by the federal centers for medicare and medicaid services. The department may limit the number of program participants. 49184
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To be eligible for benefits under the project, a medicaid recipient must satisfy all of the following requirements: 49194
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(1) Be a recipient of medicaid-funded nursing facility care, at the time of applying for the benefits; 49196
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(2) Have resided continuously in a nursing facility since January 1, 2002; 49198
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(3) Need the level of care provided by nursing facilities; 49200

(4) For participation in a non-medicaid program, receive services to remain in the community with a projected cost not exceeding eighty per cent of the average monthly medicaid cost of a medicaid recipient in a nursing facility; 49201
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(5) For participation in a program established under a home and community-based services waiver, meet waiver enrollment criteria. 49205
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(C) If the director establishes the Ohio access success project, the benefits provided under the project may include payment of all of the following: 49208
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<u>(1) The first month's rent in a community setting;</u>	49211
<u>(2) Rental deposits;</u>	49212
<u>(3) Utility deposits;</u>	49213
<u>(4) Moving expenses;</u>	49214
<u>(5) Other expenses not covered by the medicaid program that facilitate a medicaid recipient's move from a nursing facility to a community setting.</u>	49215 49216 49217
<u>(D) If the project is established as a non-medicaid program, no participant may receive more than two thousand dollars worth of benefits under the project.</u>	49218 49219 49220
<u>(E) The director may submit a request to the United States secretary of health and human services pursuant to section 1915 of the "Social Security Act," 79 Stat. 286 (1965), 42 U.S.C. 1396n, as amended, to create a medicaid home and community-based services waiver programs to serve individuals who meet the criteria for participation in the Ohio access success project. The director may adopt rules under Chapter 119. of the Revised Code for the administration and operation of the program.</u>	49221 49222 49223 49224 49225 49226 49227 49228
Sec. 5111.21. (A) Subject to sections 5111.01, 5111.011, 5111.012, and 5111.02, <u>and 5111.6810</u> of the Revised Code, the department of job and family services shall pay, as provided in sections 5111.20 to 5111.32 of the Revised Code, the reasonable costs of services provided to an eligible medicaid recipient by an eligible nursing facility or intermediate care facility for the mentally retarded.	49229 49230 49231 49232 49233 49234 49235
In order to be eligible for medical assistance payments, <u>an operator of</u> a nursing facility or intermediate care facility for the mentally retarded shall do all of the following:	49236 49237 49238
(1) Enter into a provider agreement with the department as	49239

provided in section 5111.22, 5111.671, or 5111.672 of the Revised Code; 49240
49241

(2) Apply for and maintain a valid license to operate if so required by law; 49242
49243

(3) Comply with all applicable state and federal laws and rules. 49244
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(B) ~~A~~ An operator of a nursing facility that elects to obtain and maintain eligibility for payments under the ~~medicare~~ medicaid program established by ~~Title XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 301, as amended~~ may shall qualify all ~~or part of the facility of the facility's~~ medicaid-certified beds in the medicare program established by Title XVIII of the "Social Security Act," 79 Stat. 286 (1965), 42 U.S.C. 1395. The director of job and family services may adopt rules in accordance with Chapter 119. of the Revised Code to establish the time frame in which a nursing facility must comply with this requirement. 49246
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Sec. 5111.22. A provider agreement between the department of job and family services and an operator of a nursing facility or intermediate care facility for the mentally retarded shall contain the following provisions: 49256
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(A) The department agrees to: 49260

~~(1) Make~~ make payments to the nursing facility or intermediate care facility for the mentally retarded for patients eligible for services under the medical assistance program as provided in sections 5111.20 to 5111.32 of the Revised Code. No payment shall be made for the day a recipient is discharged from the facility. 49261
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~~(2) Provide copies of rules governing the facility's participation as a provider in the medical assistance program. Whenever the director of job and family services files a proposed~~ 49267
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~~rule or proposed rule in revised form under division (D) of 49270
section 111.15 or division (B) of section 119.03 of the Revised 49271
Code, the department shall provide the facility with one copy of 49272
such rule. In the case of a rescission or proposed rescission of a 49273
rule, the department may provide the rule number and title instead 49274
of the rules rescinded or proposed to be rescinded. 49275~~

(B) The ~~provider~~ operator agrees to: 49276

(1) Maintain eligibility as provided in section 5111.21 of 49277
the Revised Code; 49278

(2) Keep records relating to a cost reporting period for the 49279
greater of seven years after the cost report is filed or, if the 49280
department issues an audit report in accordance with division (B) 49281
of section 5111.27 of the Revised Code, six years after all appeal 49282
rights relating to the audit report are exhausted; 49283

(3) File reports as required by the department; 49284

(4) Open all records relating to the costs of its services 49285
for inspection and audit by the department; 49286

(5) Open its premises for inspection by the department, the 49287
department of health, and any other state or local authority 49288
having authority to inspect; 49289

(6) Supply to the department such information as it requires 49290
concerning the facility's services to patients who are or are 49291
eligible to be medicaid recipients; 49292

(7) Comply with section 5111.31 of the Revised Code. 49293

The provider agreement may contain other provisions that are 49294
consistent with law and considered necessary by the department. 49295

A provider agreement shall be effective for no longer than 49296
twelve months, except that if federal statute or regulations 49297
authorize a longer term, it may be effective for a longer term so 49298
authorized. A provider agreement may be renewed only if the 49299

facility is certified by the department of health for 49300
participation in the medicaid program. 49301

The department of job and family services, in accordance with 49302
rules adopted by the director pursuant to Chapter 119. of the 49303
Revised Code, may elect not to enter into, not to renew, or to 49304
terminate a provider agreement when the department determines that 49305
such an agreement would not be in the best interests of the 49306
recipients or of the state. 49307

Sec. 5111.222. An operator of a nursing facility or 49308
intermediate care facility for the mentally retarded may enter 49309
into provider agreements for more than one nursing facility or 49310
intermediate care facility for the mentally retarded. 49311

Sec. 5111.25. (A) The department of job and family services 49312
shall pay each eligible nursing facility a per resident per day 49313
rate for its reasonable capital costs established prospectively 49314
each fiscal year for each facility. Except as otherwise provided 49315
in sections 5111.20 to 5111.32 of the Revised Code, the rate shall 49316
be based on the facility's capital costs for the calendar year 49317
preceding the fiscal year in which the rate will be paid. The rate 49318
shall equal the sum of divisions (A)(1) to (3) of this section: 49319

(1) The lesser of the following: 49320

(a) Eighty-eight and sixty-five one-hundredths per cent of 49321
the facility's desk-reviewed, actual, allowable, per diem cost of 49322
ownership and eighty-five per cent of the facility's actual, 49323
allowable, per diem cost of nonextensive renovation determined 49324
under division (F) of this section; 49325

(b) Eighty-eight and sixty-five one-hundredths per cent of 49326
the following limitation: 49327

(i) For the fiscal year beginning July 1, 1993, sixteen 49328
dollars per resident day; 49329

(ii) For the fiscal year beginning July 1, 1994, sixteen 49330
dollars per resident day, adjusted to reflect the rate of 49331
inflation for the twelve-month period beginning July 1, 1992, and 49332
ending June 30, 1993, using the consumer price index for shelter 49333
costs for all urban consumers for the north central region, 49334
published by the United States bureau of labor statistics; 49335

(iii) For subsequent fiscal years, the limitation in effect 49336
during the previous fiscal year, adjusted to reflect the rate of 49337
inflation for the twelve-month period beginning on the first day 49338
of July for the calendar year preceding the calendar year that 49339
precedes the fiscal year and ending on the following thirtieth day 49340
of June, using the consumer price index for shelter costs for all 49341
urban consumers for the north central region, published by the 49342
United States bureau of labor statistics. 49343

(2) Any efficiency incentive determined under division (D) of 49344
this section; 49345

(3) Any amounts for return on equity determined under 49346
division (H) of this section. 49347

Buildings shall be depreciated using the straight line method 49348
over forty years or over a different period approved by the 49349
department. Components and equipment shall be depreciated using 49350
the straight-line method over a period designated in rules adopted 49351
by the director of job and family services in accordance with 49352
Chapter 119. of the Revised Code, consistent with the guidelines 49353
of the American hospital association, or over a different period 49354
approved by the department. Any rules adopted under this division 49355
that specify useful lives of buildings, components, or equipment 49356
apply only to assets acquired on or after July 1, 1993. 49357
Depreciation for costs paid or reimbursed by any government agency 49358
shall not be included in cost of ownership or renovation unless 49359
that part of the payment under sections 5111.20 to 5111.32 of the 49360

Revised Code is used to reimburse the government agency. 49361

(B) The capital cost basis of nursing facility assets shall 49362
be determined in the following manner: 49363

(1) For purposes of calculating the rate to be paid for the 49364
fiscal year beginning July 1, 1993, for facilities with dates of 49365
licensure on or before June 30, 1993, the capital cost basis shall 49366
be equal to the following: 49367

(a) For facilities that have not had a change of ownership 49368
during the period beginning January 1, 1993, and ending June 30, 49369
1993, the desk-reviewed, actual, allowable capital cost basis that 49370
is listed on the facility's cost report for the cost reporting 49371
period ending December 31, 1992, plus the actual, allowable 49372
capital cost basis of any assets constructed or acquired after 49373
December 31, 1992, but before July 1, 1993, if the aggregate 49374
capital costs of those assets would increase the facility's rate 49375
for capital costs by twenty or more cents per resident per day. 49376

(b) For facilities that have a date of licensure or had a 49377
change of ownership during the period beginning January 1, 1993, 49378
and ending June 30, 1993, the actual, allowable capital cost basis 49379
of the person or government entity that owns the facility on June 49380
30, 1993. 49381

Capital cost basis shall be calculated as provided in 49382
division (B)(1) of this section subject to approval by the United 49383
States health care financing administration of any necessary 49384
amendment to the state plan for providing medical assistance. 49385

The department shall include the actual, allowable capital 49386
cost basis of assets constructed or acquired during the period 49387
beginning January 1, 1993, and ending June 30, 1993, in the 49388
calculation for the facility's rate effective July 1, 1993, if the 49389
aggregate capital costs of the assets would increase the 49390
facility's rate by twenty or more cents per resident per day and 49391

the facility provides the department with sufficient documentation 49392
of the costs before June 1, 1993. If the facility provides the 49393
documentation after that date, the department shall adjust the 49394
facility's rate to reflect the costs of the assets one month after 49395
the first day of the month after the department receives the 49396
documentation. 49397

(2) Except as provided in division (B)(4) of this section, 49398
for purposes of calculating the rates to be paid for fiscal years 49399
beginning after June 30, 1994, for facilities with dates of 49400
licensure on or before June 30, 1993, the capital cost basis of 49401
each asset shall be equal to the desk-reviewed, actual, allowable, 49402
capital cost basis that is listed on the facility's cost report 49403
for the calendar year preceding the fiscal year during which the 49404
rate will be paid. 49405

(3) For facilities with dates of licensure after June 30, 49406
1993, the capital cost basis shall be determined in accordance 49407
with the principles of the medicare program established under 49408
Title XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 49409
U.S.C.A. 301, as amended, except as otherwise provided in sections 49410
5111.20 to 5111.32 of the Revised Code. 49411

(4) Except as provided in division (B)(5) of this section, if 49412
a provider transfers an interest in a facility to another provider 49413
after June 30, 1993, there shall be no increase in the capital 49414
cost basis of the asset if the providers are related parties. If 49415
the providers are not related parties or if they are related 49416
parties and division (B)(5) of this section requires the 49417
adjustment of the capital cost basis under this division, the 49418
basis of the asset shall be adjusted by the lesser of the 49419
following: 49420

(a) One-half of the change in construction costs during the 49421
time that the transferor held the asset, as calculated by the 49422
department of job and family services using the "Dodge building 49423

cost indexes, northeastern and north central states," published by 49424
Marshall and Swift; 49425

(b) One-half of the change in the consumer price index for 49426
all items for all urban consumers, as published by the United 49427
States bureau of labor statistics, during the time that the 49428
transferor held the asset. 49429

(5) If a provider transfers an interest in a facility to 49430
another provider who is a related party, the capital cost basis of 49431
the asset shall be adjusted as specified in division (B)(4) of 49432
this section for a transfer to a provider that is not a related 49433
party if all of the following conditions are met: 49434

(a) The related party is a relative of owner; 49435

(b) Except as provided in division (B)(5)(c)(ii) of this 49436
section, the provider making the transfer retains no ownership 49437
interest in the facility; 49438

(c) The department of job and family services determines that 49439
the transfer is an arm's length transaction pursuant to rules the 49440
department shall adopt in accordance with Chapter 119. of the 49441
Revised Code no later than December 31, 2000. The rules shall 49442
provide that a transfer is an arm's length transaction if all of 49443
the following apply: 49444

(i) Once the transfer goes into effect, the provider that 49445
made the transfer has no direct or indirect interest in the 49446
provider that acquires the facility or the facility itself, 49447
including interest as an owner, officer, director, employee, 49448
independent contractor, or consultant, but excluding interest as a 49449
creditor. 49450

(ii) The provider that made the transfer does not reacquire 49451
an interest in the facility except through the exercise of a 49452
creditor's rights in the event of a default. If the provider 49453
reacquires an interest in the facility in this manner, the 49454

department shall treat the facility as if the transfer never 49455
occurred when the department calculates its reimbursement rates 49456
for capital costs. 49457

(iii) The transfer satisfies any other criteria specified in 49458
the rules. 49459

(d) Except in the case of hardship caused by a catastrophic 49460
event, as determined by the department, or in the case of a 49461
provider making the transfer who is at least sixty-five years of 49462
age, not less than twenty years have elapsed since, for the same 49463
facility, the capital cost basis was adjusted most recently under 49464
division (B)(5) of this section or actual, allowable cost of 49465
ownership was determined most recently under division (C)(9) of 49466
this section. 49467

(C) As used in this division, "lease expense" means lease 49468
payments in the case of an operating lease and depreciation 49469
expense and interest expense in the case of a capital lease. As 49470
used in this division, "new lease" means a lease, to a different 49471
lessee, of a nursing facility that previously was operated under a 49472
lease. 49473

(1) Subject to the limitation specified in division (A)(1) of 49474
this section, for a lease of a facility that was effective on May 49475
27, 1992, the entire lease expense is an actual, allowable cost of 49476
ownership during the term of the existing lease. The entire lease 49477
expense also is an actual, allowable cost of ownership if a lease 49478
in existence on May 27, 1992, is renewed under either of the 49479
following circumstances: 49480

(a) The renewal is pursuant to a renewal option that was in 49481
existence on May 27, 1992; 49482

(b) The renewal is for the same lease payment amount and 49483
between the same parties as the lease in existence on May 27, 49484
1992. 49485

(2) Subject to the limitation specified in division (A)(1) of this section, for a lease of a facility that was in existence but not operated under a lease on May 27, 1992, actual, allowable cost of ownership shall include the lesser of the annual lease expense or the annual depreciation expense and imputed interest expense that would be calculated at the inception of the lease using the lessor's entire historical capital asset cost basis, adjusted by the lesser of the following amounts:

(a) One-half of the change in construction costs during the time the lessor held each asset until the beginning of the lease, as calculated by the department using the "Dodge building cost indexes, northeastern and north central states," published by Marshall and Swift;

(b) One-half of the change in the consumer price index for all items for all urban consumers, as published by the United States bureau of labor statistics, during the time the lessor held each asset until the beginning of the lease.

(3) Subject to the limitation specified in division (A)(1) of this section, for a lease of a facility with a date of licensure on or after May 27, 1992, that is initially operated under a lease, actual, allowable cost of ownership shall include the annual lease expense if there was a substantial commitment of money for construction of the facility after December 22, 1992, and before July 1, 1993. If there was not a substantial commitment of money after December 22, 1992, and before July 1, 1993, actual, allowable cost of ownership shall include the lesser of the annual lease expense or the sum of the following:

(a) The annual depreciation expense that would be calculated at the inception of the lease using the lessor's entire historical capital asset cost basis;

(b) The greater of the lessor's actual annual amortization of

financing costs and interest expense at the inception of the lease 49517
or the imputed interest expense calculated at the inception of the 49518
lease using seventy per cent of the lessor's historical capital 49519
asset cost basis. 49520

(4) Subject to the limitation specified in division (A)(1) of 49521
this section, for a lease of a facility with a date of licensure 49522
on or after May 27, 1992, that was not initially operated under a 49523
lease and has been in existence for ten years, actual, allowable 49524
cost of ownership shall include the lesser of the annual lease 49525
expense or the annual depreciation expense and imputed interest 49526
expense that would be calculated at the inception of the lease 49527
using the entire historical capital asset cost basis of the 49528
lessor, adjusted by the lesser of the following: 49529

(a) One-half of the change in construction costs during the 49530
time the lessor held each asset until the beginning of the lease, 49531
as calculated by the department using the "Dodge building cost 49532
indexes, northeastern and north central states," published by 49533
Marshall and Swift; 49534

(b) One-half of the change in the consumer price index for 49535
all items for all urban consumers, as published by the United 49536
States bureau of labor statistics, during the time the lessor held 49537
each asset until the beginning of the lease. 49538

(5) Subject to the limitation specified in division (A)(1) of 49539
this section, for a new lease of a facility that was operated 49540
under a lease on May 27, 1992, actual, allowable cost of ownership 49541
shall include the lesser of the annual new lease expense or the 49542
annual old lease payment. If the old lease was in effect for ten 49543
years or longer, the old lease payment from the beginning of the 49544
old lease shall be adjusted by the lesser of the following: 49545

(a) One-half of the change in construction costs from the 49546
beginning of the old lease to the beginning of the new lease, as 49547

calculated by the department using the "Dodge building cost 49548
indexes, northeastern and north central states," published by 49549
Marshall and Swift; 49550

(b) One-half of the change in the consumer price index for 49551
all items for all urban consumers, as published by the United 49552
States bureau of labor statistics, from the beginning of the old 49553
lease to the beginning of the new lease. 49554

(6) Subject to the limitation specified in division (A)(1) of 49555
this section, for a new lease of a facility that was not in 49556
existence or that was in existence but not operated under a lease 49557
on May 27, 1992, actual, allowable cost of ownership shall include 49558
the lesser of annual new lease expense or the annual amount 49559
calculated for the old lease under division (C)(2), (3), (4), or 49560
(6) of this section, as applicable. If the old lease was in effect 49561
for ten years or longer, the lessor's historical capital asset 49562
cost basis shall be adjusted by the lesser of the following for 49563
purposes of calculating the annual amount under division (C)(2), 49564
(3), (4), or (6) of this section: 49565

(a) One-half of the change in construction costs from the 49566
beginning of the old lease to the beginning of the new lease, as 49567
calculated by the department using the "Dodge building cost 49568
indexes, northeastern and north central states," published by 49569
Marshall and Swift; 49570

(b) One-half of the change in the consumer price index for 49571
all items for all urban consumers, as published by the United 49572
States bureau of labor statistics, from the beginning of the old 49573
lease to the beginning of the new lease. 49574

In the case of a lease under division (C)(3) of this section 49575
of a facility for which a substantial commitment of money was made 49576
after December 22, 1992, and before July 1, 1993, the old lease 49577
payment shall be adjusted for the purpose of determining the 49578

annual amount. 49579

(7) For any revision of a lease described in division (C)(1), 49580
(2), (3), (4), (5), or (6) of this section, or for any subsequent 49581
lease of a facility operated under such a lease, other than 49582
execution of a new lease, the portion of actual, allowable cost of 49583
ownership attributable to the lease shall be the same as before 49584
the revision or subsequent lease. 49585

(8) Except as provided in division (C)(9) of this section, if 49586
a provider leases an interest in a facility to another provider 49587
who is a related party, the related party's actual, allowable cost 49588
of ownership shall include the lesser of the annual lease expense 49589
or the reasonable cost to the lessor. 49590

(9) If a provider leases an interest in a facility to another 49591
provider who is a related party, regardless of the date of the 49592
lease, the related party's actual, allowable cost of ownership 49593
shall include the annual lease expense, subject to the limitations 49594
specified in divisions (C)(1) to (7) of this section, if all of 49595
the following conditions are met: 49596

(a) The related party is a relative of owner; 49597

(b) If the lessor retains an ownership interest, it is, 49598
except as provided in division (C)(9)(c)(ii) of this section, in 49599
only the real property and any improvements on the real property; 49600

(c) The department of job and family services determines that 49601
the lease is an arm's length transaction pursuant to rules the 49602
department shall adopt in accordance with Chapter 119. of the 49603
Revised Code no later than December 31, 2000. The rules shall 49604
provide that a lease is an arm's length transaction if all of the 49605
following apply: 49606

(i) Once the lease goes into effect, the lessor has no direct 49607
or indirect interest in the lessee or, except as provided in 49608
division (C)(9)(b) of this section, the facility itself, including 49609

interest as an owner, officer, director, employee, independent 49610
contractor, or consultant, but excluding interest as a lessor. 49611

(ii) The lessor does not reacquire an interest in the 49612
facility except through the exercise of a lessor's rights in the 49613
event of a default. If the lessor reacquires an interest in the 49614
facility in this manner, the department shall treat the facility 49615
as if the lease never occurred when the department calculates its 49616
reimbursement rates for capital costs. 49617

(iii) The lease satisfies any other criteria specified in the 49618
rules. 49619

(d) Except in the case of hardship caused by a catastrophic 49620
event, as determined by the department, or in the case of a lessor 49621
who is at least sixty-five years of age, not less than twenty 49622
years have elapsed since, for the same facility, the capital cost 49623
basis was adjusted most recently under division (B)(5) of this 49624
section or actual, allowable cost of ownership was determined most 49625
recently under division (C)(9) of this section. 49626

(10) This division does not apply to leases of specific items 49627
of equipment. 49628

(D)(1) Subject to division (D)(2) of this section, the 49629
department shall pay each nursing facility an efficiency incentive 49630
that is equal to fifty per cent of the difference between the 49631
following: 49632

(a) Eighty-eight and sixty-five one-hundredths per cent of 49633
the facility's desk-reviewed, actual, allowable, per diem cost of 49634
ownership; 49635

(b) The applicable amount specified in division (E) of this 49636
section. 49637

(2) The efficiency incentive paid to a nursing facility shall 49638
not exceed the greater of the following: 49639

(a) The efficiency incentive the facility was paid during the 49640
fiscal year ending June 30, 1994; 49641

(b) Three dollars per resident per day, adjusted annually for 49642
rates paid beginning July 1, 1994, for the inflation rate for the 49643
twelve-month period beginning on the first day of July of the 49644
calendar year preceding the calendar year that precedes the fiscal 49645
year for which the efficiency incentive is determined and ending 49646
on the thirtieth day of the following June, using the consumer 49647
price index for shelter costs for all urban consumers for the 49648
north central region, as published by the United States bureau of 49649
labor statistics. 49650

(3) For purposes of calculating the efficiency incentive, 49651
depreciation for costs that are paid or reimbursed by any 49652
government agency shall be considered as costs of ownership, and 49653
renovation costs that are paid under division (F) of this section 49654
shall not be considered costs of ownership. 49655

(E) The following amounts shall be used to calculate 49656
efficiency incentives for nursing facilities under this section: 49657

(1) For facilities with dates of licensure prior to January 49658
1, 1958, four dollars and twenty-four cents per patient day; 49659

(2) For facilities with dates of licensure after December 31, 49660
1957, but prior to January 1, 1968: 49661

(a) Five dollars and twenty-four cents per patient day if the 49662
cost of construction was three thousand five hundred dollars or 49663
more per bed; 49664

(b) Four dollars and twenty-four cents per patient day if the 49665
cost of construction was less than three thousand five hundred 49666
dollars per bed. 49667

(3) For facilities with dates of licensure after December 31, 49668
1967, but prior to January 1, 1976: 49669

(a) Six dollars and twenty-four cents per patient day if the 49670
cost of construction was five thousand one hundred fifty dollars 49671
or more per bed; 49672

(b) Five dollars and twenty-four cents per patient day if the 49673
cost of construction was less than five thousand one hundred fifty 49674
dollars per bed, but exceeded three thousand five hundred dollars 49675
per bed; 49676

(c) Four dollars and twenty-four cents per patient day if the 49677
cost of construction was three thousand five hundred dollars or 49678
less per bed. 49679

(4) For facilities with dates of licensure after December 31, 49680
1975, but prior to January 1, 1979: 49681

(a) Seven dollars and twenty-four cents per patient day if 49682
the cost of construction was six thousand eight hundred dollars or 49683
more per bed; 49684

(b) Six dollars and twenty-four cents per patient day if the 49685
cost of construction was less than six thousand eight hundred 49686
dollars per bed but exceeded five thousand one hundred fifty 49687
dollars per bed; 49688

(c) Five dollars and twenty-four cents per patient day if the 49689
cost of construction was five thousand one hundred fifty dollars 49690
or less per bed, but exceeded three thousand five hundred dollars 49691
per bed; 49692

(d) Four dollars and twenty-four cents per patient day if the 49693
cost of construction was three thousand five hundred dollars or 49694
less per bed. 49695

(5) For facilities with dates of licensure after December 31, 49696
1978, but prior to January 1, 1981: 49697

(a) Seven dollars and seventy-four cents per patient day if 49698
the cost of construction was seven thousand six hundred 49699

twenty-five dollars or more per bed; 49700

(b) Seven dollars and twenty-four cents per patient day if 49701
the cost of construction was less than seven thousand six hundred 49702
twenty-five dollars per bed but exceeded six thousand eight 49703
hundred dollars per bed; 49704

(c) Six dollars and twenty-four cents per patient day if the 49705
cost of construction was six thousand eight hundred dollars or 49706
less per bed but exceeded five thousand one hundred fifty dollars 49707
per bed; 49708

(d) Five dollars and twenty-four cents per patient day if the 49709
cost of construction was five thousand one hundred fifty dollars 49710
or less but exceeded three thousand five hundred dollars per bed; 49711

(e) Four dollars and twenty-four cents per patient day if the 49712
cost of construction was three thousand five hundred dollars or 49713
less per bed. 49714

(6) For facilities with dates of licensure in 1981 or any 49715
year thereafter prior to December 22, 1992, the following amount: 49716

(a) For facilities with construction costs less than seven 49717
thousand six hundred twenty-five dollars per bed, the applicable 49718
amounts for the construction costs specified in divisions 49719
(E)(5)(b) to (e) of this section; 49720

(b) For facilities with construction costs of seven thousand 49721
six hundred twenty-five dollars or more per bed, six dollars per 49722
patient day, provided that for 1981 and annually thereafter prior 49723
to December 22, 1992, the department shall do both of the 49724
following to the six-dollar amount: 49725

(i) Adjust the amount for fluctuations in construction costs 49726
calculated by the department using the "Dodge building cost 49727
indexes, northeastern and north central states," published by 49728
Marshall and Swift, using 1980 as the base year; 49729

(ii) Increase the amount, as adjusted for inflation under 49730
division (E)(6)(b)(i) of this section, by one dollar and 49731
seventy-four cents. 49732

(7) For facilities with dates of licensure on or after 49733
January 1, 1992, seven dollars and ninety-seven cents, adjusted 49734
for fluctuations in construction costs between 1991 and 1993 as 49735
calculated by the department using the "Dodge building cost 49736
indexes, northeastern and north central states," published by 49737
Marshall and Swift, and then increased by one dollar and 49738
seventy-four cents. 49739

For the fiscal year that begins July 1, 1994, each of the 49740
amounts listed in divisions (E)(1) to (7) of this section shall be 49741
increased by twenty-five cents. For the fiscal year that begins 49742
July 1, 1995, each of those amounts shall be increased by an 49743
additional twenty-five cents. For subsequent fiscal years, each of 49744
those amounts, as increased for the prior fiscal year, shall be 49745
adjusted to reflect the rate of inflation for the twelve-month 49746
period beginning on the first day of July of the calendar year 49747
preceding the calendar year that precedes the fiscal year and 49748
ending on the following thirtieth day of June, using the consumer 49749
price index for shelter costs for all urban consumers for the 49750
north central region, as published by the United States bureau of 49751
labor statistics. 49752

If the amount established for a nursing facility under this 49753
division is less than the amount that applied to the facility 49754
under division (B) of former section 5111.25 of the Revised Code, 49755
as the former section existed immediately prior to December 22, 49756
1992, the amount used to calculate the efficiency incentive for 49757
the facility under division (D)(2) of this section shall be the 49758
amount that was calculated under division (B) of the former 49759
section. 49760

(F) Beginning July 1, 1993, regardless of the facility's date of licensure or the date of the nonextensive renovations, the rate for the costs of nonextensive renovations for nursing facilities shall be eighty-five per cent of the desk-reviewed, actual, allowable, per diem, nonextensive renovation costs. 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 nonextensive 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.

(1) For a nonextensive renovation made after July 1, 1993, to qualify for payment under this division, both of the following conditions must be met:

(a) At least five years have elapsed since the date of licensure 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.

(b) The provider has obtained prior approval from the department of job and family services, and if required the director of health has granted a certificate of need for the renovation under section 3702.52 of the Revised Code. 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 department 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. No provider shall separate a project with the intent to evade the characterization of the project as a renovation or as an extensive renovation. No provider shall

increase the scope of a project after it is approved by the 49793
department of job and family services unless the increase in scope 49794
is approved by the department. 49795

(2) The payment provided for in this division is the only 49796
payment that shall be made for the costs of a nonextensive 49797
renovation. Nonextensive renovation costs shall not be included in 49798
costs of ownership, and a nonextensive renovation shall not affect 49799
the date of licensure for purposes of calculating the efficiency 49800
incentive under divisions (D) and (E) of this section. 49801

~~(G) The owner of a nursing facility operating under a 49802
provider agreement shall provide written notice to the department 49803
of job and family services at least forty five days prior to 49804
entering into any contract of sale for the facility or voluntarily 49805
terminating participation in the medical assistance program. After 49806
the date on which a transaction of sale of a nursing facility is 49807
closed, the owner shall refund to the department the amount of 49808
excess depreciation paid to the facility by the department for 49809
each year the owner has operated the facility under a provider 49810
agreement and prorated according to the number of medicaid patient 49811
days for which the facility has received payment. If a nursing 49812
facility is sold after five or fewer years of operation under a 49813
provider agreement, the refund to the department shall be equal to 49814
the excess depreciation paid to the facility. If a nursing 49815
facility is sold after more than five years but less than ten 49816
years of operation under a provider agreement, the refund to the 49817
department shall equal the excess depreciation paid to the 49818
facility multiplied by twenty per cent, multiplied by the 49819
difference between ten and the number of years that the facility 49820
was operated under a provider agreement. If a nursing facility is 49821
sold after ten or more years of operation under a provider 49822
agreement, the owner shall not refund any excess depreciation to 49823
the department. The owner of a nursing facility that is sold or 49824~~

that ~~voluntarily terminates~~ undergoes a voluntary withdrawal of 49825
~~participation in the medical assistance program, as defined in~~ 49826
section 5111.65 of the Revised Code, also shall refund any other 49827
amount that the department properly finds to be due after ~~the a~~ 49828
final fiscal audit ~~conducted under this division~~ the department 49829
shall conduct. For the purposes of this division, "depreciation 49830
paid to the facility" means the amount paid to the nursing 49831
facility for cost of ownership pursuant to this section less any 49832
amount paid for interest costs, amortization of financing costs, 49833
and lease expenses. For the purposes of this division, "excess 49834
depreciation" is the nursing facility's depreciated basis, which 49835
is the owner's cost less accumulated depreciation, subtracted from 49836
the purchase price net of selling costs but not exceeding the 49837
amount of depreciation paid to the facility. 49838

~~A cost report shall be filed with the department within~~ 49839
~~ninety days after the date on which the transaction of sale is~~ 49840
~~closed or participation is voluntarily terminated. The report~~ 49841
~~shall show the accumulated depreciation, the sales price, and~~ 49842
~~other information required by the department. The department shall~~ 49843
~~provide for a bank, trust company, or savings and loan association~~ 49844
~~to hold in escrow the amount of the last two monthly payments to a~~ 49845
~~nursing facility made pursuant to division (A)(1) of section~~ 49846
~~5111.22 of the Revised Code before a sale or termination of~~ 49847
~~participation or, if the owner fails, within the time required by~~ 49848
~~this division, to notify the department before entering into a~~ 49849
~~contract of sale for the facility, the amount of the first two~~ 49850
~~monthly payments made to the facility after the department learns~~ 49851
~~of the contract, regardless of whether a new owner is in~~ 49852
~~possession of the facility. If the amount the owner will be~~ 49853
~~required to refund under this section is likely to be less than~~ 49854
~~the amount of the two monthly payments otherwise put into escrow~~ 49855
~~under this division, the department shall take one of the~~ 49856
~~following actions instead of withholding the amount of the two~~ 49857

monthly payments: 49858

~~(1) In the case of an owner that owns other facilities that participate in the medical assistance program, obtain a promissory note in an amount sufficient to cover the amount likely to be refunded;~~ 49859
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~~(2) In the case of all other owners, withhold the amount of the last monthly payment to the nursing facility or, if the owner fails, within the time required by this division, to notify the department before entering into a contract of sale for the facility, the amount of the first monthly payment made to the facility after the department learns of the contract, regardless of whether a new owner is in possession of the facility.~~ 49863
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~~The department shall, within ninety days following the filing of the cost report, audit the cost report and issue an audit report to the owner. The department also may audit any other cost report that the facility has filed during the previous three years. In the audit report, the department shall state its findings and the amount of any money owed to the department by the nursing facility. The findings shall be subject to 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.~~ 49870
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~~If a nursing facility 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. After written notice is received from a nursing facility that a sale or termination 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.~~

(H) The department shall pay each eligible proprietary nursing facility a return on the facility's net equity computed at the rate of one and one-half times the average interest rate on special issues of public debt obligations issued to the federal hospital insurance trust fund for the cost reporting period, except that no facility's return on net equity shall exceed fifty cents per patient day.

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

(I) If a nursing facility would receive a lower rate for capital costs for assets in the facility's possession on July 1, 1993, under this section than it would receive under former section 5111.25 of the Revised Code, as the former section existed immediately prior to December 22, 1992, the facility shall receive for those assets the rate it would have received under the former section for each fiscal year beginning on or after July 1, 1993, until the rate it would receive under this section exceeds the rate it would have received under the former section. Any facility that receives a rate calculated under the former section 5111.25

of the Revised Code for assets in the facility's possession on 49922
July 1, 1993, also shall receive a rate calculated under this 49923
section for costs of any assets it constructs or acquires after 49924
July 1, 1993. 49925

Sec. 5111.251. (A) The department of job and family services 49926
shall pay each eligible intermediate care facility for the 49927
mentally retarded for its reasonable capital costs, a per resident 49928
per day rate established prospectively each fiscal year for each 49929
intermediate care facility for the mentally retarded. Except as 49930
otherwise provided in sections 5111.20 to 5111.32 of the Revised 49931
Code, the rate shall be based on the facility's capital costs for 49932
the calendar year preceding the fiscal year in which the rate will 49933
be paid. The rate shall equal the sum of the following: 49934

(1) The facility's desk-reviewed, actual, allowable, per diem 49935
cost of ownership for the preceding cost reporting period, limited 49936
as provided in divisions (C) and (F) of this section; 49937

(2) Any efficiency incentive determined under division (B) of 49938
this section; 49939

(3) Any amounts for renovations determined under division (D) 49940
of this section; 49941

(4) Any amounts for return on equity determined under 49942
division (I) of this section. 49943

Buildings shall be depreciated using the straight line method 49944
over forty years or over a different period approved by the 49945
department. Components and equipment shall be depreciated using 49946
the straight line method over a period designated by the director 49947
of job and family services in rules adopted in accordance with 49948
Chapter 119. of the Revised Code, consistent with the guidelines 49949
of the American hospital association, or over a different period 49950
approved by the department of job and family services. Any rules 49951

adopted under this division that specify useful lives of 49952
buildings, components, or equipment apply only to assets acquired 49953
on or after July 1, 1993. Depreciation for costs paid or 49954
reimbursed by any government agency shall not be included in costs 49955
of ownership or renovation unless that part of the payment under 49956
sections 5111.20 to 5111.32 of the Revised Code is used to 49957
reimburse the government agency. 49958

(B) The department of job and family services shall pay to 49959
each intermediate care facility for the mentally retarded an 49960
efficiency incentive equal to fifty per cent of the difference 49961
between any desk-reviewed, actual, allowable cost of ownership and 49962
the applicable limit on cost of ownership payments under division 49963
(C) of this section. For purposes of computing the efficiency 49964
incentive, depreciation for costs paid or reimbursed by any 49965
government agency shall be considered as a cost of ownership, and 49966
the applicable limit under division (C) of this section shall 49967
apply both to facilities with more than eight beds and facilities 49968
with eight or fewer beds. The efficiency incentive paid to a 49969
facility with eight or fewer beds shall not exceed three dollars 49970
per patient day, adjusted annually for the inflation rate for the 49971
twelve-month period beginning on the first day of July of the 49972
calendar year preceding the calendar year that precedes the fiscal 49973
year for which the efficiency incentive is determined and ending 49974
on the thirtieth day of the following June, using the consumer 49975
price index for shelter costs for all urban consumers for the 49976
north central region, as published by the United States bureau of 49977
labor statistics. 49978

(C) Cost of ownership payments to intermediate care 49979
facilities for the mentally retarded with more than eight beds 49980
shall not exceed the following limits: 49981

(1) For facilities with dates of licensure prior to January 49982
1, 1958, not exceeding two dollars and fifty cents per patient 49983

day;	49984
(2) For facilities with dates of licensure after December 31, 1957, but prior to January 1, 1968, not exceeding:	49985
	49986
(a) Three dollars and fifty cents per patient day if the cost of construction was three thousand five hundred dollars or more per bed;	49987
	49988
	49989
(b) Two dollars and fifty cents per patient day if the cost of construction was less than three thousand five hundred dollars per bed.	49990
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	49992
(3) For facilities with dates of licensure after December 31, 1967, but prior to January 1, 1976, not exceeding:	49993
	49994
(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;	49995
	49996
	49997
(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;	49998
	49999
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	50001
(c) Two dollars and fifty cents per patient day if the cost of construction was three thousand five hundred dollars or less per bed.	50002
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	50004
(4) For facilities with dates of licensure after December 31, 1975, but prior to January 1, 1979, not exceeding:	50005
	50006
(a) Five dollars and fifty cents per patient day if the cost of construction was six thousand eight hundred dollars or more per bed;	50007
	50008
	50009
(b) Four dollars and fifty cents per patient day if the cost of construction was less than six thousand eight hundred dollars per bed but exceeds five thousand one hundred fifty dollars per bed;	50010
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(c) Three dollars and fifty cents per patient day if the cost of construction was five thousand one hundred fifty dollars or less per bed, but exceeds three thousand five hundred dollars per bed; 50014
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(d) Two dollars and fifty cents per patient day if the cost of construction was three thousand five hundred dollars or less per bed. 50018
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(5) For facilities with dates of licensure after December 31, 1978, but prior to January 1, 1980, not exceeding: 50021
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(a) Six dollars per patient day if the cost of construction was seven thousand six hundred twenty-five dollars or more per bed; 50023
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(b) Five dollars and fifty cents per patient day if the cost of construction was less than seven thousand six hundred twenty-five dollars per bed but exceeds six thousand eight hundred dollars per bed; 50026
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(c) Four dollars and fifty cents per patient day if the cost of construction was six thousand eight hundred dollars or less per bed but exceeds five thousand one hundred fifty dollars per bed; 50030
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(d) Three dollars and fifty cents per patient day if the cost of construction was five thousand one hundred fifty dollars or less but exceeds three thousand five hundred dollars per bed; 50033
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(e) Two dollars and fifty cents per patient day if the cost of construction was three thousand five hundred dollars or less per bed. 50036
50037
50038

(6) For facilities with dates of licensure after December 31, 1979, but prior to January 1, 1981, not exceeding: 50039
50040

(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; 50041
50042
50043

(b) Six dollars per patient day if the beds were originally licensed as nursing home beds by the department of health.	50044 50045
(7) For facilities with dates of licensure after December 31, 1980, but prior to January 1, 1982, not exceeding:	50046 50047
(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;	50048 50049 50050
(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.	50051 50052 50053
(8) For facilities with dates of licensure after December 31, 1981, but prior to January 1, 1983, not exceeding:	50054 50055
(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;	50056 50057 50058
(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.	50059 50060 50061
(9) For facilities with dates of licensure after December 31, 1982, but prior to January 1, 1984, not exceeding:	50062 50063
(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;	50064 50065 50066
(b) Seven dollars and nine cents per patient day if the beds were originally licensed as nursing home beds by the department of health.	50067 50068 50069
(10) For facilities with dates of licensure after December 31, 1983, but prior to January 1, 1985, not exceeding:	50070 50071
(a) Twelve dollars and twenty-four cents per patient day if	50072

the beds were originally licensed as residential facility beds by 50073
the department of mental retardation and developmental 50074
disabilities; 50075

(b) Seven dollars and twenty-three cents per patient day if 50076
the beds were originally licensed as nursing home beds by the 50077
department of health. 50078

(11) For facilities with dates of licensure after December 50079
31, 1984, but prior to January 1, 1986, not exceeding: 50080

(a) Twelve dollars and fifty-three cents per patient day if 50081
the beds were originally licensed as residential facility beds by 50082
the department of mental retardation and developmental 50083
disabilities; 50084

(b) Seven dollars and forty cents per patient day if the beds 50085
were originally licensed as nursing home beds by the department of 50086
health. 50087

(12) For facilities with dates of licensure after December 50088
31, 1985, but prior to January 1, 1987, not exceeding: 50089

(a) Twelve dollars and seventy cents per patient day if the 50090
beds were originally licensed as residential facility beds by the 50091
department of mental retardation and developmental disabilities; 50092

(b) Seven dollars and fifty cents per patient day if the beds 50093
were originally licensed as nursing home beds by the department of 50094
health. 50095

(13) For facilities with dates of licensure after December 50096
31, 1986, but prior to January 1, 1988, not exceeding: 50097

(a) Twelve dollars and ninety-nine cents per patient day if 50098
the beds were originally licensed as residential facility beds by 50099
the department of mental retardation and developmental 50100
disabilities; 50101

(b) Seven dollars and sixty-seven cents per patient day if 50102

the beds were originally licensed as nursing home beds by the 50103
department of health. 50104

(14) For facilities with dates of licensure after December 50105
31, 1987, but prior to January 1, 1989, not exceeding thirteen 50106
dollars and twenty-six cents per patient day; 50107

(15) For facilities with dates of licensure after December 50108
31, 1988, but prior to January 1, 1990, not exceeding thirteen 50109
dollars and forty-six cents per patient day; 50110

(16) For facilities with dates of licensure after December 50111
31, 1989, but prior to January 1, 1991, not exceeding thirteen 50112
dollars and sixty cents per patient day; 50113

(17) For facilities with dates of licensure after December 50114
31, 1990, but prior to January 1, 1992, not exceeding thirteen 50115
dollars and forty-nine cents per patient day; 50116

(18) For facilities with dates of licensure after December 50117
31, 1991, but prior to January 1, 1993, not exceeding thirteen 50118
dollars and sixty-seven cents per patient day; 50119

(19) For facilities with dates of licensure after December 50120
31, 1992, not exceeding fourteen dollars and twenty-eight cents 50121
per patient day. 50122

(D) Beginning January 1, 1981, regardless of the original 50123
date of licensure, the department of job and family services shall 50124
pay a rate for the per diem capitalized costs of renovations to 50125
intermediate care facilities for the mentally retarded made after 50126
January 1, 1981, not exceeding six dollars per patient day using 50127
1980 as the base year and adjusting the amount annually until June 50128
30, 1993, for fluctuations in construction costs calculated by the 50129
department using the "Dodge building cost indexes, northeastern 50130
and north central states," published by Marshall and Swift. The 50131
payment provided for in this division is the only payment that 50132
shall be made for the capitalized costs of a nonextensive 50133

renovation of an intermediate care facility for the mentally 50134
retarded. Nonextensive renovation costs shall not be included in 50135
cost of ownership, and a nonextensive renovation shall not affect 50136
the date of licensure for purposes of division (C) of this 50137
section. This division applies to nonextensive renovations 50138
regardless of whether they are made by an owner or a lessee. If 50139
the tenancy of a lessee that has made renovations ends before the 50140
depreciation expense for the renovation costs has been fully 50141
reported, the former lessee shall not report the undepreciated 50142
balance as an expense. 50143

For a nonextensive renovation to qualify for payment under 50144
this division, both of the following conditions must be met: 50145

(1) At least five years have elapsed since the date of 50146
licensure or date of an extensive renovation of the portion of the 50147
facility that is proposed to be renovated, except that this 50148
condition does not apply if the renovation is necessary to meet 50149
the requirements of federal, state, or local statutes, ordinances, 50150
rules, or policies. 50151

(2) The provider has obtained prior approval from the 50152
department of job and family services. The provider shall submit a 50153
plan that describes in detail the changes in capital assets to be 50154
accomplished by means of the renovation and the timetable for 50155
completing the project. The time for completion of the project 50156
shall be no more than eighteen months after the renovation begins. 50157
The director of job and family services shall adopt rules in 50158
accordance with Chapter 119. of the Revised Code that specify 50159
criteria and procedures for prior approval of renovation projects. 50160
No provider shall separate a project with the intent to evade the 50161
characterization of the project as a renovation or as an extensive 50162
renovation. No provider shall increase the scope of a project 50163
after it is approved by the department of job and family services 50164
unless the increase in scope is approved by the department. 50165

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

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

(2) For facilities with eight or fewer beds that have dates of licensure or have been granted project authorization by the department of mental retardation and developmental disabilities on or after July 1, 1993, for which substantial commitments of funds were not made before that date, cost of ownership payments shall not exceed the applicable amount calculated under division (F)(1) of this section, if the department of job and family services

gives prior approval for construction of the facility or, 50198
regardless of whether the department gives prior approval, if the 50199
facility obtains a residential facility license under section 50200
5123.19 of the Revised Code pursuant to section 5123.1910 of the 50201
Revised Code. If the department does not give prior approval, cost 50202
of ownership payments shall not exceed the amount specified in 50203
division (C) of this section unless the facility obtains a 50204
residential facility license under section 5123.19 of the Revised 50205
Code pursuant to section 5123.1910 of the Revised Code. 50206

(3) Notwithstanding divisions (D) and (F)(1) and (2) of this 50207
section, the total payment for cost of ownership, cost of 50208
ownership efficiency incentive, and capitalized costs of 50209
renovations for an intermediate care facility for the mentally 50210
retarded with eight or fewer beds shall not exceed the sum of the 50211
limitations specified in divisions (C) and (D) of this section. 50212

(G) Notwithstanding any provision of this section or section 50213
5111.24 of the Revised Code, the director of job and family 50214
services may adopt rules in accordance with Chapter 119. of the 50215
Revised Code that provide for a calculation of a combined maximum 50216
payment limit for indirect care costs and cost of ownership for 50217
intermediate care facilities for the mentally retarded with eight 50218
or fewer beds. 50219

(H) ~~After June 30, 1980, the owner of an intermediate care~~ 50220
~~facility for the mentally retarded operating under a provider~~ 50221
~~agreement shall provide written notice to the department of job~~ 50222
~~and family services at least forty five days prior to entering~~ 50223
~~into any contract of sale for the facility or voluntarily~~ 50224
~~terminating participation in the medical assistance program.~~ After 50225
the date on which a transaction of sale of an intermediate care 50226
facility for the mentally retarded is closed, the owner shall 50227
refund to the department the amount of excess depreciation paid to 50228
the facility by the department for each year the owner has 50229

operated the facility under a provider agreement and prorated 50230
according to the number of medicaid patient days for which the 50231
facility has received payment. If an intermediate care facility 50232
for the mentally retarded is sold after five or fewer years of 50233
operation under a provider agreement, the refund to the department 50234
shall be equal to the excess depreciation paid to the facility. If 50235
an intermediate care facility for the mentally retarded is sold 50236
after more than five years but less than ten years of operation 50237
under a provider agreement, the refund to the department shall 50238
equal the excess depreciation paid to the facility multiplied by 50239
twenty per cent, multiplied by the number of years less than ten 50240
that a facility was operated under a provider agreement. If an 50241
intermediate care facility for the mentally retarded is sold after 50242
ten or more years of operation under a provider agreement, the 50243
owner shall not refund any excess depreciation to the department. 50244
For the purposes of this division, "depreciation paid to the 50245
facility" means the amount paid to the intermediate care facility 50246
for the mentally retarded for cost of ownership pursuant to this 50247
section less any amount paid for interest costs. For the purposes 50248
of this division, "excess depreciation" is the intermediate care 50249
facility for the mentally retarded's depreciated basis, which is 50250
the owner's cost less accumulated depreciation, subtracted from 50251
the purchase price but not exceeding the amount of depreciation 50252
paid to the facility. 50253

~~A cost report shall be filed with the department within 50254
ninety days after the date on which the transaction of sale is 50255
closed or participation is voluntarily terminated for an 50256
intermediate care facility for the mentally retarded subject to 50257
this division. The report shall show the accumulated depreciation, 50258
the sales price, and other information required by the department. 50259
The department shall provide for a bank, trust company, or savings 50260
and loan association to hold in escrow the amount of the last two 50261
monthly payments to an intermediate care facility for the mentally 50262~~

~~retarded made pursuant to division (A)(1) of section 5111.22 of 50263
the Revised Code before a sale or voluntary termination of 50264
participation or, if the owner fails, within the time required by 50265
this division, to notify the department before entering into a 50266
contract of sale for the facility, the amount of the first two 50267
monthly payments made to the facility after the department learns 50268
of the contract, regardless of whether a new owner is in 50269
possession of the facility. If the amount the owner will be 50270
required to refund under this section is likely to be less than 50271
the amount of the two monthly payments otherwise put into escrow 50272
under this division, the department shall take one of the 50273
following actions instead of withholding the amount of the two 50274
monthly payments:~~ 50275

~~(1) In the case of an owner that owns other facilities that 50276
participate in the medical assistance program, obtain a promissory 50277
note in an amount sufficient to cover the amount likely to be 50278
refunded;~~ 50279

~~(2) In the case of all other owners, withhold the amount of 50280
the last monthly payment to the intermediate care facility for the 50281
mentally retarded or, if the owner fails, within the time required 50282
by this division, to notify the department before entering into a 50283
contract of sale for the facility, the amount of the first monthly 50284
payment made to the facility after the department learns of the 50285
contract, regardless of whether a new owner is in possession of 50286
the facility.~~ 50287

~~The department shall, within ninety days following the filing 50288
of the cost report, audit the report and issue an audit report to 50289
the owner. The department also may audit any other cost reports 50290
for the facility that have been filed during the previous three 50291
years. In the audit report, the department shall state its 50292
findings and the amount of any money owed to the department by the 50293
intermediate care facility for the mentally retarded. The findings 50294~~

~~shall be subject to an adjudication conducted in accordance with~~ 50295
~~Chapter 119. of the Revised Code. No later than fifteen days after~~ 50296
~~the owner agrees to a settlement, any funds held in escrow less~~ 50297
~~any amounts due to the department shall be released to the owner~~ 50298
~~and amounts due to the department shall be paid to the department.~~ 50299
~~If the amounts in escrow are less than the amounts due to the~~ 50300
~~department, the balance shall be paid to the department within~~ 50301
~~fifteen days after the owner agrees to a settlement. If the~~ 50302
~~department does not issue its audit report within the ninety day~~ 50303
~~period, the department shall release any money held in escrow to~~ 50304
~~the owner.~~ For the purposes of this section, a transfer of 50305
corporate stock, the merger of one corporation into another, or a 50306
consolidation does not constitute a sale. 50307

~~If an intermediate care facility for the mentally retarded is~~ 50308
~~not sold or its participation is not terminated after notice is~~ 50309
~~provided to the department under this division, the department~~ 50310
~~shall order any payments held in escrow released to the facility~~ 50311
~~upon receiving written notice from the owner that there will be no~~ 50312
~~sale or termination of participation. After written notice is~~ 50313
~~received from an intermediate care facility for the mentally~~ 50314
~~retarded that a sale or termination of participation will not take~~ 50315
~~place, the facility shall provide notice to the department at~~ 50316
~~least forty five days prior to entering into any contract of sale~~ 50317
~~or terminating participation at any future time.~~ 50318

(I) The department of job and family services shall pay each 50319
eligible proprietary intermediate care facility for the mentally 50320
retarded a return on the facility's net equity computed at the 50321
rate of one and one-half times the average of interest rates on 50322
special issues of public debt obligations issued to the federal 50323
hospital insurance trust fund for the cost reporting period. No 50324
facility's return on net equity paid under this division shall 50325
exceed one dollar per patient day. 50326

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

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

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

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

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

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

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

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

(d) The department of job and family services determines that

the lease or transfer is an arm's length transaction pursuant to 50357
rules the department shall adopt in accordance with Chapter 119. 50358
of the Revised Code no later than December 31, 2000. The rules 50359
shall provide that a lease or transfer is an arm's length 50360
transaction if all of the following, as applicable, apply: 50361

(i) In the case of a lease, once the lease goes into effect, 50362
the lessor has no direct or indirect interest in the lessee or, 50363
except as provided in division (J)(2)(b) of this section, the 50364
facility itself, including interest as an owner, officer, 50365
director, employee, independent contractor, or consultant, but 50366
excluding interest as a lessor. 50367

(ii) In the case of a lease, the lessor does not reacquire an 50368
interest in the facility except through the exercise of a lessor's 50369
rights in the event of a default. If the lessor reacquires an 50370
interest in the facility in this manner, the department shall 50371
treat the facility as if the lease never occurred when the 50372
department calculates its reimbursement rates for capital costs. 50373

(iii) In the case of a transfer, once the transfer goes into 50374
effect, the provider that made the transfer has no direct or 50375
indirect interest in the provider that acquires the facility or 50376
the facility itself, including interest as an owner, officer, 50377
director, employee, independent contractor, or consultant, but 50378
excluding interest as a creditor. 50379

(iv) In the case of a transfer, the provider that made the 50380
transfer does not reacquire an interest in the facility except 50381
through the exercise of a creditor's rights in the event of a 50382
default. If the provider reacquires an interest in the facility in 50383
this manner, the department shall treat the facility as if the 50384
transfer never occurred when the department calculates its 50385
reimbursement rates for capital costs. 50386

(v) The lease or transfer satisfies any other criteria 50387

specified in the rules. 50388

(e) Except in the case of hardship caused by a catastrophic 50389
event, as determined by the department, or in the case of a lessor 50390
or provider making the transfer who is at least sixty-five years 50391
of age, not less than twenty years have elapsed since, for the 50392
same facility, allowable cost of ownership was determined most 50393
recently under this division. 50394

Sec. 5111.28. (A) If a provider properly amends its cost 50395
report under section 5111.27 of the Revised Code and the amended 50396
report shows that the provider received a lower rate under the 50397
original cost report than it was entitled to receive, the 50398
department shall adjust the provider's rate prospectively to 50399
reflect the corrected information. The department shall pay the 50400
adjusted rate beginning two months after the first day of the 50401
month after the provider files the amended cost report. If the 50402
department finds, from an exception review of resident assessment 50403
information conducted after the effective date of the rate for 50404
direct care costs that is based on the assessment information, 50405
that inaccurate assessment information resulted in the provider 50406
receiving a lower rate than it was entitled to receive, the 50407
department prospectively shall adjust the provider's rate 50408
accordingly and shall make payments using the adjusted rate for 50409
the remainder of the calendar quarter for which the assessment 50410
information is used to determine the rate, beginning one month 50411
after the first day of the month after the exception review is 50412
completed. 50413

(B) If the provider properly amends its cost report under 50414
section 5111.27 of the Revised Code, the department makes a 50415
finding based on an audit under that section, or the department 50416
makes a finding based on an exception review of resident 50417
assessment information conducted under that section after the 50418

effective date of the rate for direct care costs that is based on 50419
the assessment information, any of which results in a 50420
determination that the provider has received a higher rate than it 50421
was entitled to receive, the department shall recalculate the 50422
provider's rate using the revised information. The department 50423
shall apply the recalculated rate to the periods when the provider 50424
received the incorrect rate to determine the amount of the 50425
overpayment. The provider shall refund the amount of the 50426
overpayment. 50427

In addition to requiring a refund under this division, the 50428
department may charge the provider interest at the applicable rate 50429
specified in this division from the time the overpayment was made. 50430

(1) If the overpayment resulted from costs reported for 50431
calendar year 1993, the interest shall be no greater than one and 50432
one-half times the average bank prime rate. 50433

(2) If the overpayment resulted from costs reported for 50434
subsequent calendar years: 50435

(a) The interest shall be no greater than two times the 50436
average bank prime rate if the overpayment was equal to or less 50437
than one per cent of the total medicaid payments to the provider 50438
for the fiscal year for which the incorrect information was used 50439
to establish a rate. 50440

(b) The interest shall be no greater than two and one-half 50441
times the current average bank prime rate if the overpayment was 50442
greater than one per cent of the total medicaid payments to the 50443
provider for the fiscal year for which the incorrect information 50444
was used to establish a rate. 50445

(C) The department also may impose the following penalties: 50446

(1) If a provider does not furnish invoices or other 50447
documentation that the department requests during an audit within 50448
sixty days after the request, no more than the greater of one 50449

thousand dollars per audit or twenty-five per cent of the 50450
cumulative amount by which the costs for which documentation was 50451
not furnished increased the total medicaid payments to the 50452
provider during the fiscal year for which the costs were used to 50453
establish a rate; 50454

(2) If an ~~owner~~ exiting operator fails to provide a properly 50455
completed notice of ~~sale of the facility or closure,~~ voluntary 50456
termination, voluntary withdrawal of participation ~~in the medical~~ 50457
~~assistance program, or change of operator,~~ as required by section 50458
~~5111.25~~ 5111.66 or ~~5111.251~~ 5111.67 of the Revised Code, no more 50459
than the current average bank prime rate plus four per cent of ~~the~~ 50460
~~last~~ an amount equal to two times the average amount of monthly 50461
payments to the exiting operator under the medicaid program for 50462
the twelve-month period immediately preceding the month that 50463
includes the last day the exiting operator's provider agreement is 50464
in effect or, in the case of a voluntary withdrawal of 50465
participation, the effective date of the voluntary withdrawal of 50466
participation. 50467

(D) If the provider continues to participate in the ~~medical~~ 50468
~~assistance~~ medicaid program, the department shall deduct any 50469
amount that the provider is required to refund under this section, 50470
and the amount of any interest charged or penalty imposed under 50471
this section, from the next available payment from the department 50472
to the provider. The department and the provider may enter into an 50473
agreement under which the amount, together with interest, is 50474
deducted in installments from payments from the department to the 50475
provider. If the provider does not continue to participate in the 50476
medicaid program, the department shall collect any amount that the 50477
provider owes to the department under this section from the 50478
withholding, security, or both that the department makes or 50479
requires under section 5111.681 of the Revised Code. 50480

(E) The department shall transmit refunds and penalties to 50481

the treasurer of state for deposit in the general revenue fund. 50482

(F) For the purpose of this section, the department shall 50483
determine the average bank prime rate using statistical release 50484
H.15, "selected interest rates," a weekly publication of the 50485
federal reserve board, or any successor publication. If 50486
statistical release H.15, or its successor, ceases to contain the 50487
bank prime rate information or ceases to be published, the 50488
department shall request a written statement of the average bank 50489
prime rate from the federal reserve bank of Cleveland or the 50490
federal reserve board. 50491

Sec. 5111.29. (A) The director of job and family services 50492
shall adopt rules in accordance with Chapter 119. of the Revised 50493
Code that establish a process under which a nursing facility or 50494
intermediate care facility for the mentally retarded, or a group 50495
or association of facilities, may seek reconsideration of rates 50496
established under sections 5111.23 to 5111.28 of the Revised Code, 50497
including a rate for direct care costs recalculated before the 50498
effective date of the rate as a result of an exception review of 50499
resident assessment information conducted under section 5111.27 of 50500
the Revised Code. 50501

(1) Except as provided in divisions (A)(2) to (4) of this 50502
section, the only issue that a facility, group, or association may 50503
raise in the rate reconsideration shall be whether the rate was 50504
calculated in accordance with sections 5111.23 to 5111.28 of the 50505
Revised Code and the rules adopted under those sections. The rules 50506
shall permit a facility, group, or association to submit written 50507
arguments or other materials that support its position. The rules 50508
shall specify time frames within which the facility, group, or 50509
association and the department must act. If the department 50510
determines, as a result of the rate reconsideration, that the rate 50511
established for one or more facilities is less than the rate to 50512

which it is entitled, the department shall increase the rate. If 50513
the department has paid the incorrect rate for a period of time, 50514
the department shall pay the facility the difference between the 50515
amount it was paid for that period and the amount it should have 50516
been paid. 50517

(2) The rules shall provide that during a fiscal year, the 50518
department, by means of the rate reconsideration process, may 50519
increase a facility's rate as calculated under sections 5111.23 to 50520
5111.28 of the Revised Code if the facility demonstrates that its 50521
actual, allowable costs have increased because of extreme 50522
circumstances. A facility may qualify for a rate increase only if 50523
its per diem, actual, allowable costs have increased to a level 50524
that exceeds its total rate, including any efficiency incentive 50525
and return on equity payment. The rules shall specify the 50526
circumstances that would justify a rate increase under division 50527
(A)(2) of this section. In the case of nursing facilities, the 50528
rules shall provide that the extreme circumstances include 50529
increased security costs for an inner-city nursing facility and an 50530
increase in workers' compensation experience rating of greater 50531
than five per cent for a facility that has an appropriate claims 50532
management program but do not include a change of ownership that 50533
results from bankruptcy, foreclosure, or findings of violations of 50534
certification requirements by the department of health. In the 50535
case of intermediate care facilities for the mentally retarded, 50536
the rules shall provide that the extreme circumstances include, 50537
but are not limited to, renovations approved under division (D) of 50538
section 5111.251 of the Revised Code, an increase in workers' 50539
compensation experience rating of greater than five per cent for a 50540
facility that has an appropriate claims management program, 50541
increased security costs for an inner-city facility, and a change 50542
of ownership that results from bankruptcy, foreclosure, or 50543
findings of violations of certification requirements by the 50544
department of health. An increase under division (A)(2) of this 50545

section is subject to any rate limitations or maximum rates 50546
established by sections 5111.23 to 5111.28 of the Revised Code for 50547
specific cost centers. Any rate increase granted under division 50548
(A)(2) of this section shall take effect on the first day of the 50549
first month after the department receives the request. 50550

(3) The rules shall provide that the department, through the 50551
rate reconsideration process, may increase a facility's rate as 50552
calculated under sections 5111.23 to 5111.28 of the Revised Code 50553
if the department, in its sole discretion, determines that the 50554
rate as calculated under those sections works an extreme hardship 50555
on the facility. 50556

(4) The rules shall provide that when beds certified for the 50557
medical assistance program are added to an existing facility, 50558
replaced at the same site, or subject to a change of ownership or 50559
lease, the department, through the rate reconsideration process, 50560
shall increase the facility's rate for capital costs 50561
proportionately, as limited by any applicable limitation under 50562
section 5111.25 or 5111.251 of the Revised Code, to account for 50563
the costs of the beds that are added, replaced, or subject to a 50564
change of ownership or lease. The department shall make this 50565
increase one month after the first day of the month after the 50566
department receives sufficient documentation of the costs. Any 50567
rate increase granted under division (A)(4) of this section after 50568
June 30, 1993, shall remain in effect until the effective date of 50569
a rate calculated under section 5111.25 or 5111.251 of the Revised 50570
Code that includes costs incurred for a full calendar year for the 50571
bed addition, bed replacement, or change of ownership or lease. 50572
The facility shall report double accumulated depreciation in an 50573
amount equal to the depreciation included in the rate adjustment 50574
on its cost report for the first year of operation. During the 50575
term of any loan used to finance a project for which a rate 50576
adjustment is granted under division (A)(4) of this section, if 50577

the facility is operated by the same provider, the facility shall 50578
subtract from the interest costs it reports on its cost report an 50579
amount equal to the difference between the following: 50580

(a) The actual, allowable interest costs for the loan during 50581
the calendar year for which the costs are being reported; 50582

(b) The actual, allowable interest costs attributable to the 50583
loan that were used to calculate the rates paid to the facility 50584
during the same calendar year. 50585

(5) The department's decision at the conclusion of the 50586
reconsideration process shall not be subject to any administrative 50587
proceedings under Chapter 119. or any other provision of the 50588
Revised Code. 50589

(B) ~~Any~~ All of the following are subject to an adjudication 50590
conducted in accordance with Chapter 119. of the Revised Code: 50591

(1) Any audit disallowance that the department makes as the 50592
result of an audit under section 5111.27 of the Revised Code, ~~any;~~ 50593

(2) Any adverse finding that results from an exception review 50594
of resident assessment information conducted under ~~that~~ section 50595
5111.27 of the Revised Code after the effective date of the 50596
facility's rate that is based on the assessment information, ~~and~~ 50597
~~any;~~ 50598

(3) Any penalty the department imposes under division (C) of 50599
section 5111.28 of the Revised Code ~~shall be subject to an~~ 50600
~~adjudication conducted in accordance with Chapter 119. or section~~ 50601
5111.684 of the Revised Code. 50602

Sec. 5111.30. The department of job and family services shall 50603
terminate the provider agreement with an operator of a nursing 50604
facility or intermediate care facility for the mentally retarded 50605
that does not comply with the requirements of section 3721.071 of 50606
the Revised Code for the installation of fire extinguishing and 50607

fire alarm systems. 50608

Sec. 5111.31. (A) Every provider agreement with an operator 50609
of a nursing facility or intermediate care facility for the 50610
mentally retarded shall: 50611

(1) Prohibit the facility from failing or refusing to retain 50612
as a patient any person because the person is, becomes, or may, as 50613
a patient in the facility, become a recipient of assistance under 50614
the medical assistance program. For the purposes of this division, 50615
a recipient of medical assistance who is a patient in a facility 50616
shall be considered a patient in the facility during any hospital 50617
stays totaling less than twenty-five days during any twelve-month 50618
period. Recipients who have been identified by the department of 50619
job and family services or its designee as requiring the level of 50620
care of an intermediate care facility for the mentally retarded 50621
shall not be subject to a maximum period of absences during which 50622
they are considered patients if prior authorization of the 50623
department for visits with relatives and friends and participation 50624
in therapeutic programs is obtained under rules adopted under 50625
section 5111.02 of the Revised Code. 50626

(2) Include any part of the facility that meets standards for 50627
certification of compliance with federal and state laws and rules 50628
for participation in the medical assistance program, except that 50629
nursing facilities that, during the period beginning July 1, 1987, 50630
and ending July 1, 1993, added beds licensed as nursing home beds 50631
under Chapter 3721. of the Revised Code are not required to 50632
include those beds under a provider agreement unless otherwise 50633
required by federal law. Once added to the provider agreement, 50634
however, those nursing home beds may not be removed unless the 50635
facility withdraws from the medical assistance program in its 50636
entirety. 50637

(3) Prohibit the facility from discriminating against any 50638

patient on the basis of race, color, sex, creed, or national origin. 50639
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(4) Except as otherwise prohibited under section 5111.55 of the Revised Code, prohibit the facility from failing or refusing to accept a patient because the patient is, becomes, or may, as a patient in the facility, become a recipient of assistance under the medical assistance program if less than eighty per cent of the patients in the facility are recipients of medical assistance. 50641
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(B) Nothing in this section shall bar any religious or denominational nursing facility or intermediate care facility for the mentally retarded that is operated, supervised, or controlled by a religious organization from giving preference to persons of the same religion or denomination. Nothing in this section shall bar any facility from giving preference to persons with whom it has contracted to provide continuing care. 50647
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(C) Nothing in this section shall bar any county home organized under Chapter 5155. of the Revised Code from admitting residents exclusively from the county in which the county home is located. 50654
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(D) No operator of a nursing facility or intermediate care facility for the mentally retarded with which a provider agreement is in effect shall violate the provider contract obligations imposed under this section. 50658
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(E) Nothing in divisions (A) and (B) of this section shall bar any nursing facility or intermediate care facility for the mentally retarded from retaining patients who have resided in the facility for not less than one year as private pay patients and who subsequently become recipients of assistance under the medicaid program, but refusing to accept as a patient any person who is or may, as a patient in the facility, become a recipient of assistance under the medicaid program, if all of the following 50662
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apply: 50670

(1) The facility does not refuse to retain any patient who 50671
has resided in the facility for not less than one year as a 50672
private pay patient because the patient becomes a recipient of 50673
assistance under the medicaid program, except as necessary to 50674
comply with division (E)(2) of this section; 50675

(2) The number of medicaid recipients retained under this 50676
division does not at any time exceed ten per cent of all the 50677
patients in the facility; 50678

(3) On July 1, 1980, all the patients in the facility were 50679
private pay patients. 50680

Sec. 5111.34. (A) There is hereby created the nursing 50681
facility reimbursement study council consisting of the following 50682
~~seventeen~~ eighteen members: 50683

(1) The director of job and family services; 50684

(2) The deputy director of the office of Ohio health plans of 50685
the department of job and family services; 50686

(3) An employee of the governor's office; 50687

(4) The director of health; 50688

(5) The director of aging; 50689

(6) Three members of the house of representatives, not more 50690
than two of whom are members of the same political party, 50691
appointed by the speaker of the house of representatives; 50692

(7) Three members of the senate, not more than two of whom 50693
are members of the same political party, appointed by the 50694
president of the senate; 50695

(8) One representative of medicaid recipients residing in 50696
nursing facilities, appointed by the governor; 50697

(9) Two representatives of each of the following organizations, appointed by their respective governing bodies: 50698

(a) The Ohio academy of nursing homes; 50700

(b) The association of Ohio philanthropic homes and housing for the aging; 50701
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(c) The Ohio health care association. 50703

Initial appointments of members described in divisions (A)(6), (7), and ~~(8)~~(9) of this section shall be made no later than ninety days after June 6, 2001, except that the initial appointments of the two additional members described in divisions (A)(6) and (7) of this section added by Am. Sub. H.B. 405 of the 124th general assembly shall be made not later than ninety days after ~~the effective date of this amendment~~ March 14, 2002. Initial appointment of the member described in division (A)(8) of this section shall be made not later than ninety days after the effective date of this amendment. Vacancies in any of those appointments shall be filled in the same manner as original appointments. The members described in divisions (A)(6), (7), ~~and (8)~~, and (9) of this section shall serve at the pleasure of the official or governing body appointing the member. The members described in divisions (A)(1), (2), (3), (4), and (5) of this section shall serve for as long as they hold the position that qualifies them for membership on the council. The speaker of the house of representatives and the president of the senate jointly shall appoint the chairperson of the council. Members of the council shall serve without compensation. 50704
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(B) The council shall review, on an ongoing basis, the system established by sections 5111.20 to 5111.32 of the Revised Code for reimbursing nursing facilities under the medical assistance program. The council shall recommend any changes it determines are necessary. The council shall issue a report of its activities, 50724
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findings, and recommendations to the governor, the speaker of the 50729
house of representatives, and the president of the senate not 50730
later than July 30, 2004. Thereafter, the council periodically 50731
shall report its activities, findings, and recommendations to the 50732
governor, the speaker of the house of representatives, and the 50733
president of the senate. 50734

(C) The council shall meet quarterly. Its first quarterly 50735
meeting after the effective date of this amendment shall be held 50736
not later than August 1, 2003. 50737

Sec. 5111.65. As used in sections 5111.65 to 5111.6810 of the 50738
Revised Code: 50739

(A) "Change of operator" means an entering operator becoming 50740
the operator of a nursing facility or intermediate care facility 50741
for the mentally retarded in the place of the exiting operator. 50742

(1) Actions that constitute a change of operator include, but 50743
are not limited to, the following: 50744

(a) A change in an exiting operator's form of legal 50745
organization, including the formation of a partnership or 50746
corporation from a sole proprietorship; 50747

(b) A transfer of all the exiting operator's ownership 50748
interest in the operation of the facility to the entering 50749
operator, regardless of whether ownership of any or all of the 50750
real property or personal property associated with the facility is 50751
also transferred; 50752

(c) A lease of the facility to the entering operator or the 50753
exiting operator's termination of the lease; 50754

(d) If the exiting operator is a partnership, dissolution of 50755
the partnership; 50756

(e) If the exiting operator is a partnership, a change in 50757
composition of the partnership unless both of the following apply: 50758

<u>(i) The change in composition does not cause the partnership's dissolution under state law.</u>	50759
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<u>(ii) The partners agree that the change in composition does not constitute a change in operator.</u>	50761
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<u>(f) If the operator is a corporation, dissolution of the corporation, a merger of the corporation with another corporation that is the survivor of the merger, or a consolidation of one or more other corporations to form a new corporation.</u>	50763
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<u>(2) The following, alone, do not constitute a change of operator:</u>	50767
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<u>(a) A contract for an entity to manage a nursing facility or intermediate care facility for the mentally retarded as the operator's agent, subject to the operator's approval of daily operating and management decisions;</u>	50769
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<u>(b) A change of ownership, lease, or termination of a lease of real property or personal property associated with a nursing facility or intermediate care facility for the mentally retarded if an entering operator does not become the operator in place of an exiting operator;</u>	50773
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<u>(c) If the operator is a corporation, a change of one or more members of the corporation's governing body or transfer of ownership of one or more shares of the corporation's stock, if the same corporation continues to be the operator.</u>	50778
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<u>(B) "Effective date of a change of operator" means the day the entering operator becomes the operator of the nursing facility or intermediate care facility for the mentally retarded.</u>	50782
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<u>(C) "Effective date of a facility closure" means the last day that the last of the residents of the nursing facility or intermediate care facility for the mentally retarded resides in the facility.</u>	50785
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(D) "Effective date of a voluntary termination" means the day the intermediate care facility for the mentally retarded ceases to accept medicaid patients. 50789
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(E) "Effective date of a voluntary withdrawal of participation" means the day the nursing facility ceases to accept new medicaid patients other than the individuals who reside in the nursing facility on the day before the effective date of the voluntary withdrawal of participation. 50792
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(F) "Entering operator" means the person or government entity that will become the operator of a nursing facility or intermediate care facility for the mentally retarded when a change of operator occurs. 50797
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(G) "Exiting operator" means any of the following: 50801

(1) An operator that will cease to be the operator of a nursing facility or intermediate care facility for the mentally retarded on the effective date of a change of operator; 50802
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(2) An operator that will cease to be the operator of a nursing facility or intermediate care facility for the mentally retarded on the effective date of a facility closure; 50805
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(3) An operator of an intermediate care facility for the mentally retarded that is undergoing or has undergone a voluntary termination; 50808
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(4) An operator of a nursing facility that is undergoing or has undergone a voluntary withdrawal of participation. 50811
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(H) "Facility closure" means discontinuance of the use of the building, or part of the building, that houses the facility as a nursing facility or intermediate care facility for the mentally retarded that results in the relocation of all of the facility's residents. A facility closure occurs regardless of any of the following: 50813
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- (1) The operator completely or partially replacing the facility by constructing a new facility or transferring the facility's license to another facility; 50819
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- (2) The facility's residents relocating to another of the operator's facilities; 50822
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- (3) Any action the department of health takes regarding the facility's certification under Title XIX of the "Social Security Act," 79 Stat. 286 (1965), 42 U.S.C.A. 1396, as amended, that may result in the transfer of part of the facility's survey findings to another of the operator's facilities; 50824
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- (4) Any action the department of health takes regarding the facility's license under Chapter 3721. of the Revised Code; 50829
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- (5) Any action the department of mental retardation and developmental disabilities takes regarding the facility's license under section 5123.19 of the Revised Code. 50831
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- (I) "Fiscal year" means the fiscal year of this state, as specified in section 9.34 of the Revised Code. 50834
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- (J) "Intermediate care facility for the mentally retarded," "nursing home," "operator," and "owner" have the same meanings as in section 5111.20 of the Revised Code. 50836
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- (K) "Provider agreement" means a contract between the department of job and family services and the operator of a nursing facility or intermediate care facility for the mentally retarded for the provision of nursing facility services or intermediate care facility services for the mentally retarded under the medical assistance program. 50839
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- (L) "Voluntary termination" means an operator's voluntary election to terminate the participation of an intermediate care facility for the mentally retarded in the medicaid program but to continue to provide service of the type provided by a residential 50845
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facility as defined in section 5123.19 of the Revised Code. 50849

(M) "Voluntary withdrawal of participation" means an 50850
operator's voluntary election to terminate the participation of a 50851
nursing facility in the medicaid program but to continue to 50852
provide service of the type provided by nursing facilities. 50853

Sec. 5111.66. An exiting operator or owner of a nursing 50854
facility or intermediate care facility for the mentally retarded 50855
participating in the medicaid program shall provide the department 50856
of job and family services written notice of a facility closure, 50857
voluntary termination, or voluntary withdrawal of participation 50858
not less than ninety days before the effective date of the 50859
facility closure, voluntary termination, or voluntary withdrawal 50860
of participation. The written notice shall include all of the 50861
following: 50862

(A) The name of the exiting operator and, if any, the exiting 50863
operator's authorized agent; 50864

(B) The name of the nursing facility or intermediate care 50865
facility for the mentally retarded that is the subject of the 50866
facility closure, voluntary termination, or voluntary withdrawal 50867
of participation; 50868

(C) The exiting operator's medicaid provider agreement 50869
number; 50870

(D) The effective date of the facility closure, voluntary 50871
termination, or voluntary withdrawal of participation; 50872

(E) The signature of the exiting operator's or owner's 50873
representative. 50874

Sec. 5111.661. An operator shall comply with section 50875
1919(c)(2)(F) of the "Social Security Act," 79 Stat. 286 (1965), 50876
42 U.S.C. 1396r(c)(2)(F) if the operator's nursing facility 50877

undergoes a voluntary withdrawal of participation. 50878

Sec. 5111.67. (A) An exiting operator or owner and entering operator shall provide the department of job and family services written notice of a change of operator if the nursing facility or intermediate care facility for the mentally retarded participates in the medicaid program and the entering operator seeks to continue the facility's participation. The written notice shall be provided to the department not later than forty-five days before the effective date of the change of operator if the change of operator does not entail the relocation of residents. The written notice shall be provided to the department not later than ninety days before the effective date of the change of operator if the change of operator entails the relocation of residents. The written notice shall include all of the following: 50879
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(1) The name of the exiting operator and, if any, the exiting operator's authorized agent; 50892
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(2) The name of the nursing facility or intermediate care facility for the mentally retarded that is the subject of the change of operator; 50894
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(3) The exiting operator's medicaid provider agreement number; 50897
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(4) The name of the entering operator; 50899

(5) The effective date of the change of operator; 50900

(6) The manner in which the entering operator becomes the facility's operator, including through sale, lease, merger, or other action; 50901
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(7) If the manner in which the entering operator becomes the facility's operator involves more than one step, a description of each step; 50904
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(8) Written authorization from the exiting operator or owner 50907

and entering operator for the department to process a provider agreement for the entering operator; 50908
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(9) The signature of the exiting operator's or owner's representative. 50910
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(B) The entering operator shall include a completed application for a provider agreement with the written notice to the department. The entering operator shall attach to the application the following: 50912
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(1) If the written notice is provided to the department before the date the exiting operator or owner and entering operator complete the transaction for the change of operator, all the proposed leases, management agreements, merger agreements and supporting documents, and sales contracts and supporting documents relating to the facility's change of operator; 50916
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(2) If the written notice is provided to the department on or after the date the exiting operator or owner and entering operator complete the transaction for the change of operator, copies of all the executed leases, management agreements, merger agreements and supporting documents, and sales contracts and supporting documents relating to the facility's change of operator. 50922
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Sec. 5111.671. The department of job and family services may enter into a provider agreement with an entering operator that goes into effect at 12:01 a.m. on the effective date of the change of operator if all of the following requirements are met: 50928
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(A) The department receives a properly completed written notice required by section 5111.67 of the Revised Code on or before the date required by that section. 50932
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(B) The entering operator furnishes to the department copies of all the fully executed leases, management agreements, merger agreements and supporting documents, and sales contracts and 50935
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supporting documents relating to the change of operator not later 50938
than ten days after the effective date of the change of operator. 50939

(C) The entering operator is eligible for medicaid payments 50940
as provided in section 5111.21 of the Revised Code. 50941

Sec. 5111.672. (A) The department of job and family services 50942
may enter into a provider agreement with an entering operator that 50943
goes into effect at 12:01 a.m. on the date determined under 50944
division (B) of this section if all of the following are the case: 50945

(1) The department receives a properly completed written 50946
notice required by section 5111.67 of the Revised Code. 50947

(2) The entering operator furnishes to the department copies 50948
of all the fully executed leases, management agreements, merger 50949
agreements and supporting documents, and sales contracts and 50950
supporting documents relating to change of operator. 50951

(3) The requirement of division (A)(1) of this section is met 50952
after the time required by section 5111.67 of the Revised Code, 50953
the requirement of division (A)(2) of this section is met more 50954
than ten days after the effective date of the change of operator, 50955
or both. 50956

(4) The entering operator is eligible for medicaid payments 50957
as provided in section 5111.21 of the Revised Code. 50958

(B) The department shall determine the date a provider 50959
agreement entered into under this section is to go into effect as 50960
follows: 50961

(1) The effective date shall give the department sufficient 50962
time to process the change of operator, assure no duplicate 50963
payments are made, make the withholding required by section 50964
5111.681 of the Revised Code, and withhold the final payment to 50965
the exiting operator until the following: 50966

(a) Ninety days after the exiting operator submits to the 50967

department a properly completed cost report under section 5111.683 50968
of the Revised Code; 50969

(b) One hundred eighty days after the department waives the 50970
cost report requirement of section 5111.683 of the Revised Code. 50971

(2) The effective date shall be not earlier than the later of 50972
the effective date of the change of operator or the date that the 50973
exiting operator or owner and entering operator comply with 50974
section 5111.67 of the Revised Code. 50975

(3) The effective date shall be not later than the following 50976
after the later of the dates specified in division (B)(2) of this 50977
section: 50978

(a) Forty-five days if the change of operator does not entail 50979
the relocation of residents; 50980

(b) Ninety days if the change of operator entails the 50981
relocation of residents. 50982

Sec. 5111.673. A provider agreement that the department of 50983
job and family services enters into with an entering operator 50984
under section 5111.671 or 5111.672 of the Revised Code shall 50985
satisfy all of the following requirements: 50986

(A) Comply with all applicable federal statutes and 50987
regulations; 50988

(B) Comply with section 5111.22 of the Revised Code and all 50989
other applicable state statutes and rules; 50990

(C) Include all the terms and conditions of the exiting 50991
operator's provider agreement, including, but not limited to, all 50992
of the following: 50993

(1) Any plan of correction; 50994

(2) Compliance with health and safety standards; 50995

(3) Compliance with the ownership and financial interest 50996

<u>disclosure requirements of 42 C.F.R. 455.104, 455.105, and 1002.3;</u>	50997
<u>(4) Compliance with the civil rights requirements of 45</u>	50998
<u>C.F.R. parts 80, 84, and 90;</u>	50999
<u>(5) Compliance with additional requirements imposed by the</u>	51000
<u>department;</u>	51001
<u>(6) Any sanctions relating to remedies for violation of the</u>	51002
<u>provider agreement, including deficiencies, compliance periods,</u>	51003
<u>accountability periods, monetary penalties, notification for</u>	51004
<u>correction of contract violations, and history of deficiencies.</u>	51005
<u>(D) Require the entering operator to assume the exiting</u>	51006
<u>operator's remaining debt to the department and United States</u>	51007
<u>centers for medicare and medicaid services that the department is</u>	51008
<u>unable to collect from the exiting operator.</u>	51009
<u>Sec. 5111.674. In the case of a change of operator, the</u>	51010
<u>exiting operator shall be considered to be the operator of the</u>	51011
<u>nursing facility or intermediate care facility for the mentally</u>	51012
<u>retarded for purposes of the medicaid program, including medicaid</u>	51013
<u>payments, until the effective date of the entering operator's</u>	51014
<u>provider agreement if the provider agreement is entered into under</u>	51015
<u>section 5111.671 or 5111.672 of the Revised Code.</u>	51016
<u>Sec. 5111.675. The department of job and family services may</u>	51017
<u>enter into a provider agreement as provided in section 5111.22 of</u>	51018
<u>the Revised Code, rather than section 5111.671 or 5111.672 of the</u>	51019
<u>Revised Code, with an entering operator if the entering operator</u>	51020
<u>does not agree to a provider agreement that satisfies the</u>	51021
<u>requirements of division (C) or (D) of section 5111.673 of the</u>	51022
<u>Revised Code. The department may not enter into the provider</u>	51023
<u>agreement unless the department of health certifies the nursing</u>	51024
<u>facility or intermediate care facility for the mentally retarded</u>	51025
<u>under Title XIX of the "Social Security Act," 79 Stat. 286 (1965),</u>	51026

42 U.S.C.A. 1396, as amended. The effective date of the provider agreement shall not precede any of the following: 51027
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(A) The date that the department of health certifies the facility; 51029
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(B) The effective date of the change of operator; 51031

(C) The date the requirement of section 5111.67 of the Revised Code is satisfied. 51032
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Sec. 5111.676. The director of job and family services may adopt rules in accordance with Chapter 119. of the Revised Code governing adjustments to the medicaid reimbursement rate for a nursing facility or intermediate care facility for the mentally retarded that undergoes a change of operator. No rate adjustment resulting from a change of operator shall be effective before the effective date of the entering operator's provider agreement. This is the case regardless of whether the provider agreement is entered into under section 5111.671, section 5111.672, or, pursuant to section 5111.675, section 5111.22 of the Revised Code. 51034
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Sec. 5111.677. Neither of the following shall affect the department of job and family services' determination of whether or when a change of operator occurs or the effective date of an entering operator's provider agreement under section 5111.671, section 5111.672, or, pursuant to section 5111.675, section 5111.22 of the Revised Code: 51044
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(A) The department of health's determination that a change of operator has or has not occurred for purposes of licensure under Chapter 3721. of the Revised Code; 51050
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(B) The department of mental retardation and developmental disabilities' determination that a change of operator has or has not occurred for purposes of licensure under section 5123.19 of the Revised Code. 51053
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Sec. 5111.68. (A) On receipt of a written notice under 51057
section 5111.66 of the Revised Code of a facility closure, 51058
voluntary termination, or voluntary withdrawal of participation or 51059
a written notice under section 5111.67 of the Revised Code of a 51060
change of operator, the department of job and family services 51061
shall determine the amount of any overpayments made under the 51062
medicaid program to the exiting operator, including overpayments 51063
the exiting operator disputes, and other actual and potential 51064
debts the exiting operator owes or may owe to the department and 51065
United States centers for medicare and medicaid services under the 51066
medicaid program. In determining the exiting operator's other 51067
actual and potential debts to the department under the medicaid 51068
program, the department shall include all of the following that 51069
the department determines is applicable: 51070

(1) Refunds due the department under division (G) of section 51071
5111.25 of the Revised Code or division (H) of section 5111.251 of 51072
the Revised Code; 51073

(2) Interest owed to the department and United States centers 51074
for medicare and medicaid services; 51075

(3) Final civil monetary and other penalties for which all 51076
right of appeal has been exhausted; 51077

(4) Third-party liabilities; 51078

(5) Money owed the department and United States centers for 51079
medicare and medicaid services from any outstanding final fiscal 51080
audit, including a final fiscal audit for the last fiscal year or 51081
portion thereof in which the exiting operator participated in the 51082
medicaid program. 51083

(B) If the department is unable to determine the amount of 51084
the overpayments and other debts for any period before the 51085
effective date of the entering operator's provider agreement or 51086

the effective date of the facility closure, voluntary termination, 51087
or voluntary withdrawal of participation, the department shall 51088
make a reasonable estimate of the overpayments and other debts for 51089
the period. The department shall make the estimate using 51090
information available to the department, including prior 51091
determinations of overpayments and other debts. 51092

Sec. 5111.681. (A) The department of job and family services 51093
shall withhold the greater of the following from payment due an 51094
exiting operator under the medicaid program: 51095

(1) The total amount of any overpayments made under the 51096
medicaid program to the exiting operator, including overpayments 51097
the exiting operator disputes, and other actual and potential 51098
debts, including any unpaid penalties, the exiting operator owes 51099
or may owe to the department and United States centers for 51100
medicare and medicaid services under the medicaid program; 51101

(2) An amount equal to the average amount of monthly payments 51102
to the exiting operator under the medicaid program for the 51103
twelve-month period immediately preceding the month that includes 51104
the last day the exiting operator's provider agreement is in 51105
effect or, in the case of a voluntary withdrawal of participation, 51106
the effective date of the voluntary withdrawal of participation. 51107

(B) The department may transfer the amount withheld under 51108
division (A) of this section to an escrow account with a bank, 51109
trust company, or savings and loan association. 51110

(C) If payment due an exiting operator under the medicaid 51111
program is less than the amount the department is required to 51112
withhold under division (A) of this section, the department shall 51113
require that the exiting operator provide the difference in the 51114
form of a security. 51115

(D) The department shall release to the exiting operator the 51116

actual amount withheld under division (A) of this section if the 51117
department allows the exiting operator to provide the department a 51118
security in the amount the department is required to withhold 51119
under division (A) of this section, less any of that amount 51120
provided to the department in the form of a security under 51121
division (C) of this section. 51122

(E) Security provided to the department under division (C) or 51123
(D) of this section shall be in either or both of the following 51124
forms: 51125

(1) In the case of a change of operator, the entering 51126
operator's nontransferable, unconditional, written agreement to 51127
pay the department any debt the exiting operator owes the 51128
department under the medicaid program; 51129

(2) In the case of a change of operator, facility closure, 51130
voluntary termination, or voluntary withdrawal of participation, a 51131
form of collateral or security acceptable to the department that 51132
satisfies both of the following conditions: 51133

(a) Is at least equal to the amount the department is 51134
required to withhold under division (A) of this section, less any 51135
amounts the department has received through actual withholding or 51136
one or more other forms of security under this division; 51137

(b) Is payable to the department if the exiting operator 51138
fails to pay any debt owed the department under the medicaid 51139
program within fifteen days of receiving the department's written 51140
demand for payment of the debt. 51141

Sec. 5111.682. An entering operator that provides the 51142
department of job and family services a security in the form 51143
provided by division (E)(1) of section 5111.681 of the Revised 51144
Code shall also provide the department a list of the entering 51145
operator's assets and liabilities. The department shall determine 51146

whether the assets are sufficient for the purpose of the security. 51147

Sec. 5111.683. (A) Except as provided in division (B) of this 51148
section, an exiting operator shall file with the department of job 51149
and family services a cost report not later than ninety days after 51150
the last day the exiting operator's provider agreement is in 51151
effect or, in the case of a voluntary withdrawal of participation, 51152
the effective date of the voluntary withdrawal of participation. 51153
The cost report shall cover the period that begins with the day 51154
after the last day covered by the operator's most recent previous 51155
cost report required by section 5111.26 of the Revised Code and 51156
ends on the last day the exiting operator's provider agreement is 51157
in effect or, in the case of a voluntary withdrawal of 51158
participation, the effective date of the voluntary withdrawal of 51159
participation. The cost report shall include, as applicable, all 51160
of the following: 51161

(1) The sale price of the nursing facility or intermediate 51162
care facility for the mentally retarded; 51163

(2) A final depreciation schedule that shows which assets are 51164
transferred to the buyer and which assets are not transferred to 51165
the buyer; 51166

(3) Any other information the department requires. 51167

(B) The department, at its sole discretion, may waive the 51168
requirement that an exiting operator file a cost report in 51169
accordance with division (A) of this section. 51170

Sec. 5111.684. If an exiting operator required by section 51171
5111.683 of the Revised Code to file a cost report with the 51172
department of job and family services fails to file the cost 51173
report in accordance with that section, all payments under the 51174
medicaid program for the period the cost report is required to 51175
cover are deemed overpayments until the date the department 51176

receives the properly completed cost report. The department may 51177
impose on the exiting operator a penalty of one hundred dollars 51178
for each calendar day the properly completed cost report is late. 51179

Sec. 5111.685. The department of job and family services may 51180
not provide an exiting operator final payment under the medicaid 51181
program until the department receives all properly completed cost 51182
reports the exiting operator is required to file under sections 51183
5111.26 and 5111.683 of the Revised Code. 51184

Sec. 5111.686. The department of job and family services 51185
shall determine the actual amount of debt an exiting operator owes 51186
the department under the medicaid program by completing all final 51187
fiscal audits not already completed and performing all other 51188
appropriate actions the department determines to be necessary. The 51189
department shall issue a report on this matter not later than 51190
ninety days after the date the exiting operator files the properly 51191
completed cost report required by section 5111.683 of the Revised 51192
Code with the department or, if the department waives the cost 51193
report requirement for the exiting operator, one hundred eighty 51194
days after the date the department waives the cost report 51195
requirement. The report shall include the department's findings 51196
and the amount of debt the department determines the exiting 51197
operator owes the department and United States centers for 51198
medicare and medicaid services under the medicaid program. Only 51199
the parts of the report that are subject to an adjudication as 51200
specified in division (B) of section 5111.29 of the Revised Code 51201
are subject to an adjudication conducted in accordance with 51202
Chapter 119. of the Revised Code. 51203

Sec. 5111.687. The department of job and family services 51204
shall release the actual amount withheld under division (A) of 51205
section 5111.681 of the Revised Code, and any security provided to 51206

the department under that section, less any amount the exiting operator owes the department and United States centers for medicare and medicaid services under the medicaid program, as follows: 51207
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(A) Ninety-one days after the date the exiting operator files a properly completed cost report required by section 5111.683 of the Revised Code unless the department issues the report required by section 5111.686 of the Revised Code not later than ninety days after the date the exiting operator files the properly completed cost report; 51211
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(B) Not later than fifteen days after the exiting operator agrees to a final fiscal audit resulting from the report required by section 5111.686 of the Revised Code if the department issues the report not later than ninety days after the date the exiting operator files a properly completed cost report required by section 5111.683 of the Revised Code; 51217
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(C) One hundred eighty-one days after the date the department waives the cost report requirement of section 5111.683 of the Revised Code unless the department issues the report required by section 5111.686 of the Revised Code not later than one hundred eighty days after the date the department waives the cost report requirement; 51223
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(D) Not later than fifteen days after the exiting operator agrees to a final fiscal audit resulting from the report required by section 5111.686 of the Revised Code if the department issues the report not later than one hundred eighty days after the date the department waives the cost report requirement of section 5111.683 of the Revised Code. 51229
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Sec. 5111.688. If the actual amount the department of job and family services withholds from an exiting operator under division (A) of section 5111.681 of the Revised Code, and any security 51235
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provided to the department under that section, is inadequate to 51238
pay the exiting operator's debt to the department and United 51239
States centers for medicare and medicaid services under the 51240
medicaid program or the department is required to release the 51241
withholdings and security under section 5111.687 of the Revised 51242
Code before the department is paid the exiting operator's debt, 51243
the department shall collect the debt as follows: 51244

(A) From the exiting operator; 51245

(B) From the entering operator if the department is unable to 51246
collect the entire debt from the exiting operator and the entering 51247
operator entered into a provider agreement under section 5111.671 51248
or 5111.672 of the Revised Code. The department may collect the 51249
remaining debt by withholding the amount due from payments to the 51250
entering operator under the medicaid program. The department may 51251
enter into an agreement with the entering operator under which the 51252
entering operator pays the remaining debt, with applicable 51253
interest, in installments from withholdings from the entering 51254
operator's payments under the medicaid program. 51255

Sec. 5111.689. The department of job and family services, at 51256
its sole discretion, may release the amount withheld under 51257
division (A) of section 5111.681 of the Revised Code, and any 51258
security provided to the department under that section, if the 51259
exiting operator submits to the department written notice of a 51260
postponement of a change of operator, facility closure, voluntary 51261
termination, or voluntary withdrawal of participation and the 51262
transactions leading to the change of operator, facility closure, 51263
voluntary termination, or voluntary withdrawal of participation 51264
are postponed for at least thirty days but less than ninety days 51265
after the date originally proposed for the change of operator, 51266
facility closure, voluntary termination, or voluntary withdrawal 51267
of participation as reported in the written notice required by 51268

section 5111.66 or 5111.67 of the Revised Code. The department shall release the amount withheld and security if the exiting operator submits to the department written notice of a cancellation or postponement of a change of operator, facility closure, voluntary termination, or voluntary withdrawal of participation and the transactions leading to the change of operator, facility closure, voluntary termination, or voluntary withdrawal of participation are canceled, or postponed for more than ninety days after the date originally proposed for the change of operator, facility closure, voluntary termination, or voluntary withdrawal of participation as reported in the written notice required by section 5111.66 or 5111.67 of the Revised Code.

After the department receives a written notice regarding a cancellation or postponement of a facility closure, voluntary termination, or voluntary withdrawal of participation, the exiting operator or owner shall provide new written notice to the department under section 5111.66 of the Revised Code regarding any transactions leading to a facility closure, voluntary termination, or voluntary withdrawal of participation at a future time. After the department receives a written notice regarding a cancellation or postponement of a change of operator, the exiting operator or owner and entering operator shall provide new written notice to the department under section 5111.67 of the Revised Code regarding any transactions leading to a change of operator at a future time.

Sec. 5111.6810. The director of job and family services may adopt rules in accordance with Chapter 119. of the Revised Code to implement sections 5111.65 to 5111.6810 of the Revised Code, including rules applicable to an exiting operator that provides written notification under section 5111.66 of the Revised Code of a voluntary withdrawal of participation. Rules adopted under this section shall comply with section 1919(c)(2)(F) of the "Social Security Act," 79 Stat. 286 (1965), 42 U.S.C. 1396r(c)(2)(F),

regarding restrictions on transfers or discharges of nursing facility residents in the case of a voluntary withdrawal of participation. The rules may prescribe a medicaid reimbursement methodology and other procedures that are applicable after the effective date of a voluntary withdrawal of participation that differ from the reimbursement methodology and other procedures that would otherwise apply.

Sec. 5111.85. (A) As used in this section, "medicaid waiver component" means a component of the medicaid program authorized by a waiver granted by the United States department of health and human services under section 1115 or 1915 of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 1315 or 1396n. "Medicaid waiver component" does not include a ~~managed~~ care management system established under section ~~5111.17~~ 5111.16 of the Revised Code.

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

(1) Eligibility requirements for the medicaid waiver components;

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

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

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

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

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

(7) Procedures for enforcing the rules, including 51331
establishing corrective action plans for, and imposing financial 51332
and administrative sanctions on, persons and government entities 51333
that violate the rules. Sanctions shall include terminating 51334
medicaid provider agreements. The procedures shall include due 51335
process protections. 51336

(8) Other policies necessary for the efficient administration 51337
of the medicaid waiver components. 51338

(C) The director of job and family services may adopt 51339
different rules for the different medicaid waiver components. The 51340
rules shall be consistent with the terms of the waiver authorizing 51341
the medicaid waiver component. 51342

(D) The director of job and family services may conduct 51343
reviews of the medicaid waiver components. The reviews may include 51344
physical inspections of records and sites where services are 51345
provided under the medicaid waiver components and interviews of 51346
providers and recipients of the services. If the director 51347
determines pursuant to a review that a person or government entity 51348
has violated a rule governing a medicaid waiver component, the 51349
director may establish a corrective action plan for the violator 51350
and impose fiscal, administrative, or both types of sanctions on 51351
the violator in accordance with rules adopted under division (B) 51352
of this section. 51353

Sec. 5111.87. As used in this section and section 5111.871 of 51354
the Revised Code, "intermediate care facility for the mentally 51355
retarded" has the same meaning as in section 5111.20 of the 51356
Revised Code. 51357

The director of job and family services may apply to the 51358
United States secretary of health and human services for one or 51359
more medicaid waivers under which home and community-based 51360

services are provided to individuals with mental retardation or 51361
other developmental disability as an alternative to placement in 51362
an intermediate care facility for the mentally retarded. ~~Before~~ 51363
~~the director applies~~ The director of mental retardation and 51364
developmental disabilities may request that the director of job 51365
and family services apply for one or more medicaid waivers under 51366
this section. 51367

Before applying for a waiver under this section, the director 51368
of job and family services shall seek, accept, and consider public 51369
comments. 51370

Sec. 5111.871. The department of job and family services 51371
shall enter into a contract with the department of mental 51372
retardation and developmental disabilities under section 5111.91 51373
of the Revised Code with regard to one or more of the ~~component~~ 51374
components of the medicaid program established by the department 51375
of job and family services under one or more of the medicaid 51376
wavers from the United States secretary of health and human 51377
services pursuant to section 1915 of the "Social Security Act," ~~49~~ 51378
~~Stat. 620 (1935), 42 U.S.C.A. 1396n, as amended, to provide~~ 51379
~~eligible medicaid recipients with home and community based~~ 51380
~~services as an alternative to placement in an intermediate care~~ 51381
~~facility for the mentally retarded~~ sought under section 5111.87 of 51382
the Revised Code. The contract shall provide for the department of 51383
mental retardation and developmental disabilities to administer 51384
the ~~component~~ components in accordance with the terms of the 51385
~~waiver~~ wavers. The directors of job and family services and 51386
mental retardation and developmental disabilities shall adopt 51387
rules in accordance with Chapter 119. of the Revised Code 51388
governing the ~~component~~ components. 51389

If the department of mental retardation and developmental 51390
disabilities or the department of job and family services denies 51391

an individual's application for home and community-based services 51392
provided under ~~this~~ any of these medicaid ~~component~~ components, 51393
the department that denied the services shall give timely notice 51394
to the individual that the individual may request a hearing under 51395
section 5101.35 of the Revised Code. 51396

The departments of mental retardation and developmental 51397
disabilities and job and family services may approve, reduce, 51398
deny, or terminate a service included in the individualized 51399
service plan developed for a medicaid recipient eligible for home 51400
and community-based services provided under ~~this~~ any of these 51401
medicaid ~~component~~ components. The departments shall consider the 51402
recommendations a county board of mental retardation and 51403
developmental disabilities makes under division (A)(1)(c) of 51404
section 5126.055 of the Revised Code. If either department 51405
approves, reduces, denies, or terminates a service, that 51406
department shall give timely notice to the medicaid recipient that 51407
the recipient may request a hearing under section 5101.35 of the 51408
Revised Code. 51409

If supported living or residential services, as defined in 51410
section 5126.01 of the Revised Code, are to be provided under ~~this~~ 51411
~~component~~ any of these components, any person or government entity 51412
with a current, valid medicaid provider agreement and a current, 51413
valid license under section 5123.19 or certificate under section 51414
5123.045 or 5126.431 of the Revised Code may provide the services. 51415

Sec. 5111.872. When the department of mental retardation and 51416
developmental disabilities allocates enrollment numbers to a 51417
county board of mental retardation and developmental disabilities 51418
for home and community-based services provided under any of the 51419
~~component~~ components of the medicaid program that the department 51420
administers under section 5111.871 of the Revised Code, the 51421
department shall consider all of the following: 51422

(A) The number of individuals with mental retardation or 51423
other developmental disability who are on a waiting list the 51424
county board establishes under division (C) of section 5126.042 of 51425
the Revised Code for those services and are given priority on the 51426
waiting list pursuant to division (D) or (E) of that section; 51427

(B) The implementation component required by division (A)(4) 51428
of section 5126.054 of the Revised Code of the county board's plan 51429
approved under section 5123.046 of the Revised Code; 51430

(C) Anything else the department considers necessary to 51431
enable county boards to provide those services to individuals in 51432
accordance with the priority requirements of ~~division~~ divisions 51433
(D) and (E) of section 5126.042 of the Revised Code. 51434

Sec. 5111.873. (A) Not later than the effective date of the 51435
first of any medicaid waivers the United States secretary of 51436
health and human services grants pursuant to a request made under 51437
section 5111.87 of the Revised Code, the director of job and 51438
family services shall adopt rules in accordance with Chapter 119. 51439
of the Revised Code establishing statewide fee schedules for home 51440
and community-based services provided under the component of the 51441
medicaid program authorized by that waiver that the department of 51442
mental retardation and developmental disabilities administers 51443
under section 5111.871 of the Revised Code. The rules shall 51444
provide for all of the following: 51445

(1) The department of mental retardation and developmental 51446
disabilities arranging for the initial and ongoing collection of 51447
cost information from a comprehensive, statistically valid sample 51448
of persons and government entities providing the services at the 51449
time the information is obtained; 51450

(2) The collection of consumer-specific information through 51451
an assessment instrument the department of mental retardation and 51452

developmental disabilities shall provide to the department of job and family services; 51453
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(3) With the information collected pursuant to divisions (A)(1) and (2) of this section, an analysis of that information, and other information the director determines relevant, methods and standards for calculating the fee schedules that do all of the following: 51455
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(a) Assure that the fees are consistent with efficiency, economy, and quality of care; 51460
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(b) Consider the intensity of consumer resource need; 51462

(c) Recognize variations in different geographic areas regarding the resources necessary to assure the health and welfare of consumers; 51463
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(d) Recognize variations in environmental supports available to consumers. 51466
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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. 51468
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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. 51475
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Sec. 5111.911. Any contract the department of job and family services enters into with the department of mental health or 51481
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department of alcohol and drug addiction services under section 51483
5111.91 of the Revised Code is subject to the approval of the 51484
director of budget and management and shall require or specify all 51485
of the following: 51486

(A) In the case of a contract with the department of mental 51487
health, that section 5111.912 of the Revised Code be complied 51488
with; 51489

(B) In the case of a contract with the department of alcohol 51490
and drug addiction services, that section 5111.913 of the Revised 51491
Code be complied with; 51492

(C) How providers will be paid for providing the services; 51493

(D) The department of mental health's or department of 51494
alcohol and drug addiction services' responsibilities for 51495
reimbursing providers, including program oversight and quality 51496
assurance. 51497

Sec. 5111.912. If the department of job and family services 51498
enters into a contract with the department of mental health under 51499
section 5111.91 of the Revised Code, the department of mental 51500
health and boards of alcohol, drug addiction, and mental health 51501
services shall pay the nonfederal share of any medicaid payment to 51502
a provider for services under the component, or aspect of the 51503
component, the department of mental health administers. 51504

Sec. 5111.913. If the department of job and family services 51505
enters into a contract with the department of alcohol and drug 51506
addiction services under section 5111.91 of the Revised Code, the 51507
department of alcohol and drug addiction services and boards of 51508
alcohol, drug addiction, and mental health services shall pay the 51509
nonfederal share of any medicaid payment to a provider for 51510
services under the component, or aspect of the component, the 51511
department of alcohol and drug addiction services administers. 51512

Sec. 5111.94. (A) As used in this section, "vendor offset" 51513
means a reduction of a medicaid payment to a medicaid provider to 51514
correct a previous, incorrect medicaid payment to that provider. 51515

(B) There is hereby created in the state treasury the health 51516
care services administration fund. Except as provided in division 51517
(C) of this section, all the following shall be deposited into the 51518
fund: 51519

(1) Amounts deposited into the fund pursuant to sections 51520
5111.92 and 5111.93 of the Revised Code; 51521

(2) The amount of the state share of all money the department 51522
of job and family services, in fiscal year 2003 and each fiscal 51523
year thereafter, recovers pursuant to a tort action under the 51524
department's right of recovery under section 5101.58 of the 51525
Revised Code that exceeds the state share of all money the 51526
department, in fiscal year 2002, recovers pursuant to a tort 51527
action under that right of recovery; 51528

(3) Subject to division (D) of this section, the amount of 51529
the state share of all money the department of job and family 51530
services, in fiscal year 2003 and each fiscal year thereafter, 51531
recovers through audits of medicaid providers that exceeds the 51532
state share of all money the department, in fiscal year 2002, 51533
recovers through such audits; 51534

(4) ~~Until October 16, 2003, amounts~~ Amounts from assessments 51535
on hospitals under section 5112.06 of the Revised Code and 51536
intergovernmental transfers by governmental hospitals under 51537
section 5112.07 of the Revised Code that are deposited into the 51538
fund in accordance with the law. 51539

(C) No funds shall be deposited into the health care services 51540
administration fund in violation of federal statutes or 51541
regulations. 51542

(D) In determining under division (B)(3) of this section the amount of money the department, in a fiscal year, recovers through audits of medicaid providers, the amount recovered in the form of vendor offset shall be excluded.

(E) The director of job and family services shall use funds available in the health care services administration fund to pay for costs associated with the administration of the medicaid program.

Sec. 5111.95. (A) As used in this section:

(1) "Applicant" means a person who is under final consideration for employment or, after the effective date of this section, an existing employee with a waiver agency in a full-time, part-time, or temporary position that involves providing home and community-based waiver services to a person with disabilities. "Applicant" also means an existing employee with a waiver agency in a full-time, part-time, or temporary position that involves providing home and community-based waiver services to a person with disabilities after the effective date of this section.

(2) "Criminal records check" has the same meaning as in section 109.572 of the Revised Code.

(3) "Waiver agency" means a person or government entity that is not certified under the medicare program and is accredited by the community health accreditation program or the joint commission on accreditation of health care organizations or a company that provides home and community-based waiver services to persons with disabilities through department of job and family services administered home and community-based waiver programs. "Waiver agency" does not include a person or government entity that provides home and community-based waiver services through components of the medicaid program being administered by the

department of mental retardation and developmental disabilities 51573
pursuant to a contract entered into with the department of job and 51574
family services under section 5111.871 of the Revised Code. 51575

(4) "Home and community-based waiver services" means services 51576
furnished under the provision of 42 C.F.R. 441, subpart G, that 51577
permit individuals to live in a home setting rather than a nursing 51578
facility or hospital. Home and community-based waiver services are 51579
approved by the centers for medicare and medicaid for specific 51580
populations and are not otherwise available under the medicaid 51581
state plan. 51582

(B)(1) The chief administrator of a waiver agency shall 51583
request that the superintendent of the bureau of criminal 51584
identification and investigation conduct a criminal records check 51585
with respect to each applicant. If an applicant for whom a 51586
criminal records check request is required under this division 51587
does not present proof of having been a resident of this state for 51588
the five-year period immediately prior to the date the criminal 51589
records check is requested or provide evidence that within that 51590
five-year period the superintendent has requested information 51591
about the applicant from the federal bureau of investigation in a 51592
criminal records check, the chief administrator shall request that 51593
the superintendent obtain information from the federal bureau of 51594
investigation as part of the criminal records check of the 51595
applicant. Even if an applicant for whom a criminal records check 51596
request is required under this division presents proof of having 51597
been a resident of this state for the five-year period, the chief 51598
administrator may request that the superintendent include 51599
information from the federal bureau of investigation in the 51600
criminal records check. 51601

(2) A person required by division (B)(1) of this section to 51602
request a criminal records check shall do both of the following: 51603

(a) Provide to each applicant for whom a criminal records 51604

check request is required under division (B)(1) of this section a 51605
copy of the form prescribed pursuant to division (C)(1) of section 51606
109.572 of the Revised Code and a standard fingerprint impression 51607
sheet prescribed pursuant to division (C)(2) of that section, and 51608
obtain the completed form and impression sheet from the applicant; 51609

(b) Forward the completed form and impression sheet to the 51610
superintendent of the bureau of criminal identification and 51611
investigation. 51612

(3) An applicant provided the form and fingerprint impression 51613
sheet under division (B)(2)(a) of this section who fails to 51614
complete the form or provide fingerprint impressions shall not be 51615
employed in any position in a waiver agency for which a criminal 51616
records check is required by this section. 51617

(C)(1) Except as provided in rules adopted by the department 51618
of job and family services in accordance with division (F) of this 51619
section and subject to division (C)(2) of this section, no waiver 51620
agency shall employ a person in a position that involves providing 51621
home and community-based waiver services to persons with 51622
disabilities if the person has been convicted of or pleaded guilty 51623
to any of the following: 51624

(a) A violation of section 2903.01, 2903.02, 2903.03, 51625
2903.04, 2903.041, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 51626
2903.34, 2905.01, 2905.02, 2905.05, 2905.11, 2905.12, 2907.02, 51627
2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 51628
2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 51629
2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 51630
2913.02, 2913.03, 2913.04, 2913.11, 2913.21, 2913.31, 2913.40, 51631
2913.43, 2913.47, 2913.51, 2919.12, 2919.24, 2919.25, 2921.36, 51632
2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 2925.05, 51633
2925.06, 2925.11, 2925.13, 2925.22, 2925.23, or 3716.11 of the 51634
Revised Code, felonious sexual penetration in violation of former 51635
section 2907.12 of the Revised Code, a violation of section 51636

2905.04 of the Revised Code as it existed prior to July 1, 1996, a 51637
violation of section 2919.23 of the Revised Code that would have 51638
been a violation of section 2905.04 of the Revised Code as it 51639
existed prior to July 1, 1996, had the violation been committed 51640
prior to that date; 51641

(b) An existing or former law of this state, any other state, 51642
or the United States that is substantially equivalent to any of 51643
the offenses listed in division (C)(1)(a) of this section. 51644

(2)(a) A waiver agency may employ conditionally an applicant 51645
for whom a criminal records check request is required under 51646
division (B) of this section prior to obtaining the results of a 51647
criminal records check regarding the individual, provided that the 51648
agency shall request a criminal records check regarding the 51649
individual in accordance with division (B)(1) of this section not 51650
later than five business days after the individual begins 51651
conditional employment. 51652

(b) A waiver agency that employs an individual conditionally 51653
under authority of division (C)(2)(a) of this section shall 51654
terminate the individual's employment if the results of the 51655
criminal records check request under division (B) of this section, 51656
other than the results of any request for information from the 51657
federal bureau of investigation, are not obtained within the 51658
period ending sixty days after the date the request is made. 51659
Regardless of when the results of the criminal records check are 51660
obtained, if the results indicate that the individual has been 51661
convicted of or pleaded guilty to any of the offenses listed or 51662
described in division (C)(1) of this section, the agency shall 51663
terminate the individual's employment unless the agency chooses to 51664
employ the individual pursuant to division (F) of this section. 51665
Termination of employment under this division shall be considered 51666
just cause for discharge for purposes of division (D)(2) of 51667
section 4141.29 of the Revised Code if the individual makes any 51668

attempt to deceive the agency about the individual's criminal record. 51669
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(D)(1) Each waiver agency shall pay to the bureau of criminal identification and investigation the fee prescribed pursuant to division (C)(3) of section 109.572 of the Revised Code for each criminal records check conducted pursuant to a request made under division (B) of this section. 51671
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(2) A waiver agency may charge an applicant a fee not exceeding the amount the agency pays under division (D)(1) of this section. An agency may collect a fee only if the agency notifies the person at the time of initial application for employment of the amount of the fee and that, unless the fee is paid, the person will not be considered for employment. 51676
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(E) The report of any criminal records check conducted pursuant to a request made under this section is not a public record for the purposes of section 149.43 of the Revised Code and shall not be made available to any person other than the following: 51682
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(1) The individual who is the subject of the criminal records check or the individual's representative; 51687
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(2) The chief administrator of the agency requesting the criminal records check or the administrator's representative; 51689
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(3) A court, hearing officer, or other necessary individual involved in a case dealing with a denial of employment of the applicant or dealing with employment or unemployment benefits of the applicant. 51691
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(F) The department shall adopt rules in accordance with Chapter 119. of the Revised Code to implement this section. The rules shall specify circumstances under which a waiver agency may employ a person who has been convicted of or pleaded guilty to an offense listed or described in division (C)(1) of this section but 51695
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meets personal character standards set by the department. 51700

(G) The chief administrator of a waiver agency shall inform each person, at the time of initial application for a position that involves providing home and community-based waiver services to a person with a disability, that the person is required to provide a set of fingerprint impressions and that a criminal records check is required to be conducted if the person comes under final consideration for employment. 51701
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(H)(1) A person who, on the effective date of this section, is an employee of a waiver agency in a full-time, part-time, or temporary position that involves providing home and community-based waiver services to a person with disabilities shall comply with this section within sixty days after the effective date of this section unless division (H)(2) of this section applies. 51708
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(2) This section shall not apply to a person to whom all of the following apply: 51715
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(a) On the effective date of this section, the person is an employee of a waiver agency in a full-time, part-time, or temporary position that involves providing home and community-based waiver services to a person with disabilities. 51717
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(b) The person previously had been the subject of a criminal background check relating to that position; 51721
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(c) The person has been continuously employed in that position since that criminal background check had been conducted. 51723
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Sec. 5111.96. (A) As used in this section: 51725

(1) "Anniversary date" means the later of the effective date of the provider agreement relating to the independent provider or sixty days after the effective date of this section. 51726
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(2) "Criminal records check" has the same meaning as in 51729

section 109.572 of the Revised Code. 51730

(3) "The department" means the department of job and family services or its designee. 51731
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(4) "Independent provider" means a person who is submitting an application for a provider agreement or who has a provider agreement as an independent provider in a department of job and family services administered home and community-based services program providing home and community-based waiver services to consumers with disabilities. 51733
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(5) "Home and community-based waiver services" has the same meaning as in section 5111.95 of the Revised Code. 51739
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(B)(1) The department shall inform each independent provider, at the time of initial application for a provider agreement that involves providing home and community-based waiver services to consumers with disabilities, that the independent provider is required to provide a set of fingerprint impressions and that a criminal records check is required to be conducted if the person is to become an independent provider in a department administered home and community-based waiver program. 51741
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(2) Beginning on the effective date of this section, the department shall inform each enrolled medicaid independent provider on or before time of the anniversary date of the provider agreement that involves providing home and community-based waiver services to consumers with disabilities that the independent provider is required to provide a set of fingerprint impressions and that a criminal records check is required to be conducted. 51749
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(C)(1) The department shall require the independent provider to complete a criminal records check prior to entering into a provider agreement with the independent provider and at least annually thereafter. If an independent provider for whom a criminal records check is required under this division does not 51756
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present proof of having been a resident of this state for the 51761
five-year period immediately prior to the date the criminal 51762
records check is requested or provide evidence that within that 51763
five-year period the superintendent has requested information 51764
about the applicant from the federal bureau of investigation in a 51765
criminal records check, the department shall request the 51766
independent provider obtain through the superintendent a criminal 51767
records request from the federal bureau of investigation as part 51768
of the criminal records check of the independent provider. Even if 51769
an independent provider for whom a criminal records check request 51770
is required under this division presents proof of having been a 51771
resident of this state for the five-year period, the department 51772
may request that the independent provider obtain information 51773
through the superintendent from the federal bureau of 51774
investigation in the criminal records check. 51775

(2) The department shall do both of the following: 51776

(a) Provide information to each independent provider for whom 51777
a criminal records check request is required under division (C)(1) 51778
of this section about requesting a copy of the form prescribed 51779
pursuant to division (C)(1) of section 109.572 of the Revised Code 51780
and a standard fingerprint impression sheet prescribed pursuant to 51781
division (C)(2) of that section, and obtain the completed form and 51782
impression sheet and fee from the independent provider; 51783

(b) Forward the completed form, impression sheet, and fee to 51784
the superintendent of the bureau of criminal identification and 51785
investigation. 51786

(3) An independent provider given information about obtaining 51787
the form and fingerprint impression sheet under division (C)(2)(a) 51788
of this section who fails to complete the form or provide 51789
fingerprint impressions shall not be approved as an independent 51790
provider. 51791

(D) Except as provided in rules adopted by the department in accordance with division (G) of this section, the department shall not issue a new provider agreement to, and shall terminate an existing provider agreement of, an independent provider if the person has been convicted of or pleaded guilty to any of the following:

(1) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.041, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 2905.01, 2905.02, 2905.05, 2905.11, 2905.12, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2913.02, 2913.03, 2913.04, 2913.11, 2913.21, 2913.31, 2913.40, 2913.43, 2913.47, 2913.51, 2919.12, 2919.24, 2919.25, 2921.36, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, 2925.11, 2925.13, 2925.22, 2925.23, or 3716.11 of the Revised Code, felonious sexual penetration in violation of former section 2907.12 of the Revised Code, a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, a violation of section 2919.23 of the Revised Code that would have been a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, had the violation been committed prior to that date;

(2) An existing or former law of this state, any other state, or the United States that is substantially equivalent to any of the offenses listed in division (D)(1) of this section.

(E) Each independent provider shall pay to the bureau of criminal identification and investigation the fee prescribed pursuant to division (C)(3) of section 109.572 of the Revised Code for each criminal records check conducted pursuant to a request made under division (C) of this section.

(F) The report of any criminal records check conducted by the bureau of criminal identification and investigation in accordance with section 109.572 of the Revised Code and pursuant to a request made under division (C) of this section is not a public record for the purposes of section 149.43 of the Revised Code and shall not be made available to any person other than the following:

(1) The person who is the subject of the criminal records check or the person's representative;

(2) The administrator at the department who is requesting the criminal records check or the administrator's representative;

(3) Any court, hearing officer, or other necessary individual involved in a case dealing with a denial or termination of a provider agreement related to the criminal records check.

(G) The department shall adopt rules in accordance with Chapter 119. of the Revised Code to implement this section. The rules shall specify circumstances under which the department may issue a provider agreement to an independent provider who has been convicted of or pleaded guilty to an offense listed or described in division (C)(1) of this section but meets personal character standards set by the department.

Sec. 5111.97. (A) The director of job and family services may submit a request to the United States secretary of health and human services pursuant to section 1915 of the "Social Security Act," 79 Stat. 286 (1965), 42 U.S.C. 1396n, as amended, to obtain waivers of federal medicaid requirements that would otherwise be violated in the creation and implementation of two medicaid home and community-based services programs to replace the Ohio home care program being operated pursuant to rules adopted under sections 5111.01 and 5111.02 of the Revised Code and a medicaid waiver granted prior to the effective date of this section. In the

request, the director may specify the following: 51853

(1) That one of the replacement programs will provide home and community-based services to individuals in need of nursing facility care, including individuals enrolled in the Ohio home care program; 51854
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(2) That the other replacement program will provide services to individuals in need of hospital care, including individuals enrolled in the Ohio home care program; 51858
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(3) That there will be a maximum number of individuals who may be enrolled in the replacement programs in addition to the number of individuals to be transferred from the Ohio home care program; 51861
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(4) That there will be a maximum amount the department may expend each year for each individual enrolled in the replacement programs; 51865
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(5) That there will be a maximum aggregate amount the department may expend each year for all individuals enrolled in the replacement programs; 51868
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(6) Any other requirement the director selects for the replacement programs. 51871
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(B) If the secretary grants the medicaid waivers requested, the director may create and implement the replacement programs in accordance with the provisions of the waivers granted. The department of job and family services shall administer the replacement programs. 51873
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As the replacement programs are implemented, the director shall reduce the maximum number of individuals who may be enrolled in the Ohio home care program by the number of individuals who are transferred to the replacement programs. When all individuals who are eligible to be transferred to the replacement programs have 51878
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been transferred, the director may submit to the secretary an 51883
amendment to the state medicaid plan to provide for the 51884
elimination of the Ohio home care program. 51885

Sec. 5112.03. (A) The director of job and family services 51886
shall adopt, and may amend and rescind, rules in accordance with 51887
Chapter 119. of the Revised Code for the purpose of administering 51888
sections 5112.01 to 5112.21 of the Revised Code, including rules 51889
that do all of the following: 51890

(1) Define as a "disproportionate share hospital" any 51891
hospital included under subsection (b) of section 1923 of the 51892
"Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 51893
1396r-4(b), as amended, and any other hospital the director 51894
determines appropriate; 51895

(2) Prescribe the form for submission of cost reports under 51896
section 5112.04 of the Revised Code; 51897

(3) Establish, in accordance with division (A) of section 51898
5112.06 of the Revised Code, the assessment rate or rates to be 51899
applied to hospitals under that section; 51900

(4) Establish schedules for hospitals to pay installments on 51901
their assessments under section 5112.06 of the Revised Code and 51902
for governmental hospitals to pay installments on their 51903
intergovernmental transfers under section 5112.07 of the Revised 51904
Code; 51905

(5) Establish procedures to notify hospitals of adjustments 51906
made under division (B)(2)(b) of section 5112.06 of the Revised 51907
Code in the amount of installments on their assessment; 51908

(6) Establish procedures to notify hospitals of adjustments 51909
made under division (D) of section 5112.09 of the Revised Code in 51910
the total amount of their assessment and to adjust for the 51911
remainder of the program year the amount of the installments on 51912

the assessments;	51913
(7) Establish, in accordance with section 5112.08 of the Revised Code, the methodology for paying hospitals under that section.	51914 51915 51916
The director shall consult with hospitals when adopting the rules required by divisions (A)(4) and (5) of this section in order to minimize hospitals' cash flow difficulties.	51917 51918 51919
(B) Rules adopted under this section may provide that "total facility costs" excludes costs associated with any of the following:	51920 51921 51922
(1) Recipients of the medical assistance program;	51923
(2) <u>Recipients of financial assistance provided under Chapter 5115. of the Revised Code;</u>	51924 51925
<u>(3)</u> Recipients of disability assistance medical assistance provided under Chapter 5115. of the Revised Code;	51926 51927
(3) <u>(4)</u> Recipients of the program for medically handicapped children established under section 3701.023 of the Revised Code;	51928 51929
(4) <u>(5)</u> Recipients of the medicare program established under Title XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 301, as amended:	51930 51931 51932
(5) <u>(6)</u> Recipients of Title V of the "Social Security Act";	51933
(6) <u>(7)</u> Any other category of costs deemed appropriate by the director in accordance with Title XIX of the "Social Security Act" and the rules adopted under that title.	51934 51935 51936
Sec. 5112.08. The director of job and family services shall adopt rules under section 5112.03 of the Revised Code establishing a methodology to pay hospitals that is sufficient to expend all money in the indigent care pool. Under the rules:	51937 51938 51939 51940
(A) The department of job and family services may classify	51941

similar hospitals into groups and allocate funds for distribution 51942
within each group. 51943

(B) The department shall establish a method of allocating 51944
funds to hospitals, taking into consideration the relative amount 51945
of indigent care provided by each hospital or group of hospitals. 51946
The amount to be allocated shall be based on any combination of 51947
the following indicators of indigent care that the director 51948
considers appropriate: 51949

(1) Total costs, volume, or proportion of services to 51950
recipients of the medical assistance program, including recipients 51951
enrolled in health insuring corporations; 51952

(2) Total costs, volume, or proportion of services to 51953
low-income patients in addition to recipients of the medical 51954
assistance program, which may include recipients of Title V of the 51955
"Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 301, as 51956
amended, and disability recipients of financial or medical 51957
assistance ~~established~~ provided under Chapter 5115. of the Revised 51958
Code; 51959

(3) The amount of uncompensated care provided by the hospital 51960
or group of hospitals; 51961

(4) Other factors that the director considers to be 51962
appropriate indicators of indigent care. 51963

(C) The department shall distribute funds to each hospital or 51964
group of hospitals in a manner that first may provide for an 51965
additional distribution to individual hospitals that provide a 51966
high proportion of indigent care in relation to the total care 51967
provided by the hospital or in relation to other hospitals. The 51968
department shall establish a formula to distribute the remainder 51969
of the funds. The formula shall be consistent with section 1923 of 51970
the "Social Security Act," 42 U.S.C.A. 1396r-4, as amended, shall 51971
be based on any combination of the indicators of indigent care 51972

listed in division (B) of this section that the director considers 51973
appropriate. 51974

(D) The department shall distribute funds to each hospital in 51975
installments not later than ten working days after the deadline 51976
established in rules for each hospital to pay an installment on 51977
its assessment under section 5112.06 of the Revised Code. In the 51978
case of a governmental hospital that makes intergovernmental 51979
transfers, the department shall pay an installment under this 51980
section not later than ten working days after the earlier of that 51981
deadline or the deadline established in rules for the governmental 51982
hospital to pay an installment on its intergovernmental transfer. 51983
If the amount in the hospital care assurance program fund and the 51984
hospital care assurance match fund created under section 5112.18 51985
of the Revised Code is insufficient to make the total 51986
distributions for which hospitals are eligible to receive in any 51987
period, the department shall reduce the amount of each 51988
distribution by the percentage by which the amount is 51989
insufficient. The department shall distribute to hospitals any 51990
amounts not distributed in the period in which they are due as 51991
soon as moneys are available in the funds. 51992

Sec. 5112.17. (A) As used in this section: 51993

(1) "Federal poverty guideline" means the official poverty 51994
guideline as revised annually by the United States secretary of 51995
health and human services in accordance with section 673 of the 51996
"Community Service Block Grant Act," 95 Stat. 511 (1981), 42 51997
U.S.C.A. 9902, as amended, for a family size equal to the size of 51998
the family of the person whose income is being determined. 51999

(2) "Third-party payer" means any private or public entity or 52000
program that may be liable by law or contract to make payment to 52001
or on behalf of an individual for health care services. 52002
"Third-party payer" does not include a hospital. 52003

(B) Each hospital that receives funds distributed under 52004
sections 5112.01 to 5112.21 of the Revised Code shall provide, 52005
without charge to the individual, basic, medically necessary 52006
hospital-level services to individuals who are residents of this 52007
state, are not recipients of the medical assistance program, and 52008
whose income is at or below the federal poverty guideline. 52009
Recipients of disability financial assistance and recipients of 52010
disability medical assistance provided under Chapter 5115. of the 52011
Revised Code qualify for services under this section. The director 52012
of job and family services shall adopt rules under section 5112.03 52013
of the Revised Code specifying the hospital services to be 52014
provided under this section. 52015

(C) Nothing in this section shall be construed to prevent a 52016
hospital from requiring an individual to apply for eligibility 52017
under the medical assistance program before the hospital processes 52018
an application under this section. Hospitals may bill any 52019
third-party payer for services rendered under this section. 52020
Hospitals may bill the medical assistance program, in accordance 52021
with Chapter 5111. of the Revised Code and the rules adopted under 52022
that chapter, for services rendered under this section if the 52023
individual becomes a recipient of the program. Hospitals may bill 52024
individuals for services under this section if all of the 52025
following apply: 52026

(1) The hospital has an established post-billing procedure 52027
for determining the individual's income and canceling the charges 52028
if the individual is found to qualify for services under this 52029
section. 52030

(2) The initial bill, and at least the first follow-up bill, 52031
is accompanied by a written statement that does all of the 52032
following: 52033

(a) Explains that individuals with income at or below the 52034

federal poverty guideline are eligible for services without charge;	52035 52036
(b) Specifies the federal poverty guideline for individuals and families of various sizes at the time the bill is sent;	52037 52038
(c) Describes the procedure required by division (C)(1) of this section.	52039 52040
(3) The hospital complies with any additional rules the department adopts under section 5112.03 of the Revised Code.	52041 52042
Notwithstanding division (B) of this section, a hospital providing care to an individual under this section is subrogated to the rights of any individual to receive compensation or benefits from any person or governmental entity for the hospital goods and services rendered.	52043 52044 52045 52046 52047
(D) Each hospital shall collect and report to the department, in the form and manner prescribed by the department, information on the number and identity of patients served pursuant to this section.	52048 52049 52050 52051
(E) This section applies beginning May 22, 1992, regardless of whether the department has adopted rules specifying the services to be provided. Nothing in this section alters the scope or limits the obligation of any governmental entity or program, including the program awarding reparations to victims of crime under sections 2743.51 to 2743.72 of the Revised Code and the program for medically handicapped children established under section 3701.023 of the Revised Code, to pay for hospital services in accordance with state or local law.	52052 52053 52054 52055 52056 52057 52058 52059 52060
Sec. 5112.31. The department of job and family services shall:	52061 52062
(A) For the purpose of providing home and community-based services for mentally retarded and developmentally disabled	52063 52064

persons, annually assess each intermediate care facility for the 52065
mentally retarded a franchise permit fee equal to nine dollars and 52066
~~twenty-four~~ sixty-three cents multiplied by the product of the 52067
following: 52068

(1) The number of beds certified under Title XIX of the 52069
"Social Security Act" on the first day of May of the calendar year 52070
in which the assessment is determined pursuant to division (A) of 52071
section 5112.33 of the Revised Code; 52072

(2) The number of days in the fiscal year beginning on the 52073
first day of July of the same calendar year. 52074

(B) ~~Not later than~~ Beginning July 1, ~~1996~~ 2005, and the first 52075
day of each July thereafter, adjust fees determined under division 52076
(A) of this section in accordance with the composite inflation 52077
factor established in rules adopted under section 5112.39 of the 52078
Revised Code. 52079

If the United States secretary of health and human services 52080
determines that the franchise permit fee established by sections 52081
5112.30 to 5112.39 of the Revised Code would be an impermissible 52082
health care-related tax under section 1903(w) of the "Social 52083
Security Act," 42 U.S.C.A. 1396b(w), as amended, the department 52084
shall take all necessary actions to cease implementation of those 52085
sections in accordance with rules adopted under section 5112.39 of 52086
the Revised Code. 52087

Sec. 5112.99. (A) The director of job and family services 52088
shall impose a penalty ~~of one hundred dollars~~ for each day that a 52089
hospital fails to report the information required under section 52090
5112.04 of the Revised Code on or before the dates specified in 52091
that section. The amount of the penalty shall be established by 52092
the director in rules adopted under section 5112.03 of the Revised 52093
Code. 52094

(B) In addition to any other remedy available to the 52095
department of job and family services under law to collect unpaid 52096
assessments and transfers, the director shall impose a penalty of 52097
ten per cent of the amount due, ~~not to exceed twenty thousand~~ 52098
~~dollars,~~ on any hospital that fails to pay assessments or make 52099
intergovernmental transfers by the dates required by rules adopted 52100
under section 5112.03 of the Revised Code. 52101

(C) The director shall waive the penalties provided for in 52102
divisions (A) and (B) of this section for good cause shown by the 52103
hospital. 52104

(D) All penalties imposed under this section shall be 52105
deposited into the ~~general revenue~~ health care administration fund 52106
created by section 5111.94 of the Revised Code. 52107

Sec. 5115.01. (A) ~~There is hereby established~~ The director of 52108
job and family services shall establish the disability financial 52109
assistance program. ~~Except as provided in division (D) of this~~ 52110
~~section, a disability assistance recipient shall receive financial~~ 52111
~~assistance. Except as provided in section 5115.11 of the Revised~~ 52112
~~Code, a disability assistance recipient also shall receive~~ 52113
~~disability assistance medical assistance.~~ 52114

~~Except as provided by division (B) of this section, a person~~ 52115
~~who meets all of the following requirements is~~ (B) Subject to all 52116
other eligibility requirements established by this chapter and the 52117
rules adopted under it for the disability financial assistance 52118
program, a person may be eligible for disability financial 52119
assistance only if one of the following applies: 52120

(1) The person is ~~ineligible to participate in the Ohio works~~ 52121
~~first program established under Chapter 5107. of the Revised Code~~ 52122
~~and to receive supplemental security income provided pursuant to~~ 52123
~~Title XVI of the Social Security Act, 86 Stat. 1475 (1972), 42~~ 52124

U.S.C.A. 1383, as amended;	52125
(2) The person is at least one of the following:	52126
(a) Under age eighteen;	52127
(b) Age sixty or older;	52128
(c) Pregnant;	52129
(d) Unable <u>unable</u> to do any substantial or gainful activity	52130
by reason of a medically determinable physical or mental	52131
impairment that can be expected to result in death or has lasted	52132
or can be expected to last for not less than nine months;	52133
(e) A resident of a residential treatment center certified as	52134
an alcohol or drug addiction program by the department of alcohol	52135
and drug addiction services under section 3793.06 of the Revised	52136
Code.	52137
(f) Medication dependent as determined by a physician, as	52138
defined in section 4730.01 of the Revised Code, who has certified	52139
to the county department of job and family services that the	52140
person is receiving ongoing treatment for a chronic medical	52141
condition requiring continuous prescription medication for an	52142
indefinite, long term period of time and for whom the loss of the	52143
medication would result in a significant risk of medical emergency	52144
and loss of employability lasting at least nine months.	52145
(3) <u>The (2) On the day before the effective date of this</u>	52146
<u>amendment, the person meets the eligibility requirements</u>	52147
established in rules adopted under section 5115.05 of the Revised	52148
Code <u>was sixty years of age or older and one of the following is</u>	52149
<u>the case:</u>	52150
(a) <u>The person was receiving or was scheduled to begin</u>	52151
<u>receiving financial assistance under this chapter on the basis of</u>	52152
<u>being sixty years of age or older;</u>	52153
(b) <u>An eligibility determination was pending regarding the</u>	52154

person's application to receive financial assistance under this 52155
chapter on the basis of being sixty years of age or older and, on 52156
or after the effective date of this amendment, the person receives 52157
a determination of eligibility based on that application. 52158

~~(B)(1) A person is ineligible for disability assistance if~~ 52159
~~the person is ineligible to participate in the Ohio works first~~ 52160
~~program because of any of the following:~~ 52161

~~(a) Section 5101.83, 5107.14, or 5107.16 of the Revised Code;~~ 52162

~~(b) The time limit established by section 5107.18 of the~~ 52163
~~Revised Code;~~ 52164

~~(c) Failure to comply with an application or verification~~ 52165
~~procedure;~~ 52166

~~(d) The fraud control program established pursuant to 45~~ 52167
~~C.F.R. 235.112, as in effect July 1, 1996.~~ 52168

~~(2) A person under age eighteen is ineligible for disability~~ 52169
~~assistance pursuant to division (B)(1)(a) of this section only if~~ 52170
~~the person caused the assistance group to be ineligible to~~ 52171
~~participate in the Ohio works first program or resides with a~~ 52172
~~person age eighteen or older who was a member of the same~~ 52173
~~ineligible assistance group. A person age eighteen or older is~~ 52174
~~ineligible for disability assistance pursuant to division~~ 52175
~~(B)(1)(a) of this section regardless of whether the person caused~~ 52176
~~the assistance group to be ineligible to participate in the Ohio~~ 52177
~~works first program.~~ 52178

~~(C) The county department of job and family services that~~ 52179
~~serves the county in which a person receiving disability~~ 52180
~~assistance pursuant to division (A)(2)(c) of this section~~ 52181
~~participates in an alcohol or drug addiction program shall~~ 52182
~~designate a representative payee for purposes of receiving and~~ 52183
~~distributing financial assistance provided under the disability~~ 52184
~~assistance program to the person.~~ 52185

~~(D) A person eligible for disability assistance pursuant to
division (A)(2)(f) of this section shall not receive financial
assistance.~~ 52186
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~~(E) The director of job and family services shall adopt rules
in accordance with section 111.15 of the Revised Code defining
terms and establishing standards for determining whether a person
meets a condition of disability assistance eligibility pursuant to
this section.~~ 52189
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Sec. 5115.04 5115.02. (A) An individual is not eligible for 52194
disability financial assistance under this chapter if ~~either~~ any 52195
of the following apply: 52196

~~(A)(1) The individual is eligible to participate in the Ohio
works first program established under Chapter 5107. of the Revised
Code; eligible to receive supplemental security income provided
pursuant to Title XVI of the "Social Security Act," 86 Stat. 1475
(1972), 42 U.S.C. 1383, as amended; or eligible to participate in
or receive assistance through another state or federal program
that provides financial assistance similar to disability financial
assistance, as determined by the director of job and family
services;~~ 52197
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~~(2) The individual is ineligible to participate in the Ohio
works first program because of any of the following:~~ 52206
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~~(a) The time limit established by section 5107.18 of the
Revised Code;~~ 52208
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~~(b) Failure to comply with an application or verification
procedure;~~ 52210
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~~(c) The fraud control provisions of section 5101.83 of the
Revised Code or the fraud control program established pursuant to
45 C.F.R. 235.112, as in effect July 1, 1996;~~ 52212
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~~(d) The self-sufficiency contract provisions of sections~~ 52215

<u>5107.14 and 5107.16 of the Revised Code;</u>	52216
<u>(e) The minor parent provisions of section 5107.24 of the Revised Code;</u>	52217
<u>(f) The provisions of section 5107.26 of the Revised Code regarding termination of employment without just cause.</u>	52218
<u>(5) The individual, or any of the other individuals included in determining the individual's eligibility, is involved in a strike, as defined in section 5107.10 of the Revised Code;</u>	52219
<u>(6) For the purpose of avoiding consideration of property in determinations of the individual's eligibility for disability financial assistance or a greater amount of assistance, the individual has transferred property during the two years preceding application for or most recent redetermination of eligibility for disability assistance;</u>	52220
<u>(7) The individual is a child and does not live with the child's parents, guardians, or other persons standing in place of parents, unless the child is emancipated by being married, by serving in the armed forces, or by court order;</u>	52221
<u>(8) The individual reside in a county home, city infirmary, jail, or public institution;</u>	52222
<u>(9) The individual is a fugitive felon as defined in section 5101.26 of the Revised Code;</u>	52223
<u>(10) The individual is violating a condition of probation, a community control sanction, parole, or a post-release control sanction imposed under federal or state law.</u>	52224
<u>(B)(1) As used in division (B)(2) of this section, "assistance group" has the same meaning as in section 5107.02 of the Revised Code.</u>	52225
<u>(2) Ineligibility under division (A)(2)(c) or (d) of this section applies as follows:</u>	52226
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(a) In the case of an individual who is under eighteen years of age, the individual is ineligible only if the individual caused the assistance group to be ineligible to participate in the Ohio works first program or resides with an individual eighteen years of age or older who was a member of the same ineligible assistance group. 52246
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(b) In the case of an individual who is eighteen years of age or older, the individual is ineligible regardless of whether the individual caused the assistance group to be ineligible to participate in the Ohio works first program. 52252
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Sec. 5115.03. (A) The director of job and family services shall do both of the following: 52256
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~~(A) Adopt~~ adopt rules in accordance with section 111.15 of the Revised Code governing the ~~administration of~~ disability assistance, ~~including the administration of~~ financial assistance and ~~disability assistance medical assistance~~ program. The rules shall be ~~binding on county departments of job and family services.~~ 52258
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~~(B) Make investigations to determine whether disability assistance is being administered in compliance with the Revised Code and rules adopted by the director.~~ may establish or specify any or all of the following: 52263
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(1) Maximum payment amounts under the disability financial assistance program, based on state appropriations for the program; 52267
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(2) Limits on the length of time an individual may receive disability financial assistance; 52269
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(3) Limits on the total number of individuals in the state who may receive disability financial assistance; 52271
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(4) Income, resource, citizenship, age, residence, living arrangement, and other eligibility requirements for disability financial assistance; 52273
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(5) Procedures for disregarding amounts of earned and unearned income for the purpose of determining eligibility for disability financial assistance and the amount of assistance to be provided; 52276
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(6) Procedures for including the income and resources, or a certain amount of the income and resources, of a member of an individual's family when determining eligibility for disability financial assistance and the amount of assistance to be provided. 52280
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(B) In establishing or specifying eligibility requirements for disability financial assistance, the director shall exclude the value of any tuition payment contract entered into under section 3334.09 of the Revised Code or any scholarship awarded under section 3334.18 of the Revised Code and the amount of payments made by the Ohio tuition trust authority under section 3334.09 of the Revised Code pursuant to the contract or scholarship. The director shall not require any individual to terminate a tuition payment contract entered into under Chapter 3334. of the Revised Code as a condition of eligibility for disability financial assistance. The director shall consider as income any refund paid under section 3334.10 of the Revised Code. 52284
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(C) Notwithstanding section 3109.01 of the Revised Code, when a disability financial assistance applicant or recipient who is at least eighteen but under twenty-two years of age resides with the applicant's or recipient's parents, the income of the parents shall be taken into account in determining the applicant's or recipient's financial eligibility. In the rules adopted under this section, the director shall specify procedures for determining the amount of income to be attributed to applicants and recipients in this age category. 52296
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(D) For purposes of limiting the cost of the disability financial assistance program, the director may do either or both 52305
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of the following: 52307

(1) Adopt rules in accordance with section 111.15 of the 52308
Revised Code that revise the program's eligibility requirements, 52309
the maximum payment amounts, or any other requirement or standard 52310
established or specified in the rules adopted by the director; 52311

(2) Suspend acceptance of applications for disability 52312
financial assistance. While a suspension is in effect, no person 52313
shall receive a determination or redetermination of eligibility 52314
for disability financial assistance unless the person was 52315
receiving the assistance during the month immediately preceding 52316
the suspension's effective date or the person submitted an 52317
application prior to the suspension's effective date and receives 52318
a determination of eligibility based on that application. The 52319
director may adopt rules in accordance with section 111.15 of the 52320
Revised Code establishing requirements and specifying procedures 52321
applicable to the suspension of acceptance of new applications. 52322

Sec. 5115.02 5115.04. (A) The department of job and family 52323
services shall supervise and administer the disability financial 52324
assistance program, except that the department may require county 52325
departments of job and family services to perform any 52326
administrative function specified in rules adopted by the director 52327
of job and family services, ~~including making determinations of~~ 52328
~~financial eligibility and initial determinations of whether an~~ 52329
~~applicant meets a condition of eligibility under division~~ 52330
~~(A)(2)(d) of section 5115.01 of the Revised Code, distributing~~ 52331
~~financial assistance payments, reimbursing providers of medical~~ 52332
~~services for services provided to disability assistance~~ 52333
~~recipients, and any other function specified in the rules. The~~ 52334
~~department may also require county departments to make a final~~ 52335
~~determination of whether an applicant meets a condition for~~ 52336
~~eligibility under division (A)(2)(a), (b), (c), (e), or (f) of~~ 52337

~~section 5115.01 of the Revised Code. The department shall make the~~ 52338
~~final determination of whether an applicant meets a condition of~~ 52339
~~eligibility under division (A)(2)(d) of section 5115.01 of the~~ 52340
~~Revised Code.~~ 52341

(B) If the department requires county departments to perform 52342
administrative functions under this section, the director shall 52343
adopt rules in accordance with section 111.15 of the Revised Code 52344
governing the performance of the functions to be performed by 52345
county departments. County departments shall perform the functions 52346
in accordance with the rules. The director shall conduct 52347
investigations to determine whether disability financial 52348
assistance is being administered in compliance with the Revised 52349
Code and rules adopted by the director. 52350

(C) If disability financial assistance payments ~~or medical~~ 52351
~~services reimbursements~~ are made by the county department of job 52352
and family services, the department shall advance sufficient funds 52353
to provide the county treasurer with the amount estimated for the 52354
payments ~~or reimbursements~~. Financial assistance payments shall be 52355
distributed in accordance with sections 117.45, 319.16, and 329.03 52356
of the Revised Code. 52357

Sec. 5115.05. (A) The director of job and family services 52358
shall adopt rules in accordance with section 111.15 of the Revised 52359
Code establishing application and verification procedures, 52360
reapplication procedures, and ~~income, resource, citizenship, age,~~ 52361
~~residence, living arrangement, assistance group composition, and~~ 52362
other ~~eligibility~~ requirements the director considers necessary in 52363
the administration of the application process for disability 52364
financial assistance. The rules may ~~provide for disregarding~~ 52365
~~amounts of earned and unearned income for the purpose of~~ 52366
~~determining whether an assistance group is eligible for assistance~~ 52367
~~and the amount of assistance provided under this chapter. The~~ 52368

~~rules also may provide that the income and resources, or a certain amount of the income and resources, of a member of an assistance group's family group will be included in determining whether the assistance group is eligible for aid and the amount of aid provided under this chapter.~~

~~If financial assistance under this chapter is to be paid by the auditor of state through the medium of direct deposit, the application shall be accompanied by information the auditor needs to make direct deposits.~~

~~The department of job and family services may require recipients of disability financial assistance to participate in a reapplication process two months after initial approval for assistance has been determined and at such other times as specified in the department requires rules.~~

~~If a recipient of disability assistance, or the spouse of or member of the assistance group of a recipient, becomes possessed of resources or income in excess of the amount allowed under rules adopted under this section, or if other changes occur that affect the person's eligibility or need for assistance, the recipient shall notify the department or county department of job and family services within the time limits specified in the rules. Failure of a recipient to report possession of excess resources or income or a change affecting eligibility or need within those time limits shall be considered prima facie evidence of intent to defraud under section 5115.15 of the Revised Code.~~

~~Each applicant for or recipient of disability assistance shall make reasonable efforts to secure support from persons responsible for the applicant's or recipient's support, and from other sources, as a means of preventing or reducing the provision of disability assistance at public expense. The department or county department may provide assistance to the applicant or recipient in securing other forms of financial or medical~~

~~assistance.~~ 52401

~~Notwithstanding section 3109.01 of the Revised Code, when a 52402
disability assistance applicant or recipient who is at least 52403
eighteen but under twenty two years of age resides with the 52404
applicant's or recipient's parents, the income of the parents 52405
shall be taken into account in determining the applicant's or 52406
recipient's financial eligibility. The director shall adopt rules 52407
for determining the amount of income to be attributed to the 52408
assistance group of applicants in this age category.~~ 52409

~~(B) Any person who applies for disability financial 52410
assistance ~~under this section~~ shall receive a voter registration 52411
application under section 3503.10 of the Revised Code.~~ 52412

~~Sec. 5115.07 5115.06. Financial assistance Assistance under 52413
the disability financial assistance program may be given by 52414
warrant, direct deposit, or, if provided by the director of job 52415
and family services pursuant to section 5101.33 of the Revised 52416
Code, by electronic benefit transfer. It shall be inalienable 52417
whether by way of assignment, charge, or otherwise, and is exempt 52418
from attachment, garnishment, or other like process. ~~Any~~ 52419~~

~~Any direct deposit shall be made to a financial institution 52420
and account designated by the recipient. ~~The If disability~~ 52421
financial assistance is to be paid by the auditor of state through 52422
direct deposit, the application for assistance shall be 52423
accompanied by information the auditor needs to make direct 52424
deposits. 52425~~

~~The director of job and family services may adopt rules for 52426
designation of financial institutions and accounts. ~~No~~ 52427~~

~~No financial institution shall impose any charge for direct 52428
deposit of disability ~~assistance~~ financial assistance payments 52429
that it does not charge all customers for similar services. 52430~~

~~The department of job and family services shall establish financial assistance payment amounts based on state appropriations.~~

~~Disability assistance may be given to persons living in their own homes or other suitable quarters, but shall not be given to persons who reside in a county home, city infirmary, jail, or public institution. Disability assistance shall not be given to an unemancipated child unless the child lives with the child's parents, guardians, or other persons standing in place of parents. For the purpose of this section, a child is emancipated if the child is married, serving in the armed forces, or has been emancipated by court order.~~

~~No person shall be eligible for disability assistance if, for the purpose of avoiding consideration of property in determinations of the person's eligibility for disability assistance or a greater amount of assistance, the person has transferred property during the two years preceding application for or most recent redetermination of eligibility for disability assistance.~~

Sec. 5115.13 5115.07. The acceptance of disability financial assistance under ~~this chapter~~ the disability financial assistance program constitutes an assignment to the department of job and family services of any rights an individual receiving ~~disability~~ the assistance has to financial support from any other person, ~~excluding medical support assigned pursuant to section 5101.59 of the Revised Code.~~ The rights to support assigned to the department pursuant to this section constitute an obligation of the person responsible for providing the support to the state for the amount of disability financial assistance payments to the recipient or recipients whose needs are included in determining the amount of ~~disability~~ assistance received. Support payments assigned to the

state pursuant to this section shall be collected by the county 52462
department of job and family services and reimbursements for 52463
disability financial assistance payments shall be credited to the 52464
state treasury. 52465

Sec. 5115.10. (A) The director of job and family services 52466
shall establish a disability assistance medical assistance program 52467
~~shall consist of a system of managed primary care. Until July 1,~~ 52468
~~1992, the program shall also include limited hospital services,~~ 52469
~~except that if prior to that date hospitals are required by~~ 52470
~~section 5112.17 of the Revised Code to provide medical services~~ 52471
~~without charge to persons specified in that section, the program~~ 52472
~~shall cease to include hospital services at the time the~~ 52473
~~requirement of section 5112.17 of the Revised Code takes effect.~~ 52474

~~The department of job and family services may require~~ 52475
~~disability assistance medical assistance recipients to enroll in~~ 52476
~~health insuring corporations or other managed care programs, or~~ 52477
~~may limit the number or type of health care providers from which a~~ 52478
~~recipient may receive services.~~ 52479

~~The director of job and family services shall adopt rules~~ 52480
~~governing the disability assistance medical assistance program~~ 52481
~~established under this division. The rules shall specify all of~~ 52482
~~the following:~~ 52483

~~(1) Services that will be provided under the system of~~ 52484
~~managed primary care;~~ 52485

~~(2) Hospital services that will be provided during the period~~ 52486
~~that hospital services are provided under the program;~~ 52487

~~(3) The maximum authorized amount, scope, duration, or limit~~ 52488
~~of payment for services.~~ 52489

~~(B) The director of job and family services shall designate~~ 52490
~~medical services providers for the disability assistance medical~~ 52491

~~assistance program. The first such designation shall be made not 52492
later than September 30, 1991. Services under the program shall be 52493
provided only by providers designated by the director. The 52494
director may require that, as a condition of being designated a 52495
disability assistance medical assistance provider, a provider 52496
enter into a provider agreement with the state department. 52497~~

~~(C) As long as the disability assistance medical assistance 52498
program continues to include hospital services, the department or 52499
a county director of job and family services may, pursuant to 52500
rules adopted under this section, approve an application for 52501
disability assistance medical assistance for emergency inpatient 52502
hospital services when care has been given to a person who had not 52503
completed a sworn application for disability assistance at the 52504
time the care was rendered, if all of the following apply: 52505~~

~~(1) The person files an application for disability assistance 52506
within sixty days after being discharged from the hospital or, if 52507
the conditions of division (D) of this section are met, while in 52508
the hospital; 52509~~

~~(2) The person met all eligibility requirements for 52510
disability assistance at the time the care was rendered; 52511~~

~~(3) The care given to the person was a medical service within 52512
the scope of disability assistance medical assistance as 52513
established under rules adopted by the director of job and family 52514
services. 52515~~

~~(D) If a person files an application for disability 52516
assistance medical assistance for emergency inpatient hospital 52517
services while in the hospital, a face to face interview shall be 52518
conducted with the applicant while the applicant is in the 52519
hospital to determine whether the applicant is eligible for the 52520
assistance. If the hospital agrees to reimburse the county 52521
department of job and family services for all actual costs 52522~~

~~incurred by the department in conducting the interview, the 52523
interview shall be conducted by an employee of the county 52524
department. If, at the request of the hospital, the county 52525
department designates an employee of the hospital to conduct the 52526
interview, the interview shall be conducted by the hospital 52527
employee. 52528~~

~~(E) The department of job and family services may assume 52529
responsibility for peer review of expenditures for disability 52530
assistance medical assistance (B) Subject to all other eligibility 52531
requirements established by this chapter and the rules adopted 52532
under it for the disability medical assistance program, a person 52533
may be eligible for disability medical assistance only if the 52534
person is medication dependent, as determined by the department of 52535
job and family services. 52536~~

~~(C) The director shall adopt rules under section 111.15 of 52537
the Revised Code for purposes of implementing division (B) of this 52538
section. The rules may specify or establish any or all of the 52539
following: 52540~~

~~(1) Standards for determining whether a person is medication 52541
dependent, including standards under which a person may qualify as 52542
being medication dependent only if it is determined that both of 52543
the following are the case: 52544~~

~~(a) The person is receiving ongoing treatment for a chronic 52545
medical condition that requires continuous prescription medication 52546
for an indefinite, long-term period of time; 52547~~

~~(b) Loss of the medication would result in a significant risk 52548
of medical emergency and loss of employability lasting at least 52549
nine months. 52550~~

~~(2) A requirement that a person's medical condition be 52551
certified by an individual authorized under Chapter 4731. of the 52552
Revised Code to practice medicine and surgery or osteopathic 52553~~

medicine and surgery; 52554

(3) Limitations on the chronic medical conditions and 52555
prescription medications that may qualify a person as being 52556
medication dependent. 52557

Sec. 5115.11. ~~If a member of an assistance group receiving~~ 52558
~~disability assistance under this chapter~~ An individual who 52559
qualifies for the medical assistance program established under 52560
Chapter 5111. of the Revised Code, ~~the member~~ shall receive 52561
medical assistance through that program rather than through the 52562
disability ~~assistance~~ medical assistance program. 52563

An individual is ineligible for disability medical assistance 52564
if, for the purpose of avoiding consideration of property in 52565
determinations of the individual's eligibility for disability 52566
medical assistance or a greater amount of assistance, the person 52567
has transferred property during the two years preceding 52568
application for or most recent redetermination of eligibility for 52569
disability medical assistance. 52570

Sec. 5115.12. (A) The director of job and family services 52571
shall adopt rules in accordance with section 111.15 of the Revised 52572
Code governing the disability medical assistance program. The 52573
rules may establish or specify any or all of the following: 52574

(1) Income, resource, citizenship, age, residence, living 52575
arrangement, and other eligibility requirements; 52576

(2) Health services to be included in the program; 52577

(3) The maximum authorized amount, scope, duration, or limit 52578
of payment for services; 52579

(4) Limits on the length of time an individual may receive 52580
disability medical assistance; 52581

(5) Limits on the total number of individuals in the state 52582

who may receive disability medical assistance. 52583

(B) For purposes of limiting the cost of the disability medical assistance program, the director may do either of the following: 52584
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(1) Adopt rules in accordance with section 111.15 of the Revised Code that revise the program's eligibility requirements; the maximum authorized amount, scope, duration, or limit of payment for services included in the program; or any other requirement or standard established or specified by rules adopted under division (A) of this section or under section 5115.10 of the Revised Code; 52587
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(2) Suspend acceptance of applications for disability medical assistance. While a suspension is in effect, no person shall receive a determination or redetermination of eligibility for disability medical assistance unless the person was receiving the assistance during the month immediately preceding the suspension's effective date or the person submitted an application prior to the suspension's effective date and receives a determination of eligibility based on that application. The director may adopt rules in accordance with section 111.15 of the Revised Code establishing requirements and specifying procedures applicable to the suspension of acceptance of new applications. 52594
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Sec. 5115.13. (A) The department of job and family services shall supervise and administer the disability medical program, except as follows: 52605
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(1) The department may require county departments of job and family services to perform any administrative function specified in rules adopted by the director of job and family services. 52608
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(2) The director may contract with any private or public entity in this state to perform any administrative function or to 52611
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administer any or all of the program. 52613

(B) If the department requires county departments to perform administrative functions, the director of job and family services shall adopt rules in accordance with section 111.15 of the Revised Code governing the performance of the functions to be performed by county departments. County departments shall perform the functions in accordance with the rules. 52614
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If the director contracts with a private or public entity to perform administrative functions or to administer any or all of the program, the director may either adopt rules in accordance with section 111.15 of the Revised Code or include provisions in the contract governing the performance of the functions by the private or public entity. Entities under contract shall perform the functions in accordance with the requirements established by the director. 52620
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(C) Whenever division (A)(1) or (2) of this section is implemented, the director shall conduct investigations to determine whether disability medical assistance is being administered in compliance with the Revised Code and rules adopted by the director or in accordance with the terms of the contract. 52628
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Sec. 5115.14. (A) The director of job and family services shall adopt rules in accordance with section 111.15 of the Revised Code establishing application and verification procedures, reapplication procedures, and other requirements the director considers necessary in the administration of the application process for disability medical assistance. 52633
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(B) Any person who applies for disability medical assistance shall receive a voter registration application under section 3503.10 of the Revised Code. 52639
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Sec. 5115.20. (A) The department of job and family services 52642

shall establish a disability advocacy program and each county 52643
department of job and family services shall establish a disability 52644
advocacy program unit or join with other county departments of job 52645
and family services to establish a joint county disability 52646
advocacy program unit. Through the program the department and 52647
county departments shall cooperate in efforts to assist applicants 52648
for and recipients of assistance under ~~this chapter~~ the disability 52649
financial assistance program and the disability medical assistance 52650
program, who might be eligible for supplemental security income 52651
benefits under Title XVI of the "Social Security Act," 86 Stat. 52652
1475 (1972), 42 U.S.C.A. 1383, as amended, in applying for those 52653
benefits. ~~The~~ 52654

As part of their disability advocacy programs, the state 52655
department and county departments may enter into contracts for the 52656
~~services to applicants for and recipients of assistance under this~~ 52657
~~chapter who might be eligible for supplemental security income~~ 52658
~~benefits with~~ of persons and ~~governmental~~ government entities that 52659
in the judgment of the department or county department have 52660
demonstrated expertise in representing persons seeking 52661
supplemental security income benefits. Each contract shall require 52662
the person or entity with which a department contracts to assess 52663
each person referred to it by the department to determine whether 52664
the person appears to be eligible for supplemental security income 52665
benefits, and, if the person appears to be eligible, assist the 52666
person in applying and represent the person in any proceeding of 52667
the social security administration, including any appeal or 52668
reconsideration of a denial of benefits. The department or county 52669
department shall provide to the person or entity with which it 52670
contracts all records in its possession relevant to the 52671
application for supplemental security income benefits. The 52672
department shall require a county department with relevant records 52673
to submit them to the person or entity. 52674

(B) Each applicant for or recipient of disability financial assistance or disability medical assistance ~~under this chapter~~ who, in the judgment of the department or a county department might be eligible for supplemental security benefits, ~~must~~ shall, as a condition of eligibility for assistance, apply for such benefits if directed to do so by the department or county department.

(C) ~~Each~~ With regard to applicants for and recipients of disability financial assistance or disability medical assistance, ~~each~~ county department of job and family services shall do all of the following:

(1) Identify applicants ~~for~~ and recipients of ~~assistance under this chapter~~ who might be eligible for supplemental security income benefits;

(2) Assist applicants ~~for~~ and recipients of ~~assistance under this chapter~~ in securing documentation of disabling conditions or refer them for such assistance to a person or government ~~agency~~ entity with which the department or county department has contracted under division (A) of this section;

(3) Inform applicants ~~for~~ and recipients of ~~assistance under this chapter~~ of available sources of representation, which may include a person or government entity with which the department or county department has contracted under division (A) of this section, and of their right to represent themselves in reconsiderations and appeals of social security administration decisions that deny them supplemental security income benefits. The county department may require the applicants and recipients, as a condition of eligibility for assistance, to pursue reconsiderations and appeals of social security administration decisions that deny them supplemental security income benefits, and shall assist applicants and recipients as necessary to obtain

such benefits or refer them to a person or government ~~agency~~ 52706
entity with which the department or county department has 52707
contracted under division (A) of this section. 52708

(4) Require applicants ~~for~~ and recipients ~~of assistance under~~ 52709
~~this chapter~~ who, in the judgment of the county department, are or 52710
may be aged, blind, or disabled, to apply for medical assistance 52711
under Chapter 5111. of the Revised Code, make determinations when 52712
appropriate as to eligibility for medical assistance, and refer 52713
their applications when necessary to the disability determination 52714
unit established in accordance with division (F) of this section 52715
for expedited review; 52716

(5) Require each applicant ~~for~~ and ~~each~~ recipient ~~of~~ 52717
~~assistance under this chapter~~ who in the judgment of the 52718
department or the county department might be eligible for 52719
supplemental security income benefits, as a condition of 52720
eligibility for disability financial assistance or disability 52721
medical assistance ~~under this chapter~~, to execute a written 52722
authorization for the secretary of health and human services to 52723
withhold benefits due that individual and pay to the director of 52724
job and family services or the director's designee an amount 52725
sufficient to reimburse the state and county shares of interim 52726
assistance furnished to the individual. For the purposes of 52727
division (C)(5) of this section, "benefits" and "interim 52728
assistance" have the meanings given in Title XVI of the "Social 52729
Security Act." 52730

(D) The director of job and family services shall adopt rules 52731
in accordance with ~~Chapter 119.~~ section 111.15 of the Revised Code 52732
for the effective administration of the disability advocacy 52733
program. The rules shall include all of the following: 52734

(1) Methods to be used in collecting information from and 52735
disseminating it to county departments, including the following: 52736

(a) The number of <u>individuals in the county who are</u> disabled	52737
recipients of <u>disability financial assistance or disability</u>	52738
<u>medical</u> assistance under this chapter in the county;	52739
(b) The final decision made either by the social security	52740
administration or by a court for each application or	52741
reconsideration in which an individual was assisted pursuant to	52742
this section.	52743
(2) The type and process of training to be provided by the	52744
department of job and family services to the employees of the	52745
county department of job and family services who perform duties	52746
under this section;	52747
(3) Requirements for the written authorization required by	52748
division (C)(5) of this section.	52749
(E) The department shall provide basic and continuing	52750
training to employees of the county department of job and family	52751
services who perform duties under this section. Training shall	52752
include but not be limited to all processes necessary to obtain	52753
federal disability benefits, and methods of advocacy.	52754
(F) The department shall establish a disability determination	52755
unit and develop guidelines for expediting reviews of applications	52756
for medical assistance under Chapter 5111. of the Revised Code for	52757
persons who have been referred to the unit under division (C)(4)	52758
of this section. The department shall make determinations of	52759
eligibility for medical assistance for any such person within the	52760
time prescribed by federal regulations.	52761
(G) The department may, under rules the director of job and	52762
family services adopts in accordance with section 111.15 of the	52763
Revised Code, pay a portion of the federal reimbursement described	52764
in division (C)(5) of this section to persons or agencies	52765
<u>government entities</u> that assist or represent assistance recipients	52766
in reconsiderations and appeals of social security administration	52767

decisions denying them supplemental security income benefits. 52768

(H) The director shall conduct investigations to determine 52769
whether disability advocacy programs are being administered in 52770
compliance with the Revised Code and the rules adopted by the 52771
director pursuant to this section. 52772

Sec. 5115.22. (A) If a recipient of disability financial 52773
assistance or disability medical assistance, or an individual 52774
whose income and resources are included in determining the 52775
recipient's eligibility for the assistance, becomes possessed of 52776
resources or income in excess of the amount allowed to retain 52777
eligibility, or if other changes occur that affect the recipient's 52778
eligibility or need for assistance, the recipient shall notify the 52779
state or county department of job and family services within the 52780
time limits specified in rules adopted by the director of job and 52781
family services in accordance with section 111.15 of the Revised 52782
Code. Failure of a recipient to report possession of excess 52783
resources or income or a change affecting eligibility or need 52784
within those time limits shall be considered prima-facie evidence 52785
of intent to defraud under section 5115.23 of the Revised Code. 52786

(B) As a condition of eligibility for disability financial 52787
assistance or disability medical assistance, and as a means of 52788
preventing or reducing the provision of assistance at public 52789
expense, each applicant for or recipient of the assistance shall 52790
make reasonable efforts to secure support from persons responsible 52791
for the applicant's or recipient's support, and from other 52792
sources, including any federal program designed to provide 52793
assistance to individuals with disabilities. The state or county 52794
department of job and family services may provide assistance to 52795
the applicant or recipient in securing other forms of financial 52796
assistance. 52797

Sec. ~~5115.15~~ 5115.23. As used in this section, "erroneous payments" means disability financial assistance payments, ~~including or~~ disability ~~assistance~~ medical assistance payments, made to persons who are not entitled to receive them, including payments made as a result of misrepresentation or fraud, and payments made due to an error by the recipient or by the county department of job and family services that made the payment.

The department of job and family services shall adopt rules in accordance with section 111.15 of the Revised Code specifying the circumstances under which action is to be taken under this section to recover erroneous payments. The department, or a county department of job and family services at the request of the department, shall take action to recover erroneous payments in the circumstances specified in the rules. The department or county department may institute a civil action to recover erroneous payments.

Whenever disability financial assistance or disability medical assistance has been furnished to a recipient for whose support another person is responsible, the other person shall, in addition to the liability otherwise imposed, as a consequence of failure to support the recipient, be liable for all ~~disability~~ assistance furnished the recipient. The value of the assistance so furnished may be recovered in a civil action brought by the county department of job and family services.

Each county department of job and family services shall retain fifty per cent of the erroneous payments it recovers under this section. The department of job and family services shall receive the remaining fifty per cent.

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

refers to the community mental health board in an alcohol, drug 52828
addiction, and mental health service district that has a community 52829
mental health board. 52830

The director of mental health with respect to all facilities 52831
and programs established and operated under Chapter 340. of the 52832
Revised Code for mentally ill and emotionally disturbed persons, 52833
shall do all of the following: 52834

(A) Adopt rules pursuant to Chapter 119. of the Revised Code 52835
that may be necessary to carry out the purposes of Chapter 340. 52836
and sections 5119.61 to 5119.63 of the Revised Code. 52837

(1) The rules shall include all of the following: 52838

(a) Rules governing a community mental health agency's 52839
services under section 340.091 of the Revised Code to an 52840
individual referred to the agency under division (C)(2) of section 52841
173.35 of the Revised Code; 52842

(b) For the purpose of division (A)(16) of section 340.03 of 52843
the Revised Code, rules governing the duties of mental health 52844
agencies and boards of alcohol, drug addiction, and mental health 52845
services under section 3722.18 of the Revised Code regarding 52846
referrals of individuals with mental illness or severe mental 52847
disability to adult care facilities and effective arrangements for 52848
ongoing mental health services for the individuals. The rules 52849
shall do at least the following: 52850

(i) Provide for agencies and boards to participate fully in 52851
the procedures owners and managers of adult care facilities must 52852
follow under division (A)(2) of section 3722.18 of the Revised 52853
Code; 52854

(ii) Specify the manner in which boards are accountable for 52855
ensuring that ongoing mental health services are effectively 52856
arranged for individuals with mental illness or severe mental 52857
disability who are referred by the board or mental health agency 52858

under contract with the board to an adult care facility. 52859

(c) Rules governing a board of alcohol, drug addiction, and 52860
mental health services when making a report to the director of 52861
health under section 3722.17 of the Revised Code regarding the 52862
quality of care and services provided by an adult care facility to 52863
a person with mental illness or a severe mental disability. 52864

(2) Rules may be adopted to govern the method of paying a 52865
community mental health facility ~~described,~~ as defined in division 52866
~~(B) of~~ section 5111.022 of the Revised Code, for providing 52867
services ~~established by~~ listed in division ~~(A)(B)~~ of that section. 52868
Such rules must be consistent with the contract entered into 52869
between the departments of job and family services and mental 52870
health under ~~division (E) of that~~ section 5111.91 of the Revised 52871
Code and include requirements ensuring appropriate service 52872
utilization. 52873

(B) Review and evaluate, and, taking into account the 52874
findings and recommendations of the board of alcohol, drug 52875
addiction, and mental health services of the district served by 52876
the program and the requirements and priorities of the state 52877
mental health plan, including the needs of residents of the 52878
district now residing in state mental institutions, approve and 52879
allocate funds to support community programs, and make 52880
recommendations for needed improvements to boards of alcohol, drug 52881
addiction, and mental health services; 52882

(C) Withhold state and federal funds for any program, in 52883
whole or in part, from a board of alcohol, drug addiction, and 52884
mental health services in the event of failure of that program to 52885
comply with Chapter 340. or section 5119.61, 5119.611, 5119.612, 52886
or 5119.62 of the Revised Code or rules of the department of 52887
mental health. The director shall identify the areas of 52888
noncompliance and the action necessary to achieve compliance. The 52889
director shall offer technical assistance to the board to achieve 52890

compliance. The director shall give the board a reasonable time 52891
within which to comply or to present its position that it is in 52892
compliance. Before withholding funds, a hearing shall be conducted 52893
to determine if there are continuing violations and that either 52894
assistance is rejected or the board is unable to achieve 52895
compliance. Subsequent to the hearing process, if it is determined 52896
that compliance has not been achieved, the director may allocate 52897
all or part of the withheld funds to a public or private agency to 52898
provide the services not in compliance until the time that there 52899
is compliance. The director shall establish rules pursuant to 52900
Chapter 119. of the Revised Code to implement this division. 52901

(D) Withhold state or federal funds from a board of alcohol, 52902
drug addiction, and mental health services that denies available 52903
service on the basis of religion, race, color, creed, sex, 52904
national origin, age, disability as defined in section 4112.01 of 52905
the Revised Code, developmental disability, or the inability to 52906
pay; 52907

(E) Provide consultative services to community mental health 52908
agencies with the knowledge and cooperation of the board of 52909
alcohol, drug addiction, and mental health services; 52910

(F) Provide to boards of alcohol, drug addiction, and mental 52911
health services state or federal funds, in addition to those 52912
allocated under section 5119.62 of the Revised Code, for special 52913
programs or projects the director considers necessary but for 52914
which local funds are not available; 52915

(G) Establish criteria by which a board of alcohol, drug 52916
addiction, and mental health services reviews and evaluates the 52917
quality, effectiveness, and efficiency of services provided 52918
through its community mental health plan. The criteria shall 52919
include requirements ensuring appropriate service utilization. The 52920
department shall assess a board's evaluation of services and the 52921
compliance of each board with this section, Chapter 340. or 52922

section 5119.62 of the Revised Code, and other state or federal 52923
law and regulations. The department, in cooperation with the 52924
board, periodically shall review and evaluate the quality, 52925
effectiveness, and efficiency of services provided through each 52926
board. The department shall collect information that is necessary 52927
to perform these functions. 52928

(H) Develop and operate a community mental health information 52929
system. 52930

Boards of alcohol, drug abuse, and mental health services 52931
shall submit information requested by the department in the form 52932
and manner prescribed by the department. Information collected by 52933
the department shall include, but not be limited to, all of the 52934
following: 52935

(1) Information regarding units of services provided in whole 52936
or in part under contract with a board, including diagnosis and 52937
special needs, demographic information, the number of units of 52938
service provided, past treatment, financial status, and service 52939
dates in accordance with rules adopted by the department in 52940
accordance with Chapter 119. of the Revised Code; 52941

(2) Financial information other than price or price-related 52942
data regarding expenditures of boards and community mental health 52943
agencies, including units of service provided, budgeted and actual 52944
expenses by type, and sources of funds. 52945

Boards shall submit the information specified in division 52946
(H)(1) of this section no less frequently than annually for each 52947
client, and each time the client's case is opened or closed. The 52948
department shall not collect any information for the purpose of 52949
identifying by name any person who receives a service through a 52950
board of alcohol, drug addiction, and mental health services, 52951
except as required by state or federal law to validate appropriate 52952
reimbursement. For the purposes of division (H)(1) of this 52953

section, the department shall use an identification system that is 52954
consistent with applicable nationally recognized standards. 52955

(I) Review each board's community mental health plan 52956
submitted pursuant to section 340.03 of the Revised Code and 52957
approve or disapprove it in whole or in part. Periodically, in 52958
consultation with representatives of boards and after considering 52959
the recommendations of the medical director, the director shall 52960
issue criteria for determining when a plan is complete, criteria 52961
for plan approval or disapproval, and provisions for conditional 52962
approval. The factors that the director considers may include, but 52963
are not limited to, the following: 52964

(1) The mental health needs of all persons residing within 52965
the board's service district, especially severely mentally 52966
disabled children, adolescents, and adults; 52967

(2) The demonstrated quality, effectiveness, efficiency, and 52968
cultural relevance of the services provided in each service 52969
district, the extent to which any services are duplicative of 52970
other available services, and whether the services meet the needs 52971
identified above; 52972

(3) The adequacy of the board's accounting for the 52973
expenditure of funds. 52974

If the director disapproves all or part of any plan, the 52975
director shall provide the board an opportunity to present its 52976
position. The director shall inform the board of the reasons for 52977
the disapproval and of the criteria that must be met before the 52978
plan may be approved. The director shall give the board a 52979
reasonable time within which to meet the criteria, and shall offer 52980
technical assistance to the board to help it meet the criteria. 52981

If the approval of a plan remains in dispute thirty days 52982
prior to the conclusion of the fiscal year in which the board's 52983
current plan is scheduled to expire, the board or the director may 52984

request that the dispute be submitted to a mutually agreed upon 52985
third-party mediator with the cost to be shared by the board and 52986
the department. The mediator shall issue to the board and the 52987
department recommendations for resolution of the dispute. Prior to 52988
the conclusion of the fiscal year in which the current plan is 52989
scheduled to expire, the director, taking into consideration the 52990
recommendations of the mediator, shall make a final determination 52991
and approve or disapprove the plan, in whole or in part. 52992

Sec. 5119.611. (A) A board of alcohol, drug addiction, and 52993
mental health services may not contract with a community mental 52994
health agency under division (A)(8)(a) of section 340.03 of the 52995
Revised Code to provide community mental health services included 52996
in the board's community mental health plan unless the services 52997
are certified by the director of mental health under this section. 52998

A community mental health agency that seeks the director's 52999
certification of its community mental health services shall submit 53000
an application to the director. On receipt of the application, the 53001
director may visit and shall evaluate the agency to determine 53002
whether its services satisfy the standards established by rules 53003
adopted under division (C) of this section. The director shall 53004
make the evaluation, and, if the director visits the agency, shall 53005
make the visit, in cooperation with the board of alcohol, drug 53006
addiction, and mental health services with which the agency seeks 53007
to contract. 53008

If the director determines that a community mental health 53009
agency's services satisfy the standards, the director shall 53010
certify the services. 53011

If the director determines that a community mental health 53012
agency's services do not satisfy the standards, the director shall 53013
identify the areas of noncompliance, specify what action is 53014
necessary to satisfy the standards, and offer technical assistance 53015

to the board of alcohol, drug addiction, and mental health 53016
services so that the board may assist the agency in satisfying the 53017
standards. The director shall give the agency a reasonable time 53018
within which to demonstrate that its services satisfy the 53019
standards or to bring the services into compliance with the 53020
standards. If the director concludes that the services continue to 53021
fail to satisfy the standards, the director may request that the 53022
board reallocate the funds for the community mental health 53023
services the agency was to provide to another community mental 53024
health agency whose community mental health services satisfy the 53025
standards. If the board does not reallocate those funds in a 53026
reasonable period of time, the director may withhold state and 53027
federal funds for the community mental health services and 53028
allocate those funds directly to a community mental health agency 53029
whose community mental health services satisfy the standards. 53030

(B) Each community mental health agency seeking certification 53031
of its community mental health services under this section shall 53032
pay a fee for the certification review required by this section. 53033
Fees shall be paid into the sale of goods and services fund 53034
created pursuant to section 5119.161 of the Revised Code. 53035

(C) The director shall adopt rules in accordance with Chapter 53036
119. of the Revised Code to implement this section. The rules 53037
shall do all of the following: 53038

(1) Establish certification standards for community mental 53039
health services, including assertive community treatment and 53040
intensive home-based mental health services, that are consistent 53041
with nationally recognized applicable standards and facilitate 53042
participation in federal assistance programs. The rules shall 53043
include as certification standards only requirements that improve 53044
the quality of services or the health and safety of clients of 53045
community mental health services. The standards shall address at a 53046
minimum all of the following: 53047

(a) Reporting major unusual incidents to the director;	53048
(b) Procedures for applicants for and clients of community mental health services to file grievances and complaints;	53049 53050
(c) Seclusion;	53051
(d) Restraint;	53052
(e) Development of written policies addressing the rights of clients, including all of the following:	53053 53054
(i) The right to a copy of the written policies addressing client rights;	53055 53056
(ii) The right at all times to be treated with consideration and respect for the client's privacy and dignity;	53057 53058
(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;	53059 53060 53061 53062
(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.	53063 53064 53065 53066 53067
(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;	53068 53069 53070
(3) Establish the process for certification of community mental health services;	53071 53072
(4) Set the amount of certification review fees based on a portion of the cost of performing the review;	53073 53074
(5) Specify the type of notice and hearing to be provided prior to a decision on whether to reallocate funds.	53075 53076

(D) The rules adopted under division (C)(1) of this section 53077
to establish certification standards for assertive community 53078
treatment and intensive home-based mental health services shall be 53079
adopted not later than July 1, 2004. 53080

Sec. 5120.52. The department of rehabilitation and correction 53081
may enter into a contract ~~with a political subdivision in~~ under 53082
which a state correctional institution ~~is located under which the~~ 53083
~~institution will provide sewage treatment services for the~~ 53084
~~political subdivision if the institution~~ that has a water or 53085
sewage treatment facility with sufficient excess capacity to 53086
provide ~~the water or sewage treatment services~~ will provide the 53087
services for the other contracting party. The 53088

~~Any such~~ contract shall include all of the following that 53089
apply: 53090

(A) Limitations on the quantity of sewage that the facility 53091
will accept ~~that~~ which are compatible with the needs of the state 53092
correctional institution; 53093

(B) Limitations on the quantity of potable water that the 53094
facility will provide which are compatible with the needs of the 53095
state correctional institution; 53096

(C) The bases for calculating reasonable rates to be charged 53097
the ~~political subdivision~~ contracting party for potable water or 53098
sewage treatment services and for adjusting the rates; 53099

~~(C)~~(D) All other provisions the department considers 53100
necessary or proper to protect the interests of the state in the 53101
facility and the purpose for which it was constructed. 53102

All amounts due the department under the contract shall be 53103
paid to the department by the ~~political subdivision~~ contracting 53104
party at the times specified in the contract. The department shall 53105
deposit all ~~such~~ of those amounts in the state treasury to the 53106

credit of the correctional institution water and sewage treatment 53107
facility services fund, which is hereby created. The fund shall be 53108
used by the department to pay costs associated with operating and 53109
maintaining the water and sewage treatment ~~facility~~ facilities. 53110

Sec. 5123.01. As used in this chapter: 53111

(A) "Chief medical officer" means the licensed physician 53112
appointed by the managing officer of an institution for the 53113
mentally retarded with the approval of the director of mental 53114
retardation and developmental disabilities to provide medical 53115
treatment for residents of the institution. 53116

(B) "Chief program director" means a person with special 53117
training and experience in the diagnosis and management of the 53118
mentally retarded, certified according to division (C) of this 53119
section in at least one of the designated fields, and appointed by 53120
the managing officer of an institution for the mentally retarded 53121
with the approval of the director to provide habilitation and care 53122
for residents of the institution. 53123

(C) "Comprehensive evaluation" means a study, including a 53124
sequence of observations and examinations, of a person leading to 53125
conclusions and recommendations formulated jointly, with 53126
dissenting opinions if any, by a group of persons with special 53127
training and experience in the diagnosis and management of persons 53128
with mental retardation or a developmental disability, which group 53129
shall include individuals who are professionally qualified in the 53130
fields of medicine, psychology, and social work, together with 53131
such other specialists as the individual case may require. 53132

(D) "Education" means the process of formal training and 53133
instruction to facilitate the intellectual and emotional 53134
development of residents. 53135

(E) "Habilitation" means the process by which the staff of 53136

the institution assists the resident in acquiring and maintaining 53137
those life skills that enable the resident to cope more 53138
effectively with the demands of the resident's own person and of 53139
the resident's environment and in raising the level of the 53140
resident's physical, mental, social, and vocational efficiency. 53141
Habilitation includes but is not limited to programs of formal, 53142
structured education and training. 53143

(F) "Habilitation center services" means services provided by 53144
a habilitation center certified by the department of mental 53145
retardation and developmental disabilities under section 5123.041 53146
of the Revised Code and covered by the medicaid program pursuant 53147
to rules adopted under section 5111.041 of the Revised Code. 53148

(G) "Health officer" means any public health physician, 53149
public health nurse, or other person authorized or designated by a 53150
city or general health district. 53151

(H) "Home and community-based services" means medicaid-funded 53152
home and community-based services provided under a ~~the~~ medicaid 53153
~~component~~ components the department of mental retardation and 53154
developmental disabilities administers pursuant to section 53155
5111.871 of the Revised Code. 53156

(I) "Indigent person" means a person who is unable, without 53157
substantial financial hardship, to provide for the payment of an 53158
attorney and for other necessary expenses of legal representation, 53159
including expert testimony. 53160

(J) "Institution" means a public or private facility, or a 53161
part of a public or private facility, that is licensed by the 53162
appropriate state department and is equipped to provide 53163
residential habilitation, care, and treatment for the mentally 53164
retarded. 53165

(K) "Licensed physician" means a person who holds a valid 53166
certificate issued under Chapter 4731. of the Revised Code 53167

authorizing the person to practice medicine and surgery or 53168
osteopathic medicine and surgery, or a medical officer of the 53169
government of the United States while in the performance of the 53170
officer's official duties. 53171

(L) "Managing officer" means a person who is appointed by the 53172
director of mental retardation and developmental disabilities to 53173
be in executive control of an institution for the mentally 53174
retarded under the jurisdiction of the department. 53175

(M) "Medicaid" has the same meaning as in section 5111.01 of 53176
the Revised Code. 53177

(N) "Medicaid case management services" means case management 53178
services provided to an individual with mental retardation or 53179
other developmental disability that the state medicaid plan 53180
requires. 53181

(O) "Mentally retarded person" means a person having 53182
significantly subaverage general intellectual functioning existing 53183
concurrently with deficiencies in adaptive behavior, manifested 53184
during the developmental period. 53185

(P) "Mentally retarded person subject to institutionalization 53186
by court order" means a person eighteen years of age or older who 53187
is at least moderately mentally retarded and in relation to whom, 53188
because of the person's retardation, either of the following 53189
conditions exist: 53190

(1) The person represents a very substantial risk of physical 53191
impairment or injury to self as manifested by evidence that the 53192
person is unable to provide for and is not providing for the 53193
person's most basic physical needs and that provision for those 53194
needs is not available in the community; 53195

(2) The person needs and is susceptible to significant 53196
habilitation in an institution. 53197

(Q) "A person who is at least moderately mentally retarded" 53198
means a person who is found, following a comprehensive evaluation, 53199
to be impaired in adaptive behavior to a moderate degree and to be 53200
functioning at the moderate level of intellectual functioning in 53201
accordance with standard measurements as recorded in the most 53202
current revision of the manual of terminology and classification 53203
in mental retardation published by the American association on 53204
mental retardation. 53205

(R) As used in this division, "substantial functional 53206
limitation," "developmental delay," and "established risk" have 53207
the meanings established pursuant to section 5123.011 of the 53208
Revised Code. 53209

"Developmental disability" means a severe, chronic disability 53210
that is characterized by all of the following: 53211

(1) It is attributable to a mental or physical impairment or 53212
a combination of mental and physical impairments, other than a 53213
mental or physical impairment solely caused by mental illness as 53214
defined in division (A) of section 5122.01 of the Revised Code. 53215

(2) It is manifested before age twenty-two. 53216

(3) It is likely to continue indefinitely. 53217

(4) It results in one of the following: 53218

(a) In the case of a person under three years of age, at 53219
least one developmental delay or an established risk; 53220

(b) In the case of a person at least three years of age but 53221
under six years of age, at least two developmental delays or an 53222
established risk; 53223

(c) In the case of a person six years of age or older, a 53224
substantial functional limitation in at least three of the 53225
following areas of major life activity, as appropriate for the 53226
person's age: self-care, receptive and expressive language, 53227

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.

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

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

(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 financial 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 assistance, care, or support at the expense of the other state or its subdivisions. For the purpose of determining the legal settlement of a person who is living in a public or private institution or in a home subject to licensing by the department of job and family services, the department of mental health, or the department of mental retardation and developmental disabilities, the residence of the person shall be considered as though the person were residing in the county in which the person was living prior to the person's entrance into the institution or home.

Settlement once acquired shall continue until a person has been 53260
continuously absent from Ohio for a period of one year or has 53261
acquired a legal residence in another state. A woman who marries a 53262
man with legal settlement in any county immediately acquires the 53263
settlement of her husband. The legal settlement of a minor is that 53264
of the parents, surviving parent, sole parent, parent who is 53265
designated the residential parent and legal custodian by a court, 53266
other adult having permanent custody awarded by a court, or 53267
guardian of the person of the minor, provided that: 53268

(1) A minor female who marries shall be considered to have 53269
the legal settlement of her husband and, in the case of death of 53270
her husband or divorce, she shall not thereby lose her legal 53271
settlement obtained by the marriage. 53272

(2) A minor male who marries, establishes a home, and who has 53273
resided in this state for one year without receiving general 53274
assistance prior to July 17, 1995, under former Chapter 5113. of 53275
the Revised Code, ~~disability~~ financial assistance under Chapter 53276
5115. of the Revised Code, or assistance from a private agency 53277
that maintains records of assistance given shall be considered to 53278
have obtained a legal settlement in this state. 53279

(3) The legal settlement of a child under eighteen years of 53280
age who is in the care or custody of a public or private child 53281
caring agency shall not change if the legal settlement of the 53282
parent changes until after the child has been in the home of the 53283
parent for a period of one year. 53284

No person, adult or minor, may establish a legal settlement 53285
in this state for the purpose of gaining admission to any state 53286
institution. 53287

(V)(1) "Resident" means, subject to division (R)(2) of this 53288
section, a person who is admitted either voluntarily or 53289
involuntarily to an institution or other facility pursuant to 53290

section 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code subsequent to a finding of not guilty by reason of insanity or incompetence to stand trial or under this chapter who is under observation or receiving habilitation and care in an institution.

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

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

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

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

(Z) "Court" means the probate division of the court of common pleas.

Sec. 5123.051. (A) If the department of mental retardation and developmental disabilities determines ~~pursuant to an audit conducted under section 5123.05 of the Revised Code or a reconciliation conducted under section 5123.18 or 5111.252 of the Revised Code~~ that money is owed the state by a ~~provider of a~~

~~service person~~ or ~~program~~ government entity, the department may 53321
enter into a payment agreement with the ~~provider~~ person or 53322
government entity for collection of the money owed the state. The 53323
agreement shall include the following: 53324

(1) A schedule of installment payments whereby the money owed 53325
the state is to be paid in full within a reasonable period ~~not to~~ 53326
~~exceed one year~~; 53327

(2) A provision that the ~~provider may pay~~ the entire balance 53328
owed may be paid at any time during the term of the agreement; 53329

(3) A provision that if any installment is not paid in full 53330
within forty-five days after it is due, the entire balance owed is 53331
immediately due and payable; 53332

(4) Any other terms and conditions that are agreed to by the 53333
department and the ~~provider~~ person or government entity. 53334

(B) The department may include a provision in a payment 53335
agreement that requires the ~~provider to pay~~ payment of interest on 53336
the money owed the state. The department, in its discretion, shall 53337
determine whether to require the payment of interest and, if it so 53338
requires, the rate of interest. Neither the obligation to pay 53339
interest nor the rate of interest is subject to negotiation 53340
between the department and the ~~provider~~ person or government 53341
entity. 53342

(C) If ~~the provider fails to pay~~ any installment is not paid 53343
in full within forty-five days after its due date, the department 53344
shall certify the entire balance owed to the attorney general for 53345
collection under section 131.02 of the Revised Code. ~~The To~~ 53346
satisfy a judgment secured by the attorney general, the department 53347
may withhold funds from any payments ~~made~~ it makes to a ~~provider~~ 53348
~~under section 5123.18 or 5111.252 of the Revised Code to satisfy a~~ 53349
~~judgment secured by the attorney general~~ person or government 53350
entity. 53351

(D) The purchase of service fund is hereby created. Money 53352
credited to the fund shall be used solely for purposes of section 53353
5123.05 of the Revised Code. 53354

Sec. 5123.19. (A) As used in this section and in sections 53355
5123.191, 5123.194, 5123.196, 5123.197, 5123.198, 5123.1910, and 53356
5123.20 of the Revised Code: 53357

(1)(a) "Residential facility" means a home or facility in 53358
which a mentally retarded or developmentally disabled person 53359
resides, except the home of a relative or legal guardian in which 53360
a mentally retarded or developmentally disabled person resides, a 53361
respite care home certified under section 5126.05 of the Revised 53362
Code, a county home or district home operated pursuant to Chapter 53363
5155. of the Revised Code, or a dwelling in which the only 53364
mentally retarded or developmentally disabled residents are in an 53365
independent living arrangement or are being provided supported 53366
living. 53367

(b) "Intermediate care facility for the mentally retarded" 53368
means a residential facility that is considered an intermediate 53369
care facility for the mentally retarded for the purposes of 53370
Chapter 5111. of the Revised Code. 53371

(2) "Political subdivision" means a municipal corporation, 53372
county, or township. 53373

(3) "Independent living arrangement" means an arrangement in 53374
which a mentally retarded or developmentally disabled person 53375
resides in an individualized setting chosen by the person or the 53376
person's guardian, which is not dedicated principally to the 53377
provision of residential services for mentally retarded or 53378
developmentally disabled persons, and for which no financial 53379
support is received for rendering such service from any 53380
governmental agency by a provider of residential services. 53381

(4) "Supported living" has the same meaning as in section 53382
5126.01 of the Revised Code. 53383

(5) "Licensee" means the person or government agency that has 53384
applied for a license to operate a residential facility and to 53385
which the license was issued under this section. 53386

(B) Every person or government agency desiring to operate a 53387
residential facility shall apply for licensure of the facility to 53388
the director of mental retardation and developmental disabilities 53389
unless the residential facility is subject to section 3721.02, 53390
3722.04, 5103.03, or 5119.20 of the Revised Code. Notwithstanding 53391
Chapter 3721. of the Revised Code, a nursing home that is 53392
certified as an intermediate care facility for the mentally 53393
retarded under Title XIX of the "Social Security Act," 79 Stat. 53394
286 (1965), 42 U.S.C.A. 1396, as amended, shall apply for 53395
licensure of the portion of the home that is certified as an 53396
intermediate care facility for the mentally retarded. 53397

(C) The Subject to section 5123.196 of the Revised Code, the 53398
director of mental retardation and developmental disabilities 53399
shall license the operation of residential facilities. An initial 53400
license shall be issued for a period that does not exceed one 53401
year, unless the director denies the license under division (D) of 53402
this section. A license shall be renewed for a period that does 53403
not exceed three years, unless the director refuses to renew the 53404
license under division (D) of this section. The director, when 53405
issuing or renewing a license, shall specify the period for which 53406
the license is being issued or renewed. A license remains valid 53407
for the length of the licensing period specified by the director, 53408
unless the license is terminated, revoked, or voluntarily 53409
surrendered. 53410

(D) If it is determined that an applicant or licensee is not 53411
in compliance with a provision of this chapter that applies to 53412

residential facilities or the rules adopted under such a 53413
provision, the director may deny issuance of a license, refuse to 53414
renew a license, terminate a license, revoke a license, issue an 53415
order for the suspension of admissions to a facility, issue an 53416
order for the placement of a monitor at a facility, issue an order 53417
for the immediate removal of residents, or take any other action 53418
the director considers necessary consistent with the director's 53419
authority under this chapter regarding residential facilities. In 53420
the director's selection and administration of the sanction to be 53421
imposed, all of the following apply: 53422

(1) The director may deny, refuse to renew, or revoke a 53423
license, if the director determines that the applicant or licensee 53424
has demonstrated a pattern of serious noncompliance or that a 53425
violation creates a substantial risk to the health and safety of 53426
residents of a residential facility. 53427

(2) The director may terminate a license if more than twelve 53428
consecutive months have elapsed since the residential facility was 53429
last occupied by a resident or a notice required by division (J) 53430
of this section is not given. 53431

(3) The director may issue an order for the suspension of 53432
admissions to a facility for any violation that may result in 53433
sanctions under division (D)(1) of this section and for any other 53434
violation specified in rules adopted under division (G)(2) of this 53435
section. If the suspension of admissions is imposed for a 53436
violation that may result in sanctions under division (D)(1) of 53437
this section, the director may impose the suspension before 53438
providing an opportunity for an adjudication under Chapter 119. of 53439
the Revised Code. The director shall lift an order for the 53440
suspension of admissions when the director determines that the 53441
violation that formed the basis for the order has been corrected. 53442

(4) The director may order the placement of a monitor at a 53443
residential facility for any violation specified in rules adopted 53444

under division (G)(2) of this section. The director shall lift the 53445
order when the director determines that the violation that formed 53446
the basis for the order has been corrected. 53447

(5) If the director determines that two or more residential 53448
facilities owned or operated by the same person or government 53449
entity are not being operated in compliance with a provision of 53450
this chapter that applies to residential facilities or the rules 53451
adopted under such a provision, and the director's findings are 53452
based on the same or a substantially similar action, practice, 53453
circumstance, or incident that creates a substantial risk to the 53454
health and safety of the residents, the director shall conduct a 53455
survey as soon as practicable at each residential facility owned 53456
or operated by that person or government entity. The director may 53457
take any action authorized by this section with respect to any 53458
facility found to be operating in violation of a provision of this 53459
chapter that applies to residential facilities or the rules 53460
adopted under such a provision. 53461

(6) When the director initiates license revocation 53462
proceedings, no opportunity for submitting a plan of correction 53463
shall be given. The director shall notify the licensee by letter 53464
of the initiation of such proceedings. The letter shall list the 53465
deficiencies of the residential facility and inform the licensee 53466
that no plan of correction will be accepted. The director shall 53467
also notify each affected resident, the resident's guardian if the 53468
resident is an adult for whom a guardian has been appointed, the 53469
resident's parent or guardian if the resident is a minor, and the 53470
county board of mental retardation and developmental disabilities. 53471

(7) Pursuant to rules which shall be adopted in accordance 53472
with Chapter 119. of the Revised Code, the director may order the 53473
immediate removal of residents from a residential facility 53474
whenever conditions at the facility present an immediate danger of 53475
physical or psychological harm to the residents. 53476

(8) In determining whether a residential facility is being operated in compliance with a provision of this chapter that applies to residential facilities or the rules adopted under such a provision, or whether conditions at a residential facility present an immediate danger of physical or psychological harm to the residents, the director may rely on information obtained by a county board of mental retardation and developmental disabilities or other governmental agencies.

(9) In proceedings initiated to deny, refuse to renew, or revoke licenses, the director may deny, refuse to renew, or revoke a license regardless of whether some or all of the deficiencies that prompted the proceedings have been corrected at the time of the hearing.

(E) The director shall establish a program under which public notification may be made when the director has initiated license revocation proceedings or has issued an order for the suspension of admissions, placement of a monitor, or removal of residents. The director shall adopt rules in accordance with Chapter 119. of the Revised Code to implement this division. The rules shall establish the procedures by which the public notification will be made and specify the circumstances for which the notification must be made. The rules shall require that public notification be made if the director has taken action against the facility in the eighteen-month period immediately preceding the director's latest action against the facility and the latest action is being taken for the same or a substantially similar violation of a provision of this chapter that applies to residential facilities or the rules adopted under such a provision. The rules shall specify a method for removing or amending the public notification if the director's action is found to have been unjustified or the violation at the residential facility has been corrected.

(F)(1) Except as provided in division (F)(2) of this section,

appeals from proceedings initiated to impose a sanction under 53509
division (D) of this section shall be conducted in accordance with 53510
Chapter 119. of the Revised Code. 53511

(2) Appeals from proceedings initiated to order the 53512
suspension of admissions to a facility shall be conducted in 53513
accordance with Chapter 119. of the Revised Code, unless the order 53514
was issued before providing an opportunity for an adjudication, in 53515
which case all of the following apply: 53516

(a) The licensee may request a hearing not later than ten 53517
days after receiving the notice specified in section 119.07 of the 53518
Revised Code. 53519

(b) If a timely request for a hearing is made, the hearing 53520
shall commence not later than thirty days after the department 53521
receives the request. 53522

(c) After commencing, the hearing shall continue 53523
uninterrupted, except for Saturdays, Sundays, and legal holidays, 53524
unless other interruptions are agreed to by the licensee and the 53525
director. 53526

(d) If the hearing is conducted by a hearing examiner, the 53527
hearing examiner shall file a report and recommendations not later 53528
than ten days after the close of the hearing. 53529

(e) Not later than five days after the hearing examiner files 53530
the report and recommendations, the licensee may file objections 53531
to the report and recommendations. 53532

(f) Not later than fifteen days after the hearing examiner 53533
files the report and recommendations, the director shall issue an 53534
order approving, modifying, or disapproving the report and 53535
recommendations. 53536

(g) Notwithstanding the pendency of the hearing, the director 53537
shall lift the order for the suspension of admissions when the 53538

director determines that the violation that formed the basis for 53539
the order has been corrected. 53540

(G) In accordance with Chapter 119. of the Revised Code, the 53541
director shall adopt and may amend and rescind rules for licensing 53542
and regulating the operation of residential facilities, including 53543
intermediate care facilities for the mentally retarded. The rules 53544
for intermediate care facilities for the mentally retarded may 53545
differ from those for other residential facilities. The rules 53546
shall establish and specify the following: 53547

(1) Procedures and criteria for issuing and renewing 53548
licenses, including procedures and criteria for determining the 53549
length of the licensing period that the director must specify for 53550
each license when it is issued or renewed; 53551

(2) Procedures and criteria for denying, refusing to renew, 53552
terminating, and revoking licenses and for ordering the suspension 53553
of admissions to a facility, placement of a monitor at a facility, 53554
and the immediate removal of residents from a facility; 53555

(3) Fees for issuing and renewing licenses; 53556

(4) Procedures for surveying residential facilities; 53557

(5) Requirements for the training of residential facility 53558
personnel; 53559

(6) Classifications for the various types of residential 53560
facilities; 53561

(7) Certification procedures for licensees and management 53562
contractors that the director determines are necessary to ensure 53563
that they have the skills and qualifications to properly operate 53564
or manage residential facilities; 53565

(8) The maximum number of persons who may be served in a 53566
particular type of residential facility; 53567

(9) Uniform procedures for admission of persons to and 53568

transfers and discharges of persons from residential facilities; 53569

(10) Other standards for the operation of residential 53570
facilities and the services provided at residential facilities; 53571

(11) Procedures for waiving any provision of any rule adopted 53572
under this section. 53573

(H) Before issuing a license, the director of the department 53574
or the director's designee shall conduct a survey of the 53575
residential facility for which application is made. The director 53576
or the director's designee shall conduct a survey of each licensed 53577
residential facility at least once during the period the license 53578
is valid and may conduct additional inspections as needed. A 53579
survey includes but is not limited to an on-site examination and 53580
evaluation of the residential facility, its personnel, and the 53581
services provided there. 53582

In conducting surveys, the director or the director's 53583
designee shall be given access to the residential facility; all 53584
records, accounts, and any other documents related to the 53585
operation of the facility; the licensee; the residents of the 53586
facility; and all persons acting on behalf of, under the control 53587
of, or in connection with the licensee. The licensee and all 53588
persons on behalf of, under the control of, or in connection with 53589
the licensee shall cooperate with the director or the director's 53590
designee in conducting the survey. 53591

Following each survey, unless the director initiates a 53592
license revocation proceeding, the director or the director's 53593
designee shall provide the licensee with a report listing any 53594
deficiencies, specifying a timetable within which the licensee 53595
shall submit a plan of correction describing how the deficiencies 53596
will be corrected, and, when appropriate, specifying a timetable 53597
within which the licensee must correct the deficiencies. After a 53598
plan of correction is submitted, the director or the director's 53599

designee shall approve or disapprove the plan. A copy of the 53600
report and any approved plan of correction shall be provided to 53601
any person who requests it. 53602

The director shall initiate disciplinary action against any 53603
department employee who notifies or causes the notification to any 53604
unauthorized person of an unannounced survey of a residential 53605
facility by an authorized representative of the department. 53606

(I) In addition to any other information which may be 53607
required of applicants for a license pursuant to this section and 53608
except as provided in section 5123.1910 of the Revised Code, the 53609
director shall require each applicant to provide a copy of an 53610
approved plan for a proposed residential facility pursuant to 53611
section 5123.042 of the Revised Code. This division does not apply 53612
to renewal of a license. 53613

(J) A licensee shall notify the owner of the building in 53614
which the licensee's residential facility is located of any 53615
significant change in the identity of the licensee or management 53616
contractor before the effective date of the change if the licensee 53617
is not the owner of the building. 53618

Pursuant to rules which shall be adopted in accordance with 53619
Chapter 119. of the Revised Code, the director may require 53620
notification to the department of any significant change in the 53621
ownership of a residential facility or in the identity of the 53622
licensee or management contractor. If the director determines that 53623
a significant change of ownership is proposed, the director shall 53624
consider the proposed change to be an application for development 53625
by a new operator pursuant to section 5123.042 of the Revised Code 53626
and shall advise the applicant within sixty days of such 53627
notification that the current license shall continue in effect or 53628
a new license will be required pursuant to this section. If the 53629
director requires a new license, the director shall permit the 53630
facility to continue to operate under the current license until 53631

the new license is issued, unless the current license is revoked, 53632
refused to be renewed, or terminated in accordance with Chapter 53633
119. of the Revised Code. 53634

(K) A county board of mental retardation and developmental 53635
disabilities, the legal rights service, and any interested person 53636
may file complaints alleging violations of statute or department 53637
rule relating to residential facilities with the department. All 53638
complaints shall be in writing and shall state the facts 53639
constituting the basis of the allegation. The department shall not 53640
reveal the source of any complaint unless the complainant agrees 53641
in writing to waive the right to confidentiality or until so 53642
ordered by a court of competent jurisdiction. 53643

The department shall adopt rules in accordance with Chapter 53644
119. of the Revised Code establishing procedures for the receipt, 53645
referral, investigation, and disposition of complaints filed with 53646
the department under this division. 53647

(L) The department shall establish procedures for the 53648
notification of interested parties of the transfer or interim care 53649
of residents from residential facilities that are closing or are 53650
losing their license. 53651

(M) Before issuing a license under this section to a 53652
residential facility that will accommodate at any time more than 53653
one mentally retarded or developmentally disabled individual, the 53654
director shall, by first class mail, notify the following: 53655

(1) If the facility will be located in a municipal 53656
corporation, the clerk of the legislative authority of the 53657
municipal corporation; 53658

(2) If the facility will be located in unincorporated 53659
territory, the clerk of the appropriate board of county 53660
commissioners and the clerk of the appropriate board of township 53661
trustees. 53662

The director shall not issue the license for ten days after mailing the notice, excluding Saturdays, Sundays, and legal holidays, in order to give the notified local officials time in which to comment on the proposed issuance.

Any legislative authority of a municipal corporation, board of county commissioners, or board of township trustees that receives notice under this division of the proposed issuance of a license for a residential facility may comment on it in writing to the director within ten days after the director mailed the notice, excluding Saturdays, Sundays, and legal holidays. If the director receives written comments from any notified officials within the specified time, the director shall make written findings concerning the comments and the director's decision on the issuance of the license. If the director does not receive written comments from any notified local officials within the specified time, the director shall continue the process for issuance of the license.

(N) Any person may operate a licensed residential facility that provides room and board, personal care, habilitation services, and supervision in a family setting for at least six but not more than eight persons with mental retardation or a developmental disability as a permitted use in any residential district or zone, including any single-family residential district or zone, of any political subdivision. These residential facilities may be required to comply with area, height, yard, and architectural compatibility requirements that are uniformly imposed upon all single-family residences within the district or zone.

(O) Any person may operate a licensed residential facility that provides room and board, personal care, habilitation services, and supervision in a family setting for at least nine but not more than sixteen persons with mental retardation or a

developmental disability as a permitted use in any multiple-family residential district or zone of any political subdivision, except that a political subdivision that has enacted a zoning ordinance or resolution establishing planned unit development districts may exclude these residential facilities from such districts, and a political subdivision that has enacted a zoning ordinance or resolution may regulate these residential facilities in multiple-family residential districts or zones as a conditionally permitted use or special exception, in either case, under reasonable and specific standards and conditions set out in the zoning ordinance or resolution to:

(1) Require the architectural design and site layout of the residential facility and the location, nature, and height of any walls, screens, and fences to be compatible with adjoining land uses and the residential character of the neighborhood;

(2) Require compliance with yard, parking, and sign regulation;

(3) Limit excessive concentration of these residential facilities.

(P) This section does not prohibit a political subdivision from applying to residential facilities nondiscriminatory regulations requiring compliance with health, fire, and safety regulations and building standards and regulations.

(Q) Divisions (N) and (O) of this section are not applicable to municipal corporations that had in effect on June 15, 1977, an ordinance specifically permitting in residential zones licensed residential facilities by means of permitted uses, conditional uses, or special exception, so long as such ordinance remains in effect without any substantive modification.

(R)(1) The director may issue an interim license to operate a residential facility to an applicant for a license under this

section if either of the following is the case: 53726

(a) The director determines that an emergency exists 53727
requiring immediate placement of persons in a residential 53728
facility, that insufficient licensed beds are available, and that 53729
the residential facility is likely to receive a permanent license 53730
under this section within thirty days after issuance of the 53731
interim license. 53732

(b) The director determines that the issuance of an interim 53733
license is necessary to meet a temporary need for a residential 53734
facility. 53735

(2) To be eligible to receive an interim license, an 53736
applicant must meet the same criteria that must be met to receive 53737
a permanent license under this section, except for any differing 53738
procedures and time frames that may apply to issuance of a 53739
permanent license. 53740

(3) An interim license shall be valid for thirty days and may 53741
be renewed by the director for a period not to exceed one hundred 53742
fifty days. 53743

(4) The director shall adopt rules in accordance with Chapter 53744
119. of the Revised Code as the director considers necessary to 53745
administer the issuance of interim licenses. 53746

(S) Notwithstanding rules adopted pursuant to this section 53747
establishing the maximum number of persons who may be served in a 53748
particular type of residential facility, a residential facility 53749
shall be permitted to serve the same number of persons being 53750
served by the facility on the effective date of such rules or the 53751
number of persons for which the facility is authorized pursuant to 53752
a current application for a certificate of need with a letter of 53753
support from the department of mental retardation and 53754
developmental disabilities and which is in the review process 53755
prior to April 4, 1986. 53756

(T) The director or the director's designee may enter at any 53757
time, for purposes of investigation, any home, facility, or other 53758
structure that has been reported to the director or that the 53759
director has reasonable cause to believe is being operated as a 53760
residential facility without a license issued under this section. 53761

The director may petition the court of common pleas of the 53762
county in which an unlicensed residential facility is located for 53763
an order enjoining the person or governmental agency operating the 53764
facility from continuing to operate without a license. The court 53765
may grant the injunction on a showing that the person or 53766
governmental agency named in the petition is operating a 53767
residential facility without a license. The court may grant the 53768
injunction, regardless of whether the residential facility meets 53769
the requirements for receiving a license under this section. 53770

(U) Except as provided in section 5123.198 of the Revised 53771
Code, whenever a resident of a residential facility is committed 53772
to a state-operated intermediate care facility for the mentally 53773
retarded pursuant to sections 5123.71 to 5123.76 of the Revised 53774
Code, the department shall reduce by one the maximum number of 53775
residents for which the facility is licensed. 53776

Sec. 5123.196. (A) Except as provided in division (E) of this 53777
section, the director of mental retardation and developmental 53778
disabilities shall not issue a license under section 5123.19 of 53779
the Revised Code on or after July 1, 2003, if issuance will result 53780
in there being more beds in all residential facilities licensed 53781
under that section than is permitted under division (B) of this 53782
section. 53783

(B) The maximum number of beds for the purpose of division 53784
(A) of this section shall not exceed ten thousand eight hundred 53785
thirty-eight minus, except as provided in division (C) of this 53786
section, the number of such beds taken out of service on or after 53787

July 1, 2003, pursuant to section 5123.197 of the Revised Code or 53788
because a residential facility license is revoked, terminated, or 53789
not renewed for any reason or is surrendered. 53790

(C) The director is not required to reduce the maximum number 53791
of beds pursuant to division (B) of this section by a bed taken 53792
out of service if the director determines that the bed is needed 53793
to provide services to an individual with mental retardation or a 53794
developmental disability who resided in the residential facility 53795
in which the bed was located. 53796

(D) The director shall maintain an up-to-date written record 53797
of the maximum number of residential facility beds provided for by 53798
division (B) of this section. 53799

(E) If required by section 5123.1910 of the Revised Code to 53800
issue a license under section 5123.19 of the Revised Code, the 53801
director shall issue the license regardless of whether issuance 53802
will result in there being more beds in all residential facilities 53803
licensed under that section than is permitted under division (B) 53804
of this section. 53805

Sec. 5123.197. A licensee shall take out of service as a 53806
residential facility bed any bed located in the facility that is 53807
converted to use for supported living. The number of residential 53808
facility beds a residential facility is licensed to have shall be 53809
reduced by each bed taken out of service under this section. 53810

Sec. 5123.198. (A) Whenever a resident of an intermediate 53811
care facility for the mentally retarded is committed to a 53812
state-operated intermediate care facility for the mentally 53813
retarded pursuant to sections 5123.71 to 5123.76 of the Revised 53814
Code, the department of mental retardation and developmental 53815
disabilities shall reduce by one the number of residents for which 53816
the facility in which the resident resided is licensed, unless the 53817

facility admits an individual who resides in a state-operated 53818
intermediate care facility for the mentally retarded on the date 53819
of the commitment or another individual determined to need the 53820
level of care provided by such a facility and designated by the 53821
department not later than ninety days after the date of the 53822
commitment. 53823

(B) The department of mental retardation and developmental 53824
disabilities may notify the department of job and family services 53825
of any reduction under this section in the number of residents for 53826
which a facility is licensed. On receiving the notice, the 53827
department of job and family services may transfer to the 53828
department of mental retardation and developmental disabilities 53829
the savings in the nonfederal share of medicaid expenditures for 53830
each fiscal year after the year of the commitment to be used for 53831
costs of the resident's care in the state-operated intermediate 53832
care facility for the mentally retarded. In determining the amount 53833
saved, the department of job and family services shall consider 53834
medicaid payments for the remaining residents of the facility in 53835
which the resident resided. 53836

Sec. ~~5111.252~~ 5123.199. (A) As used in this section: 53837

(1) "Contractor" means a person or government agency that has 53838
entered into a contract with the department of mental retardation 53839
and developmental disabilities under this section. 53840

(2) "Government agency" and "residential services" have the 53841
same meanings as in section 5123.18 of the Revised Code. 53842

(3) "Intermediate care facility for the mentally retarded" 53843
has the same meaning as in section 5111.20 of the Revised Code. 53844

(4) "Respite care services" has the same meaning as in 53845
section 5123.171 of the Revised Code. 53846

(B) The department of mental retardation and developmental 53847

disabilities may enter into a contract with a person or government agency to do any of the following:

(1) Provide residential services in an intermediate care facility for the mentally retarded to an individual who meets the criteria for admission to such a facility but is not eligible for assistance under ~~this chapter~~ Chapter 5111. of the Revised Code due to unliquidated assets subject to final probate action;

(2) Provide respite care services in an intermediate care facility for the mentally retarded;

(3) Provide residential services in a facility for which the person or government agency has applied for, but has not received, certification and payment as an intermediate care facility for the mentally retarded if the person or government agency is making a good faith effort to bring the facility into compliance with requirements for certification and payment as an intermediate care facility for the mentally retarded. In assigning payment amounts to such contracts, the department shall take into account costs incurred in attempting to meet certification requirements.

(4) Reimburse an intermediate care facility for the mentally retarded for costs not otherwise reimbursed under ~~this chapter~~ Chapter 5111. of the Revised Code for clothing for individuals who are mentally retarded or developmentally disabled. Reimbursement under such contracts shall not exceed a maximum amount per individual per year specified in rules that the department shall adopt in accordance with Chapter 119. of the Revised Code.

(C) The amount paid to a contractor under divisions (B)(1) to (3) of this section shall not exceed the reimbursement that would be made under ~~this chapter~~ Chapter 5111. of the Revised Code by the department of job and family services for the same goods and services.

(D) The department of mental retardation and developmental

disabilities shall adopt rules as necessary to implement this 53879
section, including rules establishing standards and procedures for 53880
the submission of cost reports by contractors and the department's 53881
conduct of audits and reconciliations regarding the contracts. The 53882
rules shall be adopted in accordance with Chapter 119. of the 53883
Revised Code. 53884

Sec. 5123.1910. (A) The director of mental retardation and 53885
developmental disabilities shall issue one or more residential 53886
facility licenses under section 5123.19 of the Revised Code to an 53887
applicant without requiring the applicant to have plans submitted, 53888
reviewed, or approved under section 5123.042 of the Revised Code 53889
for the residential facility if all of the following requirements 53890
are met: 53891

(1) The applicant satisfies the requirements for the license 53892
established by section 5123.19 of the Revised Code and rules 53893
adopted under that section, other than any rule that requires an 53894
applicant for a residential facility license to have plans 53895
submitted, reviewed, or approved under section 5123.042 of the 53896
Revised Code for the residential facility. 53897

(2) The applicant operates at least one residential facility 53898
licensed under section 5123.19 of the Revised Code on the 53899
effective date of this section. 53900

(3) The applicant provides services to individuals with 53901
mental retardation or a developmental disability who have a 53902
chronic, medically complex, or technology-dependent condition that 53903
requires special supervision or care, the majority of whom 53904
received habilitation services from the applicant before attaining 53905
eighteen years of age. 53906

(4) The applicant has created directly or through a corporate 53907
affiliate a research center that has the mission of funding, 53908
promoting, and carrying on scientific research in the public 53909

interest related to individuals with mental retardation or a 53910
developmental disability for the purpose of improving the lives of 53911
such individuals. 53912

(5) If the applicant seeks two or more residential facility 53913
licenses, the residential facilities for which a license is sought 53914
after the effective date of this section are located on the same 53915
or adjoining property sites. 53916

(6) The residential facilities for which the applicant seeks 53917
licensure have not more than eight beds each and forty-eight beds 53918
total. 53919

(7) The applicant, one or more of the applicant's corporate 53920
affiliates, or both employ or contract for, on a full-time basis, 53921
at least one licensed physician who is certified by the American 53922
board of pediatrics or would be eligible for certification from 53923
that board if the physician passed an examination necessary to 53924
obtain certification from that board. 53925

(8) The applicant, one or more of the applicant's corporate 53926
affiliates, or both have educational facilities suitable for the 53927
instruction of individuals under eighteen years of age with mental 53928
retardation or a developmental disability who have a medically 53929
complex or technology-dependent condition. 53930

(9) The applicant has a policy for giving individuals with 53931
mental retardation or a developmental disability who meet all of 53932
the following conditions priority over all others in admissions to 53933
one of the residential facilities licensed under section 5123.19 53934
of the Revised Code that the applicant operates on the effective 53935
date of this section: 53936

(a) Are under eighteen years of age; 53937

(b) Have a chronic, medically complex, or 53938
technology-dependent condition that requires special supervision 53939
or care; 53940

(c) Are eligible for medicaid; 53941

(d) Reside in a nursing home, as defined in section 3721.01 53942
of the Revised Code, or a hospital, as defined in section 3727.01, 53943
prior to being admitted to the residential facility. 53944

(B) The director shall issue one or more residential facility 53945
licenses under section 5123.19 of the Revised Code to an applicant 53946
who meets all of the requirements of this section regardless of 53947
whether the requirements for approval of a plan for a proposed 53948
residential facility established by rules adopted under section 53949
5123.042 of the Revised Code are met. 53950

Sec. 5123.38. (A) Except as provided in division (B) and (C) 53951
of this section, if an individual receiving supported living or 53952
home and community-based services, as defined in section 5126.01 53953
of the Revised Code, funded by a county board of mental 53954
retardation and developmental disabilities is committed to a 53955
state-operated intermediate care facility for the mentally 53956
retarded pursuant to sections 5123.71 to 5123.76 of the Revised 53957
Code, the department of mental retardation and developmental 53958
disabilities shall use the funds otherwise allocated to the county 53959
board as the nonfederal share of medicaid expenditures for the 53960
individual's care in the state-operated facility. 53961

(B) Division (A) of this section does not apply if the county 53962
board, not later than ninety days after the date of the commitment 53963
of a person receiving supported services, commences funding of 53964
supported living for an individual who resides in a state-operated 53965
intermediate care facility for the mentally retarded on the date 53966
of the commitment or another eligible individual designated by the 53967
department. 53968

(C) Division (A) of this section does not apply if the county 53969
board, not later than ninety days after the date of the commitment 53970

of a person receiving home and community-based services, commences 53971
funding of home and community-based services for an individual who 53972
resides in a state-operated intermediate care facility for the 53973
mentally retarded on the date of the commitment or another 53974
eligible individual designated by the department. 53975

Sec. 5123.60. (A) A legal rights service is hereby created 53976
and established to protect and advocate the rights of mentally ill 53977
persons, mentally retarded persons, developmentally disabled 53978
persons, and other disabled persons who may be represented by the 53979
service pursuant to division (L) of this section; to receive and 53980
act upon complaints concerning institutional and hospital 53981
practices and conditions of institutions for mentally retarded or 53982
developmentally disabled persons and hospitals for the mentally 53983
ill; and to assure that all persons detained, hospitalized, 53984
discharged, or institutionalized, and all persons whose detention, 53985
hospitalization, discharge, or institutionalization is sought or 53986
has been sought under this chapter or Chapter 5122. of the Revised 53987
Code are fully informed of their rights and adequately represented 53988
by counsel in proceedings under this chapter or Chapter 5122. of 53989
the Revised Code and in any proceedings to secure the rights of 53990
those persons. Notwithstanding the definitions of "mentally 53991
retarded person" and "developmentally disabled person" in section 53992
5123.01 of the Revised Code, the legal rights service shall 53993
determine who is a mentally retarded or developmentally disabled 53994
person for purposes of this section and sections 5123.601 to 53995
5123.604 of the Revised Code. 53996

(B) In regard to those persons detained, hospitalized, or 53997
institutionalized under Chapter 5122. of the Revised Code, the 53998
legal rights service shall undertake formal representation only of 53999
those persons who are involuntarily detained, hospitalized, or 54000
institutionalized pursuant to sections 5122.10 to 5122.15 of the 54001
Revised Code, and those voluntarily detained, hospitalized, or 54002

institutionalized who are minors, who have been adjudicated 54003
incompetent, who have been detained, hospitalized, or 54004
institutionalized in a public hospital, or who have requested 54005
representation by the legal rights service. If a person referred 54006
to in division (A) of this section voluntarily requests in writing 54007
that the legal rights service terminate participation in the 54008
person's case, such involvement shall cease. 54009

(C) Any person voluntarily hospitalized or institutionalized 54010
in a public hospital under division (A) of section 5122.02 of the 54011
Revised Code, after being fully informed of the person's rights 54012
under division (A) of this section, may, by written request, waive 54013
assistance by the legal rights service if the waiver is knowingly 54014
and intelligently made, without duress or coercion. 54015

The waiver may be rescinded at any time by the voluntary 54016
patient or resident, or by the voluntary patient's or resident's 54017
legal guardian. 54018

(D)(1) The legal rights service commission is hereby created 54019
for the purposes of appointing an administrator of the legal 54020
rights service, advising the administrator, assisting the 54021
administrator in developing a budget, advising the administrator 54022
in establishing and annually reviewing a strategic plan, creating 54023
a procedure for filing and determination of grievances against the 54024
legal rights service, and establishing general policy guidelines, 54025
including guidelines for the commencement of litigation, for the 54026
legal rights service. The commission may adopt rules to carry 54027
these purposes into effect and may receive and act upon appeals of 54028
personnel decisions by the administrator. 54029

(2) The commission shall consist of seven members. One 54030
member, who shall serve as chairperson, shall be appointed by the 54031
chief justice of the supreme court, three members shall be 54032
appointed by the speaker of the house of representatives, and 54033
three members shall be appointed by the president of the senate. 54034

At least two members shall have experience in the field of 54035
developmental disabilities, and at least two members shall have 54036
experience in the field of mental health. No member shall be a 54037
provider or related to a provider of services to mentally 54038
retarded, developmentally disabled, or mentally ill persons. 54039

(3) Terms of office of the members of the commission shall be 54040
for three years, each term ending on the same day of the month of 54041
the year as did the term which it succeeds. Each member shall 54042
serve subsequent to the expiration of the member's term until a 54043
successor is appointed and qualifies, or until sixty days has 54044
elapsed, whichever occurs first. No member shall serve more than 54045
two consecutive terms. 54046

All vacancies in the membership of the commission shall be 54047
filled in the manner prescribed for regular appointments to the 54048
commission and shall be limited to the unexpired terms. 54049

(4) The commission shall meet at least four times each year. 54050
Members shall be reimbursed for their necessary and actual 54051
expenses incurred in the performance of their official duties. 54052

(5) The administrator of the legal rights service shall be 54053
~~appointed for a five year term, subject to removal for mental or~~ 54054
~~physical incapacity to perform the duties of the office,~~ 54055
~~conviction of violation of any law relating to the administrator's~~ 54056
~~powers and duties, or other good cause shown~~ serve at the pleasure 54057
of the commission. 54058

The administrator shall be a person who has had special 54059
training and experience in the type of work with which the legal 54060
rights service is charged. If the administrator is not an 54061
attorney, the administrator shall seek legal counsel when 54062
appropriate. The salary of the administrator shall be established 54063
in accordance with section 124.14 of the Revised Code. 54064

(E) The legal rights service shall be completely independent 54065

of the department of mental health and the department of mental 54066
retardation and developmental disabilities and, notwithstanding 54067
section 109.02 of the Revised Code, shall also be independent of 54068
the office of the attorney general. The administrator of the legal 54069
rights service, staff, and attorneys designated by the 54070
administrator to represent persons detained, hospitalized, or 54071
institutionalized under this chapter or Chapter 5122. of the 54072
Revised Code shall have ready access to the following: 54073

(1) During normal business hours and at other reasonable 54074
times, all records relating to expenditures of state and federal 54075
funds or to the commitment, care, treatment, and habilitation of 54076
all persons represented by the legal rights service, including 54077
those who may be represented pursuant to division (L) of this 54078
section, or persons detained, hospitalized, institutionalized, or 54079
receiving services under this chapter or Chapter 340., 5119., 54080
5122., or 5126. of the Revised Code that are records maintained by 54081
the following entities providing services for those persons: 54082
departments; institutions; hospitals; community residential 54083
facilities; boards of alcohol, drug addiction, and mental health 54084
services; county boards of mental retardation and developmental 54085
disabilities; contract agencies of those boards; and any other 54086
entity providing services to persons who may be represented by the 54087
service pursuant to division (L) of this section; 54088

(2) Any records maintained in computerized data banks of the 54089
departments or boards or, in the case of persons who may be 54090
represented by the service pursuant to division (L) of this 54091
section, any other entity that provides services to those persons; 54092

(3) During their normal working hours, personnel of the 54093
departments, facilities, boards, agencies, institutions, 54094
hospitals, and other service-providing entities; 54095

(4) At any time, all persons detained, hospitalized, or 54096
institutionalized; persons receiving services under this chapter 54097

or Chapter 340., 5119., 5122., or 5126. of the Revised Code; and 54098
persons who may be represented by the service pursuant to division 54099
(L) of this section. 54100

(F) The administrator of the legal rights service shall do 54101
the following: 54102

(1) Administer and organize the work of the legal rights 54103
service and establish administrative or geographic divisions as 54104
the administrator considers necessary, proper, and expedient; 54105

(2) Adopt and promulgate rules that are not in conflict with 54106
rules adopted by the commission and prescribe duties for the 54107
efficient conduct of the business and general administration of 54108
the legal rights service; 54109

(3) Appoint and discharge employees, and hire experts, 54110
consultants, advisors, or other professionally qualified persons 54111
as the administrator considers necessary to carry out the duties 54112
of the legal rights service; 54113

(4) Apply for and accept grants of funds, and accept 54114
charitable gifts and bequests; 54115

(5) Prepare and submit a budget to the general assembly for 54116
the operation of the legal rights service. At least thirty days 54117
prior to submitting the budget to the general assembly, the 54118
administrator shall provide a copy of the budget to the commission 54119
for review and comment. When submitting the budget to the general 54120
assembly, the administrator shall include a copy of any written 54121
comments returned by the commission to the administrator. 54122

(6) Enter into contracts and make expenditures necessary for 54123
the efficient operation of the legal rights service; 54124

(7) Annually prepare a report of activities and submit copies 54125
of the report to the governor, the chief justice of the supreme 54126
court, the president of the senate, the speaker of the house of 54127

representatives, the director of mental health, and the director 54128
of mental retardation and developmental disabilities, and make the 54129
report available to the public; 54130

(8) Upon request of the commission or of the chairperson of 54131
the commission, report to the commission on specific litigation 54132
issues or activities. 54133

(G)(1) The legal rights service may act directly or contract 54134
with other organizations or individuals for the provision of the 54135
services envisioned under this section. 54136

(2) Whenever possible, the administrator shall attempt to 54137
facilitate the resolution of complaints through administrative 54138
channels. Subject to division (G)(3) of this section, if attempts 54139
at administrative resolution prove unsatisfactory, the 54140
administrator may pursue any legal, administrative, and other 54141
appropriate remedies or approaches that may be necessary to 54142
accomplish the purposes of this section. 54143

(3) The administrator may not pursue a class action lawsuit 54144
under division (G)(2) of this section when attempts at 54145
administrative resolution of a complaint prove unsatisfactory 54146
under that division unless both of the following have first 54147
occurred: 54148

(a) At least four members of the commission, by their 54149
affirmative vote, have consented to the pursuit of the class 54150
action lawsuit; 54151

(b) At least five members of the commission are present at 54152
the meeting of the commission at which that consent is obtained. 54153

(4) ~~Relationships~~ Subject to division (G)(5) of this section, 54154
relationships between personnel and the agents of the legal rights 54155
service and its clients shall be fiduciary relationships, and all 54156
communications shall be confidential, as if between attorney and 54157
client. 54158

(5) Any person who has been represented by the legal rights service or who has applied for and been denied representation and who files a grievance with the service concerning the representation or application may appeal the decision of the service on the grievance to the commission. The person may appeal notwithstanding any objections of the person's legal guardian. The commission may examine any records relevant to the appeal and shall maintain the confidentiality of any records that are required to be kept confidential.

(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 of the legal rights service, a member of the staff of the legal rights service, or an attorney designated by the administrator to perform legal services under division (E) of this section, the state shall, when the administrator, member, or attorney has acted in good faith and in the scope of employment, indemnify the administrator, member, or attorney for any judgment awarded or amount negotiated in settlement, and for any court costs or legal fees incurred in defense of the claim.

This division does not limit or waive, and shall not be construed to limit or waive, any defense that is available to the

legal rights service, its administrator or employees, persons 54190
under a personal services contract with it, or persons designated 54191
under division (E) of this section, including, but not limited to, 54192
any defense available under section 9.86 of the Revised Code. 54193

(L) In addition to providing services to mentally ill, 54194
mentally retarded, or developmentally disabled persons, when a 54195
grant authorizing the provision of services to other individuals 54196
is accepted pursuant to division (F)(4) of this section, the legal 54197
rights service and its ombudsperson section may provide advocacy 54198
or ombudsperson services to those other individuals and exercise 54199
any other authority granted by this section or sections 5123.601 54200
to 5123.604 of the Revised Code on behalf of those individuals. 54201
Determinations of whether an individual is eligible for services 54202
under this division shall be made by the legal rights service. 54203

Sec. 5123.801. If neither a discharged resident, nor a 54204
resident granted trial visit, nor the persons requesting the 54205
resident's trial visit or discharge are financially able to bear 54206
the expense of the resident's trial visit or discharge, the 54207
managing officer of an institution under the control of the 54208
department of mental retardation and developmental disabilities 54209
may then provide actual traveling and escort expenses to the 54210
township of which the resident resided at the time of 54211
institutionalization. The amount payable shall be charged to the 54212
current expense fund of the institution. 54213

The expense of the return of a resident on trial visit from 54214
an institution, if it cannot be paid by the responsible relatives, 54215
shall be borne by the county of institutionalization. 54216

~~The managing officer of the institution shall take all proper 54217
measures for the apprehension of an escaped resident. The expense 54218
of the return of an escaped resident shall be borne by the 54219
institution where the resident is institutionalized. 54220~~

The managing officer of the institution shall provide 54221
sufficient and proper clothing for traveling if neither the 54222
resident nor the persons requesting the resident's trial visit or 54223
discharge are financially able to provide that clothing. 54224

Sec. 5123.851. When a resident institutionalized pursuant to 54225
this chapter is discharged from the institution, the managing 54226
officer of the institution may provide the resident with all 54227
personal items that were purchased in implementing the resident's 54228
habilitation plan established pursuant to section 5123.85 of the 54229
Revised Code. The personal items may be provided to the resident, 54230
regardless of the source of the funds that were used to purchase 54231
the items. 54232

Sec. 5126.01. As used in this chapter: 54233

(A) As used in this division, "adult" means an individual who 54234
is eighteen years of age or over and not enrolled in a program or 54235
service under Chapter 3323. of the Revised Code and an individual 54236
sixteen or seventeen years of age who is eligible for adult 54237
services under rules adopted by the director of mental retardation 54238
and developmental disabilities pursuant to Chapter 119. of the 54239
Revised Code. 54240

(1) "Adult services" means services provided to an adult 54241
outside the home, except when they are provided within the home 54242
according to an individual's assessed needs and identified in an 54243
individual service plan, that support learning and assistance in 54244
the area of self-care, sensory and motor development, 54245
socialization, daily living skills, communication, community 54246
living, social skills, or vocational skills. 54247

(2) "Adult services" includes all of the following: 54248

(a) Adult day habilitation services; 54249

(b) Adult day care;	54250
(c) Prevocational services;	54251
(d) Sheltered employment;	54252
(e) Educational experiences and training obtained through entities and activities that are not expressly intended for individuals with mental retardation and developmental disabilities, including trade schools, vocational or technical schools, adult education, job exploration and sampling, unpaid work experience in the community, volunteer activities, and spectator sports;	54253 54254 54255 54256 54257 54258 54259
(f) Community employment services and supported employment services.	54260 54261
(B)(1) "Adult day habilitation services" means adult services that do the following:	54262 54263
(a) Provide access to and participation in typical activities and functions of community life that are desired and chosen by the general population, including such activities and functions as 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;	54264 54265 54266 54267 54268 54269 54270 54271
(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.	54272 54273 54274 54275
(2) "Adult day habilitation services" includes all of the following:	54276 54277
(a) Personal care services needed to ensure an individual's ability to experience and participate in vocational services,	54278 54279

educational services, community activities, and any other adult	54280
day habilitation services;	54281
(b) Skilled services provided while receiving adult day	54282
habilitation services, including such skilled services as behavior	54283
management intervention, occupational therapy, speech and language	54284
therapy, physical therapy, and nursing services;	54285
(c) Training and education in self-determination designed to	54286
help the individual do one or more of the following: develop	54287
self-advocacy skills, exercise the individual's civil rights,	54288
acquire skills that enable the individual to exercise control and	54289
responsibility over the services received, and acquire skills that	54290
enable the individual to become more independent, integrated, or	54291
productive in the community;	54292
(d) Recreational and leisure activities identified in the	54293
individual's service plan as therapeutic in nature or assistive in	54294
developing or maintaining social supports;	54295
(e) Counseling and assistance provided to obtain housing,	54296
including such counseling as identifying options for either rental	54297
or purchase, identifying financial resources, assessing needs for	54298
environmental modifications, locating housing, and planning for	54299
ongoing management and maintenance of the housing selected;	54300
(f) Transportation necessary to access adult day habilitation	54301
services;	54302
(g) Habilitation management, as described in section 5126.14	54303
of the Revised Code.	54304
(3) "Adult day habilitation services" does not include	54305
activities that are components of the provision of residential	54306
services, family support services, or supported living services.	54307
(C) "Community employment services" or "supported employment	54308
services" means job training and other services related to	54309

employment outside a sheltered workshop. "Community employment services" or "supported employment services" include all of the following:

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

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

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

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

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

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

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

(2) It is manifested before age twenty-two;

(3) It is likely to continue indefinitely;

(4) It results in one of the following:

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

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

(c) In the case of a person age six or older, a substantial functional limitation in at least three of the following areas of major life activity, as appropriate for the person's age: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and, if the person is at least age sixteen, capacity for economic self-sufficiency.

(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.

(E) "Early childhood services" means a planned program of habilitation designed to meet the needs of individuals with mental retardation or other developmental disabilities who have not attained compulsory school age.

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

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

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

(G) "Family support services" means the services provided 54370
under a family support services program operated under section 54371
5126.11 of the Revised Code. 54372

(H) "Habilitation" means the process by which the staff of 54373
the facility or agency assists an individual with mental 54374
retardation or other developmental disability in acquiring and 54375
maintaining those life skills that enable the individual to cope 54376
more effectively with the demands of the individual's own person 54377
and environment, and in raising the level of the individual's 54378
personal, physical, mental, social, and vocational efficiency. 54379
Habilitation includes, but is not limited to, programs of formal, 54380
structured education and training. 54381

(I) "Habilitation center services" means services provided by 54382
a habilitation center certified by the department of mental 54383
retardation and developmental disabilities under section 5123.041 54384
of the Revised Code and covered by the medicaid program pursuant 54385
to rules adopted under section 5111.041 of the Revised Code. 54386

(J) "Home and community-based services" means medicaid-funded 54387
home and community-based services provided under a the medicaid 54388
~~component~~ components the department of mental retardation and 54389
developmental disabilities administers pursuant to section 54390
5111.871 of the Revised Code. 54391

(K) "Medicaid" has the same meaning as in section 5111.01 of 54392
the Revised Code. 54393

(L) "Medicaid case management services" means case management 54394
services provided to an individual with mental retardation or 54395
other developmental disability that the state medicaid plan 54396
requires. 54397

(M) "Mental retardation" means a mental impairment manifested 54398
during the developmental period characterized by significantly 54399
subaverage general intellectual functioning existing concurrently 54400

with deficiencies in the effectiveness or degree with which an 54401
individual meets the standards of personal independence and social 54402
responsibility expected of the individual's age and cultural 54403
group. 54404

(N) "Residential services" means services to individuals with 54405
mental retardation or other developmental disabilities to provide 54406
housing, food, clothing, habilitation, staff support, and related 54407
support services necessary for the health, safety, and welfare of 54408
the individuals and the advancement of their quality of life. 54409
"Residential services" includes program management, as described 54410
in section 5126.14 of the Revised Code. 54411

(O) "Resources" means available capital and other assets, 54412
including moneys received from the federal, state, and local 54413
governments, private grants, and donations; appropriately 54414
qualified personnel; and appropriate capital facilities and 54415
equipment. 54416

(P) "Service and support administration" means the duties 54417
performed by a service and support administrator pursuant to 54418
section 5126.15 of the Revised Code. 54419

(Q)(1) "Specialized medical, adaptive, and assistive 54420
equipment, supplies, and supports" means equipment, supplies, and 54421
supports that enable an individual to increase the ability to 54422
perform activities of daily living or to perceive, control, or 54423
communicate within the environment. 54424

(2) "Specialized medical, adaptive, and assistive equipment, 54425
supplies, and supports" includes the following: 54426

(a) Eating utensils, adaptive feeding dishes, plate guards, 54427
mylatex straps, hand splints, reaches, feeder seats, adjustable 54428
pointer sticks, interpreter services, telecommunication devices 54429
for the deaf, computerized communications boards, other 54430
communication devices, support animals, veterinary care for 54431

support animals, adaptive beds, supine boards, prone boards, 54432
wedges, sand bags, sidelayers, bolsters, adaptive electrical 54433
switches, hand-held shower heads, air conditioners, humidifiers, 54434
emergency response systems, folding shopping carts, vehicle lifts, 54435
vehicle hand controls, other adaptations of vehicles for 54436
accessibility, and repair of the equipment received. 54437

(b) Nondisposable items not covered by medicaid that are 54438
intended to assist an individual in activities of daily living or 54439
instrumental activities of daily living. 54440

(R) "Supportive home services" means a range of services to 54441
families of individuals with mental retardation or other 54442
developmental disabilities to develop and maintain increased 54443
acceptance and understanding of such persons, increased ability of 54444
family members to teach the person, better coordination between 54445
school and home, skills in performing specific therapeutic and 54446
management techniques, and ability to cope with specific 54447
situations. 54448

(S)(1) "Supported living" means services provided for as long 54449
as twenty-four hours a day to an individual with mental 54450
retardation or other developmental disability through any public 54451
or private resources, including moneys from the individual, that 54452
enhance the individual's reputation in community life and advance 54453
the individual's quality of life by doing the following: 54454

(a) Providing the support necessary to enable an individual 54455
to live in a residence of the individual's choice, with any number 54456
of individuals who are not disabled, or with not more than three 54457
individuals with mental retardation and developmental disabilities 54458
unless the individuals are related by blood or marriage; 54459

(b) Encouraging the individual's participation in the 54460
community; 54461

(c) Promoting the individual's rights and autonomy; 54462

(d) Assisting the individual in acquiring, retaining, and improving the skills and competence necessary to live successfully in the individual's residence. 54463
54464
54465

(2) "Supported living" includes the provision of all of the following: 54466
54467

(a) Housing, food, clothing, habilitation, staff support, professional services, and any related support services necessary to ensure the health, safety, and welfare of the individual receiving the services; 54468
54469
54470
54471

(b) A combination of life-long or extended-duration supervision, training, and other services essential to daily living, including assessment and evaluation and assistance with the cost of training materials, transportation, fees, and supplies; 54472
54473
54474
54475
54476

(c) Personal care services and homemaker services; 54477

(d) Household maintenance that does not include modifications to the physical structure of the residence; 54478
54479

(e) Respite care services; 54480

(f) Program management, as described in section 5126.14 of the Revised Code. 54481
54482

Sec. 5126.042. (A) As used in this section: 54483

~~(1)~~ "~~Emergency~~", "emergency" means any situation that creates for an individual with mental retardation or developmental disabilities a risk of substantial self-harm or substantial harm to others if action is not taken within thirty days. An "emergency" may include one or more of the following situations: 54484
54485
54486
54487
54488

~~(a)~~ (1) Loss of present residence for any reason, including legal action; 54489
54490

~~(b)~~ (2) Loss of present caretaker for any reason, including 54491

serious illness of the caretaker, change in the caretaker's 54492
status, or inability of the caretaker to perform effectively for 54493
the individual; 54494

~~(e)~~(3) Abuse, neglect, or exploitation of the individual; 54495

~~(d)~~(4) Health and safety conditions that pose a serious risk 54496
to the individual or others of immediate harm or death; 54497

~~(e)~~(5) Change in the emotional or physical condition of the 54498
individual that necessitates substantial accommodation that cannot 54499
be reasonably provided by the individual's existing caretaker. 54500

~~(2) "Medicaid" has the same meaning as in section 5111.01 of 54501
the Revised Code. 54502~~

(B) If a county board of mental retardation and developmental 54503
disabilities determines that available resources are not 54504
sufficient to meet the needs of all individuals who request 54505
programs and services and may be offered the programs and 54506
services, it shall establish waiting lists for services. The board 54507
may establish priorities for making placements on its waiting 54508
lists according to an individual's emergency status and shall 54509
establish priorities in accordance with ~~division~~ divisions (D) and 54510
(E) of this section. 54511

The individuals who may be placed on a waiting list include 54512
individuals with a need for services on an emergency basis and 54513
individuals who have requested services for which resources are 54514
not available. 54515

Except for an individual who is to receive priority for 54516
services pursuant to division (D)(3) of this section, an 54517
individual who currently receives a service but would like to 54518
change to another service shall not be placed on a waiting list 54519
but shall be placed on a service substitution list. The board 54520
shall work with the individual, service providers, and all 54521
appropriate entities to facilitate the change in service as 54522

expeditiously as possible. The board may establish priorities for 54523
making placements on its service substitution lists according to 54524
an individual's emergency status. 54525

In addition to maintaining waiting lists and service 54526
substitution lists, a board shall maintain a long-term service 54527
planning registry for individuals who wish to record their 54528
intention to request in the future a service they are not 54529
currently receiving. The purpose of the registry is to enable the 54530
board to document requests and to plan appropriately. The board 54531
may not place an individual on the registry who meets the 54532
conditions for receipt of services on an emergency basis. 54533

(C) A county board shall establish a separate waiting list 54534
for each of the following categories of services, and may 54535
establish separate waiting lists within the waiting lists: 54536

(1) Early childhood services; 54537

(2) Educational programs for preschool and school age 54538
children; 54539

(3) Adult services; 54540

(4) Service and support administration; 54541

(5) Residential services and supported living; 54542

(6) Transportation services; 54543

(7) Other services determined necessary and appropriate for 54544
persons with mental retardation or a developmental disability 54545
according to their individual habilitation or service plans; 54546

(8) Family support services provided under section 5126.11 of 54547
the Revised Code. 54548

(D) Except as provided in division ~~(F)~~(G) of this section, a 54549
county board shall do, as priorities, all of the following in 54550
accordance with the assessment component, approved under section 54551
5123.046 of the Revised Code, of the county board's plan developed 54552

under section 5126.054 of the Revised Code: 54553

(1) For the purpose of obtaining additional federal medicaid 54554
funds for home and community-based services, medicaid case 54555
management services, and habilitation center services, do both of 54556
the following: 54557

(a) Give an individual who is eligible for home and 54558
community-based services and meets both of the following 54559
requirements priority over any other individual on a waiting list 54560
established under division (C) of this section for home and 54561
community-based services that include supported living, 54562
residential services, or family support services: 54563

(i) Is twenty-two years of age or older; 54564

(ii) Receives supported living or family support services. 54565

(b) Give an individual who is eligible for home and 54566
community-based services and meets both of the following 54567
requirements priority over any other individual on a waiting list 54568
established under division (C) of this section for home and 54569
community-based services that include adult services: 54570

(i) Resides in the individual's own home or the home of the 54571
individual's family and will continue to reside in that home after 54572
enrollment in home and community-based services; 54573

(ii) Receives adult services from the county board. 54574

(2) As federal medicaid funds become available pursuant to 54575
division (D)(1) of this section, give an individual who is 54576
eligible for home and community-based services and meets any of 54577
the following requirements priority for such services over any 54578
other individual on a waiting list established under division (C) 54579
of this section: 54580

(a) Does not receive residential services or supported 54581
living, either needs services in the individual's current living 54582

arrangement or will need services in a new living arrangement, and 54583
has a primary caregiver who is sixty years of age or older; 54584

(b) Is less than twenty-two years of age and has at least one 54585
of the following service needs that are unusual in scope or 54586
intensity: 54587

(i) Severe behavior problems for which a behavior support 54588
plan is needed; 54589

(ii) An emotional disorder for which anti-psychotic 54590
medication is needed; 54591

(iii) A medical condition that leaves the individual 54592
dependent on life-support medical technology; 54593

(iv) A condition affecting multiple body systems for which a 54594
combination of specialized medical, psychological, educational, or 54595
habilitation services are needed; 54596

(v) A condition the county board determines to be comparable 54597
in severity to any condition described in division (D)(2)(b)(i) to 54598
(iv) of this section and places the individual at significant risk 54599
of institutionalization. 54600

(c) Is twenty-two years of age or older, does not receive 54601
residential services or supported living, and is determined by the 54602
county board to have intensive needs for home and community-based 54603
services on an in-home or out-of-home basis. 54604

(3) In fiscal years 2002 and 2003, give an individual who is 54605
eligible for home and community-based services, resides in an 54606
intermediate care facility for the mentally retarded or nursing 54607
facility, chooses to move to another setting with the help of home 54608
and community-based services, and has been determined by the 54609
department of mental retardation and developmental disabilities to 54610
be capable of residing in the other setting, priority over any 54611
other individual on a waiting list established under division (C) 54612

of this section for home and community-based services who does not 54613
meet these criteria. The department of mental retardation and 54614
developmental disabilities shall identify the individuals to 54615
receive priority under division (D)(3) of this section, assess the 54616
needs of the individuals, and notify the county boards that are to 54617
provide the individuals priority under division (D)(3) of this 54618
section of the individuals identified by the department and the 54619
individuals' assessed needs. 54620

(E) Except as provided in division (G) of this section and 54621
for a number of years and beginning on a date specified in rules 54622
adopted under division (K) of this section, a county board shall 54623
give an individual who is eligible for home and community-based 54624
services, resides in a nursing facility, and chooses to move to 54625
another setting with the help of home and community-based 54626
services, priority over any other individual on a waiting list 54627
established under division (C) of this section for home and 54628
community-based services who does not meet these criteria. 54629

(F) If two or more individuals on a waiting list established 54630
under division (C) of this section for home and community-based 54631
services have priority for the services pursuant to division 54632
(D)(1) or (2) or (E) of this section, a county board may use, 54633
until December 31, 2003, criteria specified in rules adopted under 54634
division ~~(J)~~(K)(2) of this section in determining the order in 54635
which the individuals with priority will be offered the services. 54636
Otherwise, the county board shall offer the home and 54637
community-based services to such individuals in the order they are 54638
placed on the waiting list. 54639

~~(F)~~(G)(1) No individual may receive priority for services 54640
pursuant to division (D) or (E) of this section over an individual 54641
placed on a waiting list established under division (C) of this 54642
section on an emergency status. 54643

(2) No more than four hundred individuals in the state may 54644

receive priority for services during the 2002 and 2003 biennium 54645
pursuant to division (D)(2)(b) of this section. 54646

(3) No more than a total of seventy-five individuals in the 54647
state may receive priority for services during state fiscal years 54648
2002 and 2003 pursuant to division (D)(3) of this section. 54649

~~(G)(4) No more than forty individuals in the state may 54650
receive priority for services pursuant to division (E) of this 54651
section for each year that priority category is in effect as 54652
specified in rules adopted under division (K) of this section. 54653~~

~~(H) Prior to establishing any waiting list under this 54654
section, a county board shall develop and implement a policy for 54655
waiting lists that complies with this section and rules adopted 54656
under division ~~(J)~~(K) of this section. 54657~~

Prior to placing an individual on a waiting list, the county 54658
board shall assess the service needs of the individual in 54659
accordance with all applicable state and federal laws. The county 54660
board shall place the individual on the appropriate waiting list 54661
and may place the individual on more than one waiting list. The 54662
county board shall notify the individual of the individual's 54663
placement and position on each waiting list on which the 54664
individual is placed. 54665

At least annually, the county board shall reassess the 54666
service needs of each individual on a waiting list. If it 54667
determines that an individual no longer needs a program or 54668
service, the county board shall remove the individual from the 54669
waiting list. If it determines that an individual needs a program 54670
or service other than the one for which the individual is on the 54671
waiting list, the county board shall provide the program or 54672
service to the individual or place the individual on a waiting 54673
list for the program or service in accordance with the board's 54674
policy for waiting lists. 54675

When a program or service for which there is a waiting list 54676
becomes available, the county board shall reassess the service 54677
needs of the individual next scheduled on the waiting list to 54678
receive that program or service. If the reassessment demonstrates 54679
that the individual continues to need the program or service, the 54680
board shall offer the program or service to the individual. If it 54681
determines that an individual no longer needs a program or 54682
service, the county board shall remove the individual from the 54683
waiting list. If it determines that an individual needs a program 54684
or service other than the one for which the individual is on the 54685
waiting list, the county board shall provide the program or 54686
service to the individual or place the individual on a waiting 54687
list for the program or service in accordance with the board's 54688
policy for waiting lists. The county board shall notify the 54689
individual of the individual's placement and position on the 54690
waiting list on which the individual is placed. 54691

~~(H)~~(I) A child subject to a determination made pursuant to 54692
section 121.38 of the Revised Code who requires the home and 54693
community-based services provided through ~~the~~ a medicaid component 54694
that the department of mental retardation and developmental 54695
disabilities administers under section 5111.871 of the Revised 54696
Code shall receive services through that medicaid component. For 54697
all other services, a child subject to a determination made 54698
pursuant to section 121.38 of the Revised Code shall be treated as 54699
an emergency by the county boards and shall not be subject to a 54700
waiting list. 54701

~~(I)~~(J) Not later than the fifteenth day of March of each 54702
even-numbered year, each county board shall prepare and submit to 54703
the director of mental retardation and developmental disabilities 54704
its recommendations for the funding of services for individuals 54705
with mental retardation and developmental disabilities and its 54706
proposals for reducing the waiting lists for services. 54707

~~(J)~~(K)(1) The department of mental retardation and 54708
developmental disabilities shall adopt rules in accordance with 54709
Chapter 119. of the Revised Code governing waiting lists 54710
established under this section. The rules shall include procedures 54711
to be followed to ensure that the due process rights of 54712
individuals placed on waiting lists are not violated. 54713

(2) As part of the rules adopted under this division, the 54714
department shall adopt, ~~not later than December 31, 2001,~~ rules 54715
establishing criteria a county board may use under division ~~(E)~~(F) 54716
of this section in determining the order in which individuals with 54717
priority for home and community-based services will be offered the 54718
services. The rules shall also specify conditions under which a 54719
county board, when there is no individual with priority for home 54720
and community-based services pursuant to division (D)(1) or (2) or 54721
(E) of this section available and appropriate for the services, 54722
may offer the services to an individual on a waiting list for the 54723
services but not given such priority for the services. The rules 54724
adopted under division ~~(J)~~(K)(2) of this section shall cease to 54725
have effect December 31, 2003. 54726

~~(K)~~(3) As part of the rules adopted under this division, the 54727
department shall adopt rules specifying both of the following for 54728
the priority category established under division (E) of this 54729
section: 54730

(a) The number of years, which shall not exceed five, that 54731
the priority category will be in effect; 54732

(b) The date that the priority category is to go into effect. 54733

(L) The following shall take precedence over the applicable 54734
provisions of this section: 54735

(1) Medicaid rules and regulations; 54736

(2) Any specific requirements that may be contained within a 54737

medicaid state plan amendment or waiver program that a county 54738
board has authority to administer or with respect to which it has 54739
authority to provide services, programs, or supports. 54740

Sec. 5126.11. (A) As used in this section, "respite care" 54741
means appropriate, short-term, temporary care that is provided to 54742
a mentally retarded or developmentally disabled person to sustain 54743
the family structure or to meet planned or emergency needs of the 54744
family. 54745

(B) Subject to rules adopted by the director of mental 54746
retardation and developmental disabilities, and subject to the 54747
availability of money from state and federal sources, the county 54748
board of mental retardation and developmental disabilities shall 54749
establish a family support services program. Under such a program, 54750
the board shall make payments to an individual with mental 54751
retardation or other developmental disability or the family of an 54752
individual with mental retardation or other developmental 54753
disability who desires to remain in and be supported in the family 54754
home. Payments shall be made for all or part of costs incurred or 54755
estimated to be incurred for services that would promote 54756
self-sufficiency and normalization, prevent or reduce 54757
inappropriate institutional care, and further the unity of the 54758
family by enabling the family to meet the special needs of the 54759
individual and to live as much like other families as possible. 54760
Payments may be made in the form of reimbursement for expenditures 54761
or in the form of vouchers to be used to purchase services. 54762

(C) Payment shall not be made under this section to an 54763
individual or the individual's family if the individual is living 54764
in a residential facility that is providing residential services 54765
under contract with the department of mental retardation and 54766
developmental disabilities or a county board. 54767

(D) Payments may be made for the following services: 54768

- (1) Respite care, in or out of the home; 54769
- (2) Counseling, supervision, training, and education of the 54770
individual, the individual's caregivers, and members of the 54771
individual's family that aid the family in providing proper care 54772
for the individual, provide for the special needs of the family, 54773
and assist in all aspects of the individual's daily living; 54774
- (3) Special diets, purchase or lease of special equipment, or 54775
modifications of the home, if such diets, equipment, or 54776
modifications are necessary to improve or facilitate the care and 54777
living environment of the individual; 54778
- (4) Providing support necessary for the individual's 54779
continued skill development, including such services as 54780
development of interventions to cope with unique problems that may 54781
occur within the complexity of the family, enrollment of the 54782
individual in special summer programs, provision of appropriate 54783
leisure activities, and other social skills development 54784
activities; 54785
- (5) Any other services that are consistent with the purposes 54786
specified in division (B) of this section and specified in the 54787
individual's service plan. 54788
- (E) In order to be eligible for payments under a family 54789
support services program, the individual or the individual's 54790
family must reside in the county served by the county board, and 54791
the individual must be in need of habilitation. Payments shall be 54792
adjusted for income in accordance with the payment schedule 54793
established in rules adopted under this section. Payments shall be 54794
made only after the county board has taken into account all other 54795
available assistance for which the individual or family is 54796
eligible. 54797
- (F) Before incurring expenses for a service for which payment 54798
will be sought under a family support services program, the 54799

individual or family shall apply to the county board for a 54800
determination of eligibility and approval of the service. The 54801
service need not be provided in the county served by the county 54802
board. After being determined eligible and receiving approval for 54803
the service, the individual or family may incur expenses for the 54804
service or use the vouchers received from the county board for the 54805
purchase of the service. 54806

If the county board refuses to approve a service, an appeal 54807
may be made in accordance with rules adopted by the department 54808
under this section. 54809

(G) To be reimbursed for expenses incurred for approved 54810
services, the individual or family shall submit to the county 54811
board a statement of the expenses incurred accompanied by any 54812
evidence required by the board. To redeem vouchers used to 54813
purchase approved services, the entity that provided the service 54814
shall submit to the county board evidence that the service was 54815
provided and a statement of the charges. The county board shall 54816
make reimbursements and redeem vouchers no later than forty-five 54817
days after it receives the statements and evidence required by 54818
this division. 54819

(H) A county board shall consider the following objectives in 54820
carrying out a family support services program: 54821

(1) Enabling individuals to return to their families from an 54822
institution under the jurisdiction of the department of mental 54823
retardation and developmental disabilities; 54824

(2) Enabling individuals found to be subject to 54825
institutionalization by court order under section 5123.76 of the 54826
Revised Code to remain with their families with the aid of 54827
payments provided under this section; 54828

(3) Providing services to eligible children and adults 54829
currently residing in the community; 54830

(4) Providing services to individuals with developmental disabilities who are not receiving other services from the board.	54831 54832
(I) The director shall adopt, and may amend and rescind, rules for the implementation of family support services programs by county boards. Such rules shall include the following:	54833 54834 54835
(1) A payment schedule adjusted for income;	54836
(2) A formula for distributing to county boards the money appropriated for family support services;	54837 54838
(3) Standards for supervision, training, and quality control in the provision of respite care services;	54839 54840
(4) Eligibility standards and procedures for providing temporary emergency respite care;	54841 54842
(5) Procedures for hearing and deciding appeals made under division (F) of this section;	54843 54844
(6) Requirements to be followed by county boards regarding reports submitted under division (K) of this section.	54845 54846
Rules adopted under divisions (I)(1) and (2) of this section shall be adopted in accordance with section 111.15 of the Revised Code. Rules adopted under divisions (I)(3) to (6) of this section shall be adopted in accordance with Chapter 119. of the Revised Code.	54847 54848 54849 54850 54851
(J) All individuals certified by the superintendent of the county board as eligible for temporary emergency respite care in accordance with rules adopted under this section shall be considered eligible for temporary emergency respite care for not more than five days to permit the determination of eligibility for family support services. The requirements of divisions (E) and (F) of this section do not apply to temporary emergency respite care.	54852 54853 54854 54855 54856 54857 54858
(K) On the first day of July of each year, the The department of mental retardation and developmental disabilities shall	54859 54860

distribute to county boards money appropriated for family support 54861
services in quarterly installments of equal amounts. The 54862
installments shall be made not later than the thirtieth day of 54863
September, the thirty-first day of December, the thirty-first day 54864
of March, and the thirtieth day of June. A county board shall use 54865
no more than seven per cent of the funds for administrative costs. 54866
Each county board shall submit reports to the department on 54867
payments made under this section. The reports shall be submitted 54868
at those times and in the manner specified in rules adopted under 54869
this section. 54870

(L) The county board shall not be required to make payments 54871
for family support services at a level that exceeds available 54872
state and federal funds for such payments. 54873

Sec. 5126.12. (A) As used in this section: 54874

(1) "Approved school age class" means a class operated by a 54875
county board of mental retardation and developmental disabilities 54876
and funded by the department of education under section 3317.20 of 54877
the Revised Code. 54878

(2) "Approved preschool unit" means a class or unit operated 54879
by a county board of mental retardation and developmental 54880
disabilities and approved ~~by the state board of education~~ under 54881
division (B) of section 3317.05 of the Revised Code. 54882

(3) "Active treatment" means a continuous treatment program, 54883
which includes aggressive, consistent implementation of a program 54884
of specialized and generic training, treatment, health services, 54885
and related services, that is directed toward the acquisition of 54886
behaviors necessary for an individual with mental retardation or 54887
other developmental disability to function with as much 54888
self-determination and independence as possible and toward the 54889
prevention of deceleration, regression, or loss of current optimal 54890
functional status. 54891

(4) "Eligible for active treatment" means that an individual 54892
with mental retardation or other developmental disability resides 54893
in an intermediate care facility for the mentally retarded 54894
certified under Title XIX of the "Social Security Act," ~~49~~ 79 54895
Stat. ~~620~~ 286 (~~1935~~ 1965), 42 U.S.C. ~~301~~ 1396, as amended; resides 54896
in a state institution operated by the department of mental 54897
retardation and developmental disabilities; or is enrolled in a 54898
home and community-based services waiver program ~~administered by~~ 54899
~~the department of mental retardation and developmental~~ 54900
~~disabilities as part of the medical assistance program established~~ 54901
~~under section 5111.01 of the Revised Code.~~ 54902

(5) "Community alternative funding system" means the program 54903
under which habilitation center services are reimbursed under the 54904
medicaid program pursuant to section 5111.041 of the Revised Code 54905
and rules adopted under that section. 54906

(6) "Traditional adult services" means vocational and 54907
nonvocational activities conducted within a sheltered workshop or 54908
adult activity center or supportive home services. 54909

(B) Each county board of mental retardation and developmental 54910
disabilities shall certify to the director of mental retardation 54911
and developmental disabilities all of the following: 54912

(1) On or before the fifteenth day of October, the average 54913
daily membership for the first full week of programs and services 54914
during October receiving: 54915

(a) Early childhood services provided pursuant to section 54916
5126.05 of the Revised Code for children who are less than three 54917
years of age on the thirtieth day of September of the academic 54918
year; 54919

(b) Special education for handicapped children in approved 54920
school age classes; 54921

(c) Adult services for persons sixteen years of age and older operated pursuant to section 5126.05 and division (B) of section 5126.051 of the Revised Code. Separate counts shall be made for the following:	54922 54923 54924 54925
(i) Persons enrolled in traditional adult services who are eligible for but not enrolled in active treatment under the community alternative funding system;	54926 54927 54928
(ii) Persons enrolled in traditional adult services who are eligible for and enrolled in active treatment under the community alternative funding system;	54929 54930 54931
(iii) Persons enrolled in traditional adult services but who are not eligible for active treatment under the community alternative funding system;	54932 54933 54934
(iv) Persons participating in community employment services. To be counted as participating in community employment services, a person must have spent an average of no less than ten hours per week in that employment during the preceding six months.	54935 54936 54937 54938
(d) Other programs in the county for individuals with mental retardation and developmental disabilities that have been approved for payment of subsidy by the department of mental retardation and developmental disabilities.	54939 54940 54941 54942
The membership in each such program and service in the county shall be reported on forms prescribed by the department of mental retardation and developmental disabilities.	54943 54944 54945
The department of mental retardation and developmental disabilities shall adopt rules defining full-time equivalent enrollees and for determining the average daily membership therefrom, except that certification of average daily membership in approved school age classes shall be in accordance with rules adopted by the state board of education. The average daily	54946 54947 54948 54949 54950 54951

membership figure shall be determined by dividing the amount 54952
representing the sum of the number of enrollees in each program or 54953
service in the week for which the certification is made by the 54954
number of days the program or service was offered in that week. No 54955
enrollee may be counted in average daily membership for more than 54956
one program or service. 54957

(2) By the fifteenth day of December, the number of children 54958
enrolled in approved preschool units on the first day of December; 54959

(3) On or before the thirtieth day of March, an itemized 54960
report of all income and operating expenditures for the 54961
immediately preceding calendar year, in the format specified by 54962
the department of mental retardation and developmental 54963
disabilities; 54964

(4) By the fifteenth day of February, a report of the total 54965
annual cost per enrollee for operation of programs and services in 54966
the preceding calendar year. The report shall include a grand 54967
total of all programs operated, the cost of the individual 54968
programs, and the sources of funds applied to each program. 54969

(5) That each required certification and report is in 54970
accordance with rules established by the department of mental 54971
retardation and developmental disabilities and the state board of 54972
education for the operation and subsidization of the programs and 54973
services. 54974

(C) To compute payments under this section to the board for 54975
the fiscal year, the department of mental retardation and 54976
developmental disabilities shall use the certification of average 54977
daily membership required by division (B)(1) of this section 54978
exclusive of the average daily membership in any approved school 54979
age class and the number in any approved preschool unit. 54980

(D) The department shall pay each county board for each 54981
fiscal year an amount equal to nine hundred fifty dollars times 54982

the certified number of persons who on the first day of December 54983
of the academic year are under three years of age and are not in 54984
an approved preschool unit. For persons who are at least age 54985
sixteen and are not in an approved school age class, the 54986
department shall pay each county board for each fiscal year the 54987
following amounts: 54988

(1) One thousand dollars times the certified average daily 54989
membership of persons enrolled in traditional adult services who 54990
are eligible for but not enrolled in active treatment under the 54991
community alternative funding system; 54992

(2) One thousand two hundred dollars times the certified 54993
average daily membership of persons enrolled in traditional adult 54994
services who are eligible for and enrolled in active treatment 54995
under the community alternative funding system; 54996

(3) No less than one thousand five hundred dollars times the 54997
certified average daily membership of persons enrolled in 54998
traditional adult services but who are not eligible for active 54999
treatment under the community alternative funding system; 55000

(4) No less than one thousand five hundred dollars times the 55001
certified average daily membership of persons participating in 55002
community employment services. 55003

(E) The department shall distribute this subsidy to county 55004
boards in ~~semiannual~~ quarterly installments of equal amounts. The 55005
installments shall be made not later than the thirtieth day of 55006
September, the thirty-first day of ~~August and December,~~ the 55007
thirty-first day of ~~January~~ March, and the thirtieth day of June. 55008

(F) The director of mental retardation and developmental 55009
disabilities shall make efforts to obtain increases in the 55010
subsidies for early childhood services and adult services so that 55011
the amount of the subsidies is equal to at least fifty per cent of 55012
the statewide average cost of those services minus any applicable 55013

federal reimbursements for those services. The director shall 55014
advise the director of budget and management of the need for any 55015
such increases when submitting the biennial appropriations request 55016
for the department. 55017

(G) In determining the reimbursement of a county board for 55018
the provision of service and support administration, family 55019
support services, and other services required or approved by the 55020
director for which children three through twenty-one years of age 55021
are eligible, the department shall include the average daily 55022
membership in approved school age or preschool units. The 55023
department, in accordance with this section and upon receipt and 55024
approval of the certification required by this section and any 55025
other information it requires to enable it to determine a board's 55026
payments, shall pay the agency providing the specialized training 55027
the amounts payable under this section. 55028

Sec. 5126.121. Each county board of mental retardation and 55029
developmental disabilities may be eligible to receive a subsidy 55030
from the department of mental retardation and developmental 55031
disabilities for the employment of a business manager as provided 55032
in this section. The department shall adopt rules in accordance 55033
with Chapter 119. of the Revised Code specifying standards for the 55034
employment of such a business manager. The rules shall include the 55035
minimum education and experience requirements for the position of 55036
business manager and shall specify requirements for courses in 55037
fiscal and business management that are annually sponsored or 55038
certified by the department and that are applicable to the 55039
position and designed to teach effective business practices. Each 55040
county board of mental retardation and developmental disabilities 55041
that employs a business manager in accordance with the standards 55042
adopted under this section may receive a subsidy from the 55043
department. 55044

The department shall distribute this subsidy to eligible county boards in quarterly installments of equal amounts. The installments shall be made not later than the thirtieth day of September, the thirty-first day of December, the thirty-first day of March, and the thirtieth day of June.

Sec. 5126.15. (A) A county board of mental retardation and developmental disabilities shall provide service and support administration to each individual three years of age or older who is eligible for service and support administration if the individual requests, or a person on the individual's behalf requests, service and support administration. A board shall provide service and support administration to each individual receiving home and community-based services. A board may provide, in accordance with the service coordination requirements of 34 C.F.R. 303.23, service and support administration to an individual under three years of age eligible for early intervention services under 34 C.F.R. part 303. 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.

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.

Individuals employed by a board as service and support administrators shall not be assigned responsibilities for implementing other services for individuals and shall not be

employed by or serve in a decision-making or policy-making 55076
capacity for any other entity that provides programs or services 55077
to individuals with mental retardation or developmental 55078
disabilities. An individual employed as a conditional status 55079
service and support administrator shall perform the duties of 55080
service and support administration only under the supervision of a 55081
management employee who is a service and support administration 55082
supervisor or a professional employee who is a service and support 55083
administrator. 55084

(B) The individuals employed by or under contract with a 55085
board to provide service and support administration shall do all 55086
of the following: 55087

(1) Establish an individual's eligibility for the services of 55088
the county board of mental retardation and developmental 55089
disabilities; 55090

(2) Assess individual needs for services; 55091

(3) Develop individual service plans with the active 55092
participation of the individual to be served, other persons 55093
selected by the individual, and, when applicable, the provider 55094
selected by the individual, and recommend the plans for approval 55095
by the department of mental retardation and developmental 55096
disabilities when services included in the plans are funded 55097
through medicaid; 55098

(4) Establish budgets for services based on the individual's 55099
assessed needs and preferred ways of meeting those needs; 55100

(5) Assist individuals in making selections from among the 55101
providers they have chosen; 55102

(6) Ensure that services are effectively coordinated and 55103
provided by appropriate providers; 55104

(7) Establish and implement an ongoing system of monitoring 55105

the implementation of individual service plans to achieve 55106
consistent implementation and the desired outcomes for the 55107
individual; 55108

(8) Perform quality assurance reviews as a distinct function 55109
of service and support administration; 55110

(9) Incorporate the results of quality assurance reviews and 55111
identified trends and patterns of unusual incidents and major 55112
unusual incidents into amendments of an individual's service plan 55113
for the purpose of improving and enhancing the quality and 55114
appropriateness of services rendered to the individual; 55115

(10) Ensure that each individual receiving services has a 55116
designated person who is responsible on a continuing basis for 55117
providing the individual with representation, advocacy, advice, 55118
and assistance related to the day-to-day coordination of services 55119
in accordance with the individual's service plan. The service and 55120
support administrator shall give the individual receiving services 55121
an opportunity to designate the person to provide daily 55122
representation. If the individual declines to make a designation, 55123
the administrator shall make the designation. In either case, the 55124
individual receiving services may change at any time the person 55125
designated to provide daily representation. 55126

(C) Subject to available funds, the department of mental 55127
retardation and developmental disabilities shall pay a county 55128
board an annual subsidy for service and support administration. 55129
The amount of the subsidy shall be equal to the greater of twenty 55130
thousand dollars or two hundred dollars times the board's 55131
certified average daily membership. The payments shall be made in 55132
~~semiannual~~ quarterly installments of equal amounts, which shall be 55133
made no later than the thirtieth day of September, the 55134
thirty-first day of August and December, the thirty-first day of 55135
~~January~~ March, and the thirtieth day of June. Funds received shall 55136
be used solely for service and support administration. 55137

Sec. 5126.18. (A) As used in this section:	55138
(1) "County board" means a county board of mental retardation and developmental disabilities.	55139 55140
(2) Notwithstanding section 5126.01 of the Revised Code, "adult services" means the following services, as they are identified on individual information forms submitted by county boards to the department of mental retardation and developmental disabilities for the purpose of subsidies paid to county boards under section 5126.12 of the Revised Code, provided to an individual with mental retardation or other developmental disability who is at least twenty-two years of age:	55141 55142 55143 55144 55145 55146 55147 55148
(a) Assessment;	55149
(b) Home service;	55150
(c) Adult program;	55151
(d) Community employment services;	55152
(e) Retirement.	55153
(3) "Adult services enrollment" means a county board's average daily membership in adult services, exclusive of such services provided to individuals served solely through service and support administration provided pursuant to section 5126.15 of the Revised Code or family support services provided pursuant to section 5126.11 of the Revised Code.	55154 55155 55156 55157 55158 55159
(4) "Taxable value" means the taxable value of a county board certified under division (B)(1) of this section.	55160 55161
(5) "Per-mill yield" of a county board means the quotient obtained by dividing (a) the taxable value of the county board by (b) one thousand.	55162 55163 55164
(6) "Local adult services cost" means a county board's expenditures for adult services, excluding all federal and state	55165 55166

reimbursements and subsidy allocations received by such boards and 55167
expended for such services, as certified under section 5126.12 of 55168
the Revised Code. 55169

(7) "Statewide average millage" means one thousand multiplied 55170
by the quotient obtained by dividing (a) the total of the local 55171
adult services costs of all county boards by (b) the total of the 55172
taxable values of all county boards. 55173

(8) "County yield" of a county board means the product 55174
obtained by multiplying (a) the statewide average millage by (b) 55175
the per-mill yield of the county board. 55176

(9) "County yield per enrollee" of a county board means the 55177
quotient obtained by dividing (a) the county yield of the county 55178
board by (b) the adult enrollment of the county board. 55179

(10) "Statewide yield per enrollee" means the quotient 55180
obtained by dividing (a) the sum of the county yields of all 55181
county boards by (b) the sum of the adult enrollments of all 55182
county boards. 55183

(11) "Local tax effort for adult services" of a county board 55184
means one thousand multiplied by the quotient obtained by dividing 55185
(a) the local adult services cost of the county board by (b) the 55186
taxable value of the county board. 55187

(12) "Funding percentage" for a fiscal year means the 55188
percentage that the amount appropriated to the department for the 55189
purpose of making payments under this section in the fiscal year 55190
is of the amount computed under division (C)(3) of this section 55191
for the fiscal year. 55192

(13) "Funding-adjusted required millage" for a fiscal year 55193
means the statewide average millage multiplied by the funding 55194
percentage for that fiscal year. 55195

(B)(1) On the request of the director of mental retardation 55196

and developmental disabilities, the tax commissioner shall provide 55197
to the department of mental retardation and developmental 55198
disabilities information specifying the taxable value of property 55199
on each county's tax list of real and public utility property and 55200
tax list of personal property for the most recent tax year for 55201
which such information is available. The director may request any 55202
other tax information necessary for the purposes of this section. 55203

(2) On the request of the director, each county board shall 55204
report the county board's adult services enrollment and local 55205
adult services cost. 55206

(C) Each year, the department of mental retardation and 55207
developmental disabilities shall compute the following: 55208

(1) For each county board, the amount, if any, by which the 55209
statewide yield per enrollee exceeds the county yield per 55210
enrollee; 55211

(2) For each county board, the amount of any excess computed 55212
under division (C)(1) of this section multiplied by the adult 55213
services enrollment of the county board; 55214

(3) The sum of the amounts computed under division (C)(2) of 55215
this section for all county boards. 55216

(D) From money appropriated for the purpose, the department, ~~on or before the thirtieth day of September of each year,~~ shall 55217
provide for payment to each county board of the amount computed 55218
for that county board under division (C)(2) of this section, 55219
subject to any reduction or adjustment under division (E), (F), or 55220
(G) of this section. The department shall make the payments in 55221
quarterly installments of equal amounts. The installments shall be 55222
made not later than the thirtieth day of September, thirty-first 55223
day of December, thirty-first day of March, and thirtieth day of 55224
June. 55225
55226

(E) If a county board's local tax effort for adult services 55227

is less than the funding-adjusted required millage, the director 55228
shall reduce the amount of payment otherwise computed under 55229
division (C)(2) of this section so that the amount paid, after the 55230
reduction, is the same percentage of the amount computed under 55231
division (C)(2) of this section as the county board's local tax 55232
effort for adult services is of the funding-adjusted required 55233
millage. 55234

If the director reduces the amount of a county board's 55235
payment under this division, the department, not later than the 55236
fifteenth day of July, shall notify the county board of the 55237
reduction and the amount of the reduction. The notice shall 55238
include a statement that the county board may request to be 55239
exempted from the reduction by filing a request with the director, 55240
in the manner and form prescribed by the director, within 55241
twenty-one days after such notification is issued. The board may 55242
present evidence of its attempt to obtain passage of levies or any 55243
other extenuating circumstances the board considers relevant. If 55244
the county board requests a hearing before the director to present 55245
such evidence, the director shall conduct a hearing on the request 55246
unless the director exempts the board from the reduction on the 55247
basis of the evidence presented in the request filed by the board. 55248
Upon receiving a properly and timely filed request for exemption, 55249
but not later than the thirty-first day of August, the director 55250
shall determine whether the county board shall be exempted from 55251
all or a part of the reduction. The director may exempt the board 55252
from all or part of the reduction if the director finds that the 55253
board has made good faith efforts to obtain passage of tax levies 55254
or that there are extenuating circumstances. 55255

(F) If a payment is reduced under division (E) of this 55256
section and the director does not exempt the county board from the 55257
reduction, the amount of the reduction shall be apportioned among 55258
all county boards entitled to payments under this section for 55259

which payments were not so reduced. The amount apportioned to each 55260
county board shall be proportionate to the amount of the board's 55261
payment as computed under division (C)(2) of this section. 55262

(G) If, for any fiscal year, the amount appropriated to the 55263
department for the purpose of this section is less than the amount 55264
computed under division (C)(3) of this section for the fiscal 55265
year, the department shall adjust the amount of each payment as 55266
computed under divisions (C)(2), (E), and (F) of this section by 55267
multiplying that amount by the funding percentage. 55268

(H) The payments authorized by this section are supplemental 55269
to all other funds that may be received by a county board. A 55270
county board shall use the payments solely to pay the nonfederal 55271
share of medicaid expenditures that division (A) of section 55272
5126.057 of the Revised Code requires the county board to pay. 55273

Sec. 5126.44. (A) The department of mental retardation and 55274
developmental disabilities, in accordance with Chapter 119. of the 55275
Revised Code, shall adopt rules for making allocations for 55276
counties and distributing to county boards of mental retardation 55277
and developmental disabilities money to be used for planning, 55278
development, contracting for, and providing supported living. The 55279
rules shall provide for an allocation to be made for each county 55280
on an equitable basis, taking into account any factors that 55281
indicate need for supported living for residents of the county. 55282

(B) The department shall annually allocate for each county an 55283
amount determined in accordance with the rules adopted under this 55284
section. Except as provided in division (C) of this section, the 55285
department shall distribute the amount allocated for the county to 55286
each county board. Money shall be distributed to county boards in 55287
~~two quarterly installments annually,~~ which shall be paid no later 55288
~~than the last day of July and the last day of December~~ thirtieth 55289
day of September, the thirty-first day of December, the 55290

thirty-first day of March, and the thirtieth day of June. In the 55291
case of a county that has not adopted a resolution under division 55292
(B) of section 5126.40 of the Revised Code, the department shall 55293
use the money allocated for the county to provide supported living 55294
under section 5123.182 of the Revised Code. 55295

(C) The department shall not distribute money to a county 55296
board for residential services that are being provided by a 55297
provider under contract with the department on the effective date 55298
of this amendment unless the provider and the county board agree 55299
to enter into a contract between the provider and the county board 55300
under which the provider will provide the services as supported 55301
living. If the conversion of a contract occurs under this 55302
division, the provisions of section 5126.451 shall apply as though 55303
the contract was transferred under that section. 55304

(D) Pursuant to section 5126.05 of the Revised Code, the 55305
county board shall annually adopt a separate budget for money 55306
distributed to it under this section. The board shall cause the 55307
money to be deposited in a fund created pursuant to division (F) 55308
of section 5705.09 of the Revised Code which shall be known as the 55309
"community mental retardation and developmental disabilities 55310
residential services and supported living fund." The fund shall 55311
consist of this money and any other money for residential services 55312
or supported living that the board causes to be deposited in the 55313
fund. A county board is not required to use any other money for 55314
residential services or supported living. A county board may 55315
establish a reserve balance account within this fund pursuant to 55316
division (C)(2) of section 5705.28 of the Revised Code. 55317

(E) The department of mental retardation and developmental 55318
disabilities may adopt rules under Chapter 119. of the Revised 55319
Code establishing procedures for an annual reconciliation of state 55320
funds that have been deposited in the reserve balance account. The 55321
rules may provide for the return of state funds to the appropriate 55322

department account when the funds have been unexpended for a 55323
period of two years. 55324

(F) A county board may use up to ten per cent of the amount 55325
distributed to it under this section for the administrative costs 55326
of developing, arranging, and contracting for supported living and 55327
for costs of staff training and support. Annually, each county 55328
board shall report to the department all revenue and expenditures 55329
pertaining to supported living. The report shall be made in 55330
conjunction with the annual report of expenditures submitted 55331
pursuant to section 5126.12 of the Revised Code. The report shall 55332
list the names of the individuals served, the total number of 55333
individuals served on a monthly basis in the preceding calendar 55334
year, the types of services provided, the total cost of the 55335
services, and the sources of revenue used to cover the cost. 55336

Sec. 5139.01. (A) As used in this chapter: 55337

(1) "Commitment" means the transfer of the physical custody 55338
of a child or youth from the court to the department of youth 55339
services. 55340

(2) "Permanent commitment" means a commitment that vests 55341
legal custody of a child in the department of youth services. 55342

(3) "Legal custody," insofar as it pertains to the status 55343
that is created when a child is permanently committed to the 55344
department of youth services, means a legal status in which the 55345
department has the following rights and responsibilities: the 55346
right to have physical possession of the child; the right and duty 55347
to train, protect, and control the child; the responsibility to 55348
provide the child with food, clothing, shelter, education, and 55349
medical care; and the right to determine where and with whom the 55350
child shall live, subject to the minimum periods of, or periods 55351
of, institutional care prescribed in sections 2152.13 to 2152.18 55352
of the Revised Code; provided, that these rights and 55353

responsibilities are exercised subject to the powers, rights, 55354
duties, and responsibilities of the guardian of the person of the 55355
child, and subject to any residual parental rights and 55356
responsibilities. 55357

(4) Unless the context requires a different meaning, 55358
"institution" means a state facility that is created by the 55359
general assembly and that is under the management and control of 55360
the department of youth services or a private entity with which 55361
the department has contracted for the institutional care and 55362
custody of felony delinquents. 55363

(5) "Full-time care" means care for twenty-four hours a day 55364
for over a period of at least two consecutive weeks. 55365

(6) "Placement" means the conditional release of a child 55366
under the terms and conditions that are specified by the 55367
department of youth services. The department shall retain legal 55368
custody of a child released pursuant to division (C) of section 55369
2152.22 of the Revised Code or division (C) of section 5139.06 of 55370
the Revised Code until the time that it discharges the child or 55371
until the legal custody is terminated as otherwise provided by 55372
law. 55373

(7) "Home placement" means the placement of a child in the 55374
home of the child's parent or parents or in the home of the 55375
guardian of the child's person. 55376

(8) "Discharge" means that the department of youth services' 55377
legal custody of a child is terminated. 55378

(9) "Release" means the termination of a child's stay in an 55379
institution and the subsequent period during which the child 55380
returns to the community under the terms and conditions of 55381
supervised release. 55382

(10) "Delinquent child" has the same meaning as in section 55383
2152.02 of the Revised Code. 55384

(11) "Felony delinquent" means any child who is at least 55385
~~twelve~~ ten years of age but less than eighteen years of age and 55386
who is adjudicated a delinquent child for having committed an act 55387
that if committed by an adult would be a felony. "Felony 55388
delinquent" includes any adult who is between the ages of eighteen 55389
and twenty-one and who is in the legal custody of the department 55390
of youth services for having committed an act that if committed by 55391
an adult would be a felony. 55392

(12) "Juvenile traffic offender" has the same meaning as in 55393
section 2152.02 of the Revised Code. 55394

(13) "Public safety beds" means all of the following: 55395

(a) Felony delinquents who have been committed to the 55396
department of youth services for the commission of an act, other 55397
than a violation of section 2911.01 or 2911.11 of the Revised 55398
Code, that is a category one offense or a category two offense and 55399
who are in the care and custody of an institution or have been 55400
diverted from care and custody in an institution and placed in a 55401
community corrections facility; 55402

(b) Felony delinquents who, while committed to the department 55403
of youth services and in the care and custody of an institution or 55404
a community corrections facility, are adjudicated delinquent 55405
children for having committed in that institution or community 55406
corrections facility an act that if committed by an adult would be 55407
a misdemeanor or a felony; 55408

(c) Children who satisfy all of the following: 55409

(i) They are at least ~~twelve~~ ten years of age but less than 55410
eighteen years of age. 55411

(ii) They are adjudicated delinquent children for having 55412
committed acts that if committed by an adult would be a felony. 55413

(iii) They are committed to the department of youth services 55414

by the juvenile court of a county that has had one-tenth of one 55415
per cent or less of the statewide adjudications for felony 55416
delinquents as averaged for the past four fiscal years. 55417

(iv) They are in the care and custody of an institution or a 55418
community corrections facility. 55419

(d) Felony delinquents who, while committed to the department 55420
of youth services and in the care and custody of an institution, ~~7~~ 55421
~~commit in that institution an act that if committed by an adult~~ 55422
~~would be a felony, who~~ are serving disciplinary time for having 55423
committed ~~that~~ an act described in division (A)(19)(a), (b), or 55424
(c) of this section, and who have been institutionalized or 55425
institutionalized in a secure facility for the minimum period of 55426
time specified in divisions (A)(1)(b) to (e) of section 2152.16 of 55427
the Revised Code. 55428

(e) Felony delinquents who are subject to and serving a 55429
three-year period of commitment order imposed by a juvenile court 55430
pursuant to divisions (A) and (B) of section 2152.17 of the 55431
Revised Code for an act, other than a violation of section 2911.11 55432
of the Revised Code, that would be a category one offense or 55433
category two offense if committed by an adult. 55434

(f) Felony delinquents who are described in divisions 55435
(A)(13)(a) to (e) of this section, who have been granted a 55436
judicial release to court supervision under division (B) of 55437
section 2152.22 of the Revised Code or a judicial release to the 55438
department of youth services supervision under division (C) of 55439
that section from the commitment to the department of youth 55440
services for the act described in divisions (A)(13)(a) to (e) of 55441
this section, who have violated the terms and conditions of that 55442
release, and who, pursuant to an order of the court of the county 55443
in which the particular felony delinquent was placed on release 55444
that is issued pursuant to division (D) of section 2152.22 of the 55445
Revised Code, have been returned to the department for 55446

institutionalization or institutionalization in a secure facility. 55447

(g) Felony delinquents who have been committed to the custody 55448
of the department of youth services, who have been granted 55449
supervised release from the commitment pursuant to section 5139.51 55450
of the Revised Code, who have violated the terms and conditions of 55451
that supervised release, and who, pursuant to an order of the 55452
court of the county in which the particular child was placed on 55453
supervised release issued pursuant to division (F) of section 55454
5139.52 of the Revised Code, have had the supervised release 55455
revoked and have been returned to the department for 55456
institutionalization. A felony delinquent described in this 55457
division shall be a public safety bed only for the time during 55458
which the felony delinquent is institutionalized as a result of 55459
the revocation subsequent to the initial thirty-day period of 55460
institutionalization required by division (F) of section 5139.52 55461
of the Revised Code. 55462

~~(14) "State target youth" means twenty five per cent of the 55463
projected total number of felony delinquents for each year of a 55464
biennium, factoring in revocations and recommitments. 55465~~

~~(15)~~ Unless the context requires a different meaning, 55466
"community corrections facility" means a county or multicounty 55467
rehabilitation center for felony delinquents who have been 55468
committed to the department of youth services and diverted from 55469
care and custody in an institution and placed in the 55470
rehabilitation center pursuant to division (E) of section 5139.36 55471
of the Revised Code. 55472

~~(16)~~(15) "Secure facility" means any facility that is 55473
designed and operated to ensure that all of its entrances and 55474
exits are under the exclusive control of its staff and to ensure 55475
that, because of that exclusive control, no child who has been 55476
institutionalized in the facility may leave the facility without 55477
permission or supervision. 55478

(17) (16) "Community residential program" means a program that satisfies both of the following:	55479 55480
(a) It is housed in a building or other structure that has no associated major restraining construction, including, but not limited to, a security fence.	55481 55482 55483
(b) It provides twenty-four-hour care, supervision, and programs for felony delinquents who are in residence.	55484 55485
(18) (17) "Category one offense" and "category two offense" have the same meanings as in section 2151.26 of the Revised Code.	55486 55487
(19) (18) "Disciplinary time" means additional time that the department of youth services requires a felony delinquent to serve in an institution, that delays the person's or felony delinquent's planned release, and that the department imposes upon the person or felony delinquent following the conduct of an internal due process hearing for having committed any of the following acts while committed to the department and in the care and custody of an institution:	55488 55489 55490 55491 55492 55493 55494 55495
(a) An act that if committed by an adult would be a felony;	55496
(b) An act that if committed by an adult would be a misdemeanor;	55497 55498
(c) An act that is not described in division (A) (19) (18)(a) or (b) of this section and that violates an institutional rule of conduct of the department.	55499 55500 55501
(20) (19) "Unruly child" has the same meaning as in section 2151.022 of the Revised Code.	55502 55503
(21) (20) "Revocation" means the act of revoking a child's supervised release for a violation of a term or condition of the child's supervised release in accordance with section 5139.52 of the Revised Code.	55504 55505 55506 55507
(22) (21) "Release authority" means the release authority of	55508

the department of youth services that is established by section 55509
5139.50 of the Revised Code. 55510

~~(23)~~(22) "Supervised release" means the event of the release 55511
of a child under this chapter from an institution and the period 55512
after that release during which the child is supervised and 55513
assisted by an employee of the department of youth services under 55514
specific terms and conditions for reintegration of the child into 55515
the community. 55516

~~(24)~~(23) "Victim" means the person identified in a police 55517
report, complaint, or information as the victim of an act that 55518
would have been a criminal offense if committed by an adult and 55519
that provided the basis for adjudication proceedings resulting in 55520
a child's commitment to the legal custody of the department of 55521
youth services. 55522

~~(25)~~(24) "Victim's representative" means a member of the 55523
victim's family or another person whom the victim or another 55524
authorized person designates in writing, pursuant to section 55525
5139.56 of the Revised Code, to represent the victim with respect 55526
to proceedings of the release authority of the department of youth 55527
services and with respect to other matters specified in that 55528
section. 55529

~~(26)~~(25) "Member of the victim's family" means a spouse, 55530
child, stepchild, sibling, parent, stepparent, grandparent, other 55531
relative, or legal guardian of a child but does not include a 55532
person charged with, convicted of, or adjudicated a delinquent 55533
child for committing a criminal or delinquent act against the 55534
victim or another criminal or delinquent act arising out of the 55535
same conduct, criminal or delinquent episode, or plan as the 55536
criminal or delinquent act committed against the victim. 55537

~~(27)~~(26) "Judicial release to court supervision" means a 55538
release of a child from institutional care or institutional care 55539

in a secure facility that is granted by a court pursuant to 55540
division (B) of section 2152.22 of the Revised Code during the 55541
period specified in that division. 55542

~~(28)~~(27) "Judicial release to department of youth services 55543
supervision" means a release of a child from institutional care or 55544
institutional care in a secure facility that is granted by a court 55545
pursuant to division (C) of section 2152.22 of the Revised Code 55546
during the period specified in that division. 55547

~~(29)~~(28) "Juvenile justice system" includes all of the 55548
functions of the juvenile courts, the department of youth 55549
services, any public or private agency whose purposes include the 55550
prevention of delinquency or the diversion, adjudication, 55551
detention, or rehabilitation of delinquent children, and any of 55552
the functions of the criminal justice system that are applicable 55553
to children. 55554

~~(30)~~(29) "Metropolitan county criminal justice services 55555
agency" means an agency that is established pursuant to division 55556
(A) of section 181.54 of the Revised Code. 55557

~~(31)~~(30) "Administrative planning district" means a district 55558
that is established pursuant to division (A) or (B) of section 55559
181.56 of the Revised Code. 55560

~~(32)~~(31) "Criminal justice coordinating council" means a 55561
criminal justice services agency that is established pursuant to 55562
division (D) of section 181.56 of the Revised Code. 55563

~~(33)~~(32) "Comprehensive plan" means a document that 55564
coordinates, evaluates, and otherwise assists, on an annual or 55565
multi-year basis, all of the functions of the juvenile justice 55566
systems of the state or a specified area of the state, that 55567
conforms to the priorities of the state with respect to juvenile 55568
justice systems, and that conforms with the requirements of all 55569
federal criminal justice acts. These functions include, but are 55570

not limited to, all of the following: 55571

(a) Delinquency; 55572

(b) Identification, detection, apprehension, and detention of 55573
persons charged with delinquent acts; 55574

(c) Assistance to crime victims or witnesses, except that the 55575
comprehensive plan does not include the functions of the attorney 55576
general pursuant to sections 109.91 and 109.92 of the Revised 55577
Code; 55578

(d) Adjudication or diversion of persons charged with 55579
delinquent acts; 55580

(e) Custodial treatment of delinquent children; 55581

(f) Institutional and noninstitutional rehabilitation of 55582
delinquent children. 55583

(B) There is hereby created the department of youth services. 55584
The governor shall appoint the director of the department with the 55585
advice and consent of the senate. The director shall hold office 55586
during the term of the appointing governor but subject to removal 55587
at the pleasure of the governor. Except as otherwise authorized in 55588
section 108.05 of the Revised Code, the director shall devote the 55589
director's entire time to the duties of the director's office and 55590
shall hold no other office or position of trust or profit during 55591
the director's term of office. 55592

The director is the chief executive and administrative 55593
officer of the department and has all the powers of a department 55594
head set forth in Chapter 121. of the Revised Code. The director 55595
may adopt rules for the government of the department, the conduct 55596
of its officers and employees, the performance of its business, 55597
and the custody, use, and preservation of the department's 55598
records, papers, books, documents, and property. The director 55599
shall be an appointing authority within the meaning of Chapter 55600

124. of the Revised Code. Whenever this or any other chapter or 55601
section of the Revised Code imposes a duty on or requires an 55602
action of the department, the duty or action shall be performed by 55603
the director or, upon the director's order, in the name of the 55604
department. 55605

Sec. 5139.04. The department of youth services shall do all 55606
of the following: 55607

(A) Support service districts through a central 55608
administrative office that shall have as its administrative head a 55609
deputy director who shall be appointed by the director of the 55610
department. When a vacancy occurs in the office of that deputy 55611
director, an assistant deputy director shall act as that deputy 55612
director until the vacancy is filled. The position of deputy 55613
director and assistant deputy director described in this division 55614
shall be in the unclassified civil service of the state. 55615

(B) Receive custody of all children committed to it under 55616
Chapter 2152. of the Revised Code, cause a study to be made of 55617
those children, and issue any orders, as it considers best suited 55618
to the needs of any of those children and the interest of the 55619
public, for the treatment of each of those children; 55620

(C) Obtain personnel necessary for the performance of its 55621
duties; 55622

(D) ~~Train or provide for training of probation and youth~~ 55623
~~correction workers;~~ 55624

~~(E)~~ Adopt rules that regulate its organization and operation, 55625
that implement sections 5139.34 and 5139.41 to ~~5139.45~~ 5139.43 of 55626
the Revised Code, and that pertain to the administration of other 55627
sections of this chapter; 55628

~~(F)~~(E) Submit reports of its operations to the governor and 55629
the general assembly by the thirty-first day of January of each 55630

odd-numbered year; 55631

~~(G)(F)~~ Conduct a program of research in diagnosis, training, 55632
and treatment of delinquent children to evaluate the effectiveness 55633
of the department's services and to develop more adequate methods; 55634

~~(H)~~ Receive reports from the juvenile courts under division 55635
~~(C)(3)(b)~~ of section 5139.43 of the Revised Code and prepare an 55636
annual report of state juvenile court statistics and information 55637
based upon those reports. The department shall make available a 55638
copy of the annual report to the governor and members of the 55639
general assembly upon request. 55640

~~(I)(G)~~ Develop a standard form for the disposition 55641
investigation report that a juvenile court is required pursuant to 55642
section 2152.18 of the Revised Code to complete and provide to the 55643
department when the court commits a child to the legal custody of 55644
the department; 55645

~~(J)(H)~~ Do all other acts necessary or desirable to carry out 55646
this chapter. 55647

Sec. 5139.33. (A) The department of youth services shall make 55648
grants in accordance with this section to encourage counties to 55649
use community-based programs and services for juveniles who are 55650
adjudicated delinquent children for the commission of acts that 55651
would be felonies if committed by an adult. 55652

(B) Each county seeking a grant under this section shall file 55653
an application with the department of youth services. The 55654
application shall be filed at the time and in accordance with 55655
procedures established by the department in rules adopted under 55656
this section. Each application shall be accompanied by a plan 55657
designed to reduce the county's commitment percentage, or to 55658
enable it to maintain or attain a commitment percentage that is 55659
equal to or below the statewide average commitment percentage. A 55660

county's commitment percentage is the percentage determined by 55661
dividing the number of juveniles the county committed to the 55662
department during the year by the number of juveniles who were 55663
eligible to be committed. The statewide average commitment 55664
percentage is the percentage determined by dividing the number of 55665
juveniles in the state committed to the department during the year 55666
by the number of juveniles who were eligible to be committed. 55667
These percentages shall be determined by the department using the 55668
most reliable data available to it. 55669

Each plan shall include a method of ensuring equal access for 55670
minority youth to the programs and services for which the grant 55671
will be used. 55672

The department shall review each application and plan to 55673
ensure that the requirements of this division are satisfied. Any 55674
county applying for a grant under this section that received a 55675
grant under this section during the preceding year and that failed 55676
to meet its commitment goals for that year shall make the changes 55677
in its plan that the department requires in order to continue to 55678
be eligible for grants under this section. 55679

(C) Subject to division (E) of this section, the amounts 55680
appropriated for the purpose of making grants under this section 55681
shall be distributed annually on a per capita basis among the 55682
counties that have complied with division (B) of this section. 55683

(D) The department shall adopt rules to implement this 55684
section. The rules shall include, but are not limited to, 55685
procedures and schedules for submitting applications and plans 55686
under this section, including procedures allowing joint-county 55687
applications and plans; and procedures for monitoring and 55688
evaluating the effectiveness of the programs and services financed 55689
with grant money, the enhancement of the use of local facilities 55690
and services, and the adequacy of the supervision and treatment 55691
provided to juveniles by those programs and services. 55692

(E)(1) Three months prior to the implementation of the felony delinquent care and custody program described in section 5139.43 of the Revised Code, each county that is entitled to a grant under this section shall receive its grant money for the fiscal year or the remainder of its grant money for the fiscal year, other than any grant money to which it is entitled and that is set aside by the department of youth services for purposes of division (E)(2) of this section. The grant money so distributed shall be paid in a lump sum.

(2) During the first twelve months that the felony delinquent care and custody program described in section 5139.43 of the Revised Code is implemented in a county, any grant or the remainder of any grant to which a county is entitled and that is payable from the appropriation made to the department of youth services for community sanctions shall be distributed as follows:

(a) In the first quarter of the twelve-month period, the county shall receive one hundred per cent of the quarterly distribution.

(b) In the second quarter of the twelve-month period, the county shall receive seventy-five per cent of the quarterly distribution.

(c) In the third quarter of the twelve-month period, the county shall receive fifty per cent of the quarterly distribution.

(d) In the fourth quarter of the twelve-month period, the county shall receive twenty-five per cent of the quarterly distribution.

(3) Grant moneys received pursuant to divisions (E)(1) and (2) of this section shall be transmitted by the juvenile court of the recipient county to the county treasurer, shall be deposited by the county treasurer into the felony delinquent care and custody fund created pursuant to division ~~(C)~~(B)(1) of section

5139.43 of the Revised Code, and shall be used by the juvenile court in accordance with division ~~(C)~~(B)(2) of that section. The grant moneys shall be in addition to, and shall not be used to reduce, any usual annual increase in county funding that the juvenile court is eligible to receive or the current level of county funding of the juvenile court and of any programs or services for delinquent children, unruly children, or juvenile traffic offenders.

(4) One year after the commencement of its operation of the felony delinquent care and custody program described in section 5139.43 of the Revised Code, the department shall not make any further grants under this section.

Sec. 5139.34. (A) Funds may be appropriated to the department of youth services for the purpose of granting state subsidies to counties. A county or the juvenile court that serves a county shall use state subsidies granted to the county pursuant to this section only in accordance with divisions ~~(C)~~(B)(2)(a) and (3)(a) of section 5139.43 of the Revised Code and the rules pertaining to the state subsidy funds that the department adopts pursuant to division ~~(E)~~(D) of section 5139.04 of the Revised Code. The department shall not grant financial assistance pursuant to this section for the provision of care and services for children in a ~~foster care placement~~ facility unless the facility has been certified, licensed, or approved by a state or national agency with certification, licensure, or approval authority, including, but not limited to, the department of job and family services, department of education, department of mental health, ~~or~~ department of mental retardation and developmental disabilities, or American Correctional Association. For the purposes of this section, ~~foster care placement~~ facilities do not include a state institution or a county or district children's home.

The department also shall not grant financial assistance 55755
pursuant to this section for the provision of care and services 55756
for children, including, but not limited to, care and services in 55757
a detention facility, in another facility, or in out-of-home 55758
placement, unless the minimum standards applicable to the care and 55759
services that the department prescribes in rules adopted pursuant 55760
to division ~~(E)~~(D) of section 5139.04 of the Revised Code have 55761
been satisfied. 55762

(B) The department of youth services shall apply the 55763
following formula to determine the amount of the annual grant that 55764
each county is to receive pursuant to division (A) of this 55765
section, subject to the appropriation for this purpose to the 55766
department made by the general assembly: 55767

(1) Each county shall receive a basic annual grant of fifty 55768
thousand dollars. 55769

(2) The sum of the basic annual grants provided under 55770
division (B)(1) of this section shall be subtracted from the total 55771
amount of funds appropriated to the department of youth services 55772
for the purpose of making grants pursuant to division (A) of this 55773
section to determine the remaining portion of the funds 55774
appropriated. The remaining portion of the funds appropriated 55775
shall be distributed on a per capita basis to each county that has 55776
a population of more than twenty-five thousand for that portion of 55777
the population of the county that exceeds twenty-five thousand. 55778

(C)(1) Prior to a county's receipt of an annual grant 55779
pursuant to this section, the juvenile court that serves the 55780
county shall prepare, submit, and file in accordance with division 55781
~~(C)~~(B)(3)(a) of section 5139.43 of the Revised Code an annual 55782
grant agreement and application for funding that is for the 55783
combined purposes of, and that satisfies the requirements of, this 55784
section and section 5139.43 of the Revised Code. In addition to 55785

the subject matters described in division ~~(C)~~(B)(3)(a) of section 55786
5139.43 of the Revised Code or in the rules that the department 55787
adopts to implement that division, the annual grant agreement and 55788
application for funding shall address fiscal accountability and 55789
performance matters pertaining to the programs, care, and services 55790
that are specified in the agreement and application and for which 55791
state subsidy funds granted pursuant to this section will be used. 55792

(2) The county treasurer of each county that receives an 55793
annual grant pursuant to this section shall deposit the state 55794
subsidy funds so received into the county's felony delinquent care 55795
and custody fund created pursuant to division ~~(C)~~(B)(1) of section 55796
5139.43 of the Revised Code. Subject to exceptions prescribed in 55797
section 5139.43 of the Revised Code that may apply to the 55798
disbursement, the department shall disburse the state subsidy 55799
funds to which ~~each county is entitled as follows:~~ 55800

~~(a) Except as provided in division (C)(2)(b) of this section,~~ 55801
~~the department shall disburse the state subsidy funds to which a~~ 55802
~~county is entitled in a lump sum payment that shall be made in~~ 55803
~~July of each calendar year.~~ 55804

~~(b) In the case of state subsidy funds to which a county is~~ 55805
~~entitled for fiscal year 1998, the department shall disburse the~~ 55806
~~state subsidy funds to the county in two distinct payments in~~ 55807
~~accordance with this division. The department shall disburse~~ 55808
~~seventy five per cent of those state subsidy funds to the county~~ 55809
~~in July 1997. After the department reviews and reconciles the~~ 55810
~~applicable reports that the juvenile court of the county is~~ 55811
~~required to prepare and submit to the department pursuant to~~ 55812
~~section 5139.43 of the Revised Code, the department shall disburse~~ 55813
~~to the county in October 1997, the remainder of the state subsidy~~ 55814
~~funds to which the county is entitled.~~ 55815

(3) Upon an order of the juvenile court that serves a county 55816
and subject to appropriation by the board of county commissioners 55817

of that county, a county treasurer shall disburse from the 55818
county's felony delinquent care and custody fund the state subsidy 55819
funds granted to the county pursuant to this section for use only 55820
in accordance with this section, the applicable provisions of 55821
section 5139.43 of the Revised Code, and the county's approved 55822
annual grant agreement and application for funding. 55823

(4) The moneys in a county's felony delinquent care and 55824
custody fund that represent state subsidy funds granted pursuant 55825
to this section are subject to appropriation by the board of 55826
county commissioners of the county; shall be disbursed by the 55827
county treasurer as required by division (C)(3) of this section; 55828
shall be used in the manners referred to in division (C)(3) of 55829
this section; shall not revert to the county general fund at the 55830
end of any fiscal year; shall carry over in the felony delinquent 55831
care and custody fund from the end of any fiscal year to the next 55832
fiscal year; shall be in addition to, and shall not be used to 55833
reduce, any usual annual increase in county funding that the 55834
juvenile court is eligible to receive or the current level of 55835
county funding of the juvenile court and of any programs, care, or 55836
services for alleged or adjudicated delinquent children, unruly 55837
children, or juvenile traffic offenders or for children who are at 55838
risk of becoming delinquent children, unruly children, or juvenile 55839
traffic offenders; and shall not be used to pay for the care and 55840
custody of felony delinquents who are in the care and custody of an 55841
institution pursuant to a commitment, recommitment, or revocation 55842
of a release on parole by the juvenile court of that county or who 55843
are in the care and custody of a community corrections facility 55844
pursuant to a placement by the department with the consent of the 55845
juvenile court as described in division (E) of section 5139.36 of 55846
the Revised Code. 55847

(5) As a condition of the continued receipt of state subsidy 55848
funds pursuant to this section, each county and the juvenile court 55849

that serves each county that receives an annual grant pursuant to 55850
this section shall comply with divisions ~~(C)~~(B)(3)(b), (c), and 55851
(d) of section 5139.43 of the Revised Code. 55852

Sec. 5139.36. (A) In accordance with this section and the 55853
rules adopted under it and from funds appropriated to the 55854
department of youth services for the purposes of this section, the 55855
department shall make grants that provide financial resources to 55856
operate community corrections facilities for felony delinquents. 55857

(B)(1) Each community corrections facility that intends to 55858
seek a grant under this section shall file an application with the 55859
department of youth services at the time and in accordance with 55860
the procedures that the department shall establish by rules 55861
adopted in accordance with Chapter 119. of the Revised Code. In 55862
addition to other items required to be included in the 55863
application, a plan that satisfies both of the following shall be 55864
included: 55865

(a) It reduces the number of felony delinquents committed to 55866
the department from the county or counties associated with the 55867
community corrections facility. 55868

(b) It ensures equal access for minority felony delinquents 55869
to the programs and services for which a potential grant would be 55870
used. 55871

(2) The department of youth services shall review each 55872
application submitted pursuant to division (B)(1) of this section 55873
to determine whether the plan described in that division, the 55874
community corrections facility, and the application comply with 55875
this section and the rules adopted under it. 55876

(C) To be eligible for a grant under this section and for 55877
continued receipt of moneys comprising a grant under this section, 55878
a community corrections facility shall satisfy at least all of the 55879

following requirements: 55880

(1) Be constructed, reconstructed, improved, or financed by 55881
the Ohio building authority pursuant to section 307.021 of the 55882
Revised Code and Chapter 152. of the Revised Code for the use of 55883
the department of youth services and be designated as a community 55884
corrections facility; 55885

(2) Have written standardized criteria governing the types of 55886
felony delinquents that are eligible for the programs and services 55887
provided by the facility; 55888

(3) Have a written standardized intake screening process and 55889
an intake committee that at least performs both of the following 55890
tasks: 55891

(a) Screens all eligible felony delinquents who are being 55892
considered for admission to the facility in lieu of commitment to 55893
the department; 55894

(b) Notifies, within ten days after the date of the referral 55895
of a felony delinquent to the facility, the committing court 55896
whether the felony delinquent will be admitted to the facility. 55897

(4) Comply with all applicable fiscal and program rules that 55898
the department adopts in accordance with Chapter 119. of the 55899
Revised Code and demonstrate that felony delinquents served by the 55900
facility have been or will be diverted from a commitment to the 55901
department. 55902

(D) The department of youth services shall determine the 55903
method of distribution of the funds appropriated for grants under 55904
this section to community corrections facilities. 55905

(E) ~~With the consent of a committing court and of a community~~ 55906
~~corrections facility that has received a grant under this section,~~ 55907
~~the department of youth services may place in that facility a~~ 55908
~~felony delinquent who has been committed to the department. During~~ 55909

~~the period in which the felony delinquent is in that facility, the~~ 55910
~~felony delinquent~~ (1) The department of youth services shall adopt 55911
rules in accordance with Chapter 119. of the Revised Code to 55912
establish the minimum occupancy threshold of community corrections 55913
facilities. 55914

(2) The department may make referrals for the placement of 55915
children in its custody to a community corrections facility if the 55916
community corrections facility is not meeting the minimum 55917
occupancy threshold established by the department. At least 55918
forty-five days prior to the referral of a child, the department 55919
shall notify the committing court of its intent to place the child 55920
in a community corrections facility. The court shall have thirty 55921
days after the receipt of the notice to approve or disapprove the 55922
placement. If the court does not respond to the notice of the 55923
placement within that thirty-day period, the department shall 55924
proceed with the placement and debit the county in accordance with 55925
sections 5139.41 to 5139.45 of the Revised Code. A child placed in 55926
a community corrections facility pursuant to this division shall 55927
remain in the legal custody of the department of youth services 55928
during the period in which the child is in the community 55929
corrections facility. 55930

(3) Counties that are not associated with a community 55931
corrections facility may refer children to a community corrections 55932
facility with the consent of the facility. The department of youth 55933
services shall debit the county that makes the referral in 55934
accordance with sections 5139.41 to 5139.45 of the Revised Code. 55935

(F) If the board or other governing body of a community 55936
corrections facility establishes an advisory board, the board or 55937
other governing authority of the community corrections facility 55938
shall reimburse the members of the advisory board for their actual 55939
and necessary expenses incurred in the performance of their 55940
official duties on the advisory board. The members of advisory 55941

boards shall serve without compensation. 55942

~~Sec. 5139.41. On and after January 1, 1995, the~~ The 55943
appropriation made to the department of youth services for care 55944
and custody of felony delinquents shall be expended in accordance 55945
with ~~a formula~~ the following procedure that the department shall 55946
~~develop~~ use for each year of a biennium. The ~~formula~~ procedure 55947
shall be consistent with sections 5139.41 to ~~5139.45~~ 5139.43 of 55948
the Revised Code and shall be developed in accordance with the 55949
following guidelines: 55950

~~(A) The department shall set aside at least three per cent~~ 55951
~~but not more than five per cent of the appropriation for purposes~~ 55952
~~of funding the contingency program described in section 5139.45 of~~ 55953
~~the Revised Code and of use in accordance with that section.~~ 55954

~~(B)(1) After setting aside the amount described in division~~ 55955
~~(A) of this section, the department shall set aside twenty five~~ 55956
~~per cent of the remainder of the appropriation and use that amount~~ 55957
~~for the purpose described in division (B)(2) of this section and~~ 55958
~~to pay certain of the operational costs associated with, and to~~ 55959
~~provide cash flow for, the following:~~ 55960

~~(a) Institutions;~~ 55961

~~(b) The diagnosis, care, or treatment of felony delinquents~~ 55962
~~at institutions, facilities, or centers pursuant to contracts~~ 55963
~~entered into under section 5139.08 of the Revised Code;~~ 55964

~~(c) Community corrections facilities constructed,~~ 55965
~~reconstructed, improved, or financed as described in section~~ 55966
~~5139.36 of the Revised Code for the purpose of providing~~ 55967
~~alternative placement and services for felony delinquents who have~~ 55968
~~been diverted from care and custody in institutions.~~ 55969

~~(2) The department may use a portion of the twenty five per~~ 55970
~~cent of the remainder of the appropriation set aside pursuant to~~ 55971

~~division (B)(1) of this section for administrative expenses 55972
incurred by the department in connection with the felony 55973
delinquent care and custody program described in section 5139.43 55974
of the Revised Code and the associated contingency program 55975
described in section 5139.45 of the Revised Code. 55976~~

~~(C) After setting aside the amounts described in divisions 55977
(A) and (B)(1) of this section, the department shall set aside the 55978
amount of the appropriation that is equal to twenty five per cent 55979
of the amount that is calculated by multiplying the per diem cost 55980
for the care and custody of felony delinquents, as determined 55981
pursuant to division (D) of section 5139.42 of the Revised Code, 55982
by the number of bed days that the department projects for 55983
occupancy in community corrections facilities described in 55984
division (B)(1)(c) of this section. The department shall use the 55985
amount of the appropriation that is set aside pursuant to this 55986
division to pay the percentage of the per diem cost for the care 55987
and custody of felony delinquents who are in the care and custody 55988
of community corrections facilities described in division 55989
(B)(1)(c) of this section for which the department is responsible 55990
under sections 5139.41 to 5139.45 of the Revised Code. 55991~~

~~(D) After setting aside the amounts described in divisions 55992
(A) to (C) of this section, the department shall set aside the 55993
amount of the appropriation that is necessary to pay seventy five 55994
per cent of the per diem cost of public safety beds and shall use 55995
that amount for the purpose of paying that per diem cost. 55996~~

~~(E) After setting aside the amounts described in divisions 55997
(A) to (D) of this section, the department shall use the remainder 55998
of the appropriation in connection with the felony delinquent care 55999
and custody program described in section 5139.43 of the Revised 56000
Code, except that, for fiscal year 2002 and fiscal year 2003 and 56001
only for those two fiscal years, the total number of beds 56002
available to all counties via public safety beds and county 56003~~

~~allocations shall not be less than the total beds used by all the 56004
counties during fiscal year 2000 funded by care and custody 56005
chargebacks (Line Item 401) and as public safety beds. 56006~~

~~(F) If the department's appropriation for a fiscal year is 56007
subsequently revised by law or its expenditures ordered to be 56008
reduced by executive order under section 126.05 of the Revised 56009
Code, the department may adjust the amounts described in divisions 56010
(A) to (E) of this section in a manner consistent with the 56011
revision or reduction. The line item appropriation for the care 56012
and custody of felony delinquents shall provide funding for 56013
operational costs for the following: 56014~~

~~(1) Institutions and the diagnosis, care, or treatment of 56015
felony delinquents at facilities pursuant to contracts entered 56016
into under section 5139.08 of the Revised Code; 56017~~

~~(2) Community corrections facilities constructed, 56018
reconstructed, improved, or financed as described in section 56019
5139.36 of the Revised Code for the purpose of providing 56020
alternative placement and services for felony delinquents who have 56021
been diverted from care and custody in institutions; 56022~~

~~(3) County juvenile courts that administer programs and 56023
services for prevention, early intervention, diversion, treatment, 56024
and rehabilitation services and programs that are provided for 56025
alleged or adjudicated unruly or delinquent children or for 56026
children who are at risk of becoming unruly or delinquent 56027
children; 56028~~

~~(4) Administrative expenses the department incurs in 56029
connection with the felony delinquent care and custody programs 56030
described in section 5139.43 of the Revised Code. 56031~~

~~(B) From the appropriated line item for the care and custody 56032
of felony delinquents, the department, with the advice of the 56033
RECLAIM advisory committee established under section 5139.44 of 56034~~

the Revised Code, shall allocate annual operational funds for 56035
county juvenile programs, institutional care and custody, 56036
community corrections facilities care and custody, and 56037
administrative expenses incurred by the department associated with 56038
felony delinquent care and custody programs. The department, with 56039
the advice of the RECLAIM advisory committee, shall adjust these 56040
allocations, when modifications to this line item are made by 56041
legislative or executive action. 56042

(C) The department shall divide county juvenile program 56043
allocations among county juvenile courts that administer programs 56044
and services for prevention, early intervention, diversion, 56045
treatment, and rehabilitation that are provided for alleged or 56046
adjudicated unruly or delinquent children or for children who are 56047
at risk of becoming unruly or delinquent children. The department 56048
shall base funding on the county's previous year's ratio of the 56049
department's institutional and community correctional facilities 56050
commitments to that county's four year average of felony 56051
adjudications, divided by statewide ratios of commitments to 56052
felony adjudications, as specified in the following formula: 56053

(1) The department shall give to each county a proportional 56054
allocation of commitment credits. The proportional allocation of 56055
commitment credits shall be calculated by the following 56056
procedures: 56057

(a) The department shall determine for each county and for 56058
the state a four year average of felony adjudications. 56059

(b) The department shall determine for each county and for 56060
the state the number of charged bed days, for both the department 56061
and community correctional facilities, from the previous year. 56062

(c) The department shall divide the statewide total number of 56063
charged bed days by the statewide total number of felony 56064
adjudications, which quotient shall then be multiplied by a factor 56065

determined by the department. 56066

(d) The department shall calculate the county's allocation of credits by multiplying the number of adjudications for each court by the result determined pursuant to division (C)(1)(c) of this section. 56067
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(2) The department shall subtract from the allocation determined pursuant to division (C)(1) of this section a credit for every chargeable bed day a youth stays in a department institution and two-thirds of credit for every chargeable bed day a youth stays in a community correctional facility. At the end of the year, the department shall divide the amount of remaining credits of that county's allocation by the total number of remaining credits to all counties, to determine the county's percentage, which shall then be applied to the total county allocation to determine the county's payment for the fiscal year. 56071
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(3) The department shall pay counties three times during the fiscal year to allow for credit reporting and audit adjustments, and modifications to the appropriated line item for the care and custody of felony delinquents, as described in this section. The department shall pay fifty per cent of the payment by the fifteenth of July of each fiscal year, twenty-five per cent by the fifteenth of January of that fiscal year, and twenty-five per cent of the payment by the fifteenth of June of that fiscal year. 56081
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(D) In fiscal year 2004, the payment of county juvenile programs shall be based on the following procedure: 56089
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(1) The department shall divide the funding earned by each court in fiscal year 2003 by the aggregate funding of all courts, resulting in a percentage. 56091
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(2) The department shall apply the percentage determined under division (D)(1) of this section to the total county juvenile program allocation for fiscal year 2004 to determine each court's 56094
56095
56096

total payment. 56097

(3) The department shall make payments in accordance with the 56098
schedule established in division (C)(3) of this section. 56099

Sec. 5139.43. (A) The department of youth services shall 56100
operate a felony delinquent care and custody program ~~with the~~ 56101
~~remainder of the appropriation described in division (E) of~~ 56102
~~section 5139.41 of the Revised Code. The program that shall be~~ 56103
operated in accordance with the formula developed pursuant to 56104
~~sections section 5139.41 and 5139.42 of the Revised Code, subject~~ 56105
to the conditions specified in this section, ~~and in conjunction~~ 56106
~~with the contingency program described in section 5139.45 of the~~ 56107
~~Revised Code.~~ 56108

(B)(1) ~~The department of youth services annually shall~~ 56109
~~allocate to each county a portion of the remainder of the~~ 56110
~~appropriation described in division (E) of section 5139.41 of the~~ 56111
~~Revised Code. The portion to be allocated to each county shall be~~ 56112
~~determined by multiplying the county's percentage determined under~~ 56113
~~division (E) of section 5139.42 of the Revised Code by the amount~~ 56114
~~of that remainder. The department shall divide the portion to be~~ 56115
~~allocated to each county by twelve or, if in a particular fiscal~~ 56116
~~year the felony delinquent care and custody program is in effect~~ 56117
~~in a county less than twelve months, by the number of months the~~ 56118
~~program is in effect in that county to determine the monthly~~ 56119
~~allocation to that county.~~ 56120

~~(2)(a) Except as provided in divisions (B)(2)(b) and (E) of~~ 56121
~~this section, the department shall reduce the monthly allocation~~ 56122
~~for each fiscal year to each county as determined under division~~ 56123
~~(B)(1) of this section by both of the following:~~ 56124

~~(i) Seventy five per cent of the amount determined by~~ 56125
~~multiplying the per diem cost for the care and custody of felony~~ 56126
~~delinquents, as determined pursuant to division (D) of section~~ 56127

~~5139.42 of the Revised Code, by the number of felony delinquents 56128
who have been adjudicated delinquent children and, except as 56129
otherwise provided in divisions (B)(2)(a) and (3) of this section, 56130
who are in the care and custody of an institution pursuant to a 56131
commitment, recommitment, or revocation of a release by the 56132
juvenile court of that county; 56133~~

~~(ii) Fifty per cent of the amount determined by multiplying 56134
the per diem cost for the care and custody of felony delinquents, 56135
as determined pursuant to division (D) of section 5139.42 of the 56136
Revised Code, by the number of felony delinquents who have been 56137
adjudicated delinquent children and, except as otherwise provided 56138
in division (B)(3) of this section, who are in the care and 56139
custody of a community corrections facility pursuant to a 56140
placement by the department with the consent of the juvenile court 56141
of that county as described in division (E) of section 5139.36 of 56142
the Revised Code. 56143~~

~~Public safety beds shall not be included in the number of 56144
felony delinquents who have been adjudicated delinquent children 56145
by a juvenile court in making the seventy five per cent reduction 56146
described in division (B)(2)(a)(i) of this section. The department 56147
shall bear the care and custody costs associated with public 56148
safety beds. 56149~~

~~(b) If a county has exhausted its current and future monthly 56150
allocations for the current fiscal year as determined under 56151
division (B)(1) of this section, the department shall bear the 56152
remainder of the amounts calculated under divisions (B)(2)(a)(i) 56153
and (ii) of this section for the care and custody of felony 56154
delinquents who are in the care and custody of an institution 56155
pursuant to a commitment, recommitment, or revocation of a release 56156
or in the care and custody of a community corrections facility by 56157
debiting, in accordance with division (C)(2) of section 5139.45 of 56158
the Revised Code, the amount of the appropriation for care and 56159~~

~~eustody of felony delinquents that was set aside for the 56160
contingency program pursuant to division (A) of section 5139.41 of 56161
the Revised Code. 56162~~

~~(3)(a) Subject to divisions (B)(2)(b) and (4) and (C)(3)(b) 56163
and (c) of this section and subject to the special provisions of 56164
division (B)(3)(b) of this section pertaining to monthly 56165
allocations under divisions (B)(1) and (2)(a) of this section for 56166
the month of June, after the application of division (B)(2)(a) of 56167
this section and on or before the fifteenth day of the following 56168
month, the department shall disburse to the juvenile court of each 56169
county the remainder of the monthly allocation of that county as 56170
determined pursuant to divisions (B)(1) and (2)(a) of this 56171
section. 56172~~

~~(b)(i) For the monthly allocation for the month of June of 56173
each fiscal year, the department shall estimate for each county 56174
the number of felony delinquents described in divisions 56175
(B)(2)(a)(i) and (ii) of this section rather than use the actual 56176
number of those felony delinquents, shall use the estimated number 56177
of those felony delinquents in making the seventy five per cent 56178
and fifty per cent reductions described in those divisions, and 56179
shall encumber the remainder of the estimated monthly allocation 56180
of each county for the month of June, as determined pursuant to 56181
divisions (B)(1), (2)(a), and (3)(b)(i) of this section, for 56182
disbursement in the month of July of the next fiscal year in 56183
accordance with division (B)(3)(b)(ii) of this section. If the 56184
total of the seventy five per cent and fifty per cent reductions 56185
described in division (B)(2)(a) of this section exceeds the 56186
estimated monthly allocation of a county for the month of June as 56187
so determined, the department may cover the amount of the excess 56188
by debiting, in accordance with division (C)(2) of section 5139.45 56189
of the Revised Code, the amount of the appropriation for care and 56190
eustody of felony delinquents that was set aside for the 56191~~

~~contingency program pursuant to division (A) of section 5139.41 of the Revised Code.~~ 56192
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~~(ii) In the month of July of each new fiscal year, the department shall reconcile for each county the estimated reductions that occurred pursuant to divisions (B)(2)(a) and (3)(b)(i) of this section and the reductions that should have occurred pursuant to division (B)(2)(a) of this section by using the actual number of felony delinquents described in divisions (B)(2)(a)(i) and (ii) of this section for the month of June of the prior fiscal year. After that reconciliation occurs, subject to divisions (B)(2)(b) and (4) and (C)(3)(b) and (c) of this section, the department shall disburse to each county the remainder of its monthly allocation for the month of June of the prior fiscal year as adjusted pursuant to the reconciliation and division (B)(3)(b)(ii) of this section.~~ 56194
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~~In connection with the adjustments in the monthly allocations for the month of June of the prior fiscal year, if the encumbered monthly allocations of one or more counties for that month exceed or are less than the monthly allocations for that month to which those counties are entitled under divisions (B)(1) and (2)(a) of this section by using the actual number of felony delinquents described in divisions (B)(2)(a)(i) and (ii) of this section rather than the estimated number of those felony delinquents, the department may make the necessary adjustments in the monthly allocations of those counties for the month of June of the prior fiscal year within the total of the moneys for monthly allocations for that month that were encumbered for all of the counties. If that total amount is insufficient to make the requisite monthly allocations for that month to all counties in accordance with divisions (B)(1) and (2)(a) of this section, the department shall cover the insufficiency by debiting, in accordance with division (C)(2) of section 5139.45 of the Revised Code, the amount of the~~ 56207
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~~appropriation for care and custody of felony delinquents that was 56224
set aside for the contingency program pursuant to division (A) of 56225
section 5139.41 of the Revised Code. 56226~~

~~(4) Notwithstanding the general disbursement requirements of 56227
division (B)(3)(a) and (b)(ii) of this section, if a juvenile 56228
court fails to comply with division (C)(3)(d) of this section and 56229
the department is not able to reconcile fiscal accounting as a 56230
consequence of that failure, the department is not required to 56231
make any disbursement in accordance with division (B)(3)(a) or 56232
(b)(ii) of this section to the juvenile court until it complies 56233
with division (C)(3)(d) of this section. 56234~~

~~(C)(1) Each juvenile court shall use the moneys disbursed to 56235
it by the department of youth services pursuant to division (B) of 56236
this section 5139.41 of the Revised Code in accordance with the 56237
applicable provisions of division ~~(C)~~(B)(2) of this section and 56238
shall transmit the moneys to the county treasurer for deposit in 56239
accordance with this division. The county treasurer shall create 56240
in the county treasury a fund that shall be known as the felony 56241
delinquent care and custody fund and shall deposit in that fund 56242
the moneys disbursed to the juvenile court pursuant to division 56243
(B) of ~~this~~ section 5139.41 of the Revised Code. The county 56244
treasurer also shall deposit into that fund the state subsidy 56245
funds granted to the county pursuant to section 5139.34 of the 56246
Revised Code. The moneys disbursed to the juvenile court pursuant 56247
to division (B) of ~~this~~ section 5139.41 of the Revised Code and 56248
deposited pursuant to this division in the felony delinquent care 56249
and custody fund shall not be commingled with any other county 56250
funds except state subsidy funds granted to the county pursuant to 56251
section 5139.34 of the Revised Code; shall not be used for any 56252
capital construction projects; upon an order of the juvenile court 56253
and subject to appropriation by the board of county commissioners, 56254
shall be disbursed to the juvenile court for use in accordance 56255~~

with the applicable provisions of division ~~(C)~~(B)(2) of this 56256
section; shall not revert to the county general fund at the end of 56257
any fiscal year; and shall carry over in the felony delinquent 56258
care and custody fund from the end of any fiscal year to the next 56259
fiscal year. The moneys disbursed to the juvenile court pursuant 56260
to division (B) of ~~this~~ section 5139.41 of the Revised Code and 56261
deposited pursuant to this division in the felony delinquent care 56262
and custody fund shall be in addition to, and shall not be used to 56263
reduce, any usual annual increase in county funding that the 56264
juvenile court is eligible to receive or the current level of 56265
county funding of the juvenile court and of any programs or 56266
services for delinquent children, unruly children, or juvenile 56267
traffic offenders. 56268

(2)(a) A county and the juvenile court that serves the county 56269
shall use the moneys in its felony delinquent care and custody 56270
fund in accordance with rules that the department of youth 56271
services adopts pursuant to division ~~(E)~~(D) of section 5139.04 of 56272
the Revised Code and as follows: 56273

(i) The moneys in the fund that represent state subsidy funds 56274
granted to the county pursuant to section 5139.34 of the Revised 56275
Code shall be used to aid in the support of prevention, early 56276
intervention, diversion, treatment, and rehabilitation programs 56277
that are provided for alleged or adjudicated unruly children or 56278
delinquent children or for children who are at risk of becoming 56279
unruly children or delinquent children. The county shall not use 56280
for capital improvements more than fifteen per cent of the moneys 56281
in the fund that represent the applicable annual grant of those 56282
state subsidy funds. 56283

(ii) The moneys in the fund that were disbursed to the 56284
juvenile court pursuant to division (B) of ~~this~~ section 5139.41 of 56285
the Revised Code and deposited pursuant to division ~~(C)~~(B)(1) of 56286
this section in the fund shall be used to provide programs and 56287

services for the training, treatment, or rehabilitation of felony 56288
delinquents that are alternatives to their commitment to the 56289
department, including, but not limited to, community residential 56290
programs, day treatment centers, services within the home, and 56291
electronic monitoring, and shall be used in connection with 56292
training, treatment, rehabilitation, early intervention, or other 56293
programs or services for any delinquent child, unruly child, or 56294
juvenile traffic offender who is under the jurisdiction of the 56295
juvenile court. ~~For purposes of division (C)(2)(a)(ii) of this 56296~~
~~section, a delinquent child includes a child who is so adjudicated 56297~~
~~for the commission of an act that if committed by an adult would 56298~~
~~be a misdemeanor or felony. 56299~~

~~If, during the previous state fiscal year, the county did not 56300~~
~~exceed in any month its monthly allocation as determined pursuant 56301~~
~~to division (B)(1) of this section in connection with felony 56302~~
~~delinquents described in divisions (B)(2)(a)(i) and (ii) of this 56303~~
~~section, the moneys in the fund that were disbursed to the 56304~~
~~juvenile court pursuant to division (B) of this section and 56305~~
~~deposited pursuant to division (C)(1) of this section in the The 56306~~
fund also may be used for prevention, early intervention, 56307
diversion, treatment, and rehabilitation programs that are 56308
provided for alleged or adjudicated unruly children, delinquent 56309
children, or juvenile traffic offenders or for children who are at 56310
risk of becoming unruly children, delinquent children, or juvenile 56311
traffic offenders. Consistent with division ~~(C)~~(B)(1) of this 56312
section, a county and the juvenile court of a county shall not use 56313
any of those moneys for capital construction projects. 56314

(iii) The county and the juvenile court that serves the 56315
county may not use moneys in the fund for the provision of care 56316
and services for children, including, but not limited to, care and 56317
services in a detention facility, in another facility, or in 56318
out-of-home placement, unless the minimum standards that apply to 56319

the care and services and that the department prescribes in rules 56320
adopted pursuant to division ~~(E)~~(D) of section 5139.04 of the 56321
Revised Code have been satisfied. 56322

(b) Each juvenile court shall comply with division 56323
~~(C)~~(B)(3)(d) of this section as implemented by the department. ~~If~~ 56324
~~a juvenile court fails to comply with that division and the~~ 56325
~~department is not able to reconcile fiscal accounting as a~~ 56326
~~consequence of the failure, the provisions of division (B)(4) of~~ 56327
~~this section shall apply.~~ 56328

(3) In accordance with rules adopted by the department 56329
pursuant to division ~~(E)~~(D) of section 5139.04 of the Revised 56330
Code, each juvenile court and the county served by that juvenile 56331
court shall do all of the following that apply: 56332

(a) The juvenile court shall prepare an annual grant 56333
agreement and application for funding that satisfies the 56334
requirements of this section and section 5139.34 of the Revised 56335
Code and that pertains to the use, upon an order of the juvenile 56336
court and subject to appropriation by the board of county 56337
commissioners, of the moneys in its felony delinquent care and 56338
custody fund for specified programs, care, and services as 56339
described in division ~~(C)~~(B)(2)(a) of this section, shall submit 56340
that agreement and application to the county family and children 56341
first council, the regional family and children first council, or 56342
the local intersystem services to children cluster as described in 56343
sections 121.37 and 121.38 of the Revised Code, whichever is 56344
applicable, and shall file that agreement and application with the 56345
department for its approval. The annual grant agreement and 56346
application for funding shall include a method of ensuring equal 56347
access for minority youth to the programs, care, and services 56348
specified in it. 56349

The department may approve an annual grant agreement and 56350
application for funding only if the juvenile court involved has 56351

complied with the preparation, submission, and filing requirements 56352
described in division ~~(C)~~(B)(3)(a) of this section. If the 56353
juvenile court complies with those requirements and the department 56354
approves that agreement and application, the juvenile court and 56355
the county served by the juvenile court may expend the state 56356
subsidy funds granted to the county pursuant to section 5139.34 of 56357
the Revised Code only in accordance with division ~~(C)~~(B)(2)(a) of 56358
this section, the rules pertaining to state subsidy funds that the 56359
department adopts pursuant to division ~~(E)~~(D) of section 5139.04 56360
of the Revised Code, and the approved agreement and application. 56361

(b) By the thirty-first day of August of each year, the 56362
juvenile court shall file with the department a report that 56363
contains all of the statistical and other information for each 56364
month of the prior state fiscal year ~~that will permit the~~ 56365
~~department to prepare the report described in division (D) of this~~ 56366
~~section and the annual report described in division (H) of section~~ 56367
~~5139.04 of the Revised Code.~~ If the juvenile court fails to file 56368
the report required by division ~~(C)~~(B)(3)(b) of this section by 56369
the thirty-first day of August of any year, the department shall 56370
not disburse any payment of state subsidy funds to which the 56371
county otherwise is entitled pursuant to section 5139.34 of the 56372
Revised Code and shall not disburse pursuant to division (B)~~(3)(a)~~ 56373
~~or (b)(ii) of this section the remainder of 5139.41 of the Revised~~ 56374
~~Code~~ the applicable ~~monthly~~ allocation ~~of the county~~ until the 56375
juvenile court fully complies with division ~~(C)~~(B)(3)(b) of this 56376
section. 56377

(c) If the department requires the juvenile court to prepare 56378
monthly statistical reports ~~for use under section 5139.42 of the~~ 56379
~~Revised Code~~ and to submit the reports on forms provided by the 56380
department, the juvenile court shall file those reports with the 56381
department on the forms so provided. If the juvenile court fails 56382
to prepare and submit those monthly statistical reports within the 56383

department's timelines, the department shall not disburse any 56384
payment of state subsidy funds to which the county otherwise is 56385
entitled pursuant to section 5139.34 of the Revised Code and shall 56386
not disburse pursuant to division (B)~~(3)(a)~~ or ~~(b)(ii)~~ of ~~this~~ 56387
section ~~the remainder of 5139.41 of the Revised Code~~ the 56388
applicable ~~monthly~~ allocation ~~of the county~~ until the juvenile 56389
court fully complies with division ~~(C)~~(B)(3)(c) of this section. 56390
If the juvenile court fails to prepare and submit those monthly 56391
statistical reports within one hundred eighty days of the date the 56392
department establishes for their submission, the department shall 56393
not disburse any payment of state subsidy funds to which the 56394
county otherwise is entitled pursuant to section 5139.34 of the 56395
Revised Code and shall not disburse pursuant to division (B)~~(3)(a)~~ 56396
~~or (b)(ii)~~ of ~~this~~ section ~~the remainder of 5139.41 of the Revised~~ 56397
Code the applicable ~~monthly~~ allocation ~~of the county~~, and the 56398
state subsidy funds and the remainder of the applicable ~~monthly~~ 56399
allocation shall revert to the department. If a juvenile court 56400
states in a monthly statistical report that the juvenile court 56401
adjudicated within a state fiscal year five hundred or more 56402
children to be delinquent children for committing acts that would 56403
be felonies if committed by adults and if the department 56404
determines that the data in the report may be inaccurate, the 56405
juvenile court shall have an independent auditor or other 56406
qualified entity certify the accuracy of the data on a date 56407
determined by the department. 56408

(d) If the department requires the juvenile court and the 56409
county to participate in a fiscal monitoring program or another 56410
monitoring program that is conducted by the department to ensure 56411
compliance by the juvenile court and the county with division 56412
~~(C)~~(B) of this section, the juvenile court and the county shall 56413
participate in the program and fully comply with any guidelines 56414
for the performance of audits adopted by the department pursuant 56415
to that program and all requests made by the department pursuant 56416

to that program for information necessary to reconcile fiscal 56417
accounting. If an audit that is performed pursuant to a fiscal 56418
monitoring program or another monitoring program described in this 56419
division determines that the juvenile court or the county used 56420
moneys in the county's felony delinquent care and custody fund for 56421
expenses that are not authorized under division ~~(C)~~(B) of this 56422
section, within forty-five days after the department notifies the 56423
county of the unauthorized expenditures, the county either shall 56424
repay the amount of the unauthorized expenditures from the county 56425
general revenue fund to the state's general revenue fund or shall 56426
file a written appeal with the department. If an appeal is timely 56427
filed, the director of the department shall render a decision on 56428
the appeal and shall notify the appellant county or its juvenile 56429
court of that decision within forty-five days after the date that 56430
the appeal is filed. If the director denies an appeal, the 56431
county's fiscal agent shall repay the amount of the unauthorized 56432
expenditures from the county general revenue fund to the state's 56433
general revenue fund within thirty days after receiving the 56434
director's notification of the appeal decision. If the county 56435
fails to make the repayment within that thirty-day period and if 56436
the unauthorized expenditures pertain to moneys allocated under 56437
sections 5139.41 to ~~5139.45~~ 5139.43 of the Revised Code, the 56438
department shall deduct the amount of the unauthorized 56439
expenditures from the next ~~monthly~~ allocation of those moneys to 56440
the county in accordance with this section or from the allocations 56441
that otherwise would be made under those sections to the county 56442
during the next state fiscal year in accordance with this section 56443
and shall return that deducted amount to the state's general 56444
revenue fund. If the county fails to make the repayment within 56445
that thirty-day period and if the unauthorized expenditures 56446
pertain to moneys granted pursuant to section 5139.34 of the 56447
Revised Code, the department shall deduct the amount of the 56448
unauthorized expenditures from the next annual grant to the county 56449

pursuant to that section and shall return ~~than~~ that deducted 56450
amount to the state's general revenue fund. 56451

~~(D) On or prior to the first day of December of each year,~~ 56452
~~the department of youth services shall submit to the joint~~ 56453
~~legislative committee on juvenile corrections overcrowding a~~ 56454
~~report that pertains to the operation of sections 5139.34 and~~ 56455
~~5139.41 to 5139.45 of the Revised Code during the immediately~~ 56456
~~preceding state fiscal year and that includes, but is not limited~~ 56457
~~to, the following:~~ 56458

~~(1) A description of the programs, care, and services that~~ 56459
~~were financed under those sections in each county;~~ 56460

~~(2) The number of felony delinquents, other delinquent~~ 56461
~~children, unruly children, and juvenile traffic offenders served~~ 56462
~~by the programs, care, and services in each county;~~ 56463

~~(3) The total number of children adjudicated in each juvenile~~ 56464
~~court as felony delinquents;~~ 56465

~~(4) The total number of felony delinquents who were committed~~ 56466
~~by the juvenile court of each county to the department and who~~ 56467
~~were in the care and custody of an institution or a community~~ 56468
~~corrections facility;~~ 56469

~~(5) A breakdown of the felony delinquents described in~~ 56470
~~division (D)(4) of this section on the basis of the types and~~ 56471
~~degrees of felonies committed, the ages of the felony delinquents~~ 56472
~~at the time they committed the felonies, and the sex and race of~~ 56473
~~the felony delinquents.~~ 56474

~~(E)~~(C) The determination of which county a reduction of the 56475
monthly care and custody allocation will be charged against for a 56476
particular youth shall be made as outlined below for all youths 56477
who do not qualify as public safety beds. The determination of 56478
which county a reduction of the monthly care and custody 56479
allocation will be charged against shall be made as follows until 56480

each youth is released: 56481

(1) In the event of a commitment, the reduction shall be 56482
charged against the committing county. 56483

(2) In the event of a recommitment, the reduction shall be 56484
charged against the original committing county until the 56485
expiration of the minimum period of institutionalization under the 56486
original order of commitment or until the date on which the youth 56487
is admitted to the department of youth services pursuant to the 56488
order of recommitment, whichever is later. Reductions of the 56489
~~monthly~~ allocation shall be charged against the county that 56490
recommitted the youth after the minimum expiration date of the 56491
original commitment. 56492

(3) In the event of a revocation of a release on parole, the 56493
reduction shall be charged against the county that revokes the 56494
youth's parole. 56495

(D) A juvenile court is not precluded by its allocation 56496
amount for the care and custody of felony delinquents from 56497
committing a felony delinquent to the department of youth services 56498
for care and custody in an institution or a community corrections 56499
facility when the juvenile court determines that the commitment is 56500
appropriate. 56501

Sec. 5139.44. (A)(1) There is hereby created the RECLAIM 56502
advisory committee that shall be composed of the following ten 56503
members: 56504

(a) Two members shall be juvenile court judges appointed by 56505
the Ohio association of juvenile and family court judges. 56506

(b) One member shall be the director of youth services or the 56507
director's designee. 56508

(c) One member shall be the director of budget and management 56509
or the director's designee. 56510

(d) One member shall be the director of the legislative service commission or the director's designee. 56511
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(e) One member shall be a member of a senate committee dealing with finance or criminal justice issues appointed by the president of the senate. 56513
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(f) One member shall be a member of a committee of the house of representatives dealing with finance or criminal justice issues appointed by the speaker of the house of representatives. 56516
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(g) One member shall be a member of a board of county commissioners appointed by the county commissioners association of Ohio. 56519
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(h) Two members shall be juvenile court administrators appointed by the Ohio association of juvenile and family court judges. 56522
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(2) The members of the committee shall be appointed or designated within thirty days after the effective date of this section, and the director of youth services shall be notified of the names of the members. 56525
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(3) Members described in divisions (A)(1)(a), (g), and (h) of this section shall serve for terms of two years and shall hold office from the date of the member's appointment until the end of the term for which the member was appointed. Members described in divisions (A)(1)(b), (c), and (d) of this section shall serve as long as they hold the office described in that division. Members described in divisions (A)(1)(e) and (f) of this section shall serve for the duration of the session of the general assembly during which they were appointed, provided they continue to hold the office described in that division. The members described in divisions (A)(1)(a), (e), (f), (g), and (h) may be reappointed. Vacancies shall be filled in the manner provided for original appointments. Any member appointed to fill a vacancy occurring 56529
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prior to the expiration date of the term for which the member's 56542
predecessor was appointed shall hold office as a member for the 56543
remainder of that term. A member shall continue in office 56544
subsequent to the expiration date of the member's term until the 56545
member's successor takes office or until a period of sixty days 56546
has elapsed, whichever occurs first. 56547

(4) Membership on the committee does not constitute the 56548
holding of an incompatible public office or employment in 56549
violation of any statutory or common law prohibition pertaining to 56550
the simultaneous holding of more than one public office or 56551
employment. Members of the committee are not disqualified from 56552
holding by reason of that membership and do not forfeit because of 56553
that membership their public office or employment that qualifies 56554
them for membership on the committee notwithstanding any contrary 56555
disqualification or forfeiture requirement under existing Revised 56556
Code sections. 56557

(B) The director of youth services shall serve as an interim 56558
chair of the RECLAIM advisory committee until the first meeting of 56559
the committee. Upon receipt of the names of the members of the 56560
committee, the director shall schedule the initial meeting of the 56561
committee that shall take place at an appropriate location in 56562
Columbus and occur not later than sixty days after the effective 56563
date of this section. The director shall notify the members of the 56564
committee of the time, date, and place of the meeting. At the 56565
initial meeting, the committee shall organize itself by selecting 56566
from among its members a chair, vice-chair, and secretary. The 56567
committee shall meet at least once each quarter of the calendar 56568
year but may meet more frequently at the call of the chair. 56569

(C) In addition to its functions with respect to the RECLAIM 56570
program described in section 5139.41 of the Revised Code, the 56571
RECLAIM advisory committee periodically shall do all of the 56572
following: 56573

(1) Evaluate the operation of the RECLAIM program by the department of youth services, evaluate the implementation of the RECLAIM program by the counties, and evaluate the efficiency of the formula described in section 5139.41 of the Revised Code. In conducting these evaluations, the committee shall consider the public policy that RECLAIM funds are to be expended to provide the most appropriate programs and services for felony delinquents and other youthful offenders. 56574
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(2) Advise the department of youth services, the office of budget and management, and the general assembly on the following changes that the committee believes should be made: 56582
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(a) Changes to sections of the Revised Code that pertain to the RECLAIM program, specifically the formula specified in section 5139.41 of the Revised Code; 56585
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(b) Changes in the funding level for the RECLAIM program, specifically the amounts distributed under the formula for county allocations, community correctional facilities, and juvenile correctional facility budgets. 56588
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Sec. 5139.87. (A) The department of youth services shall serve as the state agent for the administration of all federal juvenile justice grants awarded to the state. 56592
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(B) There are hereby created in the state treasury the federal juvenile justice programs funds. A separate fund shall be established each federal fiscal year. All federal grants and other moneys received for federal juvenile programs shall be deposited into the funds. All receipts deposited into the funds shall be used for federal juvenile programs. All investment earnings on the cash balance in a federal juvenile program fund shall be credited to that fund for the appropriate federal fiscal year. 56595
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(C) All rules, orders, and determinations of the office of 56603

criminal justice services regarding the administration of federal 56604
juvenile justice grants that are in effect on the effective date 56605
of this amendment shall continue in effect as rules, orders, and 56606
determinations of the department of youth services. 56607

Sec. 5153.122. (A) Each caseworker hired by a public children 56608
services agency shall complete at least ninety hours of in-service 56609
training during the first year of the caseworker's continuous 56610
employment, except that the director of the public children 56611
services agency may waive the training requirement for a school of 56612
social work graduate who participated in the university 56613
partnership program described in division (D) of section 5101.141 56614
of the Revised Code. The training shall consist of courses in 56615
recognizing and preventing child abuse and neglect, assessing 56616
risks, interviewing persons, investigating cases, intervening, 56617
providing services to children and their families, and other 56618
topics relevant to child abuse and neglect. After the first year 56619
of continuous employment, each caseworker annually shall complete 56620
thirty-six hours of training in areas relevant to the caseworker's 56621
assigned duties. 56622

(B) Each supervisor hired by a public children services 56623
agency shall complete at least sixty hours of in-service training 56624
during the first year of the supervisor's continuous employment in 56625
that position. After the first year of continuous employment as a 56626
supervisor, the supervisor annually shall complete thirty hours of 56627
training in areas relevant to the supervisor's assigned duties. 56628

Sec. 5153.163. (A) As used in this section, "adoptive parent" 56629
means, as the context requires, a prospective adoptive parent or 56630
an adoptive parent. 56631

(B)(1) ~~If~~ Before a child's adoption is finalized, a public 56632
children services agency ~~considers a child with special needs~~ 56633

~~residing in the county served by the agency to be in need of~~ 56634
~~public care or protective services and all of the following apply,~~ 56635
~~the agency shall enter into an agreement with the child's adoptive~~ 56636
~~parent before the child is adopted~~ under which the agency shall 56637
make state adoption maintenance subsidy payments as needed on 56638
behalf of the child when all of the following apply: 56639

(a) The child is a child with special needs. 56640

(b) The child was placed in the adoptive home by a public 56641
children services agency or a private child placing agency and may 56642
legally be adopted. 56643

(c) The adoptive parent has the capability of providing the 56644
permanent family relationships needed by the child ~~in all areas~~ 56645
~~except financial need as determined by the agency;.~~ 56646

~~(b)(d)~~ The needs of the child are beyond the economic 56647
resources of the adoptive parent ~~as determined by the agency;.~~ 56648

~~(c) The agency determines the acceptance~~ (e) Acceptance of 56649
the child as a member of the adoptive parent's family would not be 56650
in the child's best interest without payments on the child's 56651
behalf under this section. 56652

~~(2) Payments to an adoptive parent under division (B) of this~~ 56653
~~section shall include medical, surgical, psychiatric,~~ 56654
~~psychological, and counseling expenses, and may include~~ 56655
~~maintenance costs if necessary and other costs incidental to the~~ 56656
~~care of the child. No payment of maintenance costs shall be made~~ 56657
~~under division (B) of this section on behalf of a child if either~~ 56658
~~of the following apply:~~ 56659

~~(a)(f)~~ The gross income of the adoptive parent's family 56660
~~exceeds~~ does not exceed one hundred twenty per cent of the median 56661
income of a family of the same size, including the child, as most 56662
recently determined for this state by the secretary of health and 56663
human services under Title XX of the "Social Security Act," 88 56664

Stat. 2337, 42 U.S.C.A. 1397, as amended~~+~~. 56665

~~(b)(g)~~ The child is not eligible for adoption assistance 56666
payments ~~for maintenance costs~~ under Title IV-E of the "Social 56667
Security Act," 94 Stat. 501 (1980), 42 U.S.C.A. 671, as amended. 56668

(2) State adoption maintenance subsidy payment agreements 56669
must be made by either the public children services agency that 56670
has permanent custody of the child or the public children services 56671
agency of the county in which the private child placing agency 56672
that has permanent custody of the child is located. 56673

(3) State adoption maintenance subsidy payments shall be made 56674
in accordance with the agreement between the public children 56675
services agency and the adoptive parent and are subject to an 56676
annual redetermination of need. 56677

(4) Payments under this division ~~(B) of this section~~ may 56678
begin either before or after issuance of the final adoption 56679
decree, except that payments made before issuance of the final 56680
adoption decree may be made only while the child is living in the 56681
adoptive parent's home. Preadoption payments may be made for not 56682
more than twelve months, unless the final adoption decree is not 56683
issued within that time because of a delay in court proceedings. 56684
Payments that begin before issuance of the final adoption decree 56685
may continue after its issuance. 56686

(C)(1) If, after the child's adoption is finalized, a public 56687
children services agency considers a child residing in the county 56688
served by the agency to be in need of public care or protective 56689
services and both of the following apply, the agency may, and to 56690
the extent state funds are appropriated for this purpose shall, 56691
enter into an agreement with the child's adoptive parent ~~after the~~ 56692
~~child is adopted~~ under which the agency shall make post adoption 56693
special services subsidy payments on behalf of the child as needed 56694
when both of the following apply: 56695

~~(1)(a)~~ The child has a physical or developmental handicap or mental or emotional condition that either: 56696
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~~(a)(i)~~ Existed before the adoption petition was filed; or 56698

~~(b)(ii)~~ Developed after the adoption petition was filed and can be directly attributed to factors in the child's preadoption background, medical history, or biological family's background or medical history. 56699
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~~(2)(b)~~ The agency determines the expenses necessitated by the child's handicap or condition are beyond the adoptive parent's economic resources. 56703
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~~Payments to an adoptive parent~~ (2) Services for which a public children services agency may make post adoption special services subsidy payments on behalf of a child under this division shall include medical, surgical, psychiatric, psychological, and counseling ~~expenses~~ services, including residential treatment. 56706
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(3) The department of job and family services shall establish clinical standards to evaluate a child's physical or developmental handicap or mental or emotional condition and assess the child's need for services. 56711
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(4) The total dollar value of post adoption special services subsidy payments made on a child's behalf shall not exceed ten thousand dollars in any fiscal year, unless the department determines that extraordinary circumstances exist that necessitate further funding of services for the child. Under such extraordinary circumstances, the value of the payments made on the child's behalf shall not exceed fifteen thousand dollars in any fiscal year. 56715
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(5) The adoptive parent or parents of a child who receives post adoption special services subsidy payments shall pay at least five per cent of the total cost of all services provided to the 56723
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child; except that a public children services agency may waive 56726
this requirement if the gross annual income of the child's 56727
adoptive family is not more than two hundred per cent of the 56728
federal poverty guideline. 56729

(6) A public children services agency may use other sources 56730
of revenue to make post adoption special services subsidy 56731
payments, in addition to any state funds appropriated for that 56732
purpose. 56733

(D) No payment shall be made under division (B) or (C) of 56734
this section on behalf of any person eighteen years of age or 56735
older beyond the end of the school year during which the person 56736
attains the age of eighteen or on behalf of a mentally or 56737
physically handicapped person twenty-one years of age or older. 56738
~~Payments under those divisions shall be made in accordance with~~ 56739
~~the terms of the agreement between the public children services~~ 56740
~~agency and the adoptive parent, subject to an annual~~ 56741
~~redetermination of need. The agency may use sources of funding in~~ 56742
~~addition to any state funds appropriated for the purposes of those~~ 56743
~~divisions.~~ 56744

(E) The director of job and family services shall adopt rules 56745
in accordance with Chapter 119. of the Revised Code that are 56746
needed to implement this section. The rules shall establish all of 56747
the following: 56748

(1) The application process for ~~payments~~ all forms of 56749
assistance provided under this section; 56750

(2) The method to determine the ~~amounts and kinds~~ amount of 56751
assistance payable under division (B) of this section; 56752

(3) The definition of "child with special needs" for this 56753
section; 56754

(4) The process whereby a child's continuing need for 56755
services provided under division (B) of this section is annually 56756

redetermined; 56757

(5) The method of determining the amount, duration, and scope of services provided to a child under division (C) of this section; 56758
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(6) Any other rule, requirement, or procedure the department considers appropriate for the implementation of this section. 56761
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~~The rules shall allow for payments for children placed by nonpublic agencies.~~ 56763
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~~(E)~~(F) The state adoption special services subsidy program ceases to exist on July 1, 2004, except that, subject to the findings of the annual redetermination process established under division (E) of this section and the child's individual need for services, a public children services agency may continue to provide state adoption special services subsidy payments on behalf of a child for whom payments were being made prior to July 1, 2004. 56765
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(G) No public children services agency shall, pursuant to either section 2151.353 or 5103.15 of the Revised Code, place or maintain a child with special needs who is in the permanent custody of an institution or association certified by the department of job and family services under section 5103.03 of the Revised Code in a setting other than with a person seeking to adopt the child, unless the agency has determined and redetermined at intervals of not more than six months the impossibility of adoption by a person listed pursuant to division (B), (C), or (D) of section 5103.154 of the Revised Code, including the impossibility of entering into a payment agreement with such a person. The agency so maintaining such a child shall report its reasons for doing so to the department of job and family services. ~~No agency that fails to so determine, redetermine, and report shall receive more than fifty per cent of the state funds to which~~ 56773
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~~it would otherwise be eligible for that part of the fiscal year~~ 56788
~~following placement under section 5101.14 of the Revised Code.~~ 56789

The department may take any action permitted under section 56790
5101.24 of the Revised Code for an agency's failure to determine, 56791
redetermine, and report on a child's status. 56792

Sec. 5153.60. (A) The department of job and family services 56793
shall establish a statewide program that provides ~~the~~ all of the 56794
following: 56795

(1) The training section 5153.122 of the Revised Code 56796
requires public children services agency caseworkers and 56797
supervisors to complete. ~~The program may also provide the;~~ 56798

(2) The preplacement and continuing training described in 56799
sections 5103.034, 5103.039, 5103.0310, and 5103.0311 of the 56800
Revised Code that foster caregivers are required by sections 56801
5103.031, 5103.032, and 5103.033 of the Revised Code to obtain. 56802
~~The;~~ 56803

(3) The education programs for adoption assessors required by 56804
section 3107.014 of the Revised Code. 56805

(B) The training described in division (A)(1) of this section 56806
shall be conducted in accordance with rules adopted by the 56807
department of job and family services under section 111.15 of the 56808
Revised Code and the training and programs described in divisions 56809
(A)(2) and (3) of this section shall be conducted in accordance 56810
with rules adopted under Chapter 119. of the Revised Code. 56811

(C) The program established pursuant to division (A) of this 56812
section shall be called the "Ohio child welfare training program." 56813

Sec. 5153.69. The training program steering committee shall 56814
monitor and evaluate the Ohio child welfare training program to 56815
ensure the following: 56816

(A) That the Ohio child welfare training program is a 56817
competency-based training system that satisfies the training 56818
requirements for public children services agency caseworkers and 56819
supervisors under section 5153.122 of the Revised Code; 56820

(B) That, ~~if~~ the Ohio child welfare training program provides 56821
preplacement or continuing training for foster caregivers, ~~it~~ as 56822
required by section 5153.60 of the Revised Code that meets the 56823
~~same~~ requirements ~~that~~ preplacement training programs and 56824
continuing training programs must meet pursuant to section 56825
5103.038 of the Revised Code to obtain approval by the department 56826
of job and family services, except that the Ohio child welfare 56827
training program is not required to obtain department approval. 56828

Sec. 5153.72. Prior to the beginning of the fiscal biennium 56829
that first follows ~~the effective date of this section~~ October 5, 56830
2000, the public children services agencies of Athens, Cuyahoga, 56831
Franklin, Greene, Guernsey, Hamilton, Lucas, and Summit counties 56832
shall each establish and maintain a regional training center. At 56833
any time after the beginning of that biennium, the department of 56834
job and family services, on the recommendation of the training 56835
program steering committee, may direct a public children services 56836
agency to establish and maintain a training center to replace the 56837
center established by an agency under this section. There may be 56838
no more and no less than eight centers in existence at any time. 56839
The department may make a grant to a public children services 56840
agency that establishes and maintains a regional training center 56841
under this section for the purpose of wholly or partially 56842
subsidizing the operation of the center. 56843

Sec. 5153.78. (A) As used in this section: 56844

(1) "Title IV-B" means Title IV-B of the "Social Security Act 56845
of 1967," 81 Stat. 821, 42 U.S.C. 620, as amended. 56846

(2) "Title IV-E" means Title IV-E of the "Social Security Act," 94 Stat. 501, 42 U.S.C. 670(1980).	56847 56848
(3) "Title XX" has the same meaning as in section 5101.46 of the Revised Code.	56849 56850
(B) For purposes of adequately funding the Ohio child welfare training program, the department of job and family services may use any of the following:	56851 56852 56853
(1) The federal financial participation funds withheld pursuant to division (D) <u>(E)</u> of section 5101.141 of the Revised Code in an amount determined by the department;	56854 56855 56856
(2) Funds available under Title XX, Title IV-B, and Title IV-E to pay for training costs;	56857 56858
(3) Other available state or federal funds.	56859
Sec. 5301.68. An owner of land may grant a conservation easement to the department of natural resources, a park district created under Chapter 1545. of the Revised Code, a township park district created under section 511.18 of the Revised Code, a conservancy district created under Chapter 6101. of the Revised Code, a soil and water conservation district created under Chapter 1515. of the Revised Code, a county, a township, a municipal corporation, or a charitable organization that is authorized to hold conservation easements by division (B) of section 5301.69 of the Revised Code, in the form of articles of dedication, easement, covenant, restriction, or condition. An owner of land also may grant an agricultural easement to the director of agriculture; to a municipal corporation, county, or township, <u>or soil and water conservation district</u> ; or to a charitable organization described in division (B) of section 5301.69 of the Revised Code. An owner of land may grant an agricultural easement only on land that is valued for purposes of real property taxation at its current value	56860 56861 56862 56863 56864 56865 56866 56867 56868 56869 56870 56871 56872 56873 56874 56875 56876

for agricultural use under section 5713.31 of the Revised Code or 56877
that constitutes a homestead when the easement is granted. 56878

All conservation easements and agricultural easements shall 56879
be executed and recorded in the same manner as other instruments 56880
conveying interests in land. 56881

Sec. 5301.691. (A)(1) Subject to divisions (A)(2) and ~~(E)~~(F) 56882
of this section, the director of agriculture, with moneys credited 56883
to the agricultural easement purchase fund created in section 56884
901.21 of the Revised Code, may purchase agricultural easements in 56885
the name of the state. 56886

(2) Not less than thirty days prior to the acquisition of an 56887
agricultural easement under division (A)(1) of this section or the 56888
extinguishment of such an easement purchased under that division, 56889
the director shall provide written notice of the intention to do 56890
so to the board of county commissioners of the county in which the 56891
land that is or is proposed to be subject to the easement or 56892
extinguishment is located, and either to the legislative authority 56893
of the municipal corporation in which the land is located, if it 56894
is located in an incorporated area, or to the board of township 56895
trustees of the township in which the land is located, if it is 56896
located in an unincorporated area. If, within thirty days after 56897
the director provides the notice, the board of county 56898
commissioners, legislative authority, or board of township 56899
trustees requests an informational meeting with the director 56900
regarding the proposed acquisition or extinguishment, the director 56901
shall meet with the legislative authority or board to respond to 56902
the board's or authority's questions and concerns. If a meeting is 56903
timely requested under division (A)(2) of this section, the 56904
director shall not undertake the proposed acquisition or 56905
extinguishment until after the meeting has been concluded. 56906

The director, upon the director's own initiative and prior to 56907

the purchase of an agricultural easement under division (A)(1) of 56908
this section or the extinguishment of such an easement, may hold 56909
an informational meeting with the board of county commissioners 56910
and the legislative authority of the municipal corporation or 56911
board of township trustees in which land that would be affected by 56912
the proposed acquisition or extinguishment is located, to respond 56913
to any questions and concerns of the board or authority regarding 56914
the proposed acquisition or extinguishment. 56915

(B)(1) Subject to division ~~(E)~~(F) of this section, the 56916
legislative authority of a municipal corporation, board of county 56917
commissioners of a county, or board of trustees of a township, 56918
with moneys in the political subdivision's general fund not 56919
required by law or charter to be used for other specified purposes 56920
or with moneys in a special fund of the political subdivision to 56921
be used for the purchase of agricultural easements, may purchase 56922
agricultural easements in the name of the municipal corporation, 56923
county, or township. 56924

(2) Subject to division ~~(E)~~(F) of this section, the 56925
legislative authority of a municipal corporation, board of county 56926
commissioners of a county, or board of township trustees of a 56927
township may acquire agricultural easements by gift, devise, or 56928
bequest. Any terms may be included in an agricultural easement so 56929
acquired that are necessary or appropriate to preserve on behalf 56930
of the grantor of the easement the favorable tax consequences of 56931
the gift, devise, or bequest under the "Internal Revenue Act of 56932
1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 56933

(C)(1) Subject to division (F) of this section, the board of 56934
supervisors of a soil and water conservation district, with moneys 56935
in any fund not required by law to be used for other specified 56936
purposes or with moneys provided to the board through matching 56937
grants made under section 901.22 of the Revised Code for the 56938
purchase of agricultural easements, may purchase agricultural 56939

easements in the name of the board. 56940

(2) Subject to division (F) of this section, the board of supervisors of a soil and water conservation district may acquire agricultural easements by gift, devise, or bequest. Any terms may be included in an agricultural easement so acquired that are necessary or appropriate to preserve on behalf of the grantor of the easement the favorable tax consequences of the gift, devise, or bequest under the "Internal Revenue Act of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 56941
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(D)(1) The term of an agricultural easement purchased wholly or in part with money from the agricultural easement purchase fund shall be perpetual and shall run with the land. 56949
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(2) The term of an agricultural easement purchased by ~~such a~~ the legislative authority of a municipal corporation, board of county commissioners of a county, board of township trustees of a township, or board of supervisors of a soil and water conservation district without the use of any money from the agricultural easement purchase fund may be perpetual or for a specified period. The agricultural easement shall run with the land. The instrument conveying an agricultural easement for a specified period shall include provisions specifying, at a minimum, all of the following: 56952
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(a) The consideration to be paid for the easement and manner of payment; 56961
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(b) Whether the easement is renewable and, if so, procedures for its renewal; 56963
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(c) The circumstances under which the easement may be extinguished; 56965
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(d) The method for determining the amount of money, if any, due the holder of the easement upon extinguishment and for payment of that amount to the holder. 56967
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~~(D)~~(E)(1) The director and each legislative authority of a 56970
municipal corporation, board of county commissioners, ~~or~~ board of 56971
township trustees, or board of supervisors of a soil and water 56972
conservation district, upon acquiring an agricultural easement by 56973
purchase, gift, devise, or bequest under this section or section 56974
901.21 of the Revised Code, shall name an appropriate 56975
administrative officer, department, or division to supervise and 56976
enforce the easement. A legislative authority ~~or~~ of a municipal 56977
corporation, board of county commissioners, or board of township 56978
trustees may enter into a contract with the board of park 56979
commissioners of a park district established under Chapter 1545. 56980
of the Revised Code, the board of park commissioners of a township 56981
park district established under section 511.18 of the Revised 56982
Code, or the board of supervisors of a soil and water conservation 56983
district ~~established under Chapter 1515. of the Revised Code~~ 56984
having territorial jurisdiction within the municipal corporation, 56985
county, or township, or with a charitable organization described 56986
in division (B) of section 5301.69 of the Revised Code, to 56987
supervise on behalf of the legislative authority or board an 56988
agricultural easement so acquired. A board of supervisors of a 56989
soil and water conservation district may enter into a contract 56990
with the board of park commissioners of a park district 56991
established under Chapter 1545. of the Revised Code or the board 56992
of park commissioners of a township park district established 56993
under section 511.18 of the Revised Code having territorial 56994
jurisdiction within the soil and water conservation district, or 56995
with a charitable organization described in division (B) of 56996
section 5301.69 of the Revised Code, to supervise on behalf of the 56997
board an agricultural easement so acquired. The contract may be 56998
entered into on such terms as are agreeable to the parties and 56999
shall specify or prescribe a method for determining the amounts of 57000
any payments to be made by the legislative authority ~~or~~, board of 57001
county commissioners ~~or~~, board of township trustees, or board of 57002

supervisors for the performance of the contract. 57003

(2) With respect to an agricultural easement purchased with a 57004
matching grant that is made under division (D) of section 901.22 57005
of the Revised Code and that consists in whole or in part of 57006
moneys from the clean Ohio agricultural easement fund created in 57007
section 901.21 of the Revised Code, the recipient of the matching 57008
grant shall make an annual monitoring visit to the land that is 57009
the subject of the easement. The purpose of the visit is to ensure 57010
that no development that is prohibited by the terms of the 57011
easement has occurred or is occurring. In accordance with rules 57012
adopted under division (A)(1)(d) of section 901.22 of the Revised 57013
Code, the grant recipient shall prepare a written annual 57014
monitoring report and submit it to the office of farmland 57015
preservation in the department of agriculture. If necessary to 57016
enforce the terms of the easement, the grant recipient shall take 57017
corrective action in accordance with those rules. The director may 57018
agree to share these monitoring and enforcement responsibilities 57019
with the grant recipient. 57020

~~(E)~~(F) The director; a municipal corporation, county, or 57021
township, or soil and water conservation district; or a charitable 57022
organization ~~described in division (B) of section 5301.69 of the~~ 57023
~~Revised Code,~~ may acquire agricultural easements by purchase, 57024
gift, devise, or bequest only on land that is valued for purposes 57025
of real property taxation at its current value for agricultural 57026
use under section 5713.31 of the Revised Code or that constitutes 57027
a homestead when the easement is granted. 57028

~~(F)~~(G) An agricultural easement acquired by the director 57029
under division (A) of this section may be extinguished if an 57030
unexpected change in the conditions of or surrounding the land 57031
that is subject to the easement makes impossible or impractical 57032
the continued use of the land for the purposes described in the 57033
agricultural easement, or if the requirements of the easement are 57034

extinguished by judicial proceedings. Upon the sale, exchange, or 57035
involuntary conversion of the land subject to the easement, the 57036
director shall be paid an amount of money that is at least equal 57037
to the proportionate value of the easement compared to the total 57038
value of the land at the time the easement was acquired. Moneys so 57039
received shall be credited to the agricultural easement purchase 57040
fund. 57041

An agricultural easement acquired by a municipal corporation, 57042
county, or township under division (B) of this section or by a 57043
soil and water conservation district under division (C) of this 57044
section may be extinguished under the circumstances prescribed, 57045
and in accordance with the terms and conditions set forth, in the 57046
instrument conveying the agricultural easement. An agricultural 57047
easement acquired by a charitable organization described in 57048
division (B) of section 5301.69 of the Revised Code may be 57049
extinguished under the circumstances prescribed, and in accordance 57050
with the terms and conditions set forth, in the instrument 57051
conveying the agricultural easement. 57052

Any instrument extinguishing an agricultural easement shall 57053
be executed and recorded in the same manner as other instruments 57054
conveying or terminating interests in real property. 57055

~~(G)~~(H) Promptly after the recording and indexing of an 57056
instrument conveying an agricultural easement to any person or to 57057
a municipal corporation, county, ~~or~~ township, or soil and water 57058
conservation district or of an instrument extinguishing an 57059
agricultural easement held by any person or such a political 57060
subdivision, the county recorder shall mail, by regular mail, a 57061
photocopy of the instrument to the office of farmland preservation 57062
in the department of agriculture. The photocopy shall be 57063
accompanied by an invoice for the applicable fee established in 57064
section 317.32 of the Revised Code. Promptly after receiving the 57065
photocopy and invoice, the office of farmland preservation shall 57066

remit the fee to the county recorder. 57067

~~(H)~~(I) The director, the legislative authority of a municipal 57068
corporation, a board of county commissioners, ~~or~~ a board of 57069
township trustees, or a board of supervisors of a soil and water 57070
conservation district may receive and expend grants from any 57071
public or private source for the purpose of purchasing 57072
agricultural easements and supervising and enforcing them. 57073

Sec. 5310.15. On filing an application for registration, the 57074
applicant shall pay to the clerk of the probate court or the clerk 57075
of the court of common pleas ten dollars, which is full payment 57076
for all clerk's fees and charges in such proceeding on behalf of 57077
the applicant. Any defendant, except a guardian ad litem, on 57078
entering ~~his~~ an appearance by filing a pleading of any kind, shall 57079
pay to the clerk five dollars, which is full payment for all 57080
clerk's fees on behalf of such defendant. When any number of 57081
defendants enter their appearance at the same time in one pleading 57082
by filing a pleading of any kind, one fee shall be paid. 57083

Every required publication in a newspaper shall be paid for 57084
by the party on whose application the order of publication is 57085
made, in addition to the fees prescribed in the first paragraph of 57086
this section. The party at whose request, or on whose behalf, any 57087
notice is issued, shall pay for the service of such notice except 57088
when such notice is sent by mail by the clerk or the county 57089
recorder. 57090

Examiners of titles shall receive for examining title or 57091
original reference, and making report on all matters arising under 57092
the application, including final certificate as to all necessary 57093
parties being made and properly brought before the probate court 57094
or the court of common pleas, and as to the proceedings being 57095
regular and legal, one half of one per cent of the appraised tax 57096
value, the fee in no case to be less than seventy-five or more 57097

than two hundred fifty dollars, for each separate and distinct 57098
parcel of land included in the application although made up of 57099
more than one tract. 57100

Upon a reference to an examiner of titles or to any other 57101
person upon a hearing to take evidence and make report to the 57102
court, the fee of the referee shall be fixed by the court at not 57103
more than fifteen dollars per day for the time actually employed. 57104

For a certificate of an examiner of titles that all necessary 57105
parties are before the court, and the proceedings are regular and 57106
legal in a suit for partition, foreclosure of mortgage, 57107
marshalling of liens, or other suit or proceeding affecting the 57108
title of any interest in, or lien or charge upon registered lands, 57109
the fees shall be fixed by the court, and shall not be more than 57110
twenty-five dollars for each separate and distinct parcel of land 57111
included in the petition or application although such parcel is 57112
made up of more than one tract. 57113

Guardians for the suit in original registration shall receive 57114
three dollars when there is no contest in which the guardian 57115
participates. In other cases such guardians shall receive such 57116
fees as the court fixes, but not more than twenty-five dollars. 57117

For certifying pending suits, judgments, liens, attachments, 57118
executions, or levies, the officers certifying them to the 57119
recorder shall receive a fee of twenty-five cents to be paid by 57120
the party interested and taxed in the costs of the case. 57121

For serving summons, notice, or other paper provided for in 57122
sections 5309.02 to 5310.21 of the Revised Code, the sheriff or 57123
other officer shall receive the same fees as in other similar 57124
cases. 57125

The recorder shall receive the following fees, to include 57126
base fees for services and housing trust fund fees pursuant to 57127
section 317.36 of the Revised Code: 57128

(A) For original registration of title, issuing duplicate certificate, entering memorials and memorandums, as directed by the decree, and indexing it, a base fee of thirty dollars and a housing trust fund fee of thirty dollars;

(B) For examining and registering each transfer of registered land, including the filing of all papers therewith, entering memorials, issuing new duplicate certificate of title and indexing it, a base fee of thirty dollars and a housing trust fund fee of thirty dollars for the first distinct body or parcel of land contained in such certificate, and a base fee of two dollars and a housing trust fund fee of two dollars for each additional distinct body or parcel of land contained in such certificate;

(C) For filing, examining, and entering a memorial of each mortgage or lease, upon registered land, and indexing it, for each separately registered parcel, a base fee of ten dollars and a housing trust fund fee of ten dollars;

(D) For filing, examining, and entering a memorial of each lien, charge, or demand upon registered land, and indexing it, for each separately registered parcel of land, a base fee of five dollars and a housing trust fund fee of five dollars;

(E) For cancellation of any memorial or memorandum, a base fee of five dollars and a housing trust fund fee of five dollars; for entry of change of address, or notice of dower, for each separately registered parcel, a base fee of five dollars and a housing trust fund fee of five dollars;

(F) For each certified copy of a registered certificate, or issuing a mortgagee's duplicate certificate, or issuing a new owner's duplicate certificate to replace one which has been lost or destroyed, a base fee of fifteen dollars and a housing trust fund fee of fifteen dollars;

(G) For filing, examining, and entering a memorial of each

release, assignment, or waiver of priority of a mortgage, lease, 57160
lien, charge, or demand upon registered land and indexing it, for 57161
each separately registered parcel, a base fee of five dollars and 57162
a housing trust fund fee of five dollars; 57163

(H) For filing, examining, and entering a memorial of each 57164
official certificate of pending suit, judgment, lien, attachment, 57165
execution, or levy, upon registered land and indexing it, for each 57166
separately registered parcel, a base fee of five dollars and a 57167
housing trust fund fee of five dollars; 57168

(I) For continuing an owner's duplicate certificate, or 57169
mortgagee's duplicate certificate and entering and certifying 57170
memorials and notations thereon, a base fee of five dollars and a 57171
housing trust fund fee of five dollars; 57172

(J) For certificate as to taxes and special assessments, for 57173
each separately registered parcel, a base fee of ten dollars and a 57174
housing trust fund fee of ten dollars; 57175

(K) For filing, recording, and indexing any papers or 57176
instruments other than those provided in this section, any 57177
certified copy of record, or of any instrument on file in ~~his~~ the 57178
recorder's office, the same fees allowed by law for like services; 57179

(L) For issuing subpoenas and notices and swearing witnesses, 57180
the same fees allowed the clerk for like services. 57181

Costs as provided in this section may be taxed and by the 57182
court ordered to be paid by the parties in such manner as is just. 57183

Sec. 5502.01. (A) The department of public safety shall 57184
administer and enforce the laws relating to the registration, 57185
licensing, sale, and operation of motor vehicles and the laws 57186
pertaining to the licensing of drivers of motor vehicles. 57187

The department shall compile, analyze, and publish statistics 57188
relative to motor vehicle accidents and the causes of them, 57189

prepare and conduct educational programs for the purpose of 57190
promoting safety in the operation of motor vehicles on the 57191
highways, and conduct research and studies for the purpose of 57192
promoting safety on the highways of this state. 57193

(B) The department shall administer the laws and rules 57194
relative to trauma and emergency medical services specified in 57195
Chapter 4765. of the Revised Code. 57196

(C) The department shall administer and enforce the laws 57197
contained in Chapters 4301. and 4303. of the Revised Code and 57198
enforce the rules and orders of the liquor control commission 57199
pertaining to retail liquor permit holders. 57200

(D) The department shall administer the laws governing the 57201
state emergency management agency and shall enforce all additional 57202
duties and responsibilities as prescribed in the Revised Code 57203
related to emergency management services. 57204

(E) The department shall conduct investigations pursuant to 57205
Chapter 5101. of the Revised Code in support of the duty of the 57206
department of job and family services to administer food stamp 57207
programs throughout this state. The department of public safety 57208
shall conduct investigations necessary to protect the state's 57209
property rights and interests in the food stamp program. 57210

(F) The department of public safety shall enforce compliance 57211
with orders and rules of the public utilities commission and 57212
applicable laws in accordance with Chapters 4919., 4921., and 57213
4923. of the Revised Code regarding commercial motor vehicle 57214
transportation safety, economic, and hazardous materials 57215
requirements. 57216

(G) Notwithstanding Chapter 4117. of the Revised Code, the 57217
department of public safety may establish requirements for its 57218
enforcement personnel, including its enforcement agents described 57219
in section 5502.14 of the Revised Code, that include standards of 57220

conduct, work rules and procedures, and criteria for eligibility 57221
as law enforcement personnel. 57222

(H) The department shall administer, maintain, and operate 57223
the Ohio criminal justice network. The Ohio criminal justice 57224
network shall be a computer network that supports state and local 57225
criminal justice activities. The network shall be an electronic 57226
repository for various data, which may include arrest warrants, 57227
notices of persons wanted by law enforcement agencies, criminal 57228
records, prison inmate records, stolen vehicle records, vehicle 57229
operator's licenses, and vehicle registrations and titles. 57230

(I) The department shall coordinate all homeland security 57231
activities of all state agencies and shall be a liaison between 57232
state agencies and local entities for those activities and related 57233
purposes. 57234

Sec. 5502.03. (A) There is hereby created in the department 57235
of public safety a division of homeland security. It is the intent 57236
of the general assembly that the creation of the division of 57237
homeland security of the department of public safety by this 57238
amendment does not result in an increase of funding appropriated 57239
to the department. 57240

(B)(1) The division shall coordinate all homeland security 57241
activities of all state agencies and shall be the liaison between 57242
state agencies and local entities for the purposes of 57243
communicating homeland security funding and policy initiatives. 57244

(2) The division shall be in charge of the systems operations 57245
of the multi-agency radio communications system (MARCS) in 57246
accordance with any rules that the director of public safety may 57247
adopt. The director shall appoint a steering committee to advise 57248
the director in the operation of the MARCS, comprised of persons 57249
who represent the users of that system. The director or the 57250
director's designee shall chair the committee. 57251

(C) The director of public safety shall appoint an executive director, who shall be head of the division of homeland security and who regularly shall advise the governor and the director on matters pertaining to homeland security. The executive director shall serve at the pleasure of the director of public safety. To carry out the duties assigned under this section, the executive director may appoint and maintain necessary staff and may enter into any necessary agreements. 57252
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(D) Except as otherwise provided by law, nothing in this section shall be construed to give the director of public safety or the executive director of the division of homeland security authority over the incident management structure or responsibilities of local emergency response personnel. 57260
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Sec. 5502.13. The department of public safety shall maintain an investigative unit in order to conduct investigations and other enforcement activity authorized by Chapters 4301., 4303., 5101., 5107., ~~and 5108., and 5115.~~ and sections 2903.12, 2903.13, 2903.14, 2907.09, 2913.46, 2917.11, 2921.13, 2921.31, 2921.32, 2921.33, 2923.12, 2923.121, 2925.11, 2925.13, 2927.02, and 4507.30, ~~and 5115.03~~ of the Revised Code. The director of public safety shall appoint the employees of the unit who are necessary, designate the activities to be performed by those employees, and prescribe their titles and duties. 57265
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Sec. 5549.21. The board of township trustees may purchase or lease such machinery and tools as are necessary for use in constructing, reconstructing, maintaining, and repairing roads and culverts within the township, and shall provide suitable places for housing and storing machinery and tools owned by the township. It may purchase such material and employ such labor as is necessary for carrying into effect this section, or it may 57275
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authorize the purchase or employment of such material and labor by 57282
one of its number, or by the township highway superintendent, at a 57283
price to be fixed by the board. All payments on account of 57284
machinery, tools, material, and labor shall be made from the 57285
township road fund. Except as otherwise provided in sections 57286
505.08, 505.101, and 5513.01 of the Revised Code, all purchases of 57287
materials, machinery, and tools shall, ~~where~~ if the amount 57288
involved exceeds ~~fifteen~~ twenty-five thousand dollars, be made 57289
from the lowest responsible bidder after advertisement, as 57290
provided in section 5575.01 of the Revised Code. ~~Where~~ 57291

If, in compliance with section 505.10 of the Revised Code, 57292
the board wishes to sell machinery, equipment, or tools owned by 57293
the township to the person from whom it is to purchase other 57294
machinery, equipment, or tools, the board may offer, ~~where~~ if the 57295
amount of the purchase alone involved does not exceed ~~fifteen~~ 57296
twenty-five thousand dollars, to sell such machinery, equipment, 57297
or tools and have the amount credited by the vendor against the 57298
purchase of the other machinery, equipment, or tools. ~~Where~~ If the 57299
purchase price of the other machinery, equipment, or tools alone 57300
exceeds ~~fifteen~~ twenty-five thousand dollars, the board may give 57301
notice to the competitive bidders of its willingness to accept 57302
offers for the purchase of the old machinery, equipment, or tools, 57303
and ~~such~~ those offers shall be subtracted from the selling price 57304
of the other machinery, equipment, or tools as bid, in determining 57305
the lowest responsible bidder. Notice of the willingness of the 57306
board to accept offers for the purchase of the old machinery, 57307
equipment, or tools shall be made as a part of the advertisement 57308
for bids. 57309

Sec. 5703.052. (A) There is hereby created in the state 57310
treasury the tax refund fund, from which refunds shall be paid for 57311
taxes illegally or erroneously assessed or collected, or for any 57312
other reason overpaid, that are levied by Chapter 4301., 4305., 57313

5728., 5729., 5733., 5735., 5739., 5741., 5743., 5747., 5748., 57314
5749., or 5753., and sections 3737.71, 3905.35, 3905.36, 4303.33, 57315
5707.03, 5725.18, 5727.28, 5727.38, 5727.81, and 5727.811 of the 57316
Revised Code. Refunds for fees illegally or erroneously assessed 57317
or collected, or for any other reason overpaid, that are levied by 57318
sections 3734.90 to 3734.9014 of the Revised Code also shall be 57319
paid from the fund. However, refunds for taxes levied under 57320
section 5739.101 of the Revised Code shall not be paid from the 57321
tax refund fund, but shall be paid as provided in section 5739.104 57322
of the Revised Code. 57323

(B)(1) Upon certification by the tax commissioner to the 57324
treasurer of state of a tax refund, or fee refund, or tax credit 57325
~~due,~~ or by the superintendent of insurance of a domestic or 57326
foreign insurance tax refund, the treasurer of state ~~may~~ shall 57327
place the amount certified to the credit of the fund. The 57328
certified amount transferred shall be derived from current 57329
receipts of the same tax or the fee ~~for~~ from which the refund 57330
arose ~~or, in the case of a tax credit refund, from the current~~ 57331
~~receipts of the taxes levied by sections 5739.02 and 5741.02 of~~ 57332
~~the Revised Code. If~~ 57333

~~If the tax refund arises from a tax payable to the general~~ 57334
~~revenue fund, and current receipts from that source~~ the tax or fee 57335
from which the refund arose are inadequate to make the transfer of 57336
the amount so certified, the treasurer of state ~~may~~ shall transfer 57337
such certified amount from current receipts of the sales tax 57338
levied by section 5739.02 of the Revised Code. 57339

(2) When the treasurer of state provides for the payment of a 57340
refund of a tax or fee from the current receipts of the sales tax, 57341
and the refund is for a tax or fee that is not levied by the 57342
state, the tax commissioner shall recover the amount of that 57343
refund from the next distribution of that tax or fee that 57344
otherwise would be made to the taxing jurisdiction. If the amount 57345

to be recovered would exceed twenty-five per cent of the next 57346
distribution of that tax or fee, the commissioner may spread the 57347
recovery over more than one future distribution, taking into 57348
account the amount to be recovered and the amount of the 57349
anticipated future distributions. In no event may the commissioner 57350
spread the recovery over a period to exceed twenty-four months. 57351

Sec. 5703.56. (A) As used in this section: 57352

(1) "Sham transaction" means a transaction or series of 57353
transactions without economic substance because there is no 57354
business purpose or expectation of profit other than obtaining tax 57355
benefits. 57356

(2) "Tax" includes any tax or fee administered by the tax 57357
commissioner. 57358

(3) "Taxpayer" includes any entity subject to a tax. 57359

(4) "Controlled group" means two or more persons related in 57360
such a way that one person directly or indirectly owns or controls 57361
the business operation of another member of the group. In the case 57362
of persons with stock or other equity, one person owns or controls 57363
another if it directly or indirectly owns more than fifty per cent 57364
of the other person's common stock with voting rights or other 57365
equity with voting rights. 57366

(B) The tax commissioner may disregard any sham transaction 57367
in ascertaining any taxpayer's tax liability. Except as otherwise 57368
provided in the Revised Code, with respect to transactions between 57369
members of a controlled group, the taxpayer shall bear the burden 57370
of establishing by a preponderance of the evidence that a 57371
transaction or series of transactions between the taxpayer and one 57372
or more members of the controlled group was not a sham 57373
transaction. Except as otherwise provided in the Revised Code, for 57374
all other taxpayers, the tax commissioner shall bear the burden of 57375

establishing by a preponderance of the evidence that a transaction 57376
or series of transactions was a sham transaction. 57377

(C) In administering any tax, the tax commissioner may apply 57378
the doctrines of "economic reality," "substance over form," and 57379
"step transaction." 57380

(D) If the commissioner disregards a sham transaction under 57381
division (B) of this section, the applicable limitation period for 57382
assessing the tax, together with applicable penalties, charges, 57383
and interest, shall be extended for a period equal to the 57384
applicable limitation period. Nothing in this division shall be 57385
construed as extending an applicable limitation period for 57386
claiming any refund of a tax. 57387

(E) The tax commissioner may, in accordance with Chapter 119. 57388
of the Revised Code, adopt rules that are necessary to administer 57389
this section, including rules establishing criteria for 57390
identifying sham transactions. 57391

Sec. 5703.58. (A) As used in this section, "felony" has the 57392
same meaning as in section 109.511 of the Revised Code. 57393

(B) For the purposes of enforcing all laws relating to taxes 57394
and fees that the tax commissioner is responsible for 57395
administering, the tax commissioner, by journal entry, may 57396
delegate any investigation powers of the commissioner to an 57397
employee of the department of taxation who has been certified by 57398
the executive director of the Ohio peace officer training 57399
commission. Each journal entry shall be a matter of public record 57400
and shall be kept in an administrative portion of the journal 57401
maintained under division (L) of section 5703.05 of the Revised 57402
Code. When that journal entry is completed, the employee to whom 57403
it pertains, while engaged within the scope of the employee's 57404
duties in enforcing the laws that the commissioner is responsible 57405
for administering, has the power of a police officer to carry 57406

concealed weapons, make arrests, and obtain warrants for 57407
violations of those laws. The commissioner, at any time, may 57408
suspend or revoke the commissioner's delegation by journal entry. 57409

(C) The tax commissioner shall not delegate any investigation 57410
powers to an employee of the department of taxation under division 57411
(B) of this section if the employee has been convicted of or has 57412
pleaded guilty to a felony. 57413

(D)(1) The tax commissioner shall revoke the delegation of 57414
investigation powers to an employee to whom the delegation was 57415
made under division (B) of this section if that employee does 57416
either of the following: 57417

(a) Pleads guilty to a felony; 57418

(b) Pleads guilty to a misdemeanor pursuant to a negotiated 57419
plea agreement, as provided in division (D) of section 2929.29 of 57420
the Revised Code, in which the employee agrees under section 57421
109.77 of the Revised Code to surrender the certificate awarded to 57422
that employee. 57423

(2) The tax commissioner shall suspend the delegation of 57424
investigation powers to an employee to whom the delegation was 57425
made under division (B) of this section if that employee is 57426
convicted, after trial, of a felony. If the employee files an 57427
appeal from that conviction and the conviction is upheld by the 57428
highest court to which the appeal is taken, or if the employee 57429
does not file a timely appeal, the commissioner shall revoke the 57430
delegation of investigation powers to that employee. If the 57431
employee files an appeal that results in that employee's acquittal 57432
of the felony or conviction of a misdemeanor, or in the dismissal 57433
of the felony charge against that employee, the commissioner shall 57434
reinstate the delegation of investigation powers to that employee. 57435
The revocation, suspension, or reinstatement of the delegation of 57436
investigation powers to an employee under division (D) of this 57437

section shall be made by journal entry pursuant to division (B) of 57438
this section. An employee to whom the delegation of investigation 57439
powers is reinstated under division (D)(2) of this section shall 57440
not receive any back pay for the exercise of those investigation 57441
powers, unless that employee's conviction of the felony was 57442
reversed on appeal, or the felony charge was dismissed, because 57443
the court found insufficient evidence to convict the employee of 57444
the felony. 57445

(3) The revocation or suspension of the delegation of 57446
investigation powers to an employee under division (D) of this 57447
section shall be in accordance with Chapter 119. of the Revised 57448
Code. 57449

(E) Divisions (C) and (D) of this section do not apply to an 57450
offense that was committed prior to January 1, 1997. 57451

(F) Nothing in this section limits the tax commissioner's 57452
ability to have other employees of the department of taxation 57453
conduct investigations as authorized by sections 5703.17 and 57454
5703.19 of the Revised Code. 57455

(G) The department of taxation shall cooperate with the 57456
attorney general, local law enforcement officials, and appropriate 57457
agencies of the federal government and other states in the 57458
investigation and prosecution of violations of all laws relating 57459
to taxes and fees administered by the tax commissioner. 57460

Sec. 5703.80. There is hereby created in the state treasury 57461
the property tax administration fund. All money to the credit of 57462
the fund shall be used to defray the costs incurred by the 57463
department of taxation in administering the taxation of property 57464
and the equalization of real property valuation. 57465

Each fiscal year between the first and fifteenth days of 57466
July, the tax commissioner shall compute the following amounts for 57467

the property in each taxing district in each county, and certify 57468
to the director of budget and management the sum of those amounts 57469
for all taxing districts in all counties: 57470

(A) Three-tenths of one per cent of the total amount by which 57471
taxes charged against real property on the general tax list of 57472
real and public utility property were reduced under section 57473
319.302 of the Revised Code for the preceding tax year; 57474

(B) Fifteen-hundredths of one per cent of the total amount of 57475
taxes charged and payable against public utility personal property 57476
on the general tax list of real and public utility property for 57477
the preceding tax year; 57478

(C) Seventy-five hundredths of one per cent of the total 57479
amount of taxes charged and payable against tangible personal 57480
property on the general tax list of personal property of the 57481
preceding tax year and for which returns were filed with the tax 57482
commissioner under section 5711.13 of the Revised Code. 57483

After receiving the tax commissioner's certification, the 57484
director of budget and management shall transfer from the general 57485
revenue fund to the property tax administration fund one-fourth of 57486
the amount certified on or before each of the following days: the 57487
first days of August, November, February, and May. 57488

On or before the thirtieth day of June of the fiscal year, 57489
the tax commissioner shall certify to the director of budget and 57490
management the sum of the amounts by which the amounts computed 57491
for a taxing district under divisions (A), (B), and (C) of this 57492
section exceeded the distributions to the taxing district under 57493
division (F) of section 321.24 of the Revised Code, and the 57494
director shall transfer that sum from the property tax 57495
administration fund to the general revenue fund. 57496

Sec. 5705.39. The total appropriations from each fund shall 57497

not exceed the total of the estimated revenue available for 57498
expenditure therefrom, as certified by the budget commission, or 57499
in case of appeal, by the board of tax appeals. No appropriation 57500
measure shall become effective until the county auditor files with 57501
the appropriating authority ~~and in the case of a school district,~~ 57502
~~also files with the superintendent of public instruction,~~ a 57503
certificate that the total appropriations from each fund, taken 57504
together with all other outstanding appropriations, do not exceed 57505
such official estimate or amended official estimate. When the 57506
appropriation does not exceed such official estimate, the county 57507
auditor shall give such certificate forthwith upon receiving from 57508
the appropriating authority a certified copy of the appropriation 57509
measure, ~~a copy of which he shall deliver to the superintendent of~~ 57510
~~public instruction in the case of a school district.~~ 57511
Appropriations shall be made from each fund only for the purposes 57512
for which such fund is established. 57513

Sec. 5705.41. No subdivision or taxing unit shall: 57514

(A) Make any appropriation of money except as provided in 57515
Chapter 5705. of the Revised Code; provided, that the 57516
authorization of a bond issue shall be deemed to be an 57517
appropriation of the proceeds of the bond issue for the purpose 57518
for which such bonds were issued, but no expenditure shall be made 57519
from any bond fund until first authorized by the taxing authority; 57520

(B) Make any expenditure of money unless it has been 57521
appropriated as provided in such chapter; 57522

(C) Make any expenditure of money except by a proper warrant 57523
drawn against an appropriate fund; 57524

(D)(1) Except as otherwise provided in division (D)(2) of 57525
this section and section 5705.44 of the Revised Code, make any 57526
contract or give any order involving the expenditure of money 57527
unless there is attached thereto a certificate of the fiscal 57528

officer of the subdivision that the amount required to meet the 57529
obligation or, in the case of a continuing contract to be 57530
performed in whole or in part in an ensuing fiscal year, the 57531
amount required to meet the obligation in the fiscal year in which 57532
the contract is made, has been lawfully appropriated for such 57533
purpose and is in the treasury or in process of collection to the 57534
credit of an appropriate fund free from any previous encumbrances. 57535
This certificate need be signed only by the subdivision's fiscal 57536
officer. Every such contract made without such a certificate shall 57537
be void, and no warrant shall be issued in payment of any amount 57538
due thereon. If no certificate is furnished as required, upon 57539
receipt by the taxing authority of the subdivision or taxing unit 57540
of a certificate of the fiscal officer stating that there was at 57541
the time of the making of such contract or order and at the time 57542
of the execution of such certificate a sufficient sum appropriated 57543
for the purpose of such contract and in the treasury or in process 57544
of collection to the credit of an appropriate fund free from any 57545
previous encumbrances, such taxing authority may authorize the 57546
drawing of a warrant in payment of amounts due upon such contract, 57547
but such resolution or ordinance shall be passed within thirty 57548
days after the taxing authority receives such certificate; 57549
provided that, if the amount involved is less than one hundred 57550
dollars in the case of counties or three thousand dollars in the 57551
case of all other subdivisions or taxing units, the fiscal officer 57552
may authorize it to be paid without such affirmation of the taxing 57553
authority of the subdivision or taxing unit, if such expenditure 57554
is otherwise valid. 57555

(2) Annually, the board of county commissioners may adopt a 57556
resolution exempting for the current fiscal year county purchases 57557
of seven hundred fifty dollars or less from the requirement of 57558
division (D)(1) of this section that a certificate be attached to 57559
any contract or order involving the expenditure of money. The 57560
resolution shall state the dollar amount that is exempted from the 57561

certificate requirement and whether the exemption applies to all 57562
purchases, to one or more specific classes of purchases, or to the 57563
purchase of one or more specific items. Prior to the adoption of 57564
the resolution, the board shall give written notice to the county 57565
auditor that it intends to adopt the resolution. The notice shall 57566
state the dollar amount that is proposed to be exempted and 57567
whether the exemption would apply to all purchases, to one or more 57568
specific classes of purchases, or to the purchase of one or more 57569
specific items. The county auditor may review and comment on the 57570
proposal, and shall send any comments to the board within fifteen 57571
days after receiving the notice. The board shall wait at least 57572
fifteen days after giving the notice to the auditor before 57573
adopting the resolution. A person authorized to make a county 57574
purchase in a county that has adopted such a resolution shall 57575
prepare and file with the county auditor, within three business 57576
days after incurring an obligation not requiring a certificate, a 57577
written document specifying the purpose and amount of the 57578
expenditure, the date of the purchase, the name of the vendor, and 57579
such additional information as the auditor of state may prescribe. 57580

(3) Upon certification by the auditor or other chief fiscal 57581
officer that a certain sum of money, not in excess of ~~five~~ 57582
~~thousand dollars~~ an amount established by resolution or ordinance 57583
adopted by a majority of the members of the legislative authority 57584
of the subdivision or taxing unit, has been lawfully appropriated, 57585
authorized, or directed for a certain purpose and is in the 57586
treasury or in the process of collection to the credit of a 57587
specific line-item appropriation account in a certain fund free 57588
from previous and then outstanding obligations or certifications, 57589
then for such purpose and from such line-item appropriation 57590
account in such fund, over a period ~~not exceeding three months and~~ 57591
not extending beyond the end of the fiscal year, expenditures may 57592
be made, orders for payment issued, and contracts or obligations 57593
calling for or requiring the payment of money made and assumed; 57594

provided, that the aggregate sum of money included in and called 57595
for by such expenditures, orders, contracts, and obligations shall 57596
not exceed the sum so certified. Such a certification need be 57597
signed only by the fiscal officer of the subdivision or the taxing 57598
district and may, but need not, be limited to a specific vendor. 57599
An itemized statement of obligations incurred and expenditures 57600
made under such certificate shall be rendered to the auditor or 57601
other chief fiscal officer before another such certificate may be 57602
issued, and not more than one such certificate shall be 57603
outstanding at a time. 57604

In addition to providing the certification for expenditures 57605
~~of five thousand dollars or less~~ as provided specified in this 57606
division, a subdivision also may make expenditures, issue orders 57607
for payment, and make contracts or obligations calling for or 57608
requiring the payment of money made and assumed for specified 57609
permitted purposes from a specific line-item appropriation account 57610
in a specified fund for a sum of money upon the certification by 57611
the fiscal officer of the subdivision that this sum of money has 57612
been lawfully appropriated, authorized, or directed for a 57613
permitted purpose and is in the treasury or in the process of 57614
collection to the credit of the specific line-item appropriation 57615
account in the specified fund free from previous and 57616
then-outstanding obligations or certifications; provided that the 57617
aggregate sum of money included in and called for by the 57618
expenditures, orders, and obligations shall not exceed the 57619
certified sum. The purposes for which a subdivision may lawfully 57620
appropriate, authorize, or issue such a certificate are the 57621
services of an accountant, architect, attorney at law, physician, 57622
professional engineer, construction project manager, consultant, 57623
surveyor, or appraiser by or on behalf of the subdivision or 57624
contracting authority; fuel oil, gasoline, food items, roadway 57625
materials, and utilities; and any purchases exempt from 57626
competitive bidding under section 125.04 of the Revised Code and 57627

any other specific expenditure that is a recurring and reasonably 57628
predictable operating expense. Such a certification shall not 57629
extend beyond the end of the fiscal year or, in the case of a 57630
board of county commissioners that has established a quarterly 57631
spending plan under section 5705.392 of the Revised Code, beyond 57632
the quarter to which the plan applies. Such a certificate shall be 57633
signed by the fiscal officer and may, but need not, be limited to 57634
a specific vendor. An itemized statement of obligations incurred 57635
and expenditures made under such a certificate shall be rendered 57636
to the fiscal officer for each certificate issued. More than one 57637
such certificate may be outstanding at any time. 57638

In any case in which a contract is entered into upon a per 57639
unit basis, the head of the department, board, or commission for 57640
the benefit of which the contract is made shall make an estimate 57641
of the total amount to become due upon such contract, which 57642
estimate shall be certified in writing to the fiscal officer of 57643
the subdivision. Such a contract may be entered into if the 57644
appropriation covers such estimate, or so much thereof as may be 57645
due during the current year. In such a case the certificate of the 57646
fiscal officer based upon the estimate shall be a sufficient 57647
compliance with the law requiring a certificate. 57648

Any certificate of the fiscal officer attached to a contract 57649
shall be binding upon the political subdivision as to the facts 57650
set forth therein. Upon request of any person receiving an order 57651
or entering into a contract with any political subdivision, the 57652
certificate of the fiscal officer shall be attached to such order 57653
or contract. "Contract" as used in this section excludes current 57654
payrolls of regular employees and officers. 57655

Taxes and other revenue in process of collection, or the 57656
proceeds to be derived from authorized bonds, notes, or 57657
certificates of indebtedness sold and in process of delivery, 57658
shall for the purpose of this section be deemed in the treasury or 57659

in process of collection and in the appropriate fund. This section 57660
applies neither to the investment of sinking funds by the trustees 57661
of such funds, nor to investments made under sections 731.56 to 57662
731.59 of the Revised Code. 57663

No district authority shall, in transacting its own affairs, 57664
do any of the things prohibited to a subdivision by this section, 57665
but the appropriation referred to shall become the appropriation 57666
by the district authority, and the fiscal officer referred to 57667
shall mean the fiscal officer of the district authority. 57668

Sec. 5705.412. (A) As used in this section, "qualifying 57669
contract" means any agreement for the expenditure of money under 57670
which aggregate payments from the funds included in the school 57671
district's five-year forecast under section 5705.391 of the 57672
Revised Code will exceed the lesser of the following amounts: 57673

(1) Five hundred thousand dollars; 57674

(2) One per cent of the total revenue to be credited in the 57675
current fiscal year to the district's general fund, as specified 57676
in the district's most recent certificate of estimated resources 57677
certified under section 5705.36 of the Revised Code. 57678

(B) Notwithstanding section 5705.41 of the Revised Code, no 57679
school district shall adopt any appropriation measure, make any 57680
qualifying contract, or increase during any school year any wage 57681
or salary schedule unless there is attached thereto a certificate, 57682
signed as required by this section, that the school district has 57683
in effect the authorization to levy taxes including the renewal or 57684
replacement of existing levies which, when combined with the 57685
estimated revenue from all other sources available to the district 57686
at the time of certification, are sufficient to provide the 57687
operating revenues necessary to enable the district to maintain 57688
all personnel and programs for all the days set forth in its 57689
adopted school calendars for the current fiscal year and for a 57690

number of days in succeeding fiscal years equal to the number of 57691
days instruction was held or is scheduled for the current fiscal 57692
year, as follows: 57693

(1) A certificate attached to an appropriation measure under 57694
this section shall cover only the fiscal year in which the 57695
appropriation measure is effective and shall not consider the 57696
renewal or replacement of an existing levy as the authority to 57697
levy taxes that are subject to appropriation in the current fiscal 57698
year unless the renewal or replacement levy has been approved by 57699
the electors and is subject to appropriation in the current fiscal 57700
year. 57701

(2) A certificate attached, in accordance with this section, 57702
to any qualifying contract shall cover the term of the contract. 57703

(3) A certificate attached under this section to a wage or 57704
salary schedule shall cover the term of the schedule. 57705

If the board of education has not adopted a school calendar 57706
for the school year beginning on the first day of the fiscal year 57707
in which a certificate is required, the certificate attached to an 57708
appropriation measure shall include the number of days on which 57709
instruction was held in the preceding fiscal year and other 57710
certificates required under this section shall include that number 57711
of days for the fiscal year in which the certificate is required 57712
and any succeeding fiscal years that the certificate must cover. 57713

The certificate shall be signed by the treasurer and 57714
president of the board of education and the superintendent of the 57715
school district, unless the district is in a state of fiscal 57716
emergency declared under Chapter 3316. of the Revised Code. In 57717
that case, the certificate shall be signed by a member of the 57718
district's financial planning and supervision commission who is 57719
designated by the commission for this purpose. 57720

(C) Every qualifying contract made or wage or salary schedule 57721

adopted or put into effect without such a certificate shall be 57722
void, and no payment of any amount due thereon shall be made. 57723

(D) The department of education and the auditor of state 57724
jointly shall adopt rules governing the methods by which 57725
treasurers, presidents of boards of education, superintendents, 57726
and members of financial planning and supervision commissions 57727
shall estimate revenue and determine whether such revenue is 57728
sufficient to provide necessary operating revenue for the purpose 57729
of making certifications required by this section. 57730

(E) The auditor of state shall be responsible for determining 57731
whether school districts are in compliance with this section. At 57732
the time a school district is audited pursuant to section 117.11 57733
of the Revised Code, the auditor of state shall review each 57734
certificate issued under this section since the district's last 57735
audit, and the appropriation measure, contract, or wage and salary 57736
schedule to which such certificate was attached. If the auditor of 57737
state determines that a school district has not complied with this 57738
section with respect to any qualifying contract or wage or salary 57739
schedule, the auditor of state shall notify the prosecuting 57740
attorney for the county, the city director of law, or other chief 57741
law officer of the school district. That officer may file a civil 57742
action in any court of appropriate jurisdiction to seek a 57743
declaration that the contract or wage or salary schedule is void, 57744
to recover for the school district from the payee the amount of 57745
payments already made under it, or both, except that the officer 57746
shall not seek to recover payments made under any collective 57747
bargaining agreement entered into under Chapter 4117. of the 57748
Revised Code. If the officer does not file such an action within 57749
one hundred twenty days after receiving notice of noncompliance 57750
from the auditor of state, any taxpayer may institute the action 57751
in the taxpayer's own name on behalf of the school district. 57752

(F) This section does not apply to any contract or increase 57753

in any wage or salary schedule that is necessary in order to 57754
enable a board of education to comply with division (B) of section 57755
3317.13 of the Revised Code, provided the contract or increase 57756
does not exceed the amount required to be paid to be in compliance 57757
with such division. 57758

(G) Any officer, employee, or other person who expends or 57759
authorizes the expenditure of any public funds or authorizes or 57760
executes any contract or schedule contrary to this section, 57761
expends or authorizes the expenditure of any public funds on the 57762
void contract or schedule, or issues a certificate under this 57763
section which contains any false statements is liable to the 57764
school district for the full amount paid from the district's funds 57765
on the contract or schedule. The officer, employee, or other 57766
person is jointly and severally liable in person and upon any 57767
official bond that the officer, employee, or other person has 57768
given to the school district to the extent of any payments on the 57769
void claim, not to exceed ten thousand dollars. However, no 57770
officer, employee, or other person shall be liable for a mistaken 57771
estimate of available resources made in good faith and based upon 57772
reasonable grounds. If an officer, employee, or other person is 57773
found to have complied with rules jointly adopted by the 57774
department of education and the auditor of state under this 57775
section governing methods by which revenue shall be estimated and 57776
determined sufficient to provide necessary operating revenue for 57777
the purpose of making certifications required by this section, the 57778
officer, employee, or other person shall not be liable under this 57779
section if the estimates and determinations made according to 57780
those rules do not, in fact, conform with actual revenue. The 57781
prosecuting attorney of the county, the city director of law, or 57782
other chief law officer of the district shall enforce this 57783
liability by civil action brought in any court of appropriate 57784
jurisdiction in the name of and on behalf of the school district. 57785
If the prosecuting attorney, city director of law, or other chief 57786

law officer of the district fails, upon the written request of any taxpayer, to institute action for the enforcement of the liability, the attorney general, or the taxpayer in the taxpayer's own name, may institute the action on behalf of the subdivision.

(H) This section does not require the attachment of an additional certificate beyond that required by section 5705.41 of the Revised Code for current payrolls of, or contracts of employment with, ~~regular~~ any employees or officers of the school district.

This section does not require the attachment of a certificate to a temporary appropriation measure if all of the following apply:

(1) The amount appropriated does not exceed twenty-five per cent of the total amount from all sources available for expenditure from any fund during the preceding fiscal year;

(2) The measure will not be in effect on or after the thirtieth day following the earliest date on which the district may pass an annual appropriation measure;

(3) An amended official certificate of estimated resources for the current year, if required, has not been certified to the board of education under division (B) of section 5705.36 of the Revised Code.

Sec. 5709.61. As used in sections 5709.61 to 5709.69 of the Revised Code:

(A) "Enterprise zone" or "zone" means any of the following:

(1) An area with a single continuous boundary designated in the manner set forth in section 5709.62 or 5709.63 of the Revised Code and certified by the director of development as having a population of at least four thousand according to the best and most recent data available to the director and having at least two

of the following characteristics: 57817

(a) It is located in a municipal corporation defined by the 57818
United States office of management and budget as a central city of 57819
a metropolitan statistical area or in a city designated as an 57820
urban cluster in a rural statistical area; 57821

(b) It is located in a county designated as being in the 57822
"Appalachian region" under the "Appalachian Regional Development 57823
Act of 1965," 79 Stat. 5, 40 App. U.S.C.A. 403, as amended; 57824

(c) Its average rate of unemployment, during the most recent 57825
twelve-month period for which data are available, is equal to at 57826
least one hundred twenty-five per cent of the average rate of 57827
unemployment for the state of Ohio for the same period; 57828

(d) There is a prevalence of commercial or industrial 57829
structures in the area that are vacant or demolished, or are 57830
vacant and the taxes charged thereon are delinquent, and 57831
certification of the area as an enterprise zone would likely 57832
result in the reduction of the rate of vacant or demolished 57833
structures or the rate of tax delinquency in the area; 57834

(e) The population of all census tracts in the area, 57835
according to the federal census of 1990, decreased by at least ten 57836
per cent between the years 1970 and 1990; 57837

(f) At least fifty-one per cent of the residents of the area 57838
have incomes of less than eighty per cent of the median income of 57839
residents of the municipal corporation or municipal corporations 57840
in which the area is located, as determined in the same manner 57841
specified under section 119(b) of the "Housing and Community 57842
Development Act of 1974," 88 Stat. 633, 42 U.S.C. 5318, as 57843
amended; 57844

(g) The area contains structures previously used for 57845
industrial purposes, but currently not so used due to age, 57846
obsolescence, deterioration, relocation of the former occupant's 57847

operations, or cessation of operations resulting from unfavorable 57848
economic conditions either generally or in a specific economic 57849
sector; 57850

(h) It is located within one or more adjacent city, local, or 57851
exempted village school districts, the income-weighted tax 57852
capacity of each of which is less than seventy per cent of the 57853
average of the income-weighted tax capacity of all city, local, or 57854
exempted village school districts in the state according to the 57855
most recent data available to the director from the department of 57856
taxation. 57857

The director of development shall adopt rules in accordance 57858
with Chapter 119. of the Revised Code establishing conditions 57859
constituting the characteristics described in divisions (A)(1)(d), 57860
(g), and (h) of this section. 57861

If an area could not be certified as an enterprise zone 57862
unless it satisfied division (A)(1)(g) of this section, the 57863
legislative authority may enter into agreements in that zone under 57864
section 5709.62, 5709.63, or 5709.632 of the Revised Code only if 57865
such agreements result in the development of the facilities 57866
described in that division, the parcel of land on which such 57867
facilities are situated, or adjacent parcels. The director of 57868
development annually shall review all agreements in such zones to 57869
determine whether the agreements have resulted in such 57870
development; if the director determines that the agreements have 57871
not resulted in such development, the director immediately shall 57872
revoke certification of the zone and notify the legislative 57873
authority of such revocation. Any agreements entered into prior to 57874
revocation under this paragraph shall continue in effect for the 57875
period provided in the agreement. 57876

(2) An area with a single continuous boundary designated in 57877
the manner set forth in section 5709.63 of the Revised Code and 57878
certified by the director of development as: 57879

(a) Being located within a county that contains a population of three hundred thousand or less; 57880
57881

(b) Having a population of at least one thousand according to the best and most recent data available to the director; 57882
57883

(c) Having at least two of the characteristics described in divisions (A)(1)(b) to (h) of this section. 57884
57885

(3) An area with a single continuous boundary designated in the manner set forth under division (A)(1) of section 5709.632 of the Revised Code and certified by the director of development as having a population of at least four thousand, or under division (A)(2) of that section and certified as having a population of at least one thousand, according to the best and most recent data available to the director. 57886
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(B) "Enterprise" means any form of business organization including, but not limited to, any partnership, sole proprietorship, or corporation, including an S corporation as defined in section 1361 of the Internal Revenue Code and any corporation that is majority work-owned either directly through the ownership of stock or indirectly through participation in an employee stock ownership plan. 57893
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(C) "Facility" means an enterprise's place of business in a zone, including land, buildings, machinery, equipment, and other materials, except inventory, used in business. "Facility" includes land, buildings, machinery, production and station equipment, other equipment, and other materials, except inventory, used in business to generate electricity, provided that, for purposes of sections 5709.61 to 5709.69 of the Revised Code, the value of the property at such a facility shall be reduced by the value, if any, that is not apportioned under section 5727.15 of the Revised Code to the taxing district in which the facility is physically located. In the case of such a facility that is physically located 57900
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in two adjacent taxing districts, the property located in each 57911
taxing district constitutes a separate facility. 57912

"Facility" does not include any portion of an enterprise's 57913
place of business used primarily for making retail sales, unless 57914
the place of business is located in an impacted city as defined in 57915
section 1728.01 of the Revised Code. 57916

(D) "Vacant facility" means a facility that has been vacant 57917
for at least ninety days immediately preceding the date on which 57918
an agreement is entered into under section 5709.62 or 5709.63 of 57919
the Revised Code. 57920

(E) "Expand" means to make expenditures to add land, 57921
buildings, machinery, equipment, or other materials, except 57922
inventory, to a facility that equal at least ten per cent of the 57923
market value of the facility prior to such expenditures, as 57924
determined for the purposes of local property taxation. 57925

(F) "Renovate" means to make expenditures to alter or repair 57926
a facility that equal at least fifty per cent of the market value 57927
of the facility prior to such expenditures, as determined for the 57928
purposes of local property taxation. 57929

(G) "Occupy" means to make expenditures to alter or repair a 57930
vacant facility equal to at least twenty per cent of the market 57931
value of the facility prior to such expenditures, as determined 57932
for the purposes of local property taxation. 57933

(H) "Project site" means all or any part of a facility that 57934
is newly constructed, expanded, renovated, or occupied by an 57935
enterprise. 57936

(I) "Project" means any undertaking by an enterprise to 57937
establish a facility or to improve a project site by expansion, 57938
renovation, or occupancy. 57939

(J) "Position" means the position of one full-time employee 57940

performing a particular set of tasks and duties. 57941

(K) "Full-time employee" means an individual who is employed 57942
for consideration by an enterprise for at least thirty-five hours 57943
a week, or who renders any other standard of service generally 57944
accepted by custom or specified by contract as full-time 57945
employment. 57946

(L) "New employee" means a full-time employee first employed 57947
by an enterprise at a facility that is a project site after the 57948
enterprise enters an agreement under section 5709.62 or 5709.63 of 57949
the Revised Code. "New employee" does not include an employee if, 57950
immediately prior to being employed by the enterprise, the 57951
employee was employed by an enterprise that is a related member or 57952
predecessor enterprise of that enterprise. 57953

(M) "Unemployed person" means any person who is totally 57954
unemployed in this state, as that term is defined in division (M) 57955
of section 4141.01 of the Revised Code, for at least ten 57956
consecutive weeks immediately preceding that person's employment 57957
at a facility that is a project site, or who is so unemployed for 57958
at least twenty-six of the fifty-two weeks immediately preceding 57959
that person's employment at such a facility. 57960

(N) "JTPA eligible employee" means any individual who is 57961
eligible for employment or training under the "Job Training 57962
Partnership Act," 96 Stat. 1324 (1982), 29 U.S.C. 1501, as 57963
amended. 57964

(O) "First used in business" means that the property referred 57965
to has not been used in business in this state by the enterprise 57966
that owns it, or by an enterprise that is a related member or 57967
predecessor enterprise of such an enterprise, other than as 57968
inventory, prior to being used in business at a facility as the 57969
result of a project. 57970

(P) "Training program" means any noncredit training program 57971

or course of study that is offered by any state college or 57972
university; university branch district; community college; 57973
technical college; nonprofit college or university certified under 57974
section 1713.02 of the Revised Code; school district; joint 57975
vocational school district; school registered and authorized to 57976
offer programs under section 3332.05 of the Revised Code; an 57977
entity administering any federal, state, or local adult education 57978
and training program; or any enterprise; and that meets all of the 57979
following requirements: 57980

(1) It is approved by the director of development; 57981

(2) It is established or operated to satisfy the need of a 57982
particular industry or enterprise for skilled or semi-skilled 57983
employees; 57984

(3) An individual is required to complete the course or 57985
program before filling a position at a project site. 57986

(Q) "Development" means to engage in the process of clearing 57987
and grading land, making, installing, or constructing water 57988
distribution systems, sewers, sewage collection systems, steam, 57989
gas, and electric lines, roads, curbs, gutters, sidewalks, storm 57990
drainage facilities, and construction of other facilities or 57991
buildings equal to at least fifty per cent of the market value of 57992
the facility prior to the expenditures, as determined for the 57993
purposes of local property taxation. 57994

(R) "Large manufacturing facility" means a single Ohio 57995
facility that employed an average of at least one thousand 57996
individuals during the five calendar years preceding an agreement 57997
authorized under division (C)(3) of section 5709.62 or division 57998
(B)(2) of section 5709.63 of the Revised Code. For purposes of 57999
this division, both of the following apply: 58000

(1) A single Ohio manufacturing facility employed an average 58001
of at least one thousand individuals during the five calendar 58002

years preceding entering into such an agreement if one-fifth of 58003
the sum of the number of employees employed on the highest 58004
employment day during each of the five calendar years equals or 58005
exceeds one thousand. 58006

(2) The highest employment day is the day or days during a 58007
calendar year on which the number of employees employed at a 58008
single Ohio manufacturing facility was greater than on any other 58009
day during the calendar year. 58010

(S) "Business cycle" means the cycle of business activity 58011
usually regarded as passing through alternating stages of 58012
prosperity and depression. 58013

(T) "Making retail sales" means the effecting of 58014
point-of-final-purchase transactions at a facility open to the 58015
consuming public, wherein one party is obligated to pay the price 58016
and the other party is obligated to provide a service or to 58017
transfer title to or possession of the item sold. 58018

(U) "Environmentally contaminated" means that hazardous 58019
substances exist at a facility under conditions that have caused 58020
or would cause the facility to be identified as contaminated by 58021
the state or federal environmental protection agency. These may 58022
include facilities located at sites identified in the master sites 58023
list or similar database maintained by the state environmental 58024
protection agency if the sites have been investigated by the 58025
agency and found to be contaminated. 58026

(V) "Remediate" means to make expenditures to clean up an 58027
environmentally contaminated facility so that it is no longer 58028
environmentally contaminated that equal at least ten per cent of 58029
the real property market value of the facility prior to such 58030
expenditures as determined for the purposes of property taxation. 58031

(W) "Related member" has the same meaning as defined in 58032
section 5733.042 of the Revised Code without regard to division 58033

(B) of that section, except that it is used with respect to an 58034
enterprise rather than a taxpayer. 58035

(X) "Predecessor enterprise" means an enterprise from which 58036
the assets or equity of another enterprise has been transferred, 58037
which transfer resulted in the full or partial nonrecognition of 58038
gain or loss, or resulted in a carryover basis, both as determined 58039
by rule adopted by the tax commissioner. 58040

(Y) "Successor enterprise" means an enterprise to which the 58041
assets or equity of another enterprise has been transferred, which 58042
transfer resulted in the full or partial nonrecognition of gain or 58043
loss, or resulted in a carryover basis, both as determined by rule 58044
adopted by the tax commissioner. 58045

Sec. 5709.62. (A) In any municipal corporation that is 58046
defined by the United States office of management and budget as a 58047
central city of a metropolitan statistical area, or in a city 58048
designated as an urban cluster in a rural statistical area, the 58049
legislative authority of the municipal corporation may designate 58050
one or more areas within its municipal corporation as proposed 58051
enterprise zones. Upon designating an area, the legislative 58052
authority shall petition the director of development for 58053
certification of the area as having the characteristics set forth 58054
in division (A)(1) of section 5709.61 of the Revised Code as 58055
amended by Substitute Senate Bill No. 19 of the 120th general 58056
assembly. Except as otherwise provided in division (E) of this 58057
section, on and after July 1, 1994, legislative authorities shall 58058
not enter into agreements under this section unless the 58059
legislative authority has petitioned the director and the director 58060
has certified the zone under this section as amended by that act; 58061
however, all agreements entered into under this section as it 58062
existed prior to July 1, 1994, and the incentives granted under 58063
those agreements shall remain in effect for the period agreed to 58064

under those agreements. Within sixty days after receiving such a petition, the director shall determine whether the area has the characteristics set forth in division (A)(1) of section 5709.61 of the Revised Code, and shall forward the findings to the legislative authority of the municipal corporation. If the director certifies the area as having those characteristics, and thereby certifies it as a zone, the legislative authority may enter into an agreement with an enterprise under division (C) of this section.

(B) Any enterprise that wishes to enter into an agreement with a municipal corporation under division (C) of this section shall submit a proposal to the legislative authority of the municipal corporation on a form prescribed by the director of development, together with the application fee established under section 5709.68 of the Revised Code. The form shall require the following information:

(1) An estimate of the number of new employees whom the enterprise intends to hire, or of the number of employees whom the enterprise intends to retain, within the zone at a facility that is a project site, and an estimate of the amount of payroll of the enterprise attributable to these employees;

(2) An estimate of the amount to be invested by the enterprise to establish, expand, renovate, or occupy a facility, including investment in new buildings, additions or improvements to existing buildings, machinery, equipment, furniture, fixtures, and inventory;

(3) A listing of the enterprise's current investment, if any, in a facility as of the date of the proposal's submission.

The enterprise shall review and update the listings required under this division to reflect material changes, and any agreement entered into under division (C) of this section shall set forth

final estimates and listings as of the time the agreement is 58096
entered into. The legislative authority may, on a separate form 58097
and at any time, require any additional information necessary to 58098
determine whether an enterprise is in compliance with an agreement 58099
and to collect the information required to be reported under 58100
section 5709.68 of the Revised Code. 58101

(C) Upon receipt and investigation of a proposal under 58102
division (B) of this section, if the legislative authority finds 58103
that the enterprise submitting the proposal is qualified by 58104
financial responsibility and business experience to create and 58105
preserve employment opportunities in the zone and improve the 58106
economic climate of the municipal corporation, the legislative 58107
authority, on or before ~~June 30, 2004~~ October 15, 2009, may do one 58108
of the following: 58109

(1) Enter into an agreement with the enterprise under which 58110
the enterprise agrees to establish, expand, renovate, or occupy a 58111
facility and hire new employees, or preserve employment 58112
opportunities for existing employees, in return for one or more of 58113
the following incentives: 58114

(a) Exemption for a specified number of years, not to exceed 58115
ten, of a specified portion, up to seventy-five per cent, of the 58116
assessed value of tangible personal property first used in 58117
business at the project site as a result of the agreement. An 58118
exemption granted pursuant to this division applies to inventory 58119
required to be listed pursuant to sections 5711.15 and 5711.16 of 58120
the Revised Code, except that, in the instance of an expansion or 58121
other situations in which an enterprise was in business at the 58122
facility prior to the establishment of the zone, the inventory 58123
that is exempt is that amount or value of inventory in excess of 58124
the amount or value of inventory required to be listed in the 58125
personal property tax return of the enterprise in the return for 58126
the tax year in which the agreement is entered into. 58127

(b) Exemption for a specified number of years, not to exceed 58128
ten, of a specified portion, up to seventy-five per cent, of the 58129
increase in the assessed valuation of real property constituting 58130
the project site subsequent to formal approval of the agreement by 58131
the legislative authority; 58132

(c) Provision for a specified number of years, not to exceed 58133
ten, of any optional services or assistance that the municipal 58134
corporation is authorized to provide with regard to the project 58135
site. 58136

(2) Enter into an agreement under which the enterprise agrees 58137
to remediate an environmentally contaminated facility, to spend an 58138
amount equal to at least two hundred fifty per cent of the true 58139
value in money of the real property of the facility prior to 58140
remediation as determined for the purposes of property taxation to 58141
establish, expand, renovate, or occupy the remediated facility, 58142
and to hire new employees or preserve employment opportunities for 58143
existing employees at the remediated facility, in return for one 58144
or more of the following incentives: 58145

(a) Exemption for a specified number of years, not to exceed 58146
ten, of a specified portion, not to exceed fifty per cent, of the 58147
assessed valuation of the real property of the facility prior to 58148
remediation; 58149

(b) Exemption for a specified number of years, not to exceed 58150
ten, of a specified portion, not to exceed one hundred per cent, 58151
of the increase in the assessed valuation of the real property of 58152
the facility during or after remediation; 58153

(c) The incentive under division (C)(1)(a) of this section, 58154
except that the percentage of the assessed value of such property 58155
exempted from taxation shall not exceed one hundred per cent; 58156

(d) The incentive under division (C)(1)(c) of this section. 58157

(3) Enter into an agreement with an enterprise that plans to purchase and operate a large manufacturing facility that has ceased operation or announced its intention to cease operation, in return for exemption for a specified number of years, not to exceed ten, of a specified portion, up to one hundred per cent, of the assessed value of tangible personal property used in business at the project site as a result of the agreement, or of the assessed valuation of real property constituting the project site, or both.

(D)(1) Notwithstanding divisions (C)(1)(a) and (b) of this section, the portion of the assessed value of tangible personal property or of the increase in the assessed valuation of real property exempted from taxation under those divisions may exceed seventy-five per cent in any year for which that portion is exempted if the average percentage exempted for all years in which the agreement is in effect does not exceed sixty per cent, or if the board of education of the city, local, or exempted village school district within the territory of which the property is or will be located approves a percentage in excess of seventy-five per cent. For the purpose of obtaining such approval, the legislative authority shall deliver to the board of education a notice not later than forty-five days prior to approving the agreement, excluding Saturdays, Sundays, and legal holidays as defined in section 1.14 of the Revised Code. The notice shall state the percentage to be exempted, an estimate of the true value of the property to be exempted, and the number of years the property is to be exempted. The board of education, by resolution adopted by a majority of the board, shall approve or disapprove the agreement and certify a copy of the resolution to the legislative authority not later than fourteen days prior to the date stipulated by the legislative authority as the date upon which approval of the agreement is to be formally considered by

the legislative authority. The board of education may include in 58190
the resolution conditions under which the board would approve the 58191
agreement, including the execution of an agreement to compensate 58192
the school district under division (B) of section 5709.82 of the 58193
Revised Code. The legislative authority may approve the agreement 58194
at any time after the board of education certifies its resolution 58195
approving the agreement to the legislative authority, or, if the 58196
board approves the agreement conditionally, at any time after the 58197
conditions are agreed to by the board and the legislative 58198
authority. 58199

If a board of education has adopted a resolution waiving its 58200
right to approve agreements and the resolution remains in effect, 58201
approval of an agreement by the board is not required under this 58202
division. If a board of education has adopted a resolution 58203
allowing a legislative authority to deliver the notice required 58204
under this division fewer than forty-five business days prior to 58205
the legislative authority's approval of the agreement, the 58206
legislative authority shall deliver the notice to the board not 58207
later than the number of days prior to such approval as prescribed 58208
by the board in its resolution. If a board of education adopts a 58209
resolution waiving its right to approve agreements or shortening 58210
the notification period, the board shall certify a copy of the 58211
resolution to the legislative authority. If the board of education 58212
rescinds such a resolution, it shall certify notice of the 58213
rescission to the legislative authority. 58214

(2) The legislative authority shall comply with section 58215
5709.83 of the Revised Code unless the board of education has 58216
adopted a resolution under that section waiving its right to 58217
receive such notice. 58218

(E) This division applies to zones certified by the director 58219
of development under this section prior to July 22, 1994. 58220

On or before ~~June 30, 2004~~ October 15, 2009, the legislative 58221

authority that designated a zone to which this division applies 58222
may enter into an agreement with an enterprise if the legislative 58223
authority makes the finding required under that division and 58224
determines that the enterprise satisfies one of the criteria 58225
described in divisions (E)(1) to (5) of this section: 58226

(1) The enterprise currently has no operations in this state 58227
and, subject to approval of the agreement, intends to establish 58228
operations in the zone; 58229

(2) The enterprise currently has operations in this state 58230
and, subject to approval of the agreement, intends to establish 58231
operations at a new location in the zone that would not result in 58232
a reduction in the number of employee positions at any of the 58233
enterprise's other locations in this state; 58234

(3) The enterprise, subject to approval of the agreement, 58235
intends to relocate operations, currently located in another 58236
state, to the zone; 58237

(4) The enterprise, subject to approval of the agreement, 58238
intends to expand operations at an existing site in the zone that 58239
the enterprise currently operates; 58240

(5) The enterprise, subject to approval of the agreement, 58241
intends to relocate operations, currently located in this state, 58242
to the zone, and the director of development has issued a waiver 58243
for the enterprise under division (B) of section 5709.633 of the 58244
Revised Code. 58245

The agreement shall require the enterprise to agree to 58246
establish, expand, renovate, or occupy a facility in the zone and 58247
hire new employees, or preserve employment opportunities for 58248
existing employees, in return for one or more of the incentives 58249
described in division (C) of this section. 58250

(F) All agreements entered into under this section shall be 58251
in the form prescribed under section 5709.631 of the Revised Code. 58252

After an agreement is entered into under this division, if the 58253
legislative authority revokes its designation of a zone, or if the 58254
director of development revokes the zone's certification, any 58255
entitlements granted under the agreement shall continue for the 58256
number of years specified in the agreement. 58257

(G) Except as otherwise provided in this division, an 58258
agreement entered into under this section shall require that the 58259
enterprise pay an annual fee equal to the greater of one per cent 58260
of the dollar value of incentives offered under the agreement or 58261
five hundred dollars; provided, however, that if the value of the 58262
incentives exceeds two hundred fifty thousand dollars, the fee 58263
shall not exceed two thousand five hundred dollars. The fee shall 58264
be payable to the legislative authority once per year for each 58265
year the agreement is effective on the days and in the form 58266
specified in the agreement. Fees paid shall be deposited in a 58267
special fund created for such purpose by the legislative authority 58268
and shall be used by the legislative authority exclusively for the 58269
purpose of complying with section 5709.68 of the Revised Code and 58270
by the tax incentive review council created under section 5709.85 58271
of the Revised Code exclusively for the purposes of performing the 58272
duties prescribed under that section. The legislative authority 58273
may waive or reduce the amount of the fee charged against an 58274
enterprise, but such a waiver or reduction does not affect the 58275
obligations of the legislative authority or the tax incentive 58276
review council to comply with section 5709.68 or 5709.85 of the 58277
Revised Code. 58278

(H) When an agreement is entered into pursuant to this 58279
section, the legislative authority authorizing the agreement shall 58280
forward a copy of the agreement to the director of development and 58281
to the tax commissioner within fifteen days after the agreement is 58282
entered into. If any agreement includes terms not provided for in 58283
section 5709.631 of the Revised Code affecting the revenue of a 58284

city, local, or exempted village school district or causing 58285
revenue to be foregone by the district, including any compensation 58286
to be paid to the school district pursuant to section 5709.82 of 58287
the Revised Code, those terms also shall be forwarded in writing 58288
to the director of development along with the copy of the 58289
agreement forwarded under this division. 58290

(I) After an agreement is entered into, the enterprise shall 58291
file with each personal property tax return required to be filed, 58292
or annual report required to be filed under section 5727.08 of the 58293
Revised Code, while the agreement is in effect, an informational 58294
return, on a form prescribed by the tax commissioner for that 58295
purpose, setting forth separately the property, and related costs 58296
and values, exempted from taxation under the agreement. 58297

(J) Enterprises may agree to give preference to residents of 58298
the zone within which the agreement applies relative to residents 58299
of this state who do not reside in the zone when hiring new 58300
employees under the agreement. 58301

(K) An agreement entered into under this section may include 58302
a provision requiring the enterprise to create one or more 58303
temporary internship positions for students enrolled in a course 58304
of study at a school or other educational institution in the 58305
vicinity, and to create a scholarship or provide another form of 58306
educational financial assistance for students holding such a 58307
position in exchange for the student's commitment to work for the 58308
enterprise at the completion of the internship. 58309

Sec. 5709.63. (A) With the consent of the legislative 58310
authority of each affected municipal corporation or of a board of 58311
township trustees, a board of county commissioners may, in the 58312
manner set forth in section 5709.62 of the Revised Code, designate 58313
one or more areas in one or more municipal corporations or in 58314
unincorporated areas of the county as proposed enterprise zones. A 58315

board of county commissioners may designate no more than one area 58316
within a township, or within adjacent townships, as a proposed 58317
enterprise zone. The board shall petition the director of 58318
development for certification of the area as having the 58319
characteristics set forth in division (A)(1) or (2) of section 58320
5709.61 of the Revised Code as amended by Substitute Senate Bill 58321
No. 19 of the 120th general assembly. Except as otherwise provided 58322
in division (D) of this section, on and after July 1, 1994, boards 58323
of county commissioners shall not enter into agreements under this 58324
section unless the board has petitioned the director and the 58325
director has certified the zone under this section as amended by 58326
that act; however, all agreements entered into under this section 58327
as it existed prior to July 1, 1994, and the incentives granted 58328
under those agreements shall remain in effect for the period 58329
agreed to under those agreements. The director shall make the 58330
determination in the manner provided under section 5709.62 of the 58331
Revised Code. Any enterprise wishing to enter into an agreement 58332
with the board under division (B) or (D) of this section shall 58333
submit a proposal to the board on the form and accompanied by the 58334
application fee prescribed under division (B) of section 5709.62 58335
of the Revised Code. The enterprise shall review and update the 58336
estimates and listings required by the form in the manner required 58337
under that division. The board may, on a separate form and at any 58338
time, require any additional information necessary to determine 58339
whether an enterprise is in compliance with an agreement and to 58340
collect the information required to be reported under section 58341
5709.68 of the Revised Code. 58342

(B) If the board of county commissioners finds that an 58343
enterprise submitting a proposal is qualified by financial 58344
responsibility and business experience to create and preserve 58345
employment opportunities in the zone and to improve the economic 58346
climate of the municipal corporation or municipal corporations or 58347
the unincorporated areas in which the zone is located and to which 58348

the proposal applies, the board, on or before ~~June 30, 2004~~ 58349
October 15, 2009, and with the consent of the legislative 58350
authority of each affected municipal corporation or of the board 58351
of township trustees may do either of the following: 58352

(1) Enter into an agreement with the enterprise under which 58353
the enterprise agrees to establish, expand, renovate, or occupy a 58354
facility in the zone and hire new employees, or preserve 58355
employment opportunities for existing employees, in return for the 58356
following incentives: 58357

(a) When the facility is located in a municipal corporation, 58358
the board may enter into an agreement for one or more of the 58359
incentives provided in division (C) of section 5709.62 of the 58360
Revised Code, subject to division (D) of that section; 58361

(b) When the facility is located in an unincorporated area, 58362
the board may enter into an agreement for one or more of the 58363
following incentives: 58364

(i) Exemption for a specified number of years, not to exceed 58365
ten, of a specified portion, up to sixty per cent, of the assessed 58366
value of tangible personal property first used in business at a 58367
project site as a result of the agreement. An exemption granted 58368
pursuant to this division applies to inventory required to be 58369
listed pursuant to sections 5711.15 and 5711.16 of the Revised 58370
Code, except, in the instance of an expansion or other situations 58371
in which an enterprise was in business at the facility prior to 58372
the establishment of the zone, the inventory that is exempt is 58373
that amount or value of inventory in excess of the amount or value 58374
of inventory required to be listed in the personal property tax 58375
return of the enterprise in the return for the tax year in which 58376
the agreement is entered into. 58377

(ii) Exemption for a specified number of years, not to exceed 58378
ten, of a specified portion, up to sixty per cent, of the increase 58379

in the assessed valuation of real property constituting the 58380
project site subsequent to formal approval of the agreement by the 58381
board; 58382

(iii) Provision for a specified number of years, not to 58383
exceed ten, of any optional services or assistance the board is 58384
authorized to provide with regard to the project site; 58385

(iv) The incentive described in division (C)(2) of section 58386
5709.62 of the Revised Code. 58387

(2) Enter into an agreement with an enterprise that plans to 58388
purchase and operate a large manufacturing facility that has 58389
ceased operation or has announced its intention to cease 58390
operation, in return for exemption for a specified number of 58391
years, not to exceed ten, of a specified portion, up to one 58392
hundred per cent, of tangible personal property used in business 58393
at the project site as a result of the agreement, or of real 58394
property constituting the project site, or both. 58395

(C)(1) Notwithstanding divisions (B)(1)(b)(i) and (ii) of 58396
this section, the portion of the assessed value of tangible 58397
personal property or of the increase in the assessed valuation of 58398
real property exempted from taxation under those divisions may 58399
exceed sixty per cent in any year for which that portion is 58400
exempted if the average percentage exempted for all years in which 58401
the agreement is in effect does not exceed fifty per cent, or if 58402
the board of education of the city, local, or exempted village 58403
school district within the territory of which the property is or 58404
will be located approves a percentage in excess of sixty per cent. 58405
For the purpose of obtaining such approval, the board of 58406
commissioners shall deliver to the board of education a notice not 58407
later than forty-five days prior to approving the agreement, 58408
excluding Saturdays, Sundays, and legal holidays as defined in 58409
section 1.14 of the Revised Code. The notice shall state the 58410
percentage to be exempted, an estimate of the true value of the 58411

property to be exempted, and the number of years the property is 58412
to be exempted. The board of education, by resolution adopted by a 58413
majority of the board, shall approve or disapprove the agreement 58414
and certify a copy of the resolution to the board of commissioners 58415
not later than fourteen days prior to the date stipulated by the 58416
board of commissioners as the date upon which approval of the 58417
agreement is to be formally considered by the board of 58418
commissioners. The board of education may include in the 58419
resolution conditions under which the board would approve the 58420
agreement, including the execution of an agreement to compensate 58421
the school district under division (B) of section 5709.82 of the 58422
Revised Code. The board of county commissioners may approve the 58423
agreement at any time after the board of education certifies its 58424
resolution approving the agreement to the board of county 58425
commissioners, or, if the board of education approves the 58426
agreement conditionally, at any time after the conditions are 58427
agreed to by the board of education and the board of county 58428
commissioners. 58429

If a board of education has adopted a resolution waiving its 58430
right to approve agreements and the resolution remains in effect, 58431
approval of an agreement by the board of education is not required 58432
under division (C) of this section. If a board of education has 58433
adopted a resolution allowing a board of county commissioners to 58434
deliver the notice required under this division fewer than 58435
forty-five business days prior to approval of the agreement by the 58436
board of county commissioners, the board of county commissioners 58437
shall deliver the notice to the board of education not later than 58438
the number of days prior to such approval as prescribed by the 58439
board of education in its resolution. If a board of education 58440
adopts a resolution waiving its right to approve agreements or 58441
shortening the notification period, the board of education shall 58442
certify a copy of the resolution to the board of county 58443
commissioners. If the board of education rescinds such a 58444

resolution, it shall certify notice of the rescission to the board of county commissioners. 58445
58446

(2) The board of county commissioners shall comply with section 5709.83 of the Revised Code unless the board of education has adopted a resolution under that section waiving its right to receive such notice. 58447
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(D) This division applies to zones certified by the director of development under this section prior to July 22, 1994. 58451
58452

On or before ~~June 30, 2004~~ October 15, 2009, and with the consent of the legislative authority of each affected municipal corporation or board of township trustees of each affected township, the board of commissioners that designated a zone to which this division applies may enter into an agreement with an enterprise if the board makes the finding required under that division and determines that the enterprise satisfies one of the criteria described in divisions (D)(1) to (5) of this section: 58453
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(1) The enterprise currently has no operations in this state and, subject to approval of the agreement, intends to establish operations in the zone; 58461
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(2) The enterprise currently has operations in this state and, subject to approval of the agreement, intends to establish operations at a new location in the zone that would not result in a reduction in the number of employee positions at any of the enterprise's other locations in this state; 58464
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(3) The enterprise, subject to approval of the agreement, intends to relocate operations, currently located in another state, to the zone; 58469
58470
58471

(4) The enterprise, subject to approval of the agreement, intends to expand operations at an existing site in the zone that the enterprise currently operates; 58472
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(5) The enterprise, subject to approval of the agreement, 58475
intends to relocate operations, currently located in this state, 58476
to the zone, and the director of development has issued a waiver 58477
for the enterprise under division (B) of section 5709.633 of the 58478
Revised Code. 58479

The agreement shall require the enterprise to agree to 58480
establish, expand, renovate, or occupy a facility in the zone and 58481
hire new employees, or preserve employment opportunities for 58482
existing employees, in return for one or more of the incentives 58483
described in division (B) of this section. 58484

(E) All agreements entered into under this section shall be 58485
in the form prescribed under section 5709.631 of the Revised Code. 58486
After an agreement under this section is entered into, if the 58487
board of county commissioners revokes its designation of the zone, 58488
or if the director of development revokes the zone's 58489
certification, any entitlements granted under the agreement shall 58490
continue for the number of years specified in the agreement. 58491

(F) Except as otherwise provided in this paragraph, an 58492
agreement entered into under this section shall require that the 58493
enterprise pay an annual fee equal to the greater of one per cent 58494
of the dollar value of incentives offered under the agreement or 58495
five hundred dollars; provided, however, that if the value of the 58496
incentives exceeds two hundred fifty thousand dollars, the fee 58497
shall not exceed two thousand five hundred dollars. The fee shall 58498
be payable to the board of commissioners once per year for each 58499
year the agreement is effective on the days and in the form 58500
specified in the agreement. Fees paid shall be deposited in a 58501
special fund created for such purpose by the board and shall be 58502
used by the board exclusively for the purpose of complying with 58503
section 5709.68 of the Revised Code and by the tax incentive 58504
review council created under section 5709.85 of the Revised Code 58505
exclusively for the purposes of performing the duties prescribed 58506

under that section. The board may waive or reduce the amount of 58507
the fee charged against an enterprise, but such waiver or 58508
reduction does not affect the obligations of the board or the tax 58509
incentive review council to comply with section 5709.68 or 5709.85 58510
of the Revised Code, respectively. 58511

(G) With the approval of the legislative authority of a 58512
municipal corporation or the board of township trustees of a 58513
township in which a zone is designated under division (A) of this 58514
section, the board of county commissioners may delegate to that 58515
legislative authority or board any powers and duties of the board 58516
to negotiate and administer agreements with regard to that zone 58517
under this section. 58518

(H) When an agreement is entered into pursuant to this 58519
section, the legislative authority authorizing the agreement shall 58520
forward a copy of the agreement to the director of development and 58521
to the tax commissioner within fifteen days after the agreement is 58522
entered into. If any agreement includes terms not provided for in 58523
section 5709.631 of the Revised Code affecting the revenue of a 58524
city, local, or exempted village school district or causing 58525
revenue to be foregone by the district, including any compensation 58526
to be paid to the school district pursuant to section 5709.82 of 58527
the Revised Code, those terms also shall be forwarded in writing 58528
to the director of development along with the copy of the 58529
agreement forwarded under this division. 58530

(I) After an agreement is entered into, the enterprise shall 58531
file with each personal property tax return required to be filed, 58532
or annual report that is required to be filed under section 58533
5727.08 of the Revised Code, while the agreement is in effect, an 58534
informational return, on a form prescribed by the tax commissioner 58535
for that purpose, setting forth separately the property, and 58536
related costs and values, exempted from taxation under the 58537
agreement. 58538

(J) Enterprises may agree to give preference to residents of 58539
the zone within which the agreement applies relative to residents 58540
of this state who do not reside in the zone when hiring new 58541
employees under the agreement. 58542

(K) An agreement entered into under this section may include 58543
a provision requiring the enterprise to create one or more 58544
temporary internship positions for students enrolled in a course 58545
of study at a school or other educational institution in the 58546
vicinity, and to create a scholarship or provide another form of 58547
educational financial assistance for students holding such a 58548
position in exchange for the student's commitment to work for the 58549
enterprise at the completion of the internship. 58550

Sec. 5709.632. (A)(1) The legislative authority of a 58551
municipal corporation defined by the United States office of 58552
management and budget as a central city of a metropolitan 58553
statistical area may, in the manner set forth in section 5709.62 58554
of the Revised Code, designate one or more areas in the municipal 58555
corporation as a proposed enterprise zone. 58556

(2) With the consent of the legislative authority of each 58557
affected municipal corporation or of a board of township trustees, 58558
a board of county commissioners may, in the manner set forth in 58559
section 5709.62 of the Revised Code, designate one or more areas 58560
in one or more municipal corporations or in unincorporated areas 58561
of the county as proposed urban jobs and enterprise zones, except 58562
that a board of county commissioners may designate no more than 58563
one area within a township, or within adjacent townships, as a 58564
proposed urban jobs and enterprise zone. 58565

(3) The legislative authority or board of county 58566
commissioners may petition the director of development for 58567
certification of the area as having the characteristics set forth 58568
in division (A)(3) of section 5709.61 of the Revised Code. Within 58569

sixty days after receiving such a petition, the director shall 58570
determine whether the area has the characteristics set forth in 58571
that division and forward the findings to the legislative 58572
authority or board of county commissioners. If the director 58573
certifies the area as having those characteristics and thereby 58574
certifies it as a zone, the legislative authority or board may 58575
enter into agreements with enterprises under division (B) of this 58576
section. Any enterprise wishing to enter into an agreement with a 58577
legislative authority or board of commissioners under this section 58578
and satisfying one of the criteria described in divisions (B)(1) 58579
to (5) of this section shall submit a proposal to the legislative 58580
authority or board on the form prescribed under division (B) of 58581
section 5709.62 of the Revised Code and shall review and update 58582
the estimates and listings required by the form in the manner 58583
required under that division. The legislative authority or board 58584
may, on a separate form and at any time, require any additional 58585
information necessary to determine whether an enterprise is in 58586
compliance with an agreement and to collect the information 58587
required to be reported under section 5709.68 of the Revised Code. 58588

(B) Prior to entering into an agreement with an enterprise, 58589
the legislative authority or board of county commissioners shall 58590
determine whether the enterprise submitting the proposal is 58591
qualified by financial responsibility and business experience to 58592
create and preserve employment opportunities in the zone and to 58593
improve the economic climate of the municipal corporation or 58594
municipal corporations or the unincorporated areas in which the 58595
zone is located and to which the proposal applies, and whether the 58596
enterprise satisfies one of the following criteria: 58597

(1) The enterprise currently has no operations in this state 58598
and, subject to approval of the agreement, intends to establish 58599
operations in the zone; 58600

(2) The enterprise currently has operations in this state 58601

and, subject to approval of the agreement, intends to establish 58602
operations at a new location in the zone that would not result in 58603
a reduction in the number of employee positions at any of the 58604
enterprise's other locations in this state; 58605

(3) The enterprise, subject to approval of the agreement, 58606
intends to relocate operations, currently located in another 58607
state, to the zone; 58608

(4) The enterprise, subject to approval of the agreement, 58609
intends to expand operations at an existing site in the zone that 58610
the enterprise currently operates; 58611

(5) The enterprise, subject to approval of the agreement, 58612
intends to relocate operations, currently located in this state, 58613
to the zone, and the director of development has issued a waiver 58614
for the enterprise under division (B) of section 5709.633 of the 58615
Revised Code. 58616

(C) If the legislative authority or board determines that the 58617
enterprise is so qualified and satisfies one of the criteria 58618
described in divisions (B)(1) to (5) of this section, the 58619
legislative authority or board may, after complying with section 58620
5709.83 of the Revised Code and on or before ~~June 30, 2004~~ October 58621
15, 2009, and, in the case of a board of commissioners, with the 58622
consent of the legislative authority of each affected municipal 58623
corporation or of the board of township trustees, enter into an 58624
agreement with the enterprise under which the enterprise agrees to 58625
establish, expand, renovate, or occupy a facility in the zone and 58626
hire new employees, or preserve employment opportunities for 58627
existing employees, in return for the following incentives: 58628

(1) When the facility is located in a municipal corporation, 58629
a legislative authority or board of commissioners may enter into 58630
an agreement for one or more of the incentives provided in 58631
division (C) of section 5709.62 of the Revised Code, subject to 58632

division (D) of that section; 58633

(2) When the facility is located in an unincorporated area, a 58634
board of commissioners may enter into an agreement for one or more 58635
of the incentives provided in divisions (B)(1)(b), (B)(2), and 58636
(B)(3) of section 5709.63 of the Revised Code, subject to division 58637
(C) of that section. 58638

(D) All agreements entered into under this section shall be 58639
in the form prescribed under section 5709.631 of the Revised Code. 58640
After an agreement under this section is entered into, if the 58641
legislative authority or board of county commissioners revokes its 58642
designation of the zone, or if the director of development revokes 58643
the zone's certification, any entitlements granted under the 58644
agreement shall continue for the number of years specified in the 58645
agreement. 58646

(E) Except as otherwise provided in this division, an 58647
agreement entered into under this section shall require that the 58648
enterprise pay an annual fee equal to the greater of one per cent 58649
of the dollar value of incentives offered under the agreement or 58650
five hundred dollars; provided, however, that if the value of the 58651
incentives exceeds two hundred fifty thousand dollars, the fee 58652
shall not exceed two thousand five hundred dollars. The fee shall 58653
be payable to the legislative authority or board of commissioners 58654
once per year for each year the agreement is effective on the days 58655
and in the form specified in the agreement. Fees paid shall be 58656
deposited in a special fund created for such purpose by the 58657
legislative authority or board and shall be used by the 58658
legislative authority or board exclusively for the purpose of 58659
complying with section 5709.68 of the Revised Code and by the tax 58660
incentive review council created under section 5709.85 of the 58661
Revised Code exclusively for the purposes of performing the duties 58662
prescribed under that section. The legislative authority or board 58663
may waive or reduce the amount of the fee charged against an 58664

enterprise, but such waiver or reduction does not affect the 58665
obligations of the legislative authority or board or the tax 58666
incentive review council to comply with section 5709.68 or 5709.85 58667
of the Revised Code, respectively. 58668

(F) With the approval of the legislative authority of a 58669
municipal corporation or the board of township trustees of a 58670
township in which a zone is designated under division (A)(2) of 58671
this section, the board of county commissioners may delegate to 58672
that legislative authority or board any powers and duties of the 58673
board to negotiate and administer agreements with regard to that 58674
zone under this section. 58675

(G) When an agreement is entered into pursuant to this 58676
section, the legislative authority or board of commissioners 58677
authorizing the agreement shall forward a copy of the agreement to 58678
the director of development and to the tax commissioner within 58679
fifteen days after the agreement is entered into. If any agreement 58680
includes terms not provided for in section 5709.631 of the Revised 58681
Code affecting the revenue of a city, local, or exempted village 58682
school district or causing revenue to be foregone by the district, 58683
including any compensation to be paid to the school district 58684
pursuant to section 5709.82 of the Revised Code, those terms also 58685
shall be forwarded in writing to the director of development along 58686
with the copy of the agreement forwarded under this division. 58687

(H) After an agreement is entered into, the enterprise shall 58688
file with each personal property tax return required to be filed 58689
while the agreement is in effect, an informational return, on a 58690
form prescribed by the tax commissioner for that purpose, setting 58691
forth separately the property, and related costs and values, 58692
exempted from taxation under the agreement. 58693

(I) An agreement entered into under this section may include 58694
a provision requiring the enterprise to create one or more 58695
temporary internship positions for students enrolled in a course 58696

of study at a school or other educational institution in the 58697
vicinity, and to create a scholarship or provide another form of 58698
educational financial assistance for students holding such a 58699
position in exchange for the student's commitment to work for the 58700
enterprise at the completion of the internship. 58701

Sec. 5709.64. (A) If an enterprise has been granted an 58702
incentive for the current calendar year under an agreement entered 58703
pursuant to section 5709.62, 5709.63, or 5709.632 of the Revised 58704
Code, it may apply, on or before the thirtieth day of April of 58705
that year, to the director of development, on a form prescribed by 58706
the director, for a tax incentive qualification certificate. The 58707
enterprise qualifies for an initial certificate if, on or before 58708
the last day of the calendar year immediately preceding that in 58709
which application is made, it satisfies all of the following 58710
requirements: 58711

(1) The enterprise has established, expanded, renovated, or 58712
occupied a facility pursuant to the agreement under section 58713
5709.62, 5709.63, or 5709.632 of the Revised Code. 58714

(2) The enterprise has hired new employees to fill nonretail 58715
positions at the facility, at least twenty-five per cent of whom 58716
at the time they were employed were at least one of the following: 58717

(a) Unemployed persons who had resided at least six months in 58718
the county in which the enterprise's project site is located; 58719

(b) JPTA eligible employees who had resided at least six 58720
months in the county in which the enterprise's project site is 58721
located; 58722

(c) Participants of the Ohio works first program under 58723
Chapter 5107. of the Revised Code or the prevention, retention, 58724
and contingency program under Chapter 5108. of the Revised Code or 58725
recipients of general assistance under former Chapter 5113. of the 58726

Revised Code, ~~disability~~ financial assistance under Chapter 5115. 58727
of the Revised Code, or unemployment compensation benefits who had 58728
resided at least six months in the county in which the 58729
enterprise's project site is located; 58730

(d) Handicapped persons, as defined under division (A) of 58731
section 3304.11 of the Revised Code, who had resided at least six 58732
months in the county in which the enterprise's project site is 58733
located; 58734

(e) Residents for at least one year of a zone located in the 58735
county in which the enterprise's project site is located. 58736

The director of development shall, by rule, establish 58737
criteria for determining what constitutes a nonretail position at 58738
a facility. 58739

(3) The average number of positions attributable to the 58740
enterprise in the municipal corporation during the calendar year 58741
immediately preceding the calendar year in which application is 58742
made exceeds the maximum number of positions attributable to the 58743
enterprise in the municipal corporation during the calendar year 58744
immediately preceding the first year the enterprise satisfies the 58745
requirements set forth in divisions (A)(1) and (2) of this 58746
section. If the enterprise is engaged in a business which, because 58747
of its seasonal nature, customarily enables the enterprise to 58748
operate at full capacity only during regularly recurring periods 58749
of the year, the average number of positions attributable to the 58750
enterprise in the municipal corporation during each period of the 58751
calendar year immediately preceding the calendar year in which 58752
application is made must exceed only the maximum number of 58753
positions attributable to the enterprise in each corresponding 58754
period of the calendar year immediately preceding the first year 58755
the enterprise satisfies the requirements of divisions (A)(1) and 58756
(2) of this section. The director of development shall, by rule, 58757
prescribe methods for determining whether an enterprise is engaged 58758

in a seasonal business and for determining the length of the 58759
corresponding periods to be compared. 58760

(4) The enterprise has not closed or reduced employment at 58761
any place of business in the state for the primary purpose of 58762
establishing, expanding, renovating, or occupying a facility. The 58763
legislative authority of any municipal corporation or the board of 58764
county commissioners of any county that concludes that an 58765
enterprise has closed or reduced employment at a place of business 58766
in that municipal corporation or county for the primary purpose of 58767
establishing, expanding, renovating, or occupying a facility in a 58768
zone may appeal to the director to determine whether the 58769
enterprise has done so. Upon receiving such an appeal, the 58770
director shall investigate the allegations and make such a 58771
determination before issuing an initial or renewal tax incentive 58772
qualification certificate under this section. 58773

Within sixty days after receiving an application under this 58774
division, the director shall review, investigate, and verify the 58775
application and determine whether the enterprise qualifies for a 58776
certificate. The application shall include an affidavit executed 58777
by the applicant verifying that the enterprise satisfies the 58778
requirements of division (A)(2) of this section, and shall contain 58779
such information and documents as the director requires, by rule, 58780
to ascertain whether the enterprise qualifies for a certificate. 58781
If the director finds the enterprise qualified, the director shall 58782
issue a tax incentive qualification certificate, which shall bear 58783
as its date of issuance the thirtieth day of June of the year of 58784
application, and shall state that the applicant is entitled to 58785
receive, for the taxable year that includes the certificate's date 58786
of issuance, the tax incentives provided under section 5709.65 of 58787
the Revised Code with regard to the facility to which the 58788
certificate applies. If an enterprise is issued an initial 58789
certificate, it may apply, on or before the thirtieth day of April 58790

of each succeeding calendar year for which it has been granted an 58791
incentive under an agreement entered pursuant to section 5709.62, 58792
5709.63, or 5709.632 of the Revised Code, for a renewal 58793
certificate. Subsequent to its initial certification, the 58794
enterprise qualifies for up to three successive renewal 58795
certificates if, on or before the last day of the calendar year 58796
immediately preceding that in which the application is made, it 58797
satisfies all the requirements of divisions (A)(1) to (4) of this 58798
section, and neither the zone's designation nor the zone's 58799
certification has been revoked prior to the fifteenth day of June 58800
of the year in which the application is made. The application 58801
shall include an affidavit executed by the applicant verifying 58802
that the enterprise satisfies the requirements of division (A)(2) 58803
of this section. An enterprise with ten or more supervisory 58804
personnel at the facility to which a certificate applies qualifies 58805
for any subsequent renewal certificates only if it meets all of 58806
the foregoing requirements and, in addition, at least ten per cent 58807
of those supervisory personnel are employees who, when first hired 58808
by the enterprise, satisfied at least one of the criteria 58809
specified in divisions (A)(2)(a) to (e) of this section. If the 58810
enterprise qualifies, a renewal certificate shall be issued 58811
bearing as its date of issuance the thirtieth day of June of the 58812
year of application. The director shall send copies of the initial 58813
certificate, and each renewal certificate, by certified mail, to 58814
the enterprise, the tax commissioner, the board of county 58815
commissioners, and the chief executive of the municipal 58816
corporation in which the facility to which the certificate applies 58817
is located. 58818

(B) If the director determines that an enterprise is not 58819
qualified for an initial or renewal tax incentive qualification 58820
certificate, the director shall send notice of this determination, 58821
specifying the reasons for it, by certified mail, to the 58822
applicant, the tax commissioner, the board of county 58823

commissioners, and the chief executive of the municipal 58824
corporation in which the facility to which the certificate would 58825
have applied is located. Within thirty days after receiving such a 58826
notice, an enterprise may request, in writing, a hearing before 58827
the director for the purpose of reviewing the application and the 58828
reasons for the determination. Within sixty days after receiving a 58829
request for a hearing, the director shall afford one and, within 58830
thirty days after the hearing, shall issue a redetermination of 58831
the enterprise's qualification for a certificate. If the 58832
enterprise is found to be qualified, the director shall proceed in 58833
the manner provided under division (A) of this section. If the 58834
enterprise is found to be unqualified, the director shall send 58835
notice of this finding, by certified mail, to the applicant, the 58836
tax commissioner, the board of county commissioners, and the chief 58837
executive of the municipal corporation in which the facility to 58838
which the certificate would have applied is located. The 58839
director's redetermination that an enterprise is unqualified may 58840
be appealed to the board of tax appeals in the manner provided 58841
under section 5717.02 of the Revised Code. 58842

Sec. 5711.18. (A) As used in this section, "qualifying 58843
manufacturing property" means machinery or equipment satisfying 58844
both of the following: 58845

(1) The machinery or equipment would qualify as a thing 58846
transferred and used primarily in a manufacturing operation for 58847
the purposes of division (E)(9) of section 5739.01 and section 58848
5739.011 of the Revised Code. 58849

(2) The machinery or equipment was first placed in service in 58850
this state on or after January 1, 2004, and has not been listed 58851
for taxation under this chapter, and was not required to have been 58852
so listed, for any tax year before tax year 2004. 58853

(B) In the case of accounts receivable, the book value 58854

thereof less book reserves shall be listed and shall be taken as 58855
the true value thereof unless the assessor finds that such net 58856
book value is greater or less than the then true value of such 58857
accounts receivable in money. ~~In~~ 58858

(C) In the case of personal property used in business, the 58859
~~book value thereof less book depreciation at such time shall be~~ 58860
~~listed, and such depreciated book value~~ one of the following 58861
values shall be listed and shall be taken as the true value of 58862
such property, unless the assessor finds that such ~~depreciated~~ 58863
~~book~~ value is greater or less than the then true value of such 58864
property in money. ~~Claim:~~ 58865

(1) In the case of personal property other than qualifying 58866
manufacturing property, the book value of the property less book 58867
depreciation at the time of listing; 58868

(2) In the case of qualifying manufacturing property, the 58869
depreciated book value at which the property would be valued under 58870
division (C)(1) of this section if the property were valued at the 58871
lowest valuation percentage for the class life assigned to such 58872
property, as prescribed under the rules adopted by the tax 58873
commissioner for the purpose of valuing personal property used in 58874
business. 58875

(D) Claims for any deduction from net book value of accounts 58876
receivable or depreciated book value of personal property must be 58877
made in writing by the taxpayer at the time of making the 58878
taxpayer's return; ~~and when such.~~ If the return is made to the 58879
county auditor who is required by sections 5711.01 to 5711.36~~7~~ 58880
~~inclusive,~~ of the Revised Code~~7~~ to transmit it to the tax 58881
commissioner for assessment, the auditor shall, as deputy of the 58882
commissioner, investigate such claim and shall enter thereon, or 58883
attach thereto, in such form as the commissioner prescribes, the 58884
auditor's findings and recommendations with respect ~~thereto; when~~ 58885
~~such~~ to the claim. If the return is made to the tax commissioner, 58886

~~such~~ the claim for deduction from depreciated book value of 58887
personal property shall be referred to the auditor, as such 58888
deputy, of each county in which the property affected thereby is 58889
listed for investigation and report. 58890

(E) Any change in the method of determining true value, as 58891
prescribed by the tax commissioner on a prospective basis, shall 58892
not be admissible in any judicial or administrative action or 58893
proceeding as evidence of value with regard to prior years' taxes. 58894
Information about the business, property, or transactions of any 58895
taxpayer obtained by the commissioner for the purpose of adopting 58896
or modifying any such method shall not be subject to discovery or 58897
disclosure. 58898

Sec. 5711.22. (A) Deposits not taxed at the source shall be 58899
listed and assessed at their amount in dollars on the day they are 58900
required to be listed. Moneys shall be listed and assessed at the 58901
amount thereof in dollars on hand on the day that they are 58902
required to be listed. In listing investments, the amount of the 58903
income yield of each for the calendar year next preceding the date 58904
of listing shall, except as otherwise provided in this chapter, be 58905
stated in dollars and cents and the assessment thereof shall be at 58906
the amount of such income yield; but any property defined as 58907
investments in either division (A) or (B) of section 5701.06 of 58908
the Revised Code that has not been outstanding for the full 58909
calendar year next preceding the date of listing, except shares of 58910
stock of like kind as other shares of the same corporation 58911
outstanding for the full calendar year next preceding the date of 58912
listing, or which has yielded no income during such calendar year 58913
shall be listed and assessed as unproductive investments, at their 58914
true value in money on the day that such investments are required 58915
to be listed. 58916

Credits and other taxable intangibles shall be listed and 58917

assessed at their true value in money on the day as of which the 58918
same are required to be listed. 58919

Shares of stock of a bank holding company, as defined in 58920
Title 12 U.S.C.A., section 1841, that are required to be listed 58921
for taxation under this division and upon which dividends were 58922
paid during the year of their issuance, which dividends are 58923
subject to taxation under the provisions of Chapter 5747. of the 58924
Revised Code, shall be exempt from the intangibles tax for the 58925
year immediately succeeding their issuance. If such shares bear 58926
dividends the first calendar year after their issuance, which 58927
dividends are subject to taxation under the provisions of Chapter 58928
5747. of the Revised Code, it shall be deemed that the 58929
nondelinquent intangible property tax pursuant to division (A) of 58930
section 5707.04 of the Revised Code was paid on those dividends 58931
paid that first calendar year after the issuance of the shares. 58932

(B)(1) Boilers, machinery, equipment, and personal property 58933
the true value of which is determined under division (B) of 58934
section 5711.21 of the Revised Code shall be listed and assessed 58935
at an amount equal to the sum of the products determined under 58936
divisions (B)(1)(a), (b), and (c) of this section. 58937

(a) Multiply the portion of the true value determined under 58938
division (B)(1) of section 5711.21 of the Revised Code by the 58939
assessment rate in division (F) of this section; 58940

(b) Multiply the portion of the true value determined under 58941
division (B)(2) of section 5711.21 of the Revised Code by the 58942
assessment rate in section 5727.111 of the Revised Code that is 58943
applicable to the production equipment of an electric company; 58944

(c) Multiply the portion of the true value determined under 58945
division (B)(3) of section 5711.21 of the Revised Code by the 58946
assessment rate in section 5727.111 of the Revised Code that is 58947
applicable to the property of an electric company that is not 58948

production equipment. 58949

(2) Personal property leased to a public utility or 58950
interexchange telecommunications company as defined in section 58951
5727.01 of the Revised Code and used directly in the rendition of 58952
a public utility service as defined in division (P) of section 58953
5739.01 of the Revised Code shall be listed and assessed at the 58954
same percentage of true value in money that such property is 58955
required to be assessed by section 5727.111 of the Revised Code if 58956
owned by the public utility or interexchange telecommunications 58957
company. 58958

(C)(1) Merchandise or an agricultural product shipped from 58959
outside this state and held in this state in a warehouse or a 58960
place of storage without further manufacturing or processing and 58961
for storage only and for shipment outside this state, but that is 58962
taxable because it does not qualify as "not used in business in 58963
this state" under division (B)(1) or (2) of section 5701.08 of the 58964
Revised Code, shall be listed and assessed at a rate of 58965
twenty-five one-hundredths of its true value in money until 58966
reduced in accordance with the following schedule: 58967

(a) For any year, subtract five one-hundredths from the rate 58968
at which such property was required to be listed and assessed in 58969
the preceding year, if the total statewide collection of all real 58970
and tangible personal property taxes for the second preceding year 58971
exceeded the total statewide collection of all real and tangible 58972
personal property taxes for the third preceding year by more than 58973
the greater of four per cent or the rate of increase from the 58974
third to the second preceding years in the average consumer price 58975
index (all urban consumers, all items) prepared by the bureau of 58976
labor statistics of the United States department of labor; 58977

(b) If no reduction in the assessment rate is made for a 58978
year, the rate is the same as for the preceding year. 58979

(2) Each year until the year the assessment rate equals zero, 58980
the tax commissioner shall determine the assessment rate required 58981
under this division and shall notify all county auditors of that 58982
rate. 58983

(3) Notwithstanding provisions to the contrary in division 58984
(B) of section 5701.08 of the Revised Code, during and after the 58985
year for which the assessment rate as calculated under this 58986
division equals zero, any merchandise or agricultural product 58987
shipped from outside this state and held in this state in any 58988
warehouse or place of storage, whether public or private, without 58989
further manufacturing or processing and for storage only and for 58990
shipment outside this state to any person for any purpose is not 58991
used in business in this state for property tax purposes. 58992

(D)(1) Merchandise or an agricultural product owned by a 58993
qualified out-of-state person shipped from outside this state and 58994
held in this state in a public warehouse without further 58995
manufacturing or processing and for temporary storage only and for 58996
shipment inside this state, but that is taxable because it does 58997
not qualify as "not used in business in this state" under division 58998
(B)(1) or (2) of section 5701.08 of the Revised Code, shall be 58999
listed and assessed at a rate of twenty-five one-hundredths of its 59000
true value in money until reduced in accordance with the following 59001
schedule: 59002

(a) For any year, subtract five one-hundredths from the rate 59003
at which such property was required to be listed and assessed in 59004
the preceding year, if the total statewide collection of all real 59005
and tangible personal property taxes for the second preceding year 59006
exceeded the total statewide collection of all real and tangible 59007
personal property taxes for the third preceding year by more than 59008
the greater of four per cent or the rate of increase from the 59009
third to the second preceding years in the average consumer price 59010
index (all urban consumers, all items) prepared by the bureau of 59011

labor statistics of the United States department of labor; 59012

(b) If no reduction in the assessment rate is made for a 59013
year, the rate is the same as for the preceding year. 59014

(2) Each year until the year the assessment rate equals zero, 59015
the tax commissioner shall determine the assessment rate required 59016
under this division and shall notify all county auditors of that 59017
rate. 59018

(3) Notwithstanding provisions to the contrary in division 59019
(B) of section 5701.08 of the Revised Code, during and after the 59020
year for which the assessment rate as calculated under this 59021
division equals zero, any merchandise or agricultural product 59022
described in division (D)(1) of this section is not used in 59023
business in this state for property tax purposes. 59024

(4) As used in division (D) of this section: 59025

(a) "Qualified out-of-state person" means a person that does 59026
not own, lease, or use property, other than merchandise or an 59027
agricultural product described in this division, in this state, 59028
and does not have employees, agents, or representatives in this 59029
state; 59030

(b) "Public warehouse" means a warehouse in this state that 59031
is not subject to the control of or under the supervision of the 59032
owner of the merchandise or agricultural product stored in it, or 59033
staffed by the owner's employees, and from which the property is 59034
to be shipped inside this state. 59035

(E) Personal property valued pursuant to section 5711.15 of 59036
the Revised Code and personal property required to be listed on 59037
the average basis by division (A) of section 5711.16 of the 59038
Revised Code, except property described in division (C) or (D) of 59039
this section, business fixtures, and furniture not held for sale 59040
in the course of business, shall be listed and assessed at the 59041
rate of twenty-five per cent of its true value in money until 59042

reduced to zero in accordance with the following schedule: 59043

(1) Beginning in tax year 2002 and for each of tax years 59044
2003, and 2004, ~~2005, and 2006,~~ subtract one percentage point from 59045
the rate at which the property was required to be listed and 59046
assessed in the preceding year, if the total statewide collection 59047
of tangible personal property taxes for the second preceding year 59048
exceeded the total statewide collection of tangible personal 59049
property taxes for the third preceding year. If no reduction in 59050
the assessment rate is made for a year, the rate is the same as 59051
for the preceding year. ~~For purposes of this division, total~~ 59052
~~statewide collection of tangible personal property taxes excludes~~ 59053
~~taxes collected from public utilities and interexchange~~ 59054
~~telecommunications companies on property that is determined to be~~ 59055
~~taxable pursuant to section 5727.06 of the Revised Code.~~ 59056

(2) In tax year 2007, ~~the assessment rate shall be the lesser~~ 59057
~~of twenty four per cent or one percentage point less than the rate~~ 59058
~~at which property was required to be listed and assessed the~~ 59059
~~preceding year. Each 2005 and each~~ tax year thereafter, the 59060
assessment rate shall be reduced by ~~one~~ the lesser of two 59061
percentage ~~point until it equals zero per cent not later than tax~~ 59062
~~year 2031~~ points or the assessment rate for the preceding year, if 59063
the total statewide collection of tangible personal property taxes 59064
for the second preceding year exceeded the total statewide 59065
collection of tangible personal property taxes for the third 59066
preceding year. If no reduction in the assessment rate is made for 59067
a year, the rate is the same as for the preceding year. During and 59068
after the tax year that the assessment rate equals zero, the 59069
property described in division (E) of this section shall not be 59070
listed for taxation. 59071

Each year until the year the assessment rate equals zero, the 59072
tax commissioner shall determine the assessment rate required 59073
under this division and shall notify all county auditors of that 59074

rate. 59075

For purposes of division (E) of this section, "total statewide collection of tangible person property taxes" excludes taxes collected from public utilities and interexchange telecommunications companies on property that is determined to be taxable pursuant to section 5727.06 of the Revised Code. 59076
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(F) Unless otherwise provided by law, all other personal property used in business that has not been legally regarded as an improvement on land and considered in arriving at the value of the real property assessed for taxation shall be listed and assessed at the rate of twenty-five per cent of its true value in money. 59081
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Sec. 5713.07. The county auditor, at the time of making the assessment of real property subject to taxation, shall enter in a separate list pertinent descriptions of all burying grounds, public schoolhouses, houses used exclusively for public worship, institutions of purely public charity, real property used exclusively for a home for the aged, as defined in section 5701.13 of the Revised Code, ~~and~~ public buildings and property used exclusively for any public purpose, and any other property, with the lot or tract of land on which such house, institution, ~~or~~ public building, or other property is situated, and which ~~are exempt~~ have been exempted from taxation by either the tax commissioner under section 5715.27 of the Revised Code or by the housing officer under section 3735.67 of the Revised Code. ~~He~~ The auditor shall value such houses, buildings, property, and lots and tracts of land at their taxable value in the same manner as ~~he~~ the auditor is required to value other real property, designating in each case the township, municipal corporation, and number of the school district, or the name or designation of the school, religious society, or institution to which each house, lot, or tract belongs. If such property is held and used for other public 59086
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purposes, ~~he~~ the auditor shall state by whom or how it is held. 59106

Sec. 5713.08. (A) The county auditor shall make a list of all 59107
real and personal property in the auditor's county, including 59108
money, credits, and investments in bonds, stocks, or otherwise, 59109
which is exempted from taxation. Such list shall show the name of 59110
the owner, the value of the property exempted, and a statement in 59111
brief form of the ground on which such exemption has been granted. 59112
It shall be corrected annually by adding thereto the items of 59113
property which have been exempted during the year, and by striking 59114
therefrom the items which in the opinion of the auditor have lost 59115
their right of exemption and which have been reentered on the 59116
taxable list. No additions shall be made to such exempt lists and 59117
no additional items of property shall be exempted from taxation 59118
without the consent of the tax commissioner as is provided for in 59119
section 5715.27 of the Revised Code, ~~but when or without the~~ 59120
consent of the housing officer under section 3735.67 of the 59121
Revised Code. When any personal property or endowment fund of an 59122
institution has once been held by the commissioner to be properly 59123
exempt from taxation, it is not necessary to obtain the 59124
commissioner's consent to the exemption of additional property or 59125
investments of the same kind belonging to the same institution, 59126
but such property shall appear on the abstract filed annually with 59127
the commissioner. The commissioner may revise at any time the list 59128
in every county so that no property is improperly or illegally 59129
exempted from taxation. The auditor shall follow the orders of the 59130
commissioner given under this section. An abstract of such list 59131
shall be filed annually with the commissioner, on a form approved 59132
by the commissioner, and a copy thereof shall be kept on file in 59133
the office of each auditor for public inspection. 59134

The commissioner shall not consider an application for 59135
exemption of property unless the application has attached thereto 59136
a certificate executed by the county treasurer certifying one of 59137

the following: 59138

(1) That all taxes, assessments, interest, and penalties 59139
levied and assessed against the property sought to be exempted 59140
have been paid in full to the date upon which the application for 59141
exemption is filed, except for such taxes, interest, and penalties 59142
that may be remitted under division (B) of this section; 59143

(2) That the applicant has entered into a valid delinquent 59144
tax contract with the county treasurer pursuant to division (A) of 59145
section 323.31 of the Revised Code to pay all of the delinquent 59146
taxes, assessments, interest, and penalties charged against the 59147
property, except for such taxes, interest, and penalties that may 59148
be remitted under division (B) of this section. If the auditor 59149
receives notice under section 323.31 of the Revised Code that such 59150
a written delinquent tax contract has become void, the auditor 59151
shall strike such property from the list of exempted property and 59152
reenter such property on the taxable list. If property is removed 59153
from the exempt list because a written delinquent tax contract has 59154
become void, current taxes shall first be extended against that 59155
property on the general tax list and duplicate of real and public 59156
utility property for the tax year in which the auditor receives 59157
the notice required by division (A) of section 323.31 of the 59158
Revised Code that the delinquent tax contract has become void or, 59159
if that notice is not timely made, for the tax year in which falls 59160
the latest date by which the treasurer is required by such section 59161
to give such notice. A county auditor shall not remove from any 59162
tax list and duplicate the amount of any unpaid delinquent taxes, 59163
assessments, interest, or penalties owed on property that is 59164
placed on the exempt list pursuant to this division. 59165

(3) That a tax certificate has been issued under section 59166
5721.32 or 5721.33 of the Revised Code with respect to the 59167
property that is the subject of the application, and the tax 59168
certificate is outstanding. 59169

(B) Any taxes, interest, and penalties which have become a lien after the property was first used for the exempt purpose, but in no case prior to the date of acquisition of the title to the property by the applicant, may be remitted by the commissioner, except as is provided in division (A) of section 5713.081 of the Revised Code.

(C) Real property acquired by the state in fee simple is exempt from taxation from the date of acquisition of title or date of possession, whichever is the earlier date, provided that all taxes, interest, and penalties as provided in the apportionment provisions of section 319.20 of the Revised Code have been paid to the date of acquisition of title or date of possession by the state, whichever is earlier. The proportionate amount of taxes that are a lien but not yet determined, assessed, and levied for the year in which the property is acquired, shall be remitted by the county auditor for the balance of the year from date of acquisition of title or date of possession, whichever is earlier. This section shall not be construed to authorize the exemption of such property from taxation or the remission of taxes, interest, and penalties thereon until all private use has terminated.

Sec. 5713.081. (A) No application for real property tax exemption and tax remission shall be filed with, or considered by, the tax commissioner in which tax remission is requested for more than three tax years, and the commissioner shall not remit more than three years' ~~delinquent~~ taxes, penalties, and interest.

(B) All taxes, penalties, and interest, that have been delinquent for more than three years, appearing on the general tax list and duplicate of real property which have been levied and assessed against parcels of real property owned by the state, any political subdivision, or any other entity whose ownership of real property would constitute public ownership, shall be collected by

the county auditor of the county where the real property is 59201
located. Such ~~official~~ auditor shall deduct from each distribution 59202
made by ~~him~~ the auditor, the amount necessary to pay the tax 59203
delinquency from any revenues or funds to the credit of the state, 59204
any political subdivision, or any other entity whose ownership of 59205
real property would constitute public ownership thereof, passing 59206
under ~~his~~ the auditor's control, or which come into ~~his~~ the 59207
auditor's possession, and such deductions shall be made on a 59208
continuing basis until all delinquent taxes, penalties, and 59209
interest noted in this section have been paid. 59210

(C) As used in division (B) of this section, "political 59211
subdivision" includes townships, municipalities, counties, school 59212
districts, boards of education, all state and municipal 59213
universities, park boards, and any other entity whose ownership of 59214
real property would constitute public ownership. 59215

Sec. 5713.082. (A) Whenever the county auditor reenters an 59216
item of property to the tax list as provided in section 5713.08 of 59217
the Revised Code and there has been no conveyance of the property 59218
between separate entities, the auditor shall send notice by 59219
certified mail to the owner of the property that it is now subject 59220
to property taxation as a result of such action. The auditor shall 59221
send the notice at the same time ~~he~~ the auditor certifies the real 59222
property tax duplicate to the county treasurer. The notice shall 59223
describe the property and indicate that the owner may reapply for 59224
tax exemption by filing an application for exemption as provided 59225
in section 5715.27 of the Revised Code, and that failure to file 59226
such an application within the proper time period will result in 59227
the owner having to pay the taxes even if the property continued 59228
to be used for an exempt purpose. 59229

(B) If the auditor failed to send the notice required by this 59230
section, and if the owner of the property subsequently files an 59231

application for tax exemption for the property for the current tax 59232
year, the tax commissioner may grant exemption to the property, 59233
and ~~he~~ the commissioner shall remit all ~~unpaid~~ taxes and penalties 59234
for each prior year since the property was reentered on the tax 59235
list notwithstanding the provisions of division (A) of section 59236
5713.081 of the Revised Code. 59237

Sec. 5713.10. The county engineer shall appoint the necessary 59238
~~draftsmen~~ draftsperson and fix the salary thereof, subject to the 59239
approval of the board of county commissioners. 59240

The salaries of the assistants shall be paid out of the 59241
county treasury in the same manner as the salaries of other county 59242
officers are paid or may be paid out of the real estate assessment 59243
fund created under section 325.31 of the Revised Code. 59244

Sec. 5713.30. As used in sections 5713.31 to 5713.37 and 59245
5715.01 of the Revised Code: 59246

(A) "Land devoted exclusively to agricultural use" means: 59247

(1) Tracts, lots, or parcels of land totaling not less than 59248
ten acres that, during the three calendar years prior to the year 59249
in which application is filed under section 5713.31 of the Revised 59250
Code, and through the last day of May of such year, were devoted 59251
exclusively to commercial animal or poultry husbandry, 59252
aquaculture, apiculture, the production for a commercial purpose 59253
of timber, field crops, tobacco, fruits, vegetables, nursery 59254
stock, ornamental trees, sod, or flowers, or the growth of timber 59255
for a noncommercial purpose, if the land on which the timber is 59256
grown is contiguous to or part of a parcel of land under common 59257
ownership that is otherwise devoted exclusively to agricultural 59258
use, or were devoted to and qualified for payments or other 59259
compensation under a land retirement or conservation program under 59260
an agreement with an agency of the federal government; 59261

(2) Tracts, lots, or parcels of land totaling less than ten 59262
acres that, during the three calendar years prior to the year in 59263
which application is filed under section 5713.31 of the Revised 59264
Code and through the last day of May of such year, were devoted 59265
exclusively to commercial animal or poultry husbandry, 59266
aquaculture, apiculture, the production for a commercial purpose 59267
of field crops, tobacco, fruits, vegetables, timber, nursery 59268
stock, ornamental trees, sod, or flowers where such activities 59269
produced an average yearly gross income of at least twenty-five 59270
hundred dollars during such three-year period or where there is 59271
evidence of an anticipated gross income of such amount from such 59272
activities during the tax year in which application is made, or 59273
were devoted to and qualified for payments or other compensation 59274
under a land retirement or conservation program under an agreement 59275
with an agency of the federal government; 59276

(3) A tract, lot, or parcel of land taxed under sections 59277
5713.22 to 5713.26 of the Revised Code is not land devoted 59278
exclusively to agricultural use; 59279

(4) Tracts, lots, or parcels of land, or portions thereof 59280
~~which that~~, during the previous three consecutive calendar years 59281
have been designated as land devoted exclusively to agricultural 59282
use, but such land has been lying idle or fallow for up to one 59283
year and no action has occurred to such land that is either 59284
inconsistent with the return of it to agricultural production or 59285
converts the land devoted exclusively to agricultural use as 59286
defined in this section. Such land shall remain designated as land 59287
devoted exclusively to agricultural use provided that beyond one 59288
year, but less than three years, the landowner proves good cause 59289
as determined by the board of revision. 59290

"Land devoted exclusively to agricultural use" includes 59291
tracts, lots, or parcels of land or portions thereof that are used 59292
for conservation practices, provided that the tracts, lots, or 59293

parcels of land or portions thereof comprise twenty-five per cent 59294
or less of the total of the tracts, lots, or parcels of land that 59295
satisfy the criteria established in division (A)(1), (2), or (4) 59296
of this section together with the tracts, lots, or parcels of land 59297
or portions thereof that are used for conservation practices. 59298

(B) "Conversion of land devoted exclusively to agricultural 59299
use" means any of the following: 59300

(1) The failure of the owner of land devoted exclusively to 59301
agricultural use during the next preceding calendar year to file a 59302
renewal application under section 5713.31 of the Revised Code 59303
without good cause as determined by the board of revision; 59304

(2) The failure of the new owner of such land to file an 59305
initial application under that section without good cause as 59306
determined by the board of revision; 59307

(3) The failure of such land or portion thereof to qualify as 59308
land devoted exclusively to agricultural use for the current 59309
calendar year as requested by an application filed under such 59310
section; 59311

(4) The failure of the owner of the land described in 59312
division (A)(4) of this section to act on such land in a manner 59313
that is consistent with the return of the land to agricultural 59314
production after three years. 59315

(C) "Tax savings" means the difference between the dollar 59316
amount of real property taxes levied in any year on land valued 59317
and assessed in accordance with its current agricultural use value 59318
and the dollar amount of real property taxes ~~which~~ that would have 59319
been levied upon such land if it had been valued and assessed for 59320
such year in accordance with Section 2 of Article XII, Ohio 59321
Constitution. 59322

(D) "Owner" includes, but is not limited to, any person 59323
owning a fee simple, fee tail, or life estate, or a buyer on a 59324

land installment contract. 59325

(E) "Conservation practices" includes, but is not limited to, the installation, construction, development, planting, or use of grass waterways, terraces, diversions, filter strips, field borders, windbreaks, riparian buffers, wetlands, ponds, and cover crops to abate soil erosion. 59326
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(F) "Wetlands" has the same meaning as in section 6111.02 of the Revised Code. 59331
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Sec. 5715.27. (A) The Except as provided in section 3735.67 of the Revised Code, the owner of any property may file an 59333
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application with the tax commissioner, on forms prescribed by the 59335
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commissioner, requesting that such property be exempted from 59336
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taxation and that ~~unpaid~~ taxes and penalties be remitted as 59337
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provided in division (B) of section 5713.08 of the Revised Code. 59338

(B) The board of education of any school district may request 59339
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the tax commissioner to provide it with notification of 59340
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applications for exemption from taxation for property located 59341
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within that district. If so requested, the commissioner shall send 59342
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to the board for the quarters ending on the last day of March, 59343
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June, September, and December of each year, reports that contain 59344
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sufficient information to enable the board to identify each 59345
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property that is the subject of an exemption application, 59346
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including, but not limited to, the name of the property owner or 59347
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applicant, the address of the property, and the auditor's parcel 59348
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number. The commissioner shall mail the reports on or about the 59349
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fifteenth day of the month following the end of the quarter. 59350

(C) A board of education that has requested notification 59351
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under division (B) of this section may, with respect to any 59352
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application for exemption of property located in the district and 59353
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included in the commissioner's most recent report provided under 59354
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that division, file a statement with the commissioner and with the 59355

applicant indicating its intent to submit evidence and participate 59356
in any hearing on the application. The statements shall be filed 59357
prior to the first day of the third month following the end of the 59358
quarter in which that application was docketed by the 59359
commissioner. A statement filed in compliance with this division 59360
entitles the district to submit evidence and to participate in any 59361
hearing on the property and makes the district a party for 59362
purposes of sections 5717.02 to 5717.04 of the Revised Code in any 59363
appeal of the commissioner's decision to the board of tax appeals. 59364

(D) The commissioner shall not hold a hearing on or grant or 59365
deny an application for exemption of property in a school district 59366
whose board of education has requested notification under division 59367
(B) of this section until the end of the period within which the 59368
board may submit a statement with respect to that application 59369
under division (C) of this section. The commissioner may act upon 59370
an application at any time prior to that date upon receipt of a 59371
written waiver from each such board of education, or, in the case 59372
of exemptions authorized by section 725.02, 1728.10, ~~3735.67,~~ 59373
5709.41, 5709.62, or 5709.63 of the Revised Code, upon the request 59374
of the property owner. Failure of a board of education to receive 59375
the report required in division (B) of this section shall not void 59376
an action of the commissioner with respect to any application. The 59377
commissioner may extend the time for filing a statement under 59378
division (C) of this section. 59379

(E) A complaint may also be filed with the commissioner by 59380
any person, board, or officer authorized by section 5715.19 of the 59381
Revised Code to file complaints with the county board of revision 59382
against the continued exemption of any property granted exemption 59383
by the commissioner under this section. 59384

(F) An application for exemption and a complaint against 59385
exemption shall be filed prior to the thirty-first day of December 59386
of the tax year for which exemption is requested or for which the 59387

liability of ~~any~~ the property to taxation in that year is 59388
requested. The commissioner shall consider such application or 59389
complaint in accordance with procedures established by the 59390
commissioner, determine whether the property is subject to 59391
taxation or exempt therefrom, and certify the commissioner's 59392
findings to the auditor, who shall correct the tax list and 59393
duplicate accordingly. If a tax certificate has been sold under 59394
section 5721.32 or 5721.33 of the Revised Code with respect to 59395
property for which an exemption has been requested, the tax 59396
commissioner shall also certify the findings to the county 59397
treasurer of the county in which the property is located. 59398

(G) Applications and complaints, and documents of any kind 59399
related to applications and complaints, filed with the tax 59400
commissioner under this section, are public records within the 59401
meaning of section 149.43 of the Revised Code. 59402

(H) If the commissioner determines that the use of property 59403
or other facts relevant to the taxability of property that is the 59404
subject of an application for exemption or a complaint under this 59405
section has changed while the application or complaint was 59406
pending, the commissioner may make the determination under 59407
division (F) of this section separately for each tax year 59408
beginning with the year in which the application or complaint was 59409
filed or the year for which remission of ~~unpaid~~ taxes under 59410
division (B) of section 5713.08 of the Revised Code was requested, 59411
and including each subsequent tax year during which the 59412
application or complaint is pending before the commissioner. 59413

Sec. 5717.011. (A) As used in this chapter, "tax 59414
administrator" has the same meaning as in section 718.01 of the 59415
Revised Code. 59416

(B) Appeals from a municipal board of appeal created under 59417
section 718.11 of the Revised Code may be taken by the taxpayer to 59418

the board of tax appeals or may be taken by the taxpayer to a 59419
court of common pleas as otherwise provided by law. If the 59420
taxpayer elects to make its appeal to the board of tax appeals, 59421
the appeal shall be taken by the filing of a notice of appeal with 59422
the board of tax appeals, the municipal board of appeal, and the 59423
tax administrator. The notice of appeal shall be filed within 59424
sixty days after the day the taxpayer receives notice of the 59425
decision issued under section 718.11 of the Revised Code. The 59426
notice of appeal may be filed in person or by certified mail, 59427
express mail, or authorized delivery service as provided in 59428
section 5703.056 of the Revised Code. If the notice of appeal is 59429
filed by certified mail, express mail, or authorized delivery 59430
service as provided in section 5703.056 of the Revised Code, the 59431
date of the United States postmark placed on the sender's receipt 59432
by the postal service or the date of receipt recorded by the 59433
authorized delivery service shall be treated as the date of 59434
filing. The notice of appeal shall have attached thereto and 59435
incorporated therein by reference a true copy of the decision 59436
issued under section 718.11 of the Revised Code to the taxpayer 59437
and shall specify the errors therein complained of, but failure to 59438
attach a copy of such notice and incorporate it by reference in 59439
the notice of appeal does not invalidate the appeal. 59440

(C) Upon the filing of a notice of appeal, the municipal 59441
board of appeal shall certify to the board of tax appeals a 59442
transcript of the record of the proceedings before it, together 59443
with all evidence considered by it in connection therewith. Such 59444
appeals may be heard by the board at its office in Columbus or in 59445
the county where the appellant resides, or it may cause its 59446
examiners to conduct such hearings and to report to it their 59447
findings for affirmation or rejection. The board may order the 59448
appeal to be heard upon the record and the evidence certified to 59449
it by the administrator, but upon the application of any 59450
interested party the board shall order the hearing of additional 59451

evidence, and the board may make such investigation concerning the 59452
appeal as it considers proper. 59453

Sec. 5717.03. (A) A decision of the board of tax appeals on 59454
an appeal filed with it pursuant to section 5717.01, 5717.011, or 59455
5717.02 of the Revised Code shall be entered of record on the 59456
journal together with the date when the order is filed with the 59457
secretary for journalization. 59458

(B) In case of an appeal from a decision of a county board of 59459
revision, the board of tax appeals shall determine the taxable 59460
value of the property whose valuation or assessment by the county 59461
board of revision is complained of, or in the event the complaint 59462
and appeal is against a discriminatory valuation, shall determine 59463
a valuation which shall correct such discrimination, and shall 59464
determine the liability of the property for taxation, if that 59465
question is in issue, and ~~it is~~ the board of tax appeals's decision 59466
and the date when it was filed with the secretary for 59467
journalization shall be certified by ~~it~~ the board by certified 59468
mail to all persons who were parties to the appeal before ~~it~~ the 59469
board, to the person in whose name the property is listed, or 59470
sought to be listed, if such person is not a party to the appeal, 59471
to the county auditor of the county in which the property involved 59472
in the appeal is located, and to the tax commissioner. 59473

In correcting a discriminatory valuation, the board of tax 59474
appeals shall increase or decrease the value of the property whose 59475
valuation or assessment by the county board of revision is 59476
complained of by a per cent or amount which will cause such 59477
property to be listed and valued for taxation by an equal and 59478
uniform rule. 59479

(C) In the case of an appeal from a review, redetermination, 59480
or correction of a tax assessment, valuation, determination, 59481
finding, computation, or order of the tax commissioner, the order 59482

of the board of tax appeals and the date of the entry thereof upon 59483
its journal shall be certified by ~~it~~ the board by certified mail 59484
to all persons who were parties to the appeal before ~~it~~ the board, 59485
the person in whose name the property is listed or sought to be 59486
listed, if the decision determines the valuation or liability of 59487
property for taxation and if such person is not a party to the 59488
appeal, the taxpayer or other person to whom notice of the tax 59489
assessment, valuation, determination, finding, computation, or 59490
order, or correction or redetermination thereof, by the tax 59491
commissioner was by law required to be given, the director of 59492
budget and management, if the revenues affected by such decision 59493
would accrue primarily to the state treasury, and the county 59494
auditors of the counties to the undivided general tax funds of 59495
which the revenues affected by such decision would primarily 59496
accrue. 59497

(D) In the case of an appeal from a municipal board of appeal 59498
created under section 718.11 of the Revised Code, the order of the 59499
board of tax appeals and the date of the entry thereof upon the 59500
board's journal shall be certified by the board by certified mail 59501
to all persons who were parties to the appeal before the board. 59502

(E) In the case of all other appeals or applications filed 59503
with and determined by the board ~~its~~, the board's order and the 59504
date when ~~it~~ the order was filed by the secretary for 59505
journalization shall be certified by ~~it~~ the board by certified 59506
mail to the person who is a party to such appeal or application, 59507
to such persons as the law requires, and to such other persons as 59508
the board deems proper. 59509

(F) The orders of the board may affirm, reverse, vacate, 59510
modify, or remand the tax assessments, valuations, determinations, 59511
findings, computations, or orders complained of in the appeals 59512
determined by ~~it~~ the board, and ~~its~~ the board's decision shall 59513
become final and conclusive for the current year unless reversed, 59514

vacated, or modified as provided in section 5717.04 of the Revised Code. When an order of the board becomes final the tax commissioner and all officers to whom such decision has been certified shall make the changes in their tax lists or other records which the decision requires.

(G) If the board finds that issues not raised on the appeal are important to a determination of a controversy, ~~it~~ the board may remand the cause for an administrative determination and the issuance of a new tax assessment, valuation, determination, finding, computation, or order, unless the parties stipulate to the determination of such other issues without remand. An order remanding the cause is a final order, which may be appealed to the court of appeals in Franklin county.

Sec. 5719.07. Subject to the rules prescribed by the tax commissioner, a county treasurer charged with the collection of delinquent taxes may issue a certificate of release of the lien provided for in section 5719.04 of the Revised Code if the amount secured thereby has been paid or omitted from the delinquent tax list and duplicate pursuant to section 5719.06 of the Revised Code. The treasurer shall issue a certificate of partial discharge of any part of the real property subject to the lien ~~if he finds~~ after finding that the value of the part of the property remaining subject to the lien is at least double the amount of the delinquent taxes and all prior liens upon such real property. Such certificate shall be filed and recorded with the county recorder of the county in which the notice of lien has been filed, for which recording the recorder shall charge a base fee of two dollars for services and a housing trust fund fee of two dollars pursuant to section 317.36 of the Revised Code.

Sec. 5727.111. The taxable property of each public utility, except a railroad company, and of each interexchange

telecommunications company shall be assessed at the following 59546
percentages of true value: 59547

(A)(1) Except as provided in division (A)(2) of this section, 59548
fifty per cent in the case of a rural electric company; 59549

(2) For tax year 2001 and thereafter, fifty per cent in the 59550
case of the taxable transmission and distribution property of a 59551
rural electric company, and twenty-five per cent for all its other 59552
taxable property; 59553

(B) In the case of a telephone or telegraph company, 59554
twenty-five per cent for taxable property first subject to 59555
taxation in this state for tax year 1995 or thereafter, and 59556
~~eighty-eight per cent~~ the following for all other taxable 59557
property+: 59558

(1) For tax years prior to 2005, eighty-eight per cent; 59559

(2) For tax year 2005, sixty-seven per cent; 59560

(3) For tax year 2006, forty-six per cent; 59561

(4) For tax year 2007 and thereafter, twenty-five per cent. 59562

~~(C)(1) Except as provided in division (C)(2) of this section,~~ 59563
~~eighty-eight per cent in the case of a natural gas company;~~ 59564

~~(2) For tax year 2001 and thereafter, twenty-five~~ Twenty-five 59565
per cent in the case of a natural gas company. 59566

(D) Eighty-eight per cent in the case of a pipe-line, 59567
water-works, or heating company; 59568

(E)(1) Except as provided in division (E)(2) or (3) of this 59569
section, one hundred per cent in the case of the taxable 59570
production equipment of an electric company and eighty-eight per 59571
cent for all its other taxable property; 59572

(2) For tax year 2001 and thereafter, eighty-eight per cent 59573
in the case of the taxable transmission and distribution property 59574

of an electric company, and twenty-five per cent for all its other taxable property;

(3) Property listed and assessed under divisions (B)(1) and (2) of section 5711.22 of the Revised Code and leased to an electric company shall continue to be assessed at one hundred per cent for production equipment and eighty-eight per cent for all such other taxable property until January 1, 2002.

(F) Twenty-five per cent in the case of an interexchange telecommunications company;

(G) Twenty-five per cent in the case of a water transportation company.

Sec. 5727.30. (A) Except as provided in divisions (B) and, (C), and (D) of this section, each public utility, except railroad companies, shall be subject to an annual excise tax, as provided by sections 5727.31 to 5727.62 of the Revised Code, for the privilege of owning property in this state or doing business in this state during the twelve-month period next succeeding the period upon which the tax is based. The tax shall be imposed against each such public utility that, on the first day of such twelve-month period, owns property in this state or is doing business in this state, and the lien for the tax, including any penalties and interest accruing thereon, shall attach on such day to the property of the public utility in this state.

(B) An electric company's or a rural electric company's gross receipts received after April 30, 2001, are not subject to the annual excise tax imposed by this section.

(C) A natural gas company's gross receipts received after April 30, 2000, are not subject to the annual excise tax imposed by this section.

(D) A telephone company's gross receipts billed to customers

after June 30, 2004, are not subject to the annual excise tax 59605
imposed by this section. Notwithstanding any other provision of 59606
law, gross receipts billed by a telephone company to customers 59607
prior to July 1, 2004, shall be included in the telephone 59608
company's annual statement filed on or before August 1, 2004, 59609
which shall be the last statement or report filed under section 59610
5727.31 of the Revised Code by a telephone company. A telephone 59611
company shall not deduct from its gross receipts included in that 59612
last statement any receipts it was unable to collect from its 59613
customers for the period of July 1, 2003, to June 30, 2004. 59614

Sec. 5727.32. (A) For the purpose of the tax imposed by 59615
section 5727.30 of the Revised Code, the statement required by 59616
section 5727.31 of the Revised Code shall contain: 59617

(1) The name of the company; 59618

(2) The nature of the company, whether a person, association, 59619
or corporation, and under the laws of what state or country 59620
organized; 59621

(3) The location of its principal office; 59622

(4) The name and post-office address of the president, 59623
secretary, auditor, treasurer, and superintendent or general 59624
manager; 59625

(5) The name and post-office address of the chief officer or 59626
managing agent of the company in this state; 59627

(6) The amount of the excise taxes paid or to be paid with 59628
the reports made during the current calendar year as provided by 59629
section 5727.31 of the Revised Code; 59630

(7) In the case of telegraph ~~and telephone~~ companies: 59631

(a) The gross receipts from all sources, whether messages, 59632
telephone tolls, rentals, or otherwise, for business done within 59633
this state, including all sums earned or charged, whether actually 59634

received or not, for the year ending on the thirtieth day of June, 59635
and the company's proportion of gross receipts for business done 59636
by it within this state in connection with other companies, firms, 59637
corporations, persons, or associations, but excluding all of the 59638
following: 59639

(i) All of the receipts derived wholly from interstate 59640
business or business done for or with the federal government; 59641

(ii) The receipts of amounts billed on behalf of other 59642
entities; 59643

~~(iii) The receipts from sales to other telephone companies 59644
for resale; 59645~~

~~(iv) The receipts from sales to providers of 59646
telecommunications service for resale, receipts from incoming or 59647
outgoing wide area transmission service or wide area transmission 59648
type service, including eight hundred or eight hundred type 59649
service, and receipts from private communications service. 59650~~

~~As used in this division, "receipts from sales to other 59651
telephone companies for resale" and "receipts from sales to 59652
providers of telecommunications service for resale" include but 59653
are not limited to, receipts of carrier access charges. "Carrier 59654
access charges" means compensation paid to the taxpayer telephone 59655
company by another telephone company or by a provider of 59656
telecommunications service for the use of the taxpayer's 59657
facilities to originate or terminate telephone calls or 59658
telecommunications service. 59659~~

(b) The total gross receipts for such period from business 59660
done within this state. 59661

(8) In the case of all public utilities subject to the tax 59662
imposed by section 5727.30 of the Revised Code, except telegraph 59663
and telephone companies: 59664

(a) The gross receipts of the company, actually received, 59665
from all sources for business done within this state for the year 59666
next preceding the first day of May, including the company's 59667
proportion of gross receipts for business done by it within this 59668
state in connection with other companies, firms, corporations, 59669
persons, or associations, but excluding all both of the following: 59670

(i) Receipts from interstate business or business done for 59671
the federal government; 59672

(ii) Receipts from sales to another public utility for 59673
resale, provided such other public utility is subject to the tax 59674
levied by section 5727.24 or 5727.30 of the Revised Code; 59675

~~(iii) Receipts from the transmission or delivery of 59676
electricity to or for a rural electric company, provided that the 59677
electricity that has been so transmitted or delivered is for 59678
resale by the rural electric company. This division does not apply 59679
to tax years 2002 and thereafter. 59680~~

~~(iv) Receipts of an electric company, derived from the 59681
provision of electricity and other services to a qualified former 59682
owner of the production facilities that generated the electricity 59683
from which those receipts were derived. This division does not 59684
apply to tax years 2002 and thereafter. As used in this division, 59685
a "qualified former owner" means a person who meets both of the 59686
following conditions: 59687~~

~~(I) On or before October 11, 1991, the person had sold to an 59688
electric company part of the production facility at which the 59689
electricity is generated, and, for at least twenty years prior to 59690
that sale, the facility was used to generate electricity, but it 59691
was not owned in whole or in part during that period by an 59692
electric company. 59693~~

~~(II) At the time the electric company provided the 59694
electricity or other services for which the exclusion is claimed, 59695~~

~~the person, or a successor or assign of the person, owned not less than twenty per cent of the production facility and the rights to not less than twenty per cent of the production of that facility; and the person, or a successor or assign of the person, engaged primarily in a business other than providing electricity to others.~~

~~(v)~~ Receipts of a combined company derived from operating as a natural gas company that is subject to the tax imposed by section 5727.24 of the Revised Code.

(b) The total gross receipts of the company, for the year next preceding the first day of May, in this state from business done within the state.

(B) The reports required by section 5727.31 of the Revised Code shall contain:

(1) The name and principal mailing address of the company;

(2) The total amount of the gross receipts excise taxes charged or levied as based upon its last preceding annual statement filed prior to the first day of January of the year in which such report is filed;

(3) The amount of the excise taxes due with the report as provided by section 5727.31 of the Revised Code.

Sec. 5727.33. (A) For the purpose of computing the excise tax imposed by section 5727.24 or 5727.30 of the Revised Code, the entire gross receipts actually received from all sources for business done within this state are taxable gross receipts, excluding the receipts described in divisions (B), (C), and (D) ~~and (E)~~ of this section. The gross receipts for the tax year of each telegraph ~~and telephone~~ company shall be computed for the period of the first day of July prior to the tax year to the thirtieth day of June of the tax year. The gross receipts of each

natural gas company, including a combined company's taxable gross receipts attributed to a natural gas company activity, shall be computed in the manner required by section 5727.25 of the Revised Code. The gross receipts for the tax year of any other public utility subject to section 5727.30 of the Revised Code shall be computed for the period of the first day of May prior to the tax year to the thirtieth day of April of the tax year.

(B) In ascertaining and determining the gross receipts of each public utility subject to this section, the following gross receipts are excluded:

(1) All receipts derived wholly from interstate business;

(2) All receipts derived wholly from business done for or with the federal government;

~~(3) All receipts derived wholly from the transmission or delivery of electricity to or for a rural electric company, provided that the electricity that has been so transmitted or delivered is for resale by the rural electric company. This division does not apply to tax years 2002 and thereafter.~~

~~(4) All receipts from the sale of merchandise;~~

~~(5)(4) All receipts from sales to other public utilities, except railroad, and telegraph, ~~and telephone~~ companies, for resale, provided the other public utility is subject to the tax levied by section 5727.24 or 5727.30 of the Revised Code.~~

~~(C) In ascertaining and determining the gross receipts of a telephone company, the following gross receipts are excluded:~~

~~(1) Receipts of amounts billed on behalf of other entities;~~

~~(2) Receipts from sales to other telephone companies for resale, as defined in division (A)(7) of section 5727.32 of the Revised Code;~~

~~(3) Receipts from incoming or outgoing wide area transmission~~

~~service or wide area transmission type service, including eight 59756
hundred or eight hundred type service; 59757~~

~~(4) Receipts from private communications service as described 59758
in division (AA)(2) of section 5739.01 of the Revised Code; 59759~~

~~(5) Receipts from sales to providers of telecommunications 59760
service for resale, as defined in division (A)(7) of section 59761
5727.32 of the Revised Code. 59762~~

~~(D) In ascertaining and determining the gross receipts of an 59763
electric company, receipts derived from the provision of 59764
electricity and other services to a qualified former owner of the 59765
production facilities that generated the electricity from which 59766
those receipts were derived are excluded. This division does not 59767
apply to tax years 2002 and thereafter. As used in this division, 59768
a "qualified former owner" means a person who meets both of the 59769
following conditions: 59770~~

~~(1) On or before October 11, 1991, the person had sold to an 59771
electric company part of the production facility at which the 59772
electricity is generated, and, for at least twenty years prior to 59773
that sale, the facility was used to generate electricity, but it 59774
was not owned in whole or part during that period by an electric 59775
company. 59776~~

~~(2) At the time the electric company provided the electricity 59777
or other services for which the exclusion is claimed, the person, 59778
or a successor or assign of the person, owned not less than a 59779
twenty per cent ownership of the production facility and the 59780
rights to not less than twenty per cent of the production of that 59781
facility. 59782~~

~~(E)(C) In ascertaining and determining the gross receipts of 59783
a natural gas company, receipts billed on behalf of other entities 59784
are excluded. The tax imposed by section 5729.811 of the Revised 59785
Code, along with transportation and billing and collection fees 59786~~

charged to other entities, shall be included in the gross receipts of a natural gas company.

~~(F)~~(D) In ascertaining and determining the gross receipts of a combined company subject to the tax imposed by section 5727.30 of the Revised Code, all receipts derived from operating as a natural gas company that are subject to the tax imposed by section 5727.24 of the Revised Code are excluded.

~~(G)~~(E) Except as provided in division ~~(H)~~(F) of this section, the amount ascertained by the commissioner under this section, less a deduction of twenty-five thousand dollars, shall be the taxable gross receipts of such companies for business done within this state for that year.

~~(H)~~(F) The amount ascertained under this section, less the following deduction, shall be the taxable gross receipts of a natural gas company or combined company subject to the tax imposed by section 5727.24 of the Revised Code for business done within this state:

(1) For a natural gas company that files quarterly returns of the tax imposed by section 5727.24 of the Revised Code, six thousand two hundred fifty dollars for each quarterly return;

(2) For a natural gas company that files an annual return of the tax imposed by section 5727.24 of the Revised Code, twenty-five thousand dollars for each annual return;

(3) For a combined company, twenty-five thousand dollars on the annual statement filed under section 5727.31 of the Revised Code. A combined company shall not be entitled to a deduction in computing gross receipts subject to the tax imposed by section 5727.24 of the Revised Code.

Sec. 5727.56. Any public utility whose articles of incorporation or license certificate to do or transact business in

this state has expired or has been canceled or revoked by the 59817
secretary of state, as provided by law for failure to make any 59818
report or return or to pay any tax or fee, upon payment to the 59819
secretary of state of any additional fees and penalties required 59820
to be paid to ~~him~~ the secretary of state, and upon the filing with 59821
the secretary of state of a certificate from the tax commissioner 59822
that it has complied with all the requirements of law as to 59823
franchise or excise tax reports and paid all franchise or excise 59824
taxes, fees, or penalties due thereon for every year of its 59825
delinquency, and upon the payment to the secretary of state of an 59826
additional fee of ten dollars, shall be reinstated and again 59827
entitled to exercise its rights, privileges, and franchises in 59828
this state, and the secretary of state shall cancel the entry of 59829
cancellation or expiration to exercise its rights, privileges, and 59830
franchises. If the reinstatement is not made within one year from 59831
the date of the cancellation of its articles of incorporation or 59832
date of the cancellation or expiration of its license to do 59833
business, and it appears that articles of incorporation or license 59834
certificate have been issued to a corporation of the same or 59835
similar name, the applicant for reinstatement shall be required by 59836
the secretary of state, as a condition prerequisite to such 59837
reinstatement, to amend its articles by changing its name. A 59838
certificate of reinstatement may be filed in the county recorder's 59839
office of any county in the state, for which the recorder shall 59840
charge and collect a base fee of three dollars for services and a 59841
housing trust fund fee of three dollars pursuant to section 317.36 59842
of the Revised Code. 59843

If a domestic public utility applying for reinstatement has 59844
not previously designated an agent upon whom process may be served 59845
as required by section 1701.07 of the Revised Code, such public 59846
utility shall at the time of reinstatement and as a prerequisite 59847
thereto designate an agent in accordance with such section. 59848

Any officer, shareholder, creditor, or receiver of any such public utility may at any time take all steps required by this section to effect such reinstatement, and in such case the designation of an agent upon whom process may be served shall not be a prerequisite to the reinstatement of the public utility.

Sec. 5728.04. (A) It is unlawful for any person to operate a commercial car with three or more axles when operated alone or as part of a commercial tandem, a commercial car with two axles that is to be operated as part of a commercial tandem with a gross vehicle weight or a registered gross vehicle weight exceeding twenty-six thousand pounds, or a commercial tractor when operated alone or as part of a commercial tractor combination or commercial tandem on a public highway ~~without~~ under either of the following circumstances:

(1) Without a valid fuel use permit for such commercial car or commercial tractor.

(2) With a suspended or surrendered fuel use permit for such commercial car or commercial tractor.

(B) The judge or magistrate of any court finding any person guilty of unlawfully operating a commercial car or commercial tractor as provided for in this section shall immediately notify the tax commissioner of such violation and shall transmit to the tax commissioner the name and the permanent address of the owner of the commercial car or commercial tractor operated in violation of this section, the registration number, the state of registration, and the certificate of title number of the commercial car or commercial tractor. The commercial car or commercial tractor involved in a violation of division (A)(1) or (2) of this section may be detained until a valid fuel use permit is obtained or reinstated.

Sec. 5728.06. (A) For the following purposes, an excise tax 59879
is hereby imposed on the use of motor fuel to operate on the 59880
public highways of this state a commercial car with three or more 59881
axles operated alone or as part of a commercial tandem, a 59882
commercial car with two axles operated as part of a commercial 59883
tandem having a gross vehicle weight or registered gross vehicle 59884
weight exceeding twenty-six thousand pounds, or a commercial 59885
tractor operated alone or as part of a commercial tractor 59886
combination or commercial tandem: to provide revenue for 59887
maintaining the state highway system, to widen existing surfaces 59888
on such highways, to resurface such highways, to enable the 59889
counties of the state properly to plan for, maintain, and repair 59890
their roads, to enable the municipal corporations to plan, 59891
construct, reconstruct, repave, widen, maintain, repair, clear, 59892
and clean public highways, roads, and streets; to pay that portion 59893
of the construction cost of a highway project that a county, 59894
township, or municipal corporation normally would be required to 59895
pay, but that the director of transportation, pursuant to division 59896
(B) of section 5531.08 of the Revised Code, determines instead 59897
will be paid from moneys in the highway operating fund; to 59898
maintain and repair bridges and viaducts; to purchase, erect, and 59899
maintain street and traffic signs and markers; to purchase, erect, 59900
and maintain traffic lights and signals; to pay the costs 59901
apportioned to the public under section 4907.47 of the Revised 59902
Code; and to supplement revenue already available for such 59903
purposes, to distribute equitably among those persons using the 59904
privilege of driving motor vehicles upon such highways and streets 59905
the cost of maintaining and repairing the same, and to pay the 59906
interest, principal, and charges on bonds and other obligations 59907
issued pursuant to Section 2i of Article VIII, Ohio Constitution, 59908
and sections 5528.30 and 5528.31 of the Revised Code. The tax is 59909
imposed in the same amount as the motor fuel tax imposed under 59910

Chapter 5735. of the Revised Code plus an additional tax of three 59911
cents per gallon of motor fuel used before July 1, 2004, ~~and an~~ 59912
provided that the additional tax ~~of~~ shall be reduced to two cents 59913
per gallon of motor fuel used ~~before~~ from July 1, 2004 through 59914
June 30, 2005, as determined by the gallons consumed while 59915
operated on the public highways of this state. Subject to section 59916
5735.292 of the Revised Code, on and after July 1, 2005, the tax 59917
shall be imposed in the same amount as the motor fuel tax imposed 59918
under Chapter 5735. of the Revised Code. Payment of the fuel use 59919
tax shall be made by the purchase of motor fuel within Ohio of 59920
such gallons as is equivalent to the gallons consumed while 59921
operating such a motor vehicle on the public highways of this 59922
state, or by direct remittance to the treasurer of state with the 59923
fuel use tax return filed pursuant to section 5728.08 of the 59924
Revised Code. 59925

Any person subject to the tax imposed under this section who 59926
purchases motor fuel in this state for use in another state in 59927
excess of the amount consumed while operating such motor vehicle 59928
on the public highways of this state shall be allowed a credit 59929
against the tax imposed by this section or a refund equal to the 59930
motor fuel tax paid to this state on such excess. No such credit 59931
or refund shall be allowed for taxes paid to any state that 59932
imposes a tax on motor fuel purchased or obtained in this state 59933
and used on the highways of such other state but does not allow a 59934
similar credit or refund for the tax paid to this state on motor 59935
fuel purchased or acquired in the other state and used on the 59936
public highways of this state. 59937

The tax commissioner is authorized to determine whether such 59938
credits or refunds are available and to prescribe such rules as 59939
are required for the purpose of administering this chapter. 59940

(B) Within sixty days after the last day of each month, the 59941
tax commissioner shall determine the amount of motor fuel tax 59942

allowed as a credit against the tax imposed by this section. The 59943
commissioner shall certify the amount to the director of budget 59944
and management and the treasurer of state, who shall credit the 59945
amount in accordance with section 5728.08 of the Revised Code from 59946
current revenue arising from the tax levied by section 5735.05 of 59947
the Revised Code. 59948

(C) The owner of each commercial car and commercial tractor 59949
subject to sections 5728.01 to 5728.14 of the Revised Code is 59950
liable for the payment of the full amount of the taxes imposed by 59951
this section. 59952

An owner who is a person regularly engaged, for compensation, 59953
in the business of leasing or renting motor vehicles without 59954
furnishing drivers may designate that the lessee of a motor 59955
vehicle leased for a period of thirty days or more shall report 59956
and pay the tax incurred during the duration of the lease. An 59957
owner who is an independent contractor that furnishes both the 59958
driver and motor vehicle, may designate that the person so 59959
furnished with the driver and motor vehicle for a period of thirty 59960
days or more shall report and pay the tax incurred during that 59961
period. An independent contractor that is not an owner, but that 59962
furnishes both the driver and motor vehicle and that has been 59963
designated by the owner of the motor vehicle to report and pay the 59964
tax, may designate that the person so furnished with driver and 59965
motor vehicle for a period of thirty days or more shall report and 59966
pay the tax incurred during that period. 59967

Sec. 5728.99. (A)(1) Except as provided in division (A)(2) of 59968
this section, whoever violates any provision of sections 5728.01 59969
to 5728.14 of the Revised Code, or any rule promulgated by the tax 59970
commissioner under the authority of any provision of those 59971
sections, for the violation of which no penalty is provided 59972
elsewhere, shall be fined not less than twenty-five nor more than 59973

one hundred dollars. 59974

(2) Division (A)(1) of this section does not apply to the 59975
filing of any false or fraudulent return, application, or permit 59976
under section 5728.02, 5728.03, or 5728.08 of the Revised Code. 59977
The filing of any false or fraudulent return, application, or 59978
permit under any of those sections is a violation of section 59979
2921.13 of the Revised Code. 59980

(B)(1) Whoever violates division (A)(1) of section 5728.04 of 59981
the Revised Code is guilty of a misdemeanor of the fourth degree. 59982

(2) Whoever violates division (A)(2) of section 5728.04 of 59983
the Revised Code is guilty of a felony of the fifth degree. 59984

Sec. 5733.04. As used in this chapter: 59985

(A) "Issued and outstanding shares of stock" applies to 59986
nonprofit corporations, as provided in section 5733.01 of the 59987
Revised Code, and includes, but is not limited to, membership 59988
certificates and other instruments evidencing ownership of an 59989
interest in such nonprofit corporations, and with respect to a 59990
financial institution that does not have capital stock, "issued 59991
and outstanding shares of stock" includes, but is not limited to, 59992
ownership interests of depositors in the capital employed in such 59993
an institution. 59994

(B) "Taxpayer" means a corporation subject to the tax imposed 59995
by section 5733.06 of the Revised Code. 59996

(C) "Resident" means a corporation organized under the laws 59997
of this state. 59998

(D) "Commercial domicile" means the principal place from 59999
which the trade or business of the taxpayer is directed or 60000
managed. 60001

(E) "Taxable year" means the period prescribed by division 60002
(A) of section 5733.031 of the Revised Code upon the net income of 60003

which the value of the taxpayer's issued and outstanding shares of 60004
stock is determined under division (B) of section 5733.05 of the 60005
Revised Code or the period prescribed by division (A) of section 60006
5733.031 of the Revised Code that immediately precedes the date as 60007
of which the total value of the corporation is determined under 60008
division (A) or (C) of section 5733.05 of the Revised Code. 60009

(F) "Tax year" means the calendar year in and for which the 60010
tax imposed by section 5733.06 of the Revised Code is required to 60011
be paid. 60012

(G) "Internal Revenue Code" means the "Internal Revenue Code 60013
of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 60014

(H) "Federal income tax" means the income tax imposed by the 60015
Internal Revenue Code. 60016

(I) Except as provided in section 5733.058 of the Revised 60017
Code, "net income" means the taxpayer's taxable income before 60018
operating loss deduction and special deductions, as required to be 60019
reported for the taxpayer's taxable year under the Internal 60020
Revenue Code, subject to the following adjustments: 60021

(1)(a) Deduct any net operating loss incurred in any taxable 60022
years ending in 1971 or thereafter, but exclusive of any net 60023
operating loss incurred in taxable years ending prior to January 60024
1, 1971. This deduction shall not be allowed in any tax year 60025
commencing before December 31, 1973, but shall be carried over and 60026
allowed in tax years commencing after December 31, 1973, until 60027
fully utilized in the next succeeding taxable year or years in 60028
which the taxpayer has net income, but in no case for more than 60029
the designated carryover period as described in division (I)(1)(b) 60030
of this section. The amount of such net operating loss, as 60031
determined under the allocation and apportionment provisions of 60032
section 5733.051 and division (B) of section 5733.05 of the 60033
Revised Code for the year in which the net operating loss occurs, 60034

shall be deducted from net income, as determined under the 60035
allocation and apportionment provisions of section 5733.051 and 60036
division (B) of section 5733.05 of the Revised Code, to the extent 60037
necessary to reduce net income to zero with the remaining unused 60038
portion of the deduction, if any, carried forward to the remaining 60039
years of the designated carryover period as described in division 60040
(I)(1)(b) of this section, or until fully utilized, whichever 60041
occurs first. 60042

(b) For losses incurred in taxable years ending on or before 60043
December 31, 1981, the designated carryover period shall be the 60044
five consecutive taxable years after the taxable year in which the 60045
net operating loss occurred. For losses incurred in taxable years 60046
ending on or after January 1, 1982, and beginning before August 6, 60047
1997, the designated carryover period shall be the fifteen 60048
consecutive taxable years after the taxable year in which the net 60049
operating loss occurs. For losses incurred in taxable years 60050
beginning on or after August 6, 1997, the designated carryover 60051
period shall be the twenty consecutive taxable years after the 60052
taxable year in which the net operating loss occurs. 60053

(c) The tax commissioner may require a taxpayer to furnish 60054
any information necessary to support a claim for deduction under 60055
division (I)(1)(a) of this section and no deduction shall be 60056
allowed unless the information is furnished. 60057

(2) Deduct any amount included in net income by application 60058
of section 78 or 951 of the Internal Revenue Code, amounts 60059
received for royalties, technical or other services derived from 60060
sources outside the United States, and dividends received from a 60061
subsidiary, associate, or affiliated corporation that neither 60062
transacts any substantial portion of its business nor regularly 60063
maintains any substantial portion of its assets within the United 60064
States. For purposes of determining net foreign source income 60065
deductible under division (I)(2) of this section, the amount of 60066

gross income from all such sources other than dividend income and 60067
income derived by application of section 78 or 951 of the Internal 60068
Revenue Code shall be reduced by: 60069

(a) The amount of any reimbursed expenses for personal 60070
services performed by employees of the taxpayer for the 60071
subsidiary, associate, or affiliated corporation; 60072

(b) Ten per cent of the amount of royalty income and 60073
technical assistance fees; 60074

(c) Fifteen per cent of the amount of all other income. 60075

The amounts described in divisions (I)(2)(a) to (c) of this 60076
section are deemed to be the expenses attributable to the 60077
production of deductible foreign source income unless the taxpayer 60078
shows, by clear and convincing evidence, less actual expenses, or 60079
the tax commissioner shows, by clear and convincing evidence, more 60080
actual expenses. 60081

(3) Add any loss or deduct any gain resulting from the sale, 60082
exchange, or other disposition of a capital asset, or an asset 60083
described in section 1231 of the Internal Revenue Code, to the 60084
extent that such loss or gain occurred prior to the first taxable 60085
year on which the tax provided for in section 5733.06 of the 60086
Revised Code is computed on the corporation's net income. For 60087
purposes of division (I)(3) of this section, the amount of the 60088
prior loss or gain shall be measured by the difference between the 60089
original cost or other basis of the asset and the fair market 60090
value as of the beginning of the first taxable year on which the 60091
tax provided for in section 5733.06 of the Revised Code is 60092
computed on the corporation's net income. At the option of the 60093
taxpayer, the amount of the prior loss or gain may be a percentage 60094
of the gain or loss, which percentage shall be determined by 60095
multiplying the gain or loss by a fraction, the numerator of which 60096
is the number of months from the acquisition of the asset to the 60097

beginning of the first taxable year on which the fee provided in 60098
section 5733.06 of the Revised Code is computed on the 60099
corporation's net income, and the denominator of which is the 60100
number of months from the acquisition of the asset to the sale, 60101
exchange, or other disposition of the asset. The adjustments 60102
described in this division do not apply to any gain or loss where 60103
the gain or loss is recognized by a qualifying taxpayer, as 60104
defined in section 5733.0510 of the Revised Code, with respect to 60105
a qualifying taxable event, as defined in that section. 60106

(4) Deduct the dividend received deduction provided by 60107
section 243 of the Internal Revenue Code. 60108

(5) Deduct any interest or interest equivalent on public 60109
obligations and purchase obligations to the extent included in 60110
federal taxable income. As used in divisions (I)(5) and (6) of 60111
this section, "public obligations," "purchase obligations," and 60112
"interest or interest equivalent" have the same meanings as in 60113
section 5709.76 of the Revised Code. 60114

(6) Add any loss or deduct any gain resulting from the sale, 60115
exchange, or other disposition of public obligations to the extent 60116
included in federal taxable income. 60117

(7) To the extent not otherwise allowed, deduct any dividends 60118
or distributions received by a taxpayer from a public utility, 60119
excluding an electric company and a combined company, and, for tax 60120
years 2005 and thereafter, a telephone company, if the taxpayer 60121
owns at least eighty per cent of the issued and outstanding common 60122
stock of the public utility. As used in division (I)(7) of this 60123
section, "public utility" means a public utility as defined in 60124
Chapter 5727. of the Revised Code, whether or not the public 60125
utility is doing business in the state. 60126

(8) To the extent not otherwise allowed, deduct any dividends 60127
received by a taxpayer from an insurance company, if the taxpayer 60128

owns at least eighty per cent of the issued and outstanding common 60129
stock of the insurance company. As used in division (I)(8) of this 60130
section, "insurance company" means an insurance company that is 60131
taxable under Chapter 5725. or 5729. of the Revised Code. 60132

(9) Deduct expenditures for modifying existing buildings or 60133
structures to meet American national standards institute standard 60134
A-117.1-1961 (R-1971), as amended; provided, that no deduction 60135
shall be allowed to the extent that such deduction is not 60136
permitted under federal law or under rules of the tax 60137
commissioner. Those deductions as are allowed may be taken over a 60138
period of five years. The tax commissioner shall adopt rules under 60139
Chapter 119. of the Revised Code establishing reasonable 60140
limitations on the extent that expenditures for modifying existing 60141
buildings or structures are attributable to the purpose of making 60142
the buildings or structures accessible to and usable by physically 60143
handicapped persons. 60144

(10) Deduct the amount of wages and salaries, if any, not 60145
otherwise allowable as a deduction but that would have been 60146
allowable as a deduction in computing federal taxable income 60147
before operating loss deduction and special deductions for the 60148
taxable year, had the targeted jobs credit allowed and determined 60149
under sections 38, 51, and 52 of the Internal Revenue Code not 60150
been in effect. 60151

(11) Deduct net interest income on obligations of the United 60152
States and its territories and possessions or of any authority, 60153
commission, or instrumentality of the United States to the extent 60154
the laws of the United States prohibit inclusion of the net 60155
interest for purposes of determining the value of the taxpayer's 60156
issued and outstanding shares of stock under division (B) of 60157
section 5733.05 of the Revised Code. As used in division (I)(11) 60158
of this section, "net interest" means interest net of any expenses 60159
taken on the federal income tax return that would not have been 60160

allowed under section 265 of the Internal Revenue Code if the 60161
interest were exempt from federal income tax. 60162

(12)(a) Except as set forth in division (I)(12)(d) of this 60163
section, to the extent not included in computing the taxpayer's 60164
federal taxable income before operating loss deduction and special 60165
deductions, add gains and deduct losses from direct or indirect 60166
sales, exchanges, or other dispositions, made by a related entity 60167
who is not a taxpayer, of the taxpayer's indirect, beneficial, or 60168
constructive investment in the stock or debt of another entity, 60169
unless the gain or loss has been included in computing the federal 60170
taxable income before operating loss deduction and special 60171
deductions of another taxpayer with a more closely related 60172
investment in the stock or debt of the other entity. The amount of 60173
gain added or loss deducted shall not exceed the product obtained 60174
by multiplying such gain or loss by the taxpayer's proportionate 60175
share, directly, indirectly, beneficially, or constructively, of 60176
the outstanding stock of the related entity immediately prior to 60177
the direct or indirect sale, exchange, or other disposition. 60178

(b) Except as set forth in division (I)(12)(e) of this 60179
section, to the extent not included in computing the taxpayer's 60180
federal taxable income before operating loss deduction and special 60181
deductions, add gains and deduct losses from direct or indirect 60182
sales, exchanges, or other dispositions made by a related entity 60183
who is not a taxpayer, of intangible property other than stock, 60184
securities, and debt, if such property was owned, or used in whole 60185
or in part, at any time prior to or at the time of the sale, 60186
exchange, or disposition by either the taxpayer or by a related 60187
entity that was a taxpayer at any time during the related entity's 60188
ownership or use of such property, unless the gain or loss has 60189
been included in computing the federal taxable income before 60190
operating loss deduction and special deductions of another 60191
taxpayer with a more closely related ownership or use of such 60192

intangible property. The amount of gain added or loss deducted 60193
shall not exceed the product obtained by multiplying such gain or 60194
loss by the taxpayer's proportionate share, directly, indirectly, 60195
beneficially, or constructively, of the outstanding stock of the 60196
related entity immediately prior to the direct or indirect sale, 60197
exchange, or other disposition. 60198

(c) As used in division (I)(12) of this section, "related 60199
entity" means those entities described in divisions (I)(12)(c)(i) 60200
to (iii) of this section: 60201

(i) An individual stockholder, or a member of the 60202
stockholder's family enumerated in section 318 of the Internal 60203
Revenue Code, if the stockholder and the members of the 60204
stockholder's family own, directly, indirectly, beneficially, or 60205
constructively, in the aggregate, at least fifty per cent of the 60206
value of the taxpayer's outstanding stock; 60207

(ii) A stockholder, or a stockholder's partnership, estate, 60208
trust, or corporation, if the stockholder and the stockholder's 60209
partnerships, estates, trusts, and corporations own directly, 60210
indirectly, beneficially, or constructively, in the aggregate, at 60211
least fifty per cent of the value of the taxpayer's outstanding 60212
stock; 60213

(iii) A corporation, or a party related to the corporation in 60214
a manner that would require an attribution of stock from the 60215
corporation to the party or from the party to the corporation 60216
under division (I)(12)(c)(iv) of this section, if the taxpayer 60217
owns, directly, indirectly, beneficially, or constructively, at 60218
least fifty per cent of the value of the corporation's outstanding 60219
stock. 60220

(iv) The attribution rules of section 318 of the Internal 60221
Revenue Code apply for purposes of determining whether the 60222
ownership requirements in divisions (I)(12)(c)(i) to (iii) of this 60223

section have been met. 60224

(d) For purposes of the adjustments required by division 60225
(I)(12)(a) of this section, the term "investment in the stock or 60226
debt of another entity" means only those investments where the 60227
taxpayer and the taxpayer's related entities directly, indirectly, 60228
beneficially, or constructively own, in the aggregate, at any time 60229
during the twenty-four month period commencing one year prior to 60230
the direct or indirect sale, exchange, or other disposition of 60231
such investment at least fifty per cent or more of the value of 60232
either the outstanding stock or such debt of such other entity. 60233

(e) For purposes of the adjustments required by division 60234
(I)(12)(b) of this section, the term "related entity" excludes all 60235
of the following: 60236

(i) Foreign corporations as defined in section 7701 of the 60237
Internal Revenue Code; 60238

(ii) Foreign partnerships as defined in section 7701 of the 60239
Internal Revenue Code; 60240

(iii) Corporations, partnerships, estates, and trusts created 60241
or organized in or under the laws of the Commonwealth of Puerto 60242
Rico or any possession of the United States; 60243

(iv) Foreign estates and foreign trusts as defined in section 60244
7701 of the Internal Revenue Code. 60245

The exclusions described in divisions (I)(12)(e)(i) to (iv) 60246
of this section do not apply if the corporation, partnership, 60247
estate, or trust is described in any one of divisions (C)(1) to 60248
(5) of section 5733.042 of the Revised Code. 60249

(f) Nothing in division (I)(12) of this section shall require 60250
or permit a taxpayer to add any gains or deduct any losses 60251
described in divisions (I)(12)(f)(i) and (ii) of this section: 60252

(i) Gains or losses recognized for federal income tax 60253

purposes by an individual, estate, or trust without regard to the 60254
attribution rules described in division (I)(12)(c) of this 60255
section; 60256

(ii) A related entity's gains or losses described in division 60257
(I)(12)(b) of this section if the taxpayer's ownership of or use 60258
of such intangible property was limited to a period not exceeding 60259
nine months and was attributable to a transaction or a series of 60260
transactions executed in accordance with the election or elections 60261
made by the taxpayer or a related entity pursuant to section 338 60262
of the Internal Revenue Code. 60263

(13) Any adjustment required by section 5733.042 of the 60264
Revised Code. 60265

(14) Add any amount claimed as a credit under section 60266
5733.0611 of the Revised Code to the extent that such amount 60267
satisfies either of the following: 60268

(a) It was deducted or excluded from the computation of the 60269
corporation's taxable income before operating loss deduction and 60270
special deductions as required to be reported for the 60271
corporation's taxable year under the Internal Revenue Code; 60272

(b) It resulted in a reduction of the corporation's taxable 60273
income before operating loss deduction and special deductions as 60274
required to be reported for any of the corporation's taxable years 60275
under the Internal Revenue Code. 60276

(15) Deduct the amount contributed by the taxpayer to an 60277
individual development account program established by a county 60278
department of job and family services pursuant to sections 329.11 60279
to 329.14 of the Revised Code for the purpose of matching funds 60280
deposited by program participants. On request of the tax 60281
commissioner, the taxpayer shall provide any information that, in 60282
the tax commissioner's opinion, is necessary to establish the 60283
amount deducted under division (I)(15) of this section. 60284

(16) Any adjustment required by section 5733.0510 or 60285
5733.0511 of the Revised Code. 60286

(17)(a) Add five-sixths of the amount of depreciation expense 60287
allowed under subsection (k) of section 168 of the Internal 60288
Revenue Code, including a person's proportionate or distributive 60289
share of the amount of depreciation expense allowed by that 60290
subsection to any pass-through entity in which the person has 60291
direct or indirect ownership. The tax commissioner, under 60292
procedures established by the commissioner, may waive the add-back 60293
related to a pass-through entity if the person owns, directly or 60294
indirectly, less than five per cent of the pass-through entity. 60295

(b) Nothing in division (I)(17) of this section shall be 60296
construed to adjust or modify the adjusted basis of any asset. 60297

(c) To the extent the add-back is attributable to property 60298
generating income or loss allocable under section 5733.051 of the 60299
Revised Code, the add-back shall be allocated to the same location 60300
as the income or loss generated by that property. Otherwise, the 60301
add-back shall be apportioned, subject to division (B)(2)(d) of 60302
section 5733.05 of the Revised Code. 60303

(18)(a) If a person is required to make the add-back under 60304
division (I)(17)(a) of this section for a tax year, the person 60305
shall deduct one-fifth of the amount added back for each of the 60306
succeeding five tax years. 60307

(b) If the amount deducted under division (I)(18)(a) of this 60308
section is attributable to an add-back allocated under division 60309
(I)(17)(c) of this section, the amount deducted shall be allocated 60310
to the same location. Otherwise, the amount shall be apportioned 60311
using the apportionment factors for the taxable year in which the 60312
deduction is taken, subject to division (B)(2)(d) of section 60313
5733.05 of the Revised Code. 60314

(J) Any term used in this chapter has the same meaning as 60315

when used in comparable context in the laws of the United States 60316
relating to federal income taxes unless a different meaning is 60317
clearly required. Any reference in this chapter to the Internal 60318
Revenue Code includes other laws of the United States relating to 60319
federal income taxes. 60320

(K) "Financial institution" has the meaning given by section 60321
5725.01 of the Revised Code but does not include a production 60322
credit association as described in 85 Stat. 597, 12 U.S.C.A. 2091. 60323

(L)(1) A "qualifying holding company" is any corporation 60324
satisfying all of the following requirements: 60325

(a) Subject to divisions (L)(2) and (3) of this section, the 60326
net book value of the corporation's intangible assets is greater 60327
than or equal to ninety per cent of the net book value of all of 60328
its assets and at least fifty per cent of the net book value of 60329
all of its assets represents direct or indirect investments in the 60330
equity of, loans and advances to, and accounts receivable due from 60331
related members; 60332

(b) At least ninety per cent of the corporation's gross 60333
income for the taxable year is attributable to the following: 60334

(i) The maintenance, management, ownership, acquisition, use, 60335
and disposition of its intangible property, its aircraft the use 60336
of which is not subject to regulation under 14 C.F.R. part 121 or 60337
part 135, and any real property described in division (L)(2)(c) of 60338
this section; 60339

(ii) The collection and distribution of income from such 60340
property. 60341

(c) The corporation is not a financial institution on the 60342
last day of the taxable year ending prior to the first day of the 60343
tax year; 60344

(d) The corporation's related members make a good faith and 60345

reasonable effort to make timely and fully the adjustments 60346
required by division (C)(2) of section 5733.05 of the Revised Code 60347
and to pay timely and fully all uncontested taxes, interest, 60348
penalties, and other fees and charges imposed under this chapter; 60349

(e) Subject to division (L)(4) of this section, the 60350
corporation elects to be treated as a qualifying holding company 60351
for the tax year. 60352

A corporation otherwise satisfying divisions (L)(1)(a) to (e) 60353
of this section that does not elect to be a qualifying holding 60354
company is not a qualifying holding company for the purposes of 60355
this chapter. 60356

(2)(a)(i) For purposes of making the ninety per cent 60357
computation under division (L)(1)(a) of this section, the net book 60358
value of the corporation's assets shall not include the net book 60359
value of aircraft or real property described in division 60360
(L)(1)(b)(i) of this section. 60361

(ii) For purposes of making the fifty per cent computation 60362
under division (L)(1)(a) of this section, the net book value of 60363
assets shall include the net book value of aircraft or real 60364
property described in division (L)(1)(b)(i) of this section. 60365

(b)(i) As used in division (L) of this section, "intangible 60366
asset" includes, but is not limited to, the corporation's direct 60367
interest in each pass-through entity only if at all times during 60368
the corporation's taxable year ending prior to the first day of 60369
the tax year the corporation's and the corporation's related 60370
members' combined direct and indirect interests in the capital or 60371
profits of such pass-through entity do not exceed fifty per cent. 60372
If the corporation's interest in the pass-through entity is an 60373
intangible asset for that taxable year, then the distributive 60374
share of any income from the pass-through entity shall be income 60375
from an intangible asset for that taxable year. 60376

(ii) If a corporation's and the corporation's related members' combined direct and indirect interests in the capital or profits of a pass-through entity exceed fifty per cent at any time during the corporation's taxable year ending prior to the first day of the tax year, "intangible asset" does not include the corporation's direct interest in the pass-through entity, and the corporation shall include in its assets its proportionate share of the assets of any such pass-through entity and shall include in its gross income its distributive share of the gross income of such pass-through entity in the same form as was earned by the pass-through entity.

(iii) A pass-through entity's direct or indirect proportionate share of any other pass-through entity's assets shall be included for the purpose of computing the corporation's proportionate share of the pass-through entity's assets under division (L)(2)(b)(ii) of this section, and such pass-through entity's distributive share of any other pass-through entity's gross income shall be included for purposes of computing the corporation's distributive share of the pass-through entity's gross income under division (L)(2)(b)(ii) of this section.

(c) For the purposes of divisions (L)(1)(b)(i), (1)(b)(ii), (2)(a)(i), and (2)(a)(ii) of this section, real property is described in division (L)(2)(c) of this section only if all of the following conditions are present at all times during the taxable year ending prior to the first day of the tax year:

(i) The real property serves as the headquarters of the corporation's trade or business, or is the place from which the corporation's trade or business is principally managed or directed;

(ii) Not more than ten per cent of the value of the real property and not more than ten per cent of the square footage of

the building or buildings that are part of the real property is 60408
used, made available, or occupied for the purpose of providing, 60409
acquiring, transferring, selling, or disposing of tangible 60410
property or services in the normal course of business to persons 60411
other than related members, the corporation's employees and their 60412
families, and such related members' employees and their families. 60413

(d) As used in division (L) of this section, "related member" 60414
has the same meaning as in division (A)(6) of section 5733.042 of 60415
the Revised Code without regard to division (B) of that section. 60416

(3) The percentages described in division (L)(1)(a) of this 60417
section shall be equal to the quarterly average of those 60418
percentages as calculated during the corporation's taxable year 60419
ending prior to the first day of the tax year. 60420

(4) With respect to the election described in division 60421
(L)(1)(e) of this section: 60422

(a) The election need not accompany a timely filed report; 60423

(b) The election need not accompany the report; rather, the 60424
election may accompany a subsequently filed but timely application 60425
for refund and timely amended report, or a subsequently filed but 60426
timely petition for reassessment; 60427

(c) The election is not irrevocable; 60428

(d) The election applies only to the tax year specified by 60429
the corporation; 60430

(e) The corporation's related members comply with division 60431
(L)(1)(d) of this section. 60432

Nothing in division (L)(4) of this section shall be construed 60433
to extend any statute of limitations set forth in this chapter. 60434

(M) "Qualifying controlled group" means two or more 60435
corporations that satisfy the ownership and control requirements 60436
of division (A) of section 5733.052 of the Revised Code. 60437

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

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

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

Sec. 5733.05. As used in this section, "qualified research" means laboratory research, experimental research, and other similar types of research; research in developing or improving a product; or research in developing or improving the means of producing a product. It does not include market research, consumer surveys, efficiency surveys, management studies, ordinary testing or inspection of materials or products for quality control, historical research, or literary research. "Product" as used in this paragraph does not include services or intangible property.

The annual report determines the value of the issued and outstanding shares of stock of the taxpayer, which under division (A) or divisions (B) and (C) of this section is the base or measure of the franchise tax liability. Such determination shall be made as of the date shown by the report to have been the beginning of the corporation's annual accounting period that includes the first day of January of the tax year. For the purposes of this chapter, the value of the issued and outstanding shares of stock of any corporation that is a financial institution

shall be deemed to be the value as calculated in accordance with 60469
division (A) of this section. For the purposes of this chapter, 60470
the value of the issued and outstanding shares of stock of any 60471
corporation that is not a financial institution shall be deemed to 60472
be the values as calculated in accordance with divisions (B) and 60473
(C) of this section. Except as otherwise required by this section 60474
or section 5733.056 of the Revised Code, the value of a taxpayer's 60475
issued and outstanding shares of stock under division (A) or (C) 60476
of this section does not include any amount that is treated as a 60477
liability under generally accepted accounting principles. 60478

(A) The total value, as shown by the books of the financial 60479
institution, of its capital, surplus, whether earned or unearned, 60480
undivided profits, and reserves shall be determined as prescribed 60481
by section 5733.056 of the Revised Code for tax years 1998 and 60482
thereafter. 60483

(B) The sum of the corporation's net income during the 60484
corporation's taxable year, allocated or apportioned to this state 60485
as prescribed in divisions (B)(1) and (2) of this section, and 60486
subject to sections 5733.052, 5733.053, 5733.057, 5733.058, 60487
5733.059, and 5733.0510 of the Revised Code: 60488

(1) The net income allocated to this state as provided by 60489
section 5733.051 of the Revised Code. 60490

(2) The amount of Ohio apportioned net income from sources 60491
other than those allocated under section 5733.051 of the Revised 60492
Code, which shall be determined by multiplying the corporation's 60493
net income by a fraction. The numerator of the fraction is the sum 60494
of the following products: the property factor multiplied by 60495
twenty, the payroll factor multiplied by twenty, and the sales 60496
factor multiplied by sixty. The denominator of the fraction is one 60497
hundred, provided that the denominator shall be reduced by twenty 60498
if the property factor has a denominator of zero, by twenty if the 60499
payroll factor has a denominator of zero, and by sixty if the 60500

sales factor has a denominator of zero. 60501

The property, payroll, and sales factors shall be determined 60502
as follows: 60503

(a) The property factor is a fraction the numerator of which 60504
is the average value of the corporation's real and tangible 60505
personal property owned or rented, and used in the trade or 60506
business in this state during the taxable year, and the 60507
denominator of which is the average value of all the corporation's 60508
real and tangible personal property owned or rented, and used in 60509
the trade or business everywhere during such year. There shall be 60510
excluded from the numerator and denominator of the property factor 60511
the original cost of all of the following property within Ohio: 60512
property with respect to which a "pollution control facility" 60513
certificate has been issued pursuant to section 5709.21 of the 60514
Revised Code; property with respect to which an "industrial water 60515
pollution control certificate" has been issued pursuant to section 60516
6111.31 of the Revised Code; and property used exclusively during 60517
the taxable year for qualified research. 60518

(i) Property owned by the corporation is valued at its 60519
original cost. Property rented by the corporation is valued at 60520
eight times the net annual rental rate. "Net annual rental rate" 60521
means the annual rental rate paid by the corporation less any 60522
annual rental rate received by the corporation from subrentals. 60523

(ii) The average value of property shall be determined by 60524
averaging the values at the beginning and the end of the taxable 60525
year, but the tax commissioner may require the averaging of 60526
monthly values during the taxable year, if reasonably required to 60527
reflect properly the average value of the corporation's property. 60528

(b) The payroll factor is a fraction the numerator of which 60529
is the total amount paid in this state during the taxable year by 60530
the corporation for compensation, and the denominator of which is 60531

the total compensation paid everywhere by the corporation during 60532
such year. There shall be excluded from the numerator and the 60533
denominator of the payroll factor the total compensation paid in 60534
this state to employees who are primarily engaged in qualified 60535
research. 60536

(i) Compensation means any form of remuneration paid to an 60537
employee for personal services. 60538

(ii) Compensation is paid in this state if: (1) the 60539
recipient's service is performed entirely within this state, (2) 60540
the recipient's service is performed both within and without this 60541
state, but the service performed without this state is incidental 60542
to the recipient's service within this state, (3) some of the 60543
service is performed within this state and either the base of 60544
operations, or if there is no base of operations, the place from 60545
which the service is directed or controlled is within this state, 60546
or the base of operations or the place from which the service is 60547
directed or controlled is not in any state in which some part of 60548
the service is performed, but the recipient's residence is in this 60549
state. 60550

(iii) Compensation is paid in this state to any employee of a 60551
common or contract motor carrier corporation, who performs the 60552
employee's regularly assigned duties on a motor vehicle in more 60553
than one state, in the same ratio by which the mileage traveled by 60554
such employee within the state bears to the total mileage traveled 60555
by such employee everywhere during the taxable year. 60556

(c) Except as provided in section 5733.059 of the Revised 60557
Code, the sales factor is a fraction the numerator of which is the 60558
total sales in this state by the corporation during the taxable 60559
year, and the denominator of which is the total sales by the 60560
corporation everywhere during such year. In determining the 60561
numerator and denominator of the sales factor, receipts from the 60562
sale or other disposal of a capital asset or an asset described in 60563

section 1231 of the Internal Revenue Code shall be eliminated. 60564
Also, in determining the numerator and denominator of the sales 60565
factor, in the case of a reporting corporation owning at least 60566
eighty per cent of the issued and outstanding common stock of one 60567
or more insurance companies or public utilities, except an 60568
electric company and a combined company, and, for tax years 2005 60569
and thereafter, a telephone company, or owning at least 60570
twenty-five per cent of the issued and outstanding common stock of 60571
one or more financial institutions, receipts received by the 60572
reporting corporation from such utilities, insurance companies, 60573
and financial institutions shall be eliminated. 60574

For the purpose of this section and section 5733.03 of the 60575
Revised Code, sales of tangible personal property are in this 60576
state where such property is received in this state by the 60577
purchaser. In the case of delivery of tangible personal property 60578
by common carrier or by other means of transportation, the place 60579
at which such property is ultimately received after all 60580
transportation has been completed shall be considered as the place 60581
at which such property is received by the purchaser. Direct 60582
delivery in this state, other than for purposes of transportation, 60583
to a person or firm designated by a purchaser constitutes delivery 60584
to the purchaser in this state, and direct delivery outside this 60585
state to a person or firm designated by a purchaser does not 60586
constitute delivery to the purchaser in this state, regardless of 60587
where title passes or other conditions of sale. 60588

Except as provided in section 5733.059 of the Revised Code, 60589
sales, other than sales of tangible personal property, are in this 60590
state if either: 60591

(i) The income-producing activity is performed solely in this 60592
state; 60593

(ii) The income-producing activity is performed both within 60594
and without this state and a greater proportion of the 60595

income-producing activity is performed within this state than in 60596
any other state, based on costs of performance. 60597

(d) If the allocation and apportionment provisions of 60598
division (B) of this section do not fairly represent the extent of 60599
the taxpayer's business activity in this state, the taxpayer may 60600
request, which request must be in writing and must accompany the 60601
report, timely filed petition for reassessment, or timely filed 60602
amended report, or the tax commissioner may require, in respect to 60603
all or any part of the taxpayer's allocated or apportioned base, 60604
if reasonable, any one or more of the following: 60605

(i) Separate accounting; 60606

(ii) The exclusion of any one or more of the factors; 60607

(iii) The inclusion of one or more additional factors that 60608
will fairly represent the taxpayer's allocated or apportioned base 60609
in this state. 60610

An alternative method will be effective only with approval by 60611
the tax commissioner. 60612

Nothing in this section shall be construed to extend any 60613
statute of limitations set forth in this chapter. 60614

(e) The tax commissioner may adopt rules providing for 60615
alternative allocation and apportionment methods, and alternative 60616
calculations of a corporation's base, that apply to corporations 60617
engaged in telecommunications. 60618

(C)(1) Subject to divisions (C)(2) and (3) of this section, 60619
the total value, as shown on the books of each corporation that is 60620
not a qualified holding company, of the net book value of a 60621
corporation's assets less the net carrying value of its 60622
liabilities, and excluding from the corporation's assets land 60623
devoted exclusively to agricultural use as of the first Monday of 60624
June in the corporation's taxable year as determined by the county 60625

auditor of the county in which the land is located pursuant to 60626
section 5713.31 of the Revised Code. For the purposes of 60627
determining that total value, any reserves shown on the 60628
corporation's books shall be considered liabilities or contra 60629
assets, except for any reserves that are deemed appropriations of 60630
retained earnings under generally accepted accounting principles. 60631

(2)(a) If, on the last day of the taxpayer's taxable year 60632
preceding the tax year, the taxpayer is a related member to a 60633
corporation that elects to be a qualifying holding company for the 60634
tax year beginning after the last day of the taxpayer's taxable 60635
year, or if, on the last day of the taxpayer's taxable year 60636
preceding the tax year, a corporation that elects to be a 60637
qualifying holding company for the tax year beginning after the 60638
last day of the taxpayer's taxable year is a related member to the 60639
taxpayer, then the taxpayer's total value shall be adjusted by the 60640
qualifying amount. Except as otherwise provided under division 60641
(C)(2)(b) of this section, "qualifying amount" means the amount 60642
that, when added to the taxpayer's total value, and when 60643
subtracted from the net carrying value of the taxpayer's 60644
liabilities computed without regard to division (C)(2) of this 60645
section, or when subtracted from the taxpayer's total value and 60646
when added to the net carrying value of the taxpayer's liabilities 60647
computed without regard to division (C)(2) of this section, 60648
results in the taxpayer's debt-to-equity ratio equaling the 60649
debt-to-equity ratio of the qualifying controlled group on the 60650
last day of the taxable year ending prior to the first day of the 60651
tax year computed on a consolidated basis in accordance with 60652
general accepted accounting principles. For the purposes of 60653
division (C)(2)(a) of this section, the corporation's total value, 60654
after the adjustment required by that division, shall not exceed 60655
the net book value of the corporation's assets. 60656

(b)(i) The amount added to the taxpayer's total value and 60657

subtracted from the net carrying value of the taxpayer's 60658
liabilities shall not exceed the amount of the net carrying value 60659
of the taxpayer's liabilities owed to the taxpayer's related 60660
members. 60661

(ii) A liability owed to the taxpayer's related members 60662
includes, but is not limited to, any amount that the corporation 60663
owes to a person that is not a related member if the corporation's 60664
related member or related members in whole or in part guarantee 60665
any portion or all of that amount, or pledge, hypothecate, 60666
mortgage, or carry out any similar transactions to secure any 60667
portion or all of that amount. 60668

(3) The base upon which the tax is levied under division (C) 60669
of section 5733.06 of the Revised Code shall be computed by 60670
multiplying the amount determined under divisions (C)(1) and (2) 60671
of this section by the fraction determined under divisions 60672
(B)(2)(a) to (c) of this section and, if applicable, divisions 60673
(B)(2)(d)(ii) to (iv) of this section but without regard to 60674
section 5733.052 of the Revised Code. 60675

(4) For purposes of division (C) of this section, "related 60676
member" has the same meaning as in division (A)(6) of section 60677
5733.042 of the Revised Code without regard to division (B) of 60678
that section. 60679

Sec. 5733.051. Subject to section 5733.0510 of the Revised 60680
Code, net income of a corporation subject to the tax imposed by 60681
section 5733.06 of the Revised Code shall be allocated and 60682
apportioned to this state as follows: 60683

(A) Net rents and royalties from real property located in 60684
this state are allocable to this state. 60685

(B) Net rents and royalties from tangible personal property, 60686
to the extent such property is utilized in this state, are 60687

allocable to this state if the taxpayer is otherwise subject to 60688
the tax imposed by section 5733.06 of the Revised Code. 60689

(C) Capital gains and losses from the sale or other 60690
disposition of real property located in this state are allocable 60691
to this state. 60692

(D) Capital gains and losses from the sale or other 60693
disposition of tangible personal property are allocable to this 60694
state if the property had a situs in this state at the time of 60695
sale and the taxpayer is otherwise subject to the tax imposed by 60696
section 5733.06 of the Revised Code. 60697

(E) Capital gains and losses from the sale or other 60698
disposition of intangible property which may produce income 60699
enumerated in division (F) of this section are allocable on the 60700
same basis as set forth in that division. Capital gains and losses 60701
from the sale or other disposition of all other intangible 60702
property are apportionable under division (I) of this section. 60703

(F) Dividends or distributions which are not otherwise 60704
deducted or excluded from net income, other than dividends or 60705
distributions from a domestic international sales corporation, are 60706
allocable to this state in accordance with the ratio of the book 60707
value of the physical assets of the payor of the dividends or 60708
distributions located in this state divided by the book value of 60709
the total physical assets of the payor located everywhere. 60710
Dividends or distributions received from a domestic international 60711
sales corporation, or from a payor the location of whose physical 60712
assets is unavailable to the taxpayer, are apportionable under 60713
division (I) of this section. 60714

(G) Patent and copyright royalties and technical assistance 60715
fees, not representing the principal source of gross receipts of 60716
the taxpayer, are allocable to this state to the extent that the 60717
activity of the payor thereof giving rise to the payment takes 60718

place in this state. If the location of the payor's activity is 60719
unavailable to the taxpayer, such royalties and fees are 60720
apportionable under division (I) of this section. 60721

(H) The following amounts ~~described in division (B)(5) of~~ 60722
~~section 5747.20 of the Revised Code~~ are allocable to this state: 60723

(1)(a) All lottery prize awards paid by the state lottery 60724
commission pursuant to Chapter 3770. of the Revised Code. 60725

(b) All earnings, profit, income, and gain from the sale, 60726
exchange, or other disposition of lottery prize awards paid or to 60727
be paid to any person by the state lottery commission pursuant to 60728
Chapter 3770. of the Revised Code. 60729

(c) All earnings, profit, income, and gain from the direct or 60730
indirect ownership of lottery prize awards paid or to be paid to 60731
any person by the state lottery commission pursuant to Chapter 60732
3770. of the Revised Code. 60733

(d) All earnings, profit, income, and gain from the direct or 60734
indirect interest in any right in or to any lottery prize awards 60735
paid or to be paid to any person by the state lottery commission 60736
pursuant to Chapter 3770. of the Revised Code. 60737

(2) Lottery prize awards and related earnings, profit, 60738
income, or gain with regard to lotteries sponsored by persons or 60739
agencies outside this state are allocable outside this state. 60740

(I) Any other net income, from sources other than those 60741
enumerated in divisions (A) to (H) of this section, is 60742
apportionable to this state on the basis of the mechanism provided 60743
in division (B)(2) of section 5733.05 of the Revised Code. 60744

Sec. 5733.056. (A) As used in this section: 60745

(1) "Billing address" means the address where any notice, 60746
statement, or bill relating to a customer's account is mailed, as 60747
indicated in the books and records of the taxpayer on the first 60748

day of the taxable year or on such later date in the taxable year 60749
when the customer relationship began. 60750

(2) "Borrower or credit card holder located in this state" 60751
means: 60752

(a) A borrower, other than a credit card holder, that is 60753
engaged in a trade or business and maintains its commercial 60754
domicile in this state; or 60755

(b) A borrower that is not engaged in a trade or business, or 60756
a credit card holder, whose billing address is in this state. 60757

(3) "Branch" means a "domestic branch" as defined in section 60758
3 of the "Federal Deposit Insurance Act," 64 Stat. 873, 12 U.S.C. 60759
1813(o), as amended. 60760

(4) "Compensation" means wages, salaries, commissions, and 60761
any other form of remuneration paid to employees for personal 60762
services that are included in such employee's gross income under 60763
the Internal Revenue Code. In the case of employees not subject to 60764
the Internal Revenue Code, such as those employed in foreign 60765
countries, the determination of whether such payments would 60766
constitute gross income to such employees under the Internal 60767
Revenue Code shall be made as though such employees were subject 60768
to the Internal Revenue Code. 60769

(5) "Credit card" means a credit, travel, or entertainment 60770
card. 60771

(6) "Credit card issuer's reimbursement fee" means the fee a 60772
taxpayer receives from a merchant's bank because one of the 60773
persons to whom the taxpayer has issued a credit card has charged 60774
merchandise or services to the credit card. 60775

(7) "Deposits" has the meaning given in section 3 of the 60776
"Federal Deposit Insurance Act," 64 Stat. 873, 12 U.S.C. 1813(1), 60777
as amended. 60778

(8) "Employee" means, with respect to a particular taxpayer, any individual who under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

(9) "Gross rents" means the actual sum of money or other consideration payable for the use or possession of property. "Gross rents" includes:

(a) Any amount payable for the use or possession of real property or tangible personal property whether designated as a fixed sum of money or as a percentage of receipts, profits, or otherwise;

(b) Any amount payable as additional rent or in lieu of rent, such as interest, taxes, insurance, repairs, or any other amount required to be paid by the terms of a lease or other arrangement; and

(c) A proportionate part of the cost of any improvement to real property made by or on behalf of the taxpayer which reverts to the owner or lessor upon termination of a lease or other 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 or other mortgage-backed or asset-backed security; and other similar items.

(11) "Loan secured by real property" means that fifty per cent or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.

(12) "Merchant discount" means the fee, or negotiated discount, charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the card holder.

(13) "Participation" means an extension of credit in which an

undivided ownership interest is held on a pro rata basis in a 60840
single loan or pool of loans and related collateral. In a loan 60841
participation, the credit originator initially makes the loan and 60842
then subsequently resells all or a portion of it to other lenders. 60843
The participation may or may not be known to the borrower. 60844

(14) "Principal base of operations" with respect to 60845
transportation property means the place of more or less permanent 60846
nature from which the property is regularly directed or 60847
controlled. With respect to an employee, the "principal base of 60848
operations" means the place of more or less permanent nature from 60849
which the employee regularly (a) starts work and to which the 60850
employee customarily returns in order to receive instructions from 60851
the employer or (b) communicates with the employee's customers or 60852
other persons or (c) performs any other functions necessary to the 60853
exercise of the trade or profession at some other point or points. 60854

(15) "Qualified institution" means a financial institution 60855
that on or after June 1, 1997: 60856

(a)(i) Has consummated one or more approved transactions with 60857
insured banks with different home states that would qualify under 60858
section 102 of the "Riegle-Neal Interstate Banking and Branching 60859
Efficiency Act of 1994," Public Law 103-328, 108 Stat. 2338; 60860

(ii) Is a federal savings association or federal savings bank 60861
that has consummated one or more interstate acquisitions that 60862
result in a financial institution that has branches in more than 60863
one state; or 60864

(iii) Has consummated one or more approved interstate 60865
acquisitions under authority of Title XI of the Revised Code that 60866
result in a financial institution that has branches in more than 60867
one state; and 60868

(b) Has at least nine per cent of its deposits in this state 60869
as of the last day of June prior to the beginning of the tax year. 60870

(16) "Real property owned" and "tangible personal property owned" mean real and tangible personal property, respectively, on which the taxpayer may claim depreciation for federal income tax purposes, or to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes, or could claim depreciation if subject to federal income tax. Real and tangible personal property do not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

(17) "Regular place of business" means an office at which the taxpayer carries on its business in a regular and systematic manner and which is continuously maintained, occupied, and used by employees of the taxpayer.

(18) "State" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico, or any territory or possession of the United States.

(19) "Syndication" means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

(20) "Transportation property" means vehicles and vessels capable of moving under their own power, such as aircraft, trains, water vessels and motor vehicles, as well as any equipment or containers attached to such property, such as rolling stock, barges, trailers, or the like.

(B) The annual financial institution report determines the value of the issued and outstanding shares of stock of the taxpayer, and is the base or measure of the franchise tax liability. Such determination shall be made as of the date shown by the report to have been the beginning of the financial institution's annual accounting period that includes the first day

of January of the tax year. For purposes of this section, division 60902
(A) of section 5733.05, and division (D) of section 5733.06 of the 60903
Revised Code, the value of the issued and outstanding shares of 60904
stock of the financial institution shall include the total value, 60905
as shown by the books of the financial institution, of its 60906
capital, surplus, whether earned or unearned, undivided profits, 60907
and reserves, but exclusive of: 60908

(1) Reserves for accounts receivable, depreciation, 60909
depletion, and any other valuation reserves with respect to 60910
specific assets; 60911

(2) Taxes due and payable during the year for which such 60912
report was made; 60913

(3) Voting stock and participation certificates in 60914
corporations chartered pursuant to the "Farm Credit Act of 1971," 60915
85 Stat. 597, 12 U.S.C. 2091, as amended; 60916

(4) Good will, appreciation, and abandoned property as set up 60917
in the annual report of the financial institution, provided a 60918
certified balance sheet of the company is made available upon the 60919
request of the tax commissioner. Such balance sheet shall not be a 60920
part of the public records, but shall be a confidential report for 60921
use of the tax commissioner only. 60922

(5) A portion of the value of the issued and outstanding 60923
shares of stock of such financial institution equal to the amount 60924
obtained by multiplying such value by the quotient obtained by: 60925

(a) Dividing (1) the amount of the financial institution's 60926
assets, as shown on its books, represented by investments in the 60927
capital stock and indebtedness of public utilities, except 60928
electric companies and combined companies, and, for tax years 2005 60929
and thereafter, telephone companies, of which at least eighty per 60930
cent of the utility's issued and outstanding common stock is owned 60931
by the financial institution by (2) the total assets of such 60932

financial institution as shown on its books; 60933

(b) Dividing (1) the amount of the financial institution's 60934
assets, as shown on its books, represented by investments in the 60935
capital stock and indebtedness of insurance companies of which at 60936
least eighty per cent of the insurance company's issued and 60937
outstanding common stock is owned by the financial institution by 60938
(2) the total assets of such financial institution as shown on its 60939
books; 60940

(c) Dividing (1) the amount of the financial institution's 60941
assets, as shown on its books, represented by investments in the 60942
capital stock and indebtedness of other financial institutions of 60943
which at least twenty-five per cent of the other financial 60944
institution's issued and outstanding common stock is owned by the 60945
financial institution by (2) the total assets of the financial 60946
institution as shown on its books. Division (B)(5)(c) of this 60947
section applies only with respect to such other financial 60948
institutions that for the tax year immediately following the 60949
taxpayer's taxable year will pay the tax imposed by division (D) 60950
of section 5733.06 of the Revised Code. 60951

(6) Land that has been determined pursuant to section 5713.31 60952
of the Revised Code by the county auditor of the county in which 60953
the land is located to be devoted exclusively to agricultural use 60954
as of the first Monday of June in the financial institution's 60955
taxable year. 60956

(7) Property within this state used exclusively during the 60957
taxable year for qualified research as defined in section 5733.05 60958
of the Revised Code. 60959

(C) The base upon which the tax levied under division (D) of 60960
section 5733.06 of the Revised Code shall be computed by 60961
multiplying the value of a financial institution's issued and 60962
outstanding shares of stock as determined in division (B) of this 60963

section by a fraction. The numerator of the fraction is the sum of 60964
the following: the property factor multiplied by fifteen, the 60965
payroll factor multiplied by fifteen, and the sales factor 60966
multiplied by seventy. The denominator of the fraction is one 60967
hundred, provided that the denominator shall be reduced by fifteen 60968
if the property factor has a denominator of zero, by fifteen if 60969
the payroll factor has a denominator of zero, and by seventy if 60970
the sales factor has a denominator of zero. 60971

(D) A financial institution shall calculate the property 60972
factor as follows: 60973

(1) The property factor is a fraction, the numerator of which 60974
is the average value of real property and tangible personal 60975
property rented to the taxpayer that is located or used within 60976
this state during the taxable year, the average value of real and 60977
tangible personal property owned by the taxpayer that is located 60978
or used within this state during the taxable year, and the average 60979
value of the taxpayer's loans and credit card receivables that are 60980
located within this state during the taxable year; and the 60981
denominator of which is the average value of all such property 60982
located or used within and without this state during the taxable 60983
year. 60984

(2)(a) The value of real property and tangible personal 60985
property owned by the taxpayer is the original cost or other basis 60986
of such property for federal income tax purposes without regard to 60987
depletion, depreciation, or amortization. 60988

(b) Loans are valued at their outstanding principal balance, 60989
without regard to any reserve for bad debts. If a loan is 60990
charged-off in whole or in part for federal income tax purposes, 60991
the portion of the loan charged-off is not outstanding. A 60992
specifically allocated reserve established pursuant to financial 60993
accounting guidelines which is treated as charged-off for federal 60994
income tax purposes shall be treated as charged-off for purposes 60995

of this section. 60996

(c) Credit card receivables are valued at their outstanding 60997
principal balance, without regard to any reserve for bad debts. If 60998
a credit card receivable is charged-off in whole or in part for 60999
federal income tax purposes, the portion of the receivable 61000
charged-off is not outstanding. 61001

(3) The average value of property owned by the taxpayer is 61002
computed on an annual basis by adding the value of the property on 61003
the first day of the taxable year and the value on the last day of 61004
the taxable year and dividing the sum by two. If averaging on this 61005
basis does not properly reflect average value, the tax 61006
commissioner may require averaging on a more frequent basis. The 61007
taxpayer may elect to average on a more frequent basis. When 61008
averaging on a more frequent basis is required by the tax 61009
commissioner or is elected by the taxpayer, the same method of 61010
valuation must be used consistently by the taxpayer with respect 61011
to property within and without this state and on all subsequent 61012
returns unless the taxpayer receives prior permission from the tax 61013
commissioner or the tax commissioner requires a different method 61014
of determining value. 61015

(4)(a) The average value of real property and tangible 61016
personal property that the taxpayer has rented from another and is 61017
not treated as property owned by the taxpayer for federal income 61018
tax purposes, shall be determined annually by multiplying the 61019
gross rents payable during the taxable year by eight. 61020

(b) Where the use of the general method described in division 61021
(D)(4)(a) of this section results in inaccurate valuations of 61022
rented property, any other method which properly reflects the 61023
value may be adopted by the tax commissioner or by the taxpayer 61024
when approved in writing by the tax commissioner. Once approved, 61025
such other method of valuation must be used on all subsequent 61026
returns unless the taxpayer receives prior approval from the tax 61027

commissioner or the tax commissioner requires a different method 61028
of valuation. 61029

(5)(a) Except as described in division (D)(5)(b) of this 61030
section, real property and tangible personal property owned by or 61031
rented to the taxpayer is considered to be located within this 61032
state if it is physically located, situated, or used within this 61033
state. 61034

(b) Transportation property is included in the numerator of 61035
the property factor to the extent that the property is used in 61036
this state. The extent an aircraft will be deemed to be used in 61037
this state and the amount of value that is to be included in the 61038
numerator of this state's property factor is determined by 61039
multiplying the average value of the aircraft by a fraction, the 61040
numerator of which is the number of landings of the aircraft in 61041
this state and the denominator of which is the total number of 61042
landings of the aircraft everywhere. If the extent of the use of 61043
any transportation property within this state cannot be 61044
determined, then the property will be deemed to be used wholly in 61045
the state in which the property has its principal base of 61046
operations. A motor vehicle will be deemed to be used wholly in 61047
the state in which it is registered. 61048

(6)(a)(i) A loan, other than a loan or advance described in 61049
division (D)(6)(d) of this section, is considered to be located 61050
within this state if it is properly assigned to a regular place of 61051
business of the taxpayer within this state. 61052

(ii) A loan is properly assigned to the regular place of 61053
business with which it has a preponderance of substantive 61054
contacts. A loan assigned by the taxpayer to a regular place of 61055
business without the state shall be presumed to have been properly 61056
assigned if: 61057

(I) The taxpayer has assigned, in the regular course of its 61058

business, such loan on its records to a regular place of business 61059
consistent with federal or state regulatory requirements; 61060

(II) Such assignment on its records is based upon substantive 61061
contacts of the load to such regular place of business; and 61062

(III) The taxpayer uses the records reflecting assignment of 61063
loans for the filing of all state and local tax returns for which 61064
an assignment of loans to a regular place of business is required. 61065

(iii) The presumption of proper assignment of a loan provided 61066
in division (D)(6)(a)(ii) of this section may be rebutted upon a 61067
showing by the tax commissioner, supported by a preponderance of 61068
the evidence, that the preponderance of substantive contacts 61069
regarding such loan did not occur at the regular place of business 61070
to which it was assigned on the taxpayer's records. When such 61071
presumption has been rebutted, the loan shall then be located 61072
within this state if (1) the taxpayer had a regular place of 61073
business within this state at the time the loan was made; and (2) 61074
the taxpayer fails to show, by a preponderance of the evidence, 61075
that the preponderance of substantive contacts regarding such loan 61076
did not occur within this state. 61077

(b) In the case of a loan which is assigned by the taxpayer 61078
to a place without this state which is not a regular place of 61079
business, it shall be presumed, subject to rebuttal by the 61080
taxpayer on a showing supported by the preponderance of evidence, 61081
that the preponderance of substantive contacts regarding the loan 61082
occurred within this state if, at the time the loan was made the 61083
taxpayer's commercial domicile was within this state. 61084

(c) To determine the state in which the preponderance of 61085
substantive contacts relating to a loan have occurred, the facts 61086
and circumstances regarding the loan at issue shall be reviewed on 61087
a case-by-case basis and consideration shall be given to such 61088
activities as the solicitation, investigation, negotiation, 61089

approval, and administration of the loan. The terms 61090
"solicitation," "investigation," "negotiation," "approval," and 61091
"administration" are defined as follows: 61092

(i) "Solicitation" is either active or passive. Active 61093
solicitation occurs when an employee of the taxpayer initiates the 61094
contact with the customer. Such activity is located at the regular 61095
place of business which the taxpayer's employee is regularly 61096
connected with or working out of, regardless of where the services 61097
of such employee were actually performed. Passive solicitation 61098
occurs when the customer initiates the contact with the taxpayer. 61099
If the customer's initial contact was not at a regular place of 61100
business of the taxpayer, the regular place of business, if any, 61101
where the passive solicitation occurred is determined by the facts 61102
in each case. 61103

(ii) "Investigation" is the procedure whereby employees of 61104
the taxpayer determine the creditworthiness of the customer as 61105
well as the degree of risk involved in making a particular 61106
agreement. Such activity is located at the regular place of 61107
business which the taxpayer's employees are regularly connected 61108
with or working out of, regardless of where the services of such 61109
employees were actually performed. 61110

(iii) Negotiation is the procedure whereby employees of the 61111
taxpayer and its customer determine the terms of the agreement, 61112
such as the amount, duration, interest rate, frequency of 61113
repayment, currency denomination, and security required. Such 61114
activity is located at the regular place of business to which the 61115
taxpayer's employees are regularly connected or working from, 61116
regardless of where the services of such employees were actually 61117
performed. 61118

(iv) "Approval" is the procedure whereby employees or the 61119
board of directors of the taxpayer make the final determination 61120
whether to enter into the agreement. Such activity is located at 61121

the regular place of business to which the taxpayer's employees 61122
are regularly connected or working from, regardless of where the 61123
services of such employees were actually performed. If the board 61124
of directors makes the final determination, such activity is 61125
located at the commercial domicile of the taxpayer. 61126

(v) "Administration" is the process of managing the account. 61127
This process includes bookkeeping, collecting the payments, 61128
corresponding with the customer, reporting to management regarding 61129
the status of the agreement, and proceeding against the borrower 61130
or the security interest if the borrower is in default. Such 61131
activity is located at the regular place of business that oversees 61132
this activity. 61133

(d) A loan or advance to a subsidiary corporation at least 61134
fifty-one per cent of whose common stock is owned by the financial 61135
institution shall be allocated in and out of the state by the 61136
application of a ratio whose numerator is the sum of the net book 61137
value of the subsidiary's real property owned in this state and 61138
the subsidiary's tangible personal property owned in this state 61139
and whose denominator is the sum of the subsidiary's real property 61140
owned wherever located and the subsidiary's tangible personal 61141
property owned wherever located. For purposes of calculating this 61142
ratio, the taxpayer shall determine net book value in accordance 61143
with generally accepted accounting principles. If the subsidiary 61144
corporation owns at least fifty-one per cent of the common stock 61145
of another corporation, the ratio shall be calculated by including 61146
the other corporation's real property and tangible personal 61147
property. The calculation of the ratio applies with respect to all 61148
lower-tiered subsidiaries, provided that the immediate parent 61149
corporation of the subsidiary owns at least fifty-one per cent of 61150
the common stock of that subsidiary. 61151

(7) For purposes of determining the location of credit card 61152
receivables, credit card receivables shall be treated as loans and 61153

shall be subject to division (D)(6) of this section. 61154

(8) A loan that has been properly assigned to a state shall, 61155
absent any change of material fact, remain assigned to that state 61156
for the length of the original term of the loan. Thereafter, the 61157
loan may be properly assigned to another state if the loan has a 61158
preponderance of substantive contact to a regular place of 61159
business there. 61160

(E) A financial institution shall calculate the payroll 61161
factor as follows: 61162

(1) The payroll factor is a fraction, the numerator of which 61163
is the total amount paid in this state during the taxable year by 61164
the taxpayer for compensation, and the denominator of which is the 61165
total compensation paid both within and without this state during 61166
the taxable year. 61167

(2) Compensation is paid in this state if any one of the 61168
following tests, applied consecutively, is met: 61169

(a) The employee's services are performed entirely within 61170
this state. 61171

(b) The employee's services are performed both within and 61172
without this state, but the service performed without this state 61173
is incidental to the employee's service within this state. The 61174
term "incidental" means any service which is temporary or 61175
transitory in nature, or which is rendered in connection with an 61176
isolated transaction. 61177

(c) The employee's services are performed both within and 61178
without this state, and: 61179

(i) The employee's principal base of operations is within 61180
this state; or 61181

(ii) There is no principal base of operations in any state in 61182
which some part of the services are performed, but the place from 61183

which the services are directed or controlled is in this state; or 61184

(iii) The principal base of operations and the place from 61185
which the services are directed or controlled are not in any state 61186
in which some part of the service is performed but the employee's 61187
residence is in this state. 61188

(F) A financial institution shall calculate the sales factor 61189
as follows: 61190

(1) The sales factor is a fraction, the numerator of which is 61191
the receipts of the taxpayer in this state during the taxable year 61192
and the denominator of which is the receipts of the taxpayer 61193
within and without this state during the taxable year. The method 61194
of calculating receipts for purposes of the denominator is the 61195
same as the method used in determining receipts for purposes of 61196
the numerator. 61197

(2) The numerator of the sales factor includes receipts from 61198
the lease or rental of real property owned by the taxpayer if the 61199
property is located within this state, or receipts from the 61200
sublease of real property if the property is located within this 61201
state. 61202

(3)(a) Except as described in division (F)(3)(b) of this 61203
section the numerator of the sales factor includes receipts from 61204
the lease or rental of tangible personal property owned by the 61205
taxpayer if the property is located within this state when it is 61206
first placed in service by the lessee. 61207

(b) Receipts from the lease or rental of transportation 61208
property owned by the taxpayer are included in the numerator of 61209
the sales factor to the extent that the property is used in this 61210
state. The extent an aircraft will be deemed to be used in this 61211
state and the amount of receipts that is to be included in the 61212
numerator of this state's sales factor is determined by 61213
multiplying all the receipts from the lease or rental of the 61214

aircraft by a fraction, the numerator of which is the number of 61215
landings of the aircraft in this state and the denominator of 61216
which is the total number of landings of the aircraft. If the 61217
extent of the use of any transportation property within this state 61218
cannot be determined, then the property will be deemed to be used 61219
wholly in the state in which the property has its principal base 61220
of operations. A motor vehicle will be deemed to be used wholly in 61221
the state in which it is registered. 61222

(4)(a) The numerator of the sales factor includes interest 61223
and fees or penalties in the nature of interest from loans secured 61224
by real property if the property is located within this state. If 61225
the property is located both within this state and one or more 61226
other states, the receipts described in this paragraph are 61227
included in the numerator of the sales factor if more than fifty 61228
per cent of the fair market value of the real property is located 61229
within this state. If more than fifty per cent of the fair market 61230
value of the real property is not located within any one state, 61231
then the receipts described in this paragraph shall be included in 61232
the numerator of the sales factor if the borrower is located in 61233
this state. 61234

(b) The determination of whether the real property securing a 61235
loan is located within this state shall be made as of the time the 61236
original agreement was made and any and all subsequent 61237
substitutions of collateral shall be disregarded. 61238

(5) The numerator of the sales factor includes interest and 61239
fees or penalties in the nature of interest from loans not secured 61240
by real property if the borrower is located in this state. 61241

(6) The numerator of the sales factor includes net gains from 61242
the sale of loans. Net gains from the sale of loans includes 61243
income recorded under the coupon stripping rules of section 1286 61244
of the Internal Revenue Code. 61245

(a) The amount of net gains, but not less than zero, from the sale of loans secured by real property included in the numerator is determined by multiplying such net gains by a fraction the numerator of which is the amount included in the numerator of the sales factor pursuant to division (F)(4) of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(b) The amount of net gains, but not less than zero, from the sale of loans not secured by real property included in the numerator is determined by multiplying such net gains by a fraction the numerator of which is the amount included in the numerator of the sales factor pursuant to division (F)(5) of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(7) The numerator of the sales factor includes interest and fees or penalties in the nature of interest from credit card receivables and receipts from fees charged to card holders, such as annual fees, if the billing address of the card holder is in this state.

(8) The numerator of the sales factor includes net gains, but not less than zero, from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the sales factor pursuant to division (F)(7) of this section and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(9) The numerator of the sales factor includes all credit card issuer's reimbursement fees multiplied by a fraction, the

numerator of which is the amount included in the numerator of the 61277
sales factor pursuant to division (F)(7) of this section and the 61278
denominator of which is the taxpayer's total amount of interest 61279
and fees or penalties in the nature of interest from credit card 61280
receivables and fees charged to card holders. 61281

(10) The numerator of the sales factor includes receipts from 61282
merchant discount if the commercial domicile of the merchant is in 61283
this state. Such receipts shall be computed net of any card holder 61284
charge backs, but shall not be reduced by any interchange 61285
transaction fees or by any issuer's reimbursement fees paid to 61286
another for charges made by its card holders. 61287

(11)(a)(i) The numerator of the sales factor includes loan 61288
servicing fees derived from loans secured by real property 61289
multiplied by a fraction the numerator of which is the amount 61290
included in the numerator of the sales factor pursuant to division 61291
(F)(4) of this section and the denominator of which is the total 61292
amount of interest and fees or penalties in the nature of interest 61293
from loans secured by real property. 61294

(ii) The numerator of the sales factor includes loan 61295
servicing fees derived from loans not secured by real property 61296
multiplied by a fraction the numerator of which is the amount 61297
included in the numerator of the sales factor pursuant to division 61298
(F)(5) of this section and the denominator of which is the total 61299
amount of interest and fees or penalties in the nature of interest 61300
from loans not secured by real property. 61301

(b) In circumstances in which the taxpayer receives loan 61302
servicing fees for servicing either the secured or the unsecured 61303
loans of another, the numerator of the sales factor shall include 61304
such fees if the borrower is located in this state. 61305

(12) The numerator of the sales factor includes receipts from 61306
services not otherwise apportioned under this section if the 61307

service is performed in this state. If the service is performed 61308
both within and without this state, the numerator of the sales 61309
factor includes receipts from services not otherwise apportioned 61310
under this section, if a greater proportion of the income 61311
producing activity is performed in this state based on cost of 61312
performance. 61313

(13)(a) Interest, dividends, net gains, but not less than 61314
zero, and other income from investment assets and activities and 61315
from trading assets and activities shall be included in the sales 61316
factor. Investment assets and activities and trading assets and 61317
activities include but are not limited to: investment securities; 61318
trading account assets; federal funds; securities purchased and 61319
sold under agreements to resell or repurchase; options; futures 61320
contracts; forward contracts; notional principal contracts such as 61321
swaps; equities; and foreign currency transactions. With respect 61322
to the investment and trading assets and activities described in 61323
divisions (F)(13)(a)(i) and (ii) of this section, the sales factor 61324
shall include the amounts described in such divisions. 61325

(i) The sales factor shall include the amount by which 61326
interest from federal funds sold and securities purchased under 61327
resale agreements exceeds interest expense on federal funds 61328
purchased and securities sold under repurchase agreements. 61329

(ii) The sales factor shall include the amount by which 61330
interest, dividends, gains, and other income from trading assets 61331
and activities, including, but not limited to, assets and 61332
activities in the matched book, in the arbitrage book, and foreign 61333
currency transactions, exceed amounts paid in lieu of interest, 61334
amounts paid in lieu of dividends, and losses from such assets and 61335
activities. 61336

(b) The numerator of the sales factor includes interest, 61337
dividends, net gains, but not less than zero, and other income 61338
from investment assets and activities and from trading assets and 61339

activities described in division (F)(13)(a) of this section that 61340
are attributable to this state. 61341

(i) The amount of interest, other than interest described in 61342
division (F)(13)(b)(iv) of this section, dividends, other than 61343
dividends described in that division, net gains, but not less than 61344
zero, and other income from investment assets and activities in 61345
the investment account to be attributed to this state and included 61346
in the numerator is determined by multiplying all such income from 61347
such assets and activities by a fraction, the numerator of which 61348
is the average value of such assets which are properly assigned to 61349
a regular place of business of the taxpayer within this state and 61350
the denominator of which is the average value of all such assets. 61351

(ii) The amount of interest from federal funds sold and 61352
purchased and from securities purchased under resale agreements 61353
and securities sold under repurchase agreements attributable to 61354
this state and included in the numerator is determined by 61355
multiplying the amount described in division (F)(13)(a)(i) of this 61356
section from such funds and such securities by a fraction, the 61357
numerator of which is the average value of federal funds sold and 61358
securities purchased under agreements to resell which are properly 61359
assigned to a regular place of business of the taxpayer within 61360
this state and the denominator of which is the average value of 61361
all such funds and such securities. 61362

(iii) The amount of interest, dividends, gains, and other 61363
income from trading assets and activities, including but not 61364
limited to assets and activities in the matched book, in the 61365
arbitrage book, and foreign currency transaction, but excluding 61366
amounts described in division (F)(13)(b)(i) or (ii) of this 61367
section, attributable to this state and included in the numerator 61368
is determined by multiplying the amount described in division 61369
(F)(13)(a)(ii) of this section by a fraction, the numerator of 61370
which is the average value of such trading assets which are 61371

properly assigned to a regular place of business of the taxpayer 61372
within this state and the denominator of which is the average 61373
value of all such assets. 61374

(iv) The amount of dividends received on the capital stock 61375
of, and the amount of interest received from loans and advances 61376
to, subsidiary corporations at least fifty-one per cent of whose 61377
common stock is owned by the reporting financial institution shall 61378
be allocated in and out of this state by the application of a 61379
ratio whose numerator is the sum of the net book value of the 61380
payor's real property owned in this state and the payor's tangible 61381
personal property owned in this state and whose denominator is the 61382
sum of the net book value of the payor's real property owned 61383
wherever located and the payor's tangible personal property owned 61384
wherever located. For purposes of calculating this ratio, the 61385
taxpayer shall determine net book value in accordance with 61386
generally accepted accounting principles. 61387

(v) For purposes of this division, average value shall be 61388
determined using the rules for determining the average value of 61389
tangible personal property set forth in division (D)(2) and (3) of 61390
this section. 61391

(c) In lieu of using the method set forth in division 61392
(F)(13)(b) of this section, the taxpayer may elect, or the tax 61393
commissioner may require in order to fairly represent the business 61394
activity of the taxpayer in this state, the use of the method set 61395
forth in division (F)(13)(c) of this section. 61396

(i) The amount of interest, other than interest described in 61397
division (F)(13)(b)(iv) of this section, dividends, other than 61398
dividends described in that division, net gains, but not less than 61399
zero, and other income from investment assets and activities in 61400
the investment account to be attributed to this state and included 61401
in the numerator is determined by multiplying all such income from 61402
such assets and activities by a fraction, the numerator of which 61403

is the gross income from such assets and activities which are 61404
properly assigned to a regular place of business of the taxpayer 61405
within this state, and the denominator of which is the gross 61406
income from all such assets and activities. 61407

(ii) The amount of interest from federal funds sold and 61408
purchased and from securities purchased under resale agreements 61409
and securities sold under repurchase agreements attributable to 61410
this state and included in the numerator is determined by 61411
multiplying the amount described in division (F)(13)(a)(i) of this 61412
section from such funds and such securities by a fraction, the 61413
numerator of which is the gross income from such funds and such 61414
securities which are properly assigned to a regular place of 61415
business of the taxpayer within this state and the denominator of 61416
which is the gross income from all such funds and such securities. 61417

(iii) The amount of interest, dividends, gains, and other 61418
income from trading assets and activities, including, but not 61419
limited to, assets and activities in the matched book, in the 61420
arbitrage book, and foreign currency transactions, but excluding 61421
amounts described in division (F)(13)(a)(i) or (ii) of this 61422
section, attributable to this state and included in the numerator, 61423
is determined by multiplying the amount described in division 61424
(F)(13)(a)(ii) of this section by a fraction, the numerator of 61425
which is the gross income from such trading assets and activities 61426
which are properly assigned to a regular place of business of the 61427
taxpayer within this state and the denominator of which is the 61428
gross income from all such assets and activities. 61429

(iv) The amount of dividends received on the capital stock 61430
of, and the amount of interest received from loans and advances 61431
to, subsidiary corporations at least fifty-one per cent of whose 61432
common stock is owned by the reporting financial institution shall 61433
be allocated in and out of this state by the application of a 61434
ratio whose numerator is the sum of the net book value of the 61435

payor's real property owned in this state and the payor's tangible 61436
personal property owned in this state and whose denominator is the 61437
sum of the payor's real property owned wherever located and the 61438
payor's tangible personal property owned wherever located. For 61439
purposes of calculating this ratio, the taxpayer shall determine 61440
net book value in accordance with generally accepted accounting 61441
principles. 61442

(d) If the taxpayer elects or is required by the tax 61443
commissioner to use the method set forth in division (F)(13)(c) of 61444
this section, it shall use this method on all subsequent returns 61445
unless the taxpayer receives prior permission from the tax 61446
commissioner to use or the tax commissioner requires a different 61447
method. 61448

(e) The taxpayer shall have the burden of proving that an 61449
investment asset or activity or trading asset or activity was 61450
properly assigned to a regular place of business outside of this 61451
state by demonstrating that the day-to-day decisions regarding the 61452
asset or activity occurred at a regular place of business outside 61453
this state. Where the day-to-day decisions regarding an investment 61454
asset or activity or trading asset or activity occur at more than 61455
one regular place of business and one such regular place of 61456
business is in this state and one such regular place of business 61457
is outside this state such asset or activity shall be considered 61458
to be located at the regular place of business of the taxpayer 61459
where the investment or trading policies or guidelines with 61460
respect to the asset or activity are established. Unless the 61461
taxpayer demonstrates to the contrary, such policies and 61462
guidelines shall be presumed to be established at the commercial 61463
domicile of the taxpayer. 61464

(14) The numerator of the sales factor includes all other 61465
receipts if either: 61466

(a) The income-producing activity is performed solely in this 61467

state; or 61468

(b) The income-producing activity is performed both within 61469
and without this state and a greater proportion of the 61470
income-producing activity is performed within this state than in 61471
any other state, based on costs of performance. 61472

(G) A qualified institution may calculate the base upon which 61473
the fee provided for in division (D) of section 5733.06 of the 61474
Revised Code is determined for each tax year by multiplying the 61475
value of its issued and outstanding shares of stock determined 61476
under division (B) of this section by a single deposits fraction 61477
whose numerator is the deposits assigned to branches in this state 61478
and whose denominator is the deposits assigned to branches 61479
everywhere. Deposits shall be assigned to branches in the same 61480
manner in which the assignment is made for regulatory purposes. If 61481
the base calculated under this division is less than the base 61482
calculated under division (C) of this section, then the qualifying 61483
institution may elect to substitute the base calculated under this 61484
division for the base calculated under division (C) of this 61485
section. Such election may be made annually for each tax year on 61486
the corporate report. The election need not accompany the report; 61487
rather, the election may accompany a subsequently filed but timely 61488
application for refund, a subsequently filed but timely amended 61489
report, or a subsequently filed but timely petition for 61490
reassessment. The election is not irrevocable and it applies only 61491
to the specified tax year. Nothing in this division shall be 61492
construed to extend any statute of limitations set forth in this 61493
chapter. 61494

(H) If the apportionment provisions of this section do not 61495
fairly represent the extent of the taxpayer's business activity in 61496
this state, the taxpayer may petition for or the tax commissioner 61497
may require, in respect to all or any part of the taxpayer's 61498
business activity, if reasonable: 61499

(1) Separate accounting;	61500
(2) The exclusion of any one or more of the factors;	61501
(3) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or	61502 61503 61504
(4) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's value.	61505 61506
Sec. 5733.059. (A) As used in this section:	61507
(1) "Customer" means a person who purchases electricity for consumption either by that person or by the person's related member and the electricity is not for resale directly or indirectly to any person other than a related member.	61508 61509 61510 61511
(2) "Related member" has the same meaning as in division (A)(6) of section 5733.042 of the Revised Code without regard to division (B) of that section.	61512 61513 61514
(B) Except as provided in division (C) of this section, this division applies only to sales of electric transmission and distribution services. For purposes of sections 5733.05 and 5747.21 of the Revised Code:	61515 61516 61517 61518
(1) Sales of the transmission of electricity are in this state in proportion to the ratio of the wire mileage of the taxpayer's transmission lines located in this state divided by the wire mileage of the taxpayer's transmission lines located everywhere. Transmission wire mileage shall be weighted for the voltage capacity of each line.	61519 61520 61521 61522 61523 61524
(2) Sales of the distribution of electricity are in this state in proportion to the ratio of the wire mileage of the taxpayer's distribution lines located in this state divided by the wire mileage of the taxpayer's distribution lines located	61525 61526 61527 61528

everywhere. Distribution wire mileage shall not be weighted for 61529
the voltage capacity of each line. 61530

(C) This division applies only to a person that has 61531
transmission or distribution lines in this state. If a contract 61532
for the sale of electricity includes the seller's or the seller's 61533
related member's obligation to transmit or distribute the 61534
electricity and if the sales contract separately identifies the 61535
price charged for the transmission or distribution of electricity, 61536
the price charged for the transmission and distribution of 61537
electricity shall be apportioned to this state in accordance with 61538
division (B) of this section. Any remaining portion of the sales 61539
price of the electricity shall be sitused to this state in 61540
accordance with division (D) of this section. 61541

If the sales contract does not separately identify the price 61542
charged for the transmission or distribution of electricity, the 61543
sales price of the electricity shall be sitused to this state in 61544
accordance with division (D) of this section. 61545

(D) Any person who makes a sale of electricity shall situs 61546
the following to this state: 61547

(1) A sale of electricity directly or indirectly to a 61548
customer to the extent the customer consumes the electricity in 61549
this state; 61550

(2) A sale of electricity directly or indirectly to a related 61551
member where the related member directly or indirectly sells 61552
electricity to a customer to the extent the customer consumes the 61553
electricity in this state; 61554

(3) A sale of electricity if the seller or the seller's 61555
related member directly or indirectly delivers the electricity to 61556
a location in this state or directly or indirectly delivers the 61557
electricity exactly to the border of this state and another state; 61558

(4) A sale of electricity if the seller or the seller's 61559

related member directly or indirectly directs the delivery of the 61560
electricity to a location in this state or directly or indirectly 61561
directs the delivery of the electricity exactly to the border of 61562
this state and another state. 61563

(E) If the situsing provisions of this section do not fairly 61564
represent the extent of the taxpayer's or the taxpayer's related 61565
member's activity in this state, the taxpayer may request, or the 61566
tax commissioner may require, in respect to all or part of a 61567
taxpayer's or related member's sales, if reasonable, any of the 61568
following: 61569

(1) Separate accounting; 61570

(2) The exclusion of one or more additional situsing factors 61571
that will fairly represent the taxpayer's and the related member's 61572
sales in this state; 61573

(3) The inclusion of one or more additional situsing factors 61574
that will fairly represent the taxpayer's and the related member's 61575
sales in this state. 61576

The taxpayer's request shall be in writing and shall be filed 61577
with the report required by section 5733.02 of the Revised Code, a 61578
timely filed petition for reassessment, or a timely filed amended 61579
report. An alternative situsing method shall be effective with the 61580
approval of the tax commissioner. 61581

Nothing in this section shall be construed to extend any 61582
statute of limitations set forth in this chapter. 61583

(F) If the situsing provisions of this section do not fairly 61584
represent activity in this state, the tax commissioner may 61585
promulgate rules to situs sales using a methodology that fairly 61586
reflects sales in this state. 61587

(G) Notwithstanding ~~sections 5733.111 and 5747.131~~ section 61588
5703.56 of the Revised Code to the contrary, a person situsing a 61589

sale outside this state has the burden to establish by a 61590
preponderance of the evidence that the doctrines enumerated in 61591
~~those sections~~ that section do not apply. 61592

Sec. 5733.0511. (A) As used in this section: 61593

(1) "Qualifying telephone company taxpayer" means either of 61594
the following: 61595

(a) A telephone company, but only if the telephone company 61596
was subject to the tax imposed by section 5727.30 of the Revised 61597
Code for gross receipts received during the period from July 1, 61598
2003, to June 30, 2004, and the telephone company's property 61599
subject to taxation under Chapter 5727. of the Revised Code for 61600
tax years 2003 through 2006 was assessed using the true value 61601
percentages provided for in division (B) of section 5727.111 of 61602
the Revised Code. 61603

(b) Any taxpayer not described in division (A)(1)(a) of this 61604
section if a telephone company described in division (A)(1)(a) of 61605
this section transfers all or a portion of its assets and equity 61606
directly or indirectly to the taxpayer, the transfer occurred as 61607
part of an entity organization or reorganization, or subsequent 61608
entity organization or reorganization, and the gain or loss with 61609
respect to the transfer is not recognized in whole or in part for 61610
federal income tax purposes under the Internal Revenue Code on 61611
account of a transfer as part of an entity organization or 61612
reorganization, or subsequent entity organization or 61613
reorganization. 61614

(2) "Qualifying telephone company asset" means any asset 61615
shown on the qualifying telephone company taxpayer's books and 61616
records on December 31, 2003, in accordance with generally 61617
accepted accounting principles. 61618

(3) "Net income" has the same meaning as in division (I) of 61619

section 5733.04 of the Revised Code. 61620

(4) "Book-tax difference" means the difference, if any, 61621
between a qualifying telephone company asset's net book value 61622
shown on the qualifying telephone company taxpayer's books and 61623
records on December 31, 2003, in accordance with generally 61624
accepted accounting principles, and such asset's adjusted basis on 61625
December 31, 2003. The book-tax differential may be a negative 61626
number. 61627

(5) Solely for purposes of division (A)(1)(a) of this 61628
section, "tax year" has the same meaning as used in section 61629
5727.01 of the Revised Code. 61630

(B) In computing net income under division (I) of section 61631
5733.04 of the Revised Code, a qualifying telephone company 61632
taxpayer shall adjust net income to reflect a ten-year 61633
amortization of the book-tax difference for each qualifying 61634
telephone company asset, in equal installments over each of the 61635
ten tax years beginning with 2010. If the net book value exceeds 61636
the adjusted basis of the asset as of December 31, 2003, net 61637
income shall be reduced in each of the ten years beginning with 61638
tax year 2010 by one-tenth of the book-tax difference. If the 61639
adjusted basis exceeds the net book value of the asset as of 61640
December 31, 2003, net income shall be increased in each of the 61641
ten years beginning with tax year 2010 by one-tenth of the 61642
absolute value of the book-tax difference. The adjustment to net 61643
income provided for by this division shall apply without regard to 61644
the disposal of those assets after December 31, 2003. 61645

(C) The allocation and apportionment of this amortization of 61646
the book-tax difference under this section shall be governed by 61647
division (B) of section 5733.05 and by section 5733.051 of the 61648
Revised Code. The tax commissioner may prescribe rules regarding 61649
the apportionment of the amortization of the book-tax difference 61650
under this section. 61651

(D) Nothing in this section shall allow for an adjustment 61652
more than once with respect to the same qualifying asset or allow 61653
more than one corporation to claim an adjustment with respect to 61654
the same qualifying telephone company asset. 61655

Sec. 5733.0611. (A) There is hereby allowed a nonrefundable 61656
credit against the tax imposed under section 5733.06 of the 61657
Revised Code. The credit shall be equal to the taxpayer's 61658
proportionate share of the lesser of either the tax due or the tax 61659
paid by any qualifying entity under section 5733.41 of the Revised 61660
Code for the qualifying taxable year of the qualifying entity that 61661
ends in the taxable year of the taxpayer. The taxpayer shall claim 61662
the credit for the taxpayer's taxable year in which ends the 61663
qualifying entity's qualifying taxable year. 61664

In claiming the credit and determining its proportionate 61665
share of the tax due and the tax paid by the qualifying entity, 61666
the person claiming the credit shall follow the concepts set forth 61667
in subchapter K of the Internal Revenue Code. Nothing in this 61668
division shall be construed to limit or disallow pass-through 61669
treatment of a pass-through entity's income, deductions, credits, 61670
or other amounts necessary to compute the tax imposed and the 61671
credits allowed under this chapter. 61672

The credit shall be claimed in the order required under 61673
section 5733.98 of the Revised Code. Any unused credit shall be 61674
allowed as a credit in the ensuing tax year. Any such amount 61675
allowed as a credit in an ensuing tax year shall be deducted from 61676
the balance carried forward to the next ensuing tax year. 61677

(B) Any person that is not a taxpayer solely by reason of 61678
division (A) or (C) of section 5733.09 of the Revised Code or a 61679
person described in section 501(c) of the Internal Revenue Code or 61680
division (F) of section 3334.01 of the Revised Code, but that 61681
would be entitled to claim the nonrefundable credit under this 61682

section if that person were a taxpayer, may file an application 61683
for refund pursuant to section 5733.12 of the Revised Code. Upon 61684
proper application for refund under that section, the tax 61685
commissioner shall issue a refund in the amount of the credit to 61686
which that person would have been entitled under division (A)(1) 61687
of this section if the person had been a taxpayer, and as if the 61688
credit were a refundable credit. 61689

(C) If an organization described in section 401(a) of the 61690
Internal Revenue Code or a trust or fund is entitled to a 61691
proportionate share of the lesser of either the tax due or the tax 61692
paid by any qualifying entity under section 5733.41 of the Revised 61693
Code, and if that proportionate share is then or could be 61694
allocable to an exempt person as defined in division (D) of this 61695
section, then the organization, trust, or fund may file an 61696
application for refund with respect to such allocable amounts 61697
pursuant to section 5733.12 of the Revised Code. Upon proper 61698
application for refund under that section, the tax commissioner 61699
shall issue a refund in the amount of the credit to which the 61700
organization, trust, or fund would have been entitled under 61701
division (A)(1) of this section had the organization, trust, or 61702
fund been a taxpayer, and as if the credit were a refundable 61703
credit. To the extent that such an organization, trust, or fund is 61704
permitted to apply for a refund under this division, or to the 61705
extent that such an organization, trust, or fund has applied for 61706
such a refund, exempt persons are not entitled to the credit 61707
authorized under this section or section 5747.059 of the Revised 61708
Code. 61709

(D)(1) For the purposes of division (C) of this section only, 61710
"exempt person" means any of the following: 61711

(a) A person that is or may be the beneficiary of a trust if 61712
the trust is subject to Subchapter D of Chapter 1 of Subtitle A of 61713
the Internal Revenue Code. 61714

(b) A person that is or may be the beneficiary of or the recipient of payments from a nuclear decommissioning reserve fund, a designated settlement fund, or any other trust or fund established to resolve and satisfy claims that may otherwise be asserted by the beneficiary or a member of the beneficiary's family. Sections 267(c)(4), 468A(e), and 468B(d)(2) of the Internal Revenue Code apply to the determination of whether such a person is an exempt person under division (D) of this section.

(c) A person, other than a person that is treated as a C corporation for federal income tax purposes, who is or may be the beneficiary of a trust that, under its governing instrument, is not required to distribute all of its income currently. Division (D)(1)(c) of this section applies only if the trust irrevocably agrees that for the taxable year during or for which the trust distributes any of its income to any of the beneficiaries, the trust is a qualifying trust as defined in section 5733.40 of the Revised Code and will pay the estimated tax, and will withhold and pay the withheld tax as required under section 5733.41 and sections 5747.40 to 5747.453 of the Revised Code.

(2) An exempt person does not include any person that would not qualify as an exempt person under the doctrines of "economic reality," "sham transaction," "step doctrine," or "substance over form." Notwithstanding ~~sections 5733.111 and 5747.131~~ section 5703.56 of the Revised Code to the contrary, an organization, trust, or fund described in division (C) of this section bears the burden of establishing by a preponderance of the evidence that any transaction giving rise to a claim for a refundable credit under this section does not have as a principal purpose a claim for that credit. Nothing in this section shall be construed to limit solely to this section the application of the doctrines referred to in division (D)(2) of this section.

(E) Nothing in this section shall be construed to allow a

refund more than once with respect to the taxes imposed under 61747
section 5733.41 or 5747.41 of the Revised Code. 61748

Sec. 5733.09. (A) ~~An~~ (1) Except as provided in divisions 61749
(A)(2) and (3) of this section, an incorporated company, whether 61750
foreign or domestic, owning and operating a public utility in this 61751
state, and required by law to file reports with the tax 61752
commissioner and to pay an excise tax upon its gross receipts, and 61753
insurance, fraternal, beneficial, bond investment, and other 61754
corporations required by law to file annual reports with the 61755
superintendent of insurance and dealers in intangibles, the shares 61756
of which are, or the capital or ownership in capital employed by 61757
such dealer is, subject to the taxes imposed by section 5707.03 of 61758
the Revised Code, shall not be subject to this chapter, except for 61759
sections 5733.031, 5733.042, 5733.05, 5733.052, 5733.053, 61760
5733.069, 5733.0611, 5733.40, 5733.41, and sections 5747.40 to 61761
5747.453 of the Revised Code. However, for reports required to be 61762
filed under section 5725.14 of the Revised Code in 2003 and 61763
thereafter, nothing in this section shall be construed to exempt 61764
the property of any dealer in intangibles under section 5725.13 of 61765
the Revised Code from the tax imposed under section 5707.03 of the 61766
Revised Code. ~~An~~ 61767

(2) An electric company subject to the filing requirements of 61768
section 5727.08 of the Revised Code or otherwise having nexus with 61769
or in this state under the Constitution of the United States, or 61770
any other corporation having any gross receipts directly 61771
attributable to providing public utility service as an electric 61772
company or having any property directly attributable to providing 61773
public utility service as an electric company, is subject to this 61774
chapter. 61775

(3) A telephone company that no longer pays an excise tax 61776
under section 5727.30 of the Revised Code on its gross receipts 61777

billed after June 30, 2004, is first subject to taxation under 61778
this chapter for tax year 2005. For that tax year, a telephone 61779
company with a taxable year ending in 2004 shall compute the tax 61780
imposed under this chapter, and shall compute the net operating 61781
loss carry forward for tax year 2005, by multiplying the tax owed 61782
under this chapter, net of all nonrefundable credits, or the loss 61783
for the taxable year, by fifty per cent. 61784

(B) A corporation that has made an election under subchapter 61785
S, chapter one, subtitle A, of the Internal Revenue Code for its 61786
taxable year under such code is exempt from the tax imposed by 61787
section 5733.06 of the Revised Code that is based on that taxable 61788
year. 61789

A corporation that makes such an election shall file a notice 61790
of such election with the tax commissioner between the first day 61791
of January and the thirty-first day of March of each tax year that 61792
the election is in effect. 61793

(C) An entity defined to be a "real estate investment trust" 61794
by section 856 of the Internal Revenue Code, a "regulated 61795
investment company" by section 851 of the Internal Revenue Code, 61796
or a "real estate mortgage investment conduit" by section 860D of 61797
the Internal Revenue Code, is exempt from taxation for a tax year 61798
as a corporation under this chapter and is exempt from taxation 61799
for a return year as a dealer in intangibles under Chapter 5725. 61800
of the Revised Code if it provides the report required by this 61801
division. By the last day of March of the tax or return year the 61802
entity shall submit to the tax commissioner the name of the entity 61803
with a list of the names, addresses, and social security or 61804
federal identification numbers of all investors, shareholders, and 61805
other similar investors who owned any interest or invested in the 61806
entity during the preceding calendar year. The commissioner may 61807
extend the date by which the report must be submitted for 61808
reasonable cause shown by the entity. The commissioner may 61809

prescribe the form of the report required for exemption under this 61810
division. 61811

(D)(1) As used in this division: 61812

(a) "Commercial printer" means a person primarily engaged in 61813
the business of commercial printing. However, "commercial printer" 61814
does not include a person primarily engaged in the business of 61815
providing duplicating services using photocopy machines or other 61816
xerographic processes. 61817

(b) "Commercial printing" means printing by one or more 61818
common processes such as letterpress, lithography, gravure, 61819
screen, or digital imaging, and includes related activities such 61820
as binding, platemaking, prepress operation, cartographic 61821
composition, and typesetting. 61822

(c) "Contract for printing" means an oral or written 61823
agreement for the purchase of printed materials produced by a 61824
commercial printer. 61825

(d) "Intangible property located at the premises of a 61826
commercial printer" means intangible property of any kind owned or 61827
licensed by a customer of the commercial printer and furnished to 61828
the commercial printer for use in commercial printing. 61829

(e) "Printed material" means any tangible personal property 61830
produced or processed by a commercial printer pursuant to a 61831
contract for printing. 61832

(f) "Related member" has the same meaning as in ~~division~~ 61833
~~(A)(6)~~ of section 5733.042 of the Revised Code without regard to 61834
division (B) of that section. 61835

(2) Except as provided in divisions (D)(3) and (4) of this 61836
section, a corporation not otherwise subject to the tax imposed by 61837
section 5733.06 of the Revised Code for a tax year does not become 61838
subject to that tax for the tax year solely by reason of any one 61839

or more of the following occurring in this state during the 61840
taxable year that ends immediately prior to the tax year: 61841

(a) Ownership by the corporation or a related member of the 61842
corporation of tangible personal property or intangible property 61843
located during all or any portion of the taxable year or on the 61844
first day of the tax year at the premises of a commercial printer 61845
with which the corporation or the corporation's related member has 61846
a contract for printing with respect to such property or the 61847
premises of a commercial printer's related member with which the 61848
corporation or the corporation's related member has a contract for 61849
printing with respect to such property; 61850

(b) Sales by the corporation or a related member of the 61851
corporation of property produced at and shipped or distributed 61852
from the premises of a commercial printer with which the 61853
corporation or the corporation's related member has a contract for 61854
printing with respect to such property or the premises of a 61855
commercial printer's related member with which the corporation or 61856
the corporation's related member has a contract for printing with 61857
respect to such property; 61858

(c) Activities of employees, officers, agents, or contractors 61859
of the corporation or a related member of the corporation on the 61860
premises of a commercial printer with which the corporation or the 61861
corporation's related member has a contract for printing or the 61862
premises of a commercial printer's related member with which the 61863
corporation or the corporation's related member has a contract for 61864
printing, where the activities are directly and solely related to 61865
quality control, distribution, or printing services, or any 61866
combination thereof, performed by or at the direction of the 61867
commercial printer or the commercial printer's related member. 61868

(3) The exemption under this division does not apply for a 61869
taxable year to any corporation having on the first day of January 61870
of the tax year or at any time during the taxable year ending 61871

immediately preceding the first day of January of the tax year a 61872
related member which, on the first day of January of the tax year 61873
or during any portion of such taxable year of the corporation, has 61874
nexus in or with this state under the Constitution of the United 61875
States or holds a certificate of compliance with the laws of this 61876
state authorizing it to do business in this state. 61877

(4) With respect to allowing the exemption under this 61878
division, the tax commissioner shall be guided by the doctrines of 61879
"economic reality," "sham transaction," "step transaction," and 61880
"substance over form." A corporation shall bear the burden of 61881
establishing by a preponderance of the evidence that any 61882
transaction giving rise to an exemption claimed under this 61883
division did not have as a principal purpose the avoidance of any 61884
portion of the tax imposed by section 5733.06 of the Revised Code. 61885

Application of the doctrines listed in division (D)(4) of 61886
this section is not limited to this division. 61887

Sec. 5733.121. If a corporation entitled to a refund under 61888
section 5733.11 or 5733.12 of the Revised Code is indebted to this 61889
state for any tax, workers' compensation premium due under section 61890
4123.35 of the Revised Code, unemployment compensation 61891
contribution due under section 4141.25 of the Revised Code, or 61892
unemployment compensation payment in lieu of contribution under 61893
section 4141.241 of the Revised Code or fee ~~administered by the~~ 61894
~~tax commissioner~~ that is paid to the state or to the clerk of 61895
courts pursuant to section 4505.06 of the Revised Code, or any 61896
charge, penalty, or interest arising from such a tax, workers' 61897
compensation premium, unemployment compensation contribution, or 61898
unemployment compensation payment in lieu of contribution under 61899
section 4141.241 of the Revised Code or fee, the amount refundable 61900
may be applied in satisfaction of the debt. If the amount 61901
refundable is less than the amount of the debt, it may be applied 61902

in partial satisfaction of the debt. If the amount refundable is 61903
greater than the amount of the debt, the amount remaining after 61904
satisfaction of the debt shall be refunded. If the corporation has 61905
more than one such debt, any debt subject to section 5739.33 or 61906
division (G) of section 5747.07 of the Revised Code shall be 61907
satisfied first. This section applies only to debts that have 61908
become final. 61909

The tax commissioner may, with the consent of the taxpayer, 61910
provide for the crediting, against tax due for any tax year, of 61911
the amount of any refund due the taxpayer under this chapter for a 61912
preceding tax year. 61913

Sec. 5733.18. Annually, on the day fixed for the payment of 61914
any excise or franchise tax required to be paid by law, such tax, 61915
together with any penalties subsequently accruing thereon, shall 61916
become a lien on all property in this state of a corporation, 61917
whether such property is employed by the corporation in the 61918
prosecution of its business or is in the hands of an assignee, 61919
trustee, or receiver for the benefit of the creditors and 61920
stockholders. Such lien shall continue until such taxes, together 61921
with any penalties subsequently accruing, are paid. 61922

Upon failure of such corporation to pay such tax on the day 61923
fixed for payment, the tax commissioner may file, for which filing 61924
no fee shall be charged, in the office of the county recorder in 61925
each county in this state in which such corporation owns or has a 61926
beneficial interest in real estate, notice of such lien containing 61927
a brief description of such real estate. Such lien shall not be 61928
valid as against any mortgagee, purchaser, or judgment creditor 61929
whose rights have attached prior to the time such notice is so 61930
filed in the county in which the real estate which is the subject 61931
of such mortgage, purchase, or judgment lien is located. Such 61932
notice shall be recorded in a book kept by the recorder, called 61933

the corporation franchise lien record, and indexed under the name 61934
of the corporation charged with such tax. When such tax, together 61935
with any penalties subsequently accruing thereon, has been paid, 61936
the tax commissioner shall furnish to the corporation an 61937
acknowledgment of such payment which the corporation may record 61938
with the recorder of each county in which notice of such lien has 61939
been filed, for which recording the recorder shall charge and 61940
receive a base fee of two dollars for services and a housing trust 61941
fund fee of two dollars pursuant to section 317.36 of the Revised 61942
Code. 61943

Sec. 5733.22. (A)(1) Any corporation whose articles of 61944
incorporation or license certificate to do or transact business in 61945
this state has been canceled by the secretary of state pursuant to 61946
section 5733.20 of the Revised Code for failure to make any report 61947
or return or to pay any tax or fee, shall be reinstated and again 61948
entitled to exercise its rights, privileges, and franchises in 61949
this state, and the secretary of state shall cancel the entry of 61950
cancellation to exercise its rights, privileges, and franchises 61951
upon compliance with all of the following: 61952

(a) Payment to the secretary of state of any additional fees 61953
and penalties required to be paid to the secretary of state; 61954

(b) Filing with the secretary of state a certificate from the 61955
tax commissioner that it has complied with all the requirements of 61956
law as to franchise or excise tax reports and paid all franchise 61957
or excise taxes, fees, or penalties due thereon for every year of 61958
its delinquency; 61959

(c) Payment to the secretary of state of an additional fee of 61960
ten dollars. 61961

(2) The applicant for reinstatement shall be required by the 61962
secretary of state, as a condition prerequisite to such 61963
reinstatement, to amend its articles by changing its name if all 61964

of the following apply: 61965

(a) The reinstatement is not made within one year from the 61966
date of the cancellation of its articles of incorporation or date 61967
of the cancellation of its license to do business; 61968

(b) It appears that the applicant's articles of incorporation 61969
or license certificate has been issued to another entity and is 61970
not distinguishable upon the record from the name of the 61971
applicant; 61972

(c) It appears that the articles of organization of a limited 61973
liability company, registration of a foreign limited liability 61974
company, certificate of limited partnership, registration of a 61975
foreign limited partnership, registration of a domestic or foreign 61976
limited liability partnership, or registration of a trade name has 61977
been issued to another entity and is not distinguishable upon the 61978
record from the name of the applicant. A certificate of 61979
reinstatement may be filed in the recorder's office of any county 61980
in the state, for which the recorder shall charge and collect a 61981
base fee of three dollars for services and a housing trust fund 61982
fee of three dollars pursuant to section 317.36 of the Revised 61983
Code. 61984

Any officer, shareholder, creditor, or receiver of any such 61985
corporation may at any time take all steps required by this 61986
section to effect such reinstatement. 61987

(B) The rights, privileges, and franchises of a corporation 61988
whose articles of incorporation have been reinstated in accordance 61989
with this section, are subject to section 1701.922 of the Revised 61990
Code. 61991

(C) Notwithstanding a violation of section 5733.21 of the 61992
Revised Code, upon reinstatement of a corporation's articles of 61993
incorporation in accordance with this section, neither section 61994
5733.20 nor section 5733.21 of the Revised Code shall be applied 61995