

(125th General Assembly)  
(Substitute Senate Bill Number 165)

# AN ACT

To amend sections 166.06, 166.07, 166.21, 725.04, 1728.11, 1728.111, 3735.671, 5709.631, and 5709.831 and to enact section 9.661 of the Revised Code to authorize liens that may be used to secure the performance of obligations by recipients of development loans and local property tax incentives.

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

SECTION 1. That sections 166.06, 166.07, 166.21, 725.04, 1728.11, 1728.111, 3735.671, 5709.631, and 5709.831 be amended and section 9.661 of the Revised Code be enacted to read as follows:

Sec. 9.661. (A) As used in this section:

(1) "Borrower" means any person obligated to repay a development loan pursuant to a development loan agreement or obligated to repay a loan guaranteed pursuant to a loan guarantee agreement.

(2) "Development inducement agreement" means an agreement making a grant or inducement under the authority of Section 13 of Article VIII, Ohio Constitution, including an inducement made under section 166.02 of the Revised Code or a grant made under section 184.02 of the Revised Code.

(3) "Development loan" means any loan made under the authority of Section 13 of Article VIII, Ohio Constitution, including any loan made under the authority of Chapter 122., 165., 166., 184., or 1724. of the Revised Code.

(4) "Development loan agreement" means an agreement making a development loan.

(5) "Grantee" means any grantee or other recipient of anything of value under a development inducement agreement.

(6) "Guaranteed loan" means a loan guaranteed by this state, a state agency, or a political subdivision under the authority of Section 13 of Article VIII, Ohio Constitution, including any loan guarantee authorized under Chapter 166. of the Revised Code.

(7) "Loan guarantee agreement" means an agreement providing for the

guarantee of a guaranteed loan.

(8) "Secured party" means the state, a state agency, or a political subdivision that enters into a development loan agreement, loan guarantee agreement, or development inducement agreement.

(B) The obligations of a borrower under each development loan agreement or loan guarantee agreement may be secured by a lien of the secured party on the borrower's real property and personal property the acquisition of which was funded in whole or in part by the proceeds of the loan. Any such lien shall be in an amount not exceeding the amount financed under the development loan agreement, or the amount guaranteed under the loan guarantee agreement, and used to fund acquisition of the property. The lien may be in addition to any other security required by the development loan agreement or loan guarantee agreement, but the sum of the lien amount and the value of any such other security shall not exceed the amount financed, or the amount guaranteed, and used to fund acquisition of the property. Such a lien on real property shall attach, and may be perfected, collected, and enforced, in the same manner as a mortgage lien on real property, and otherwise shall have the same force and effect as a mortgage lien on real property. Such a lien on personal property shall attach, and may be perfected, collected, and enforced, in the same manner as a security interest in goods under Chapter 1309. of the Revised Code, and shall otherwise have the same force and effect as such a security interest.

(C) The obligations of a grantee under each development inducement agreement may be secured by a lien of the secured party on the grantee's real property and personal property the acquisition of which was funded in whole or in part by the grant or other thing of value. Any such lien shall be in an amount not exceeding the amount of the grant or other thing of value granted to the grantee under the agreement and used to fund acquisition of the property. The lien may be in addition to any other security required by the development inducement agreement, but the sum of the lien amount and the value of any such other security shall not exceed the amount of the grant, or the value of any other thing of value granted, and used to fund acquisition of the property. Such a lien on real property shall attach, and may be perfected, collected, and enforced, in the same manner as a mortgage lien on real property, and otherwise shall have the same force and effect as a mortgage lien on real property. Such a lien on personal property shall attach, and may be perfected, collected, and enforced, in the same manner as a security interest in goods under Chapter 1309. of the Revised Code, and shall otherwise have the same force and effect as such a security interest.

(D) A secured party may enforce such liens against real property by

civil action in the court of common pleas of the county where the real property is located in the same manner as mortgage liens are enforced. A secured party may enforce such liens against personal property in the manner provided for the enforcement of security interests under Chapter 1309. of the Revised Code.

Sec. 166.06. (A) Subject to any limitations as to aggregate amounts thereof that may from time to time be prescribed by the general assembly and to other applicable provisions of this chapter, the director of development may, on behalf of the state, enter into contracts to guarantee the repayment or payment of not more than ninety per cent of the unpaid principal amount of loans made, including bonds, notes, or other certificates issued or given to provide funds, to pay allowable costs of eligible projects. Such guarantees shall be secured solely by and payable solely from the loan guarantee fund created by this section and unencumbered and available moneys in the facilities establishment fund in the manner and to the extent provided in such guarantee contracts consistent with this section. Such guarantees shall not constitute general obligations of the state or of any political subdivision, and moneys raised by taxation shall not be obligated or pledged for the payment of such guarantees.

(B) Before guaranteeing any such repayments or payments the director shall determine that:

(1) The project is an eligible project and is economically sound;

(2) The principal amount to be guaranteed does not exceed ninety per cent of the allowable costs of the eligible project as determined by the director. To assist the director in making this determination, the director may, in the director's discretion, engage an independent engineer, architect, appraiser, or other professional pursuant to a contract to be paid solely from the facilities establishment fund, subject to controlling board approval.

(3) The principal amount to be guaranteed has a satisfactory maturity date or dates, which in no case shall be later than twenty years from the effective date of the guarantee;

(4) The rate of interest on the loan to be guaranteed and on any other loan made by the same parties or related persons for the eligible project is not excessive;

(5) The principal obligor, or primary guarantor, is responsible and is reasonably expected to be able to meet the payments under the loan, bonds, notes, or other certificates;

(6) The loan or documents pertaining to the bonds, notes, or other certificates to be guaranteed contains provisions for payment by the principal obligor, and is in such form and contains such terms and

provisions for the protection of the lenders as are generally consistent with commercial practice, including, where applicable, provisions with respect to property insurance, repairs, alterations, payment of taxes and assessments, delinquency charges, default remedies, acceleration of maturity, prior, additional and secondary liens, and other matters as the director may approve.

(C) The contract of guarantee may make provision for the conditions of, time for and manner of fulfillment of the guarantee commitment, subrogation of the state to the rights of the parties guaranteed and exercise of such parties' rights by the state, giving the state the options of making payment of the principal amount guaranteed in one or more installments and, if deferred, to pay interest thereon from the loan guarantee fund and the facilities establishment fund, any other terms or conditions customary to such guarantees and as the director may approve, and may contain provisions for securing the guarantee in the manner consistent with this section, including, at the discretion of the director, a lien provided for under section 9.661 of the Revised Code, and may contain covenants on behalf of the state for the maintenance of the loan guarantee fund created by this section and of receipts to it permitted by this chapter, including covenants on behalf of the state to issue obligations under section 166.08 of the Revised Code to provide moneys to the loan guarantee fund to fulfill such guarantees and covenants authorized by division (R)(1) of section 166.08 of the Revised Code, and covenants restricting the aggregate amount of guarantees that may be contracted under this section and obligations that may be issued under section 166.08 of the Revised Code, and terms pertinent to either, to better secure the parties guaranteed.

(D) The "loan guarantee fund" of the economic development program is hereby created as a special revenue fund and a trust fund which shall be in the custody of the treasurer of state but shall be separate and apart from and not a part of the state treasury to consist of all grants, gifts, and contributions of moneys or rights to moneys lawfully designated for or deposited in such fund, all moneys and rights to moneys lawfully appropriated and transferred to such fund, including moneys received from the issuance of obligations under section 166.08 of the Revised Code, and moneys deposited to such fund pursuant to division (F) of this section; provided that the loan guarantee fund shall not be comprised, in any part, of moneys raised by taxation.

(E) The director may fix service charges for making a guarantee. Such charges shall be payable at such times and place and in such amounts and manner as may be prescribed by the director.

(F) The treasurer of state shall serve as agent for the director in the making of deposits and withdrawals and maintenance of records pertaining to the loan guarantee fund. Prior to the director's entry into a contract providing for the making of a guarantee payable from the loan guarantee fund, the treasurer of state shall cause to be transferred from the facilities establishment fund to the loan guarantee fund an amount sufficient to make the aggregate balance therein, taking into account the proposed loan guarantee, equal to the loan guarantee reserve requirement. Thereafter, the treasurer of state shall cause the balance in the loan guarantee fund to be at least equal to the loan guarantee reserve requirement. Funds from the loan guarantee fund shall be disbursed under a guarantee made pursuant to this section to satisfy a guaranteed repayment or payment which is in default. The treasurer of state shall first withdraw and transfer moneys then on deposit in the loan guarantee fund. Whenever these moneys are inadequate to meet the requirements of a guarantee, the treasurer of state shall, without need of appropriation or further action by the director, provide for a withdrawal and transfer to the loan guarantee fund and then to the guaranteed party of moneys in such amount as is necessary to meet the guarantee from unencumbered and available moneys in the facilities establishment fund. Such disbursements shall be made in the manner and at the times provided in such guarantees. Within ninety days following a disbursement of moneys from the loan guarantee fund, the treasurer of state, without need of appropriation or further action by the director, shall provide for a withdrawal and transfer to the loan guarantee fund from unencumbered and available moneys in the facilities establishment fund, including moneys from the repayment of loans made from that fund, of an amount sufficient to cause the balance in the loan guarantee fund to be at least equal to the loan guarantee reserve requirement.

(G) Any guaranteed parties under this section, except to the extent that their rights are restricted by the guarantee documents, may by any suitable form of legal proceedings, protect and enforce any rights under the laws of this state or granted by such guarantee or guarantee documents. Such rights include the right to compel the performance of all duties of the director and the treasurer of state required by this section or the guarantee or guarantee documents; and in the event of default with respect to the payment of any guarantees, to apply to a court having jurisdiction of the cause to appoint a receiver to receive and administer the moneys pledged to such guarantee with full power to pay, and to provide for payment of, such guarantee, and with such powers, subject to the direction of the court, as are accorded receivers in general equity cases, excluding any power to pledge or apply

additional revenues or receipts or other income or moneys of the state or governmental agencies of the state to the payment of such guarantee. Each duty of the director and the treasurer of state and their officers and employees, and of each governmental agency and its officers, members, or employees, required or undertaken pursuant to this section or a guarantee made under authority of this section, is hereby established as a duty of the director and the treasurer of state, and of each such officer, member, or employee having authority to perform such duty, specifically enjoined by the law resulting from an office, trust, or station within the meaning of section 2731.01 of the Revised Code. The persons who are at the time the director and treasurer of state, or their officers or employees, are not liable in their personal capacities on any guarantees or contracts to make guarantees by the director.

(H) The determinations of the director under divisions (B) and (C) of this section shall be conclusive for purposes of the validity of a guarantee evidenced by a contract signed by the director, and such guarantee shall be incontestable as to moneys advanced under loans to which such guarantees are by their terms applicable.

Sec. 166.07. (A) The director of development, with the approval of the controlling board and subject to the other applicable provisions of this chapter, may lend moneys in the facilities establishment fund to persons for the purpose of paying allowable costs of an eligible project if the director determines that:

(1) The project is an eligible project and is economically sound;  
(2) The borrower is unable to finance the necessary allowable costs through ordinary financial channels upon comparable terms;  
(3) The amount to be lent from the facilities establishment fund will not exceed seventy-five per cent of the total allowable costs of the eligible project, except that if any part of the amount to be lent from the facilities establishment fund is derived from the issuance and sale of project financing obligations the amount to be lent will not exceed ninety per cent of the total allowable costs of the eligible project;

(4) The eligible project could not be achieved in the local area in which it is to be located if the portion of the project to be financed by the loan instead were to be financed by a loan guaranteed under section 166.06 of the Revised Code;

(5) The repayment of the loan from the facilities establishment fund will be adequately secured by a mortgage, ~~lien~~, assignment, or pledge, or lien provided for under section 9.661 of the Revised Code, at such level of priority as the director may require;

(6) The borrower will hold at least a ten per cent equity interest in the eligible project at the time the loan is made.

(B) The determinations of the director under division (A) of this section shall be conclusive for purposes of the validity of a loan commitment evidenced by a loan agreement signed by the director.

(C) Fees, charges, rates of interest, times of payment of interest and principal, and other terms, conditions, and provisions of and security for loans made from the facilities establishment fund pursuant to this section shall be such as the director determines to be appropriate and in furtherance of the purpose for which the loans are made. The moneys used in making such loans shall be disbursed from the facilities establishment fund upon order of the director. The director shall give special consideration in setting the required job creation ratios and interest rates for loans that are for voluntary actions.

(D) The director may take actions necessary or appropriate to collect or otherwise deal with any loan made under this section, including any action authorized by section 9.661 of the Revised Code.

(E) The director may fix service charges for the making of a loan. Such charges shall be payable at such times and place and in such amounts and manner as may be prescribed by the director.

Sec. 166.21. (A) The director of development, with the approval of the controlling board and subject to other applicable provisions of this chapter, may lend moneys in the research and development loan fund to persons for the purpose of paying allowable costs of eligible research and development projects, if the director determines that all of the following conditions are met:

(1) The project is an eligible research and development project and is economically sound;

(2) The amount to be lent from the research and development loan fund will not exceed seventy-five per cent of the total costs of the eligible research and development project;

(3) The repayment of the loan from the research and development loan fund will be secured by a mortgage, lien, assignment, pledge, lien provided for under section 9.661 of the Revised Code, or other interest in property or other assets of the borrower, at such level of priority and value as the director considers necessary, provided that, in making such a determination, the director shall take into account the value of any rights granted by the borrower to the director to control the use of any assets of the borrower under the circumstances described in the loan documents.

(B) The determinations of the director under division (A) of this section

shall be conclusive for purposes of the validity of a loan commitment evidenced by a loan agreement signed by the director.

(C) Fees, charges, rates of interest, times of payment of interest and principal, and other terms and conditions of, and security for, loans made from the research and development loan fund shall be such as the director determines to be appropriate and in furtherance of the purpose for which the loans are made. The moneys used in making loans shall be disbursed from the fund upon order of the director. Unless otherwise specified in any indenture or other instrument securing obligations under division (D) of section 166.08 of the Revised Code, any payments of principal and interest from loans made from the fund shall be paid to the fund and used for the purpose of making loans under this section.

(D)(1) As used in this division, "qualified research and development loan payments" means payments of principal and interest on a loan made from the research and development loan fund.

(2) Each year, the director may, upon request, issue a certificate to a borrower of moneys from the research and development loan fund indicating the amount of the qualified research and development loan payments made by or on behalf of the borrower during the calendar year immediately preceding the tax year, as defined in section 5733.04 of the Revised Code, or taxable year, as defined in section 5747.01 of the Revised Code, for which the certificate is issued. In addition to indicating the amount of qualified research and development loan payments, the certificate shall include a determination of the director that as of the thirty-first day of December of the calendar year for which the certificate is issued, the borrower is not in default under the loan agreement, lease, or other instrument governing repayment of the loan, including compliance with the job creation and retention commitments that are part of the qualified research and development project. The director shall not issue a certificate in an amount that exceeds one hundred fifty thousand dollars.

(E) The director may take actions necessary or appropriate to collect or otherwise deal with any loan made under this section.

(F) The director may fix service charges for the making of a loan. The charges shall be payable at such times and place and in such amounts and manner as may be prescribed by the director.

(G)(1) There shall be credited to the research and development loan fund moneys received by this state from the repayment of loans, including interest thereon, made from the fund, and moneys received from the sale, lease, or other disposition of property acquired or constructed with moneys in the fund derived from the proceeds of the sale of obligations under

section 166.08 of the Revised Code. Moneys in the fund shall be applied as provided in this chapter pursuant to appropriations made by the general assembly.

(2) In addition to the requirements in division (G)(1) of this section, moneys referred to in that division may be deposited to the credit of separate accounts established by the director of development within the research and development loan fund or in the bond service fund and pledged to the security of obligations, applied to the payment of bond service charges without need for appropriation, released from any such pledge and transferred to the research and development loan fund, all as and to the extent provided in the bond proceedings pursuant to written directions of the director of development. Accounts may be established by the director in the research and development loan fund for particular projects or otherwise. The director may withdraw from the fund or, subject to provisions of the applicable bond proceedings, from any special funds established pursuant to the bond proceedings, or from any accounts in such funds, any amounts of investment income required to be rebated and paid to the federal government in order to maintain the exemption from federal income taxation of interest on obligations issued under this chapter, which withdrawal and payment may be made without the necessity for appropriation.

Sec. 725.04. A development agreement shall contain an agreement binding on the owner or owners of the improvements, and all subsequent owners of the improvements, to make semiannual urban renewal service payments, in lieu of taxes upon the improvements during the exemption period, equal annually in the aggregate to the amount of real property taxes that would have been paid on the portion of the assessed valuation of the improvements declared to be a public purpose had an exemption period not been specified by the municipal corporation. All semiannual urban renewal service payments shall be collected at the same time that real property taxes are collected. The entire amount of these urban renewal service payments, when collected, shall be deposited in an urban renewal debt retirement fund established pursuant to section 725.03 of the Revised Code.

If the municipal corporation owns the improvements, it may require the lessee of the improvements to make the semiannual urban renewal service payments required under this section.

The legislative authority of the municipal corporation may secure the urban renewal service payments by a lien on the improvements. Such a lien shall attach, and may be perfected, collected, and enforced, in the same manner as a mortgage lien on real property, and shall otherwise have the

same force and effect as a mortgage lien on real property.

Sec. 1728.11. The community urban redevelopment corporation entering into a financial agreement with a municipal corporation other than an impacted city shall make payment to the county treasurer on or before the final date for payment of real estate taxes in the county for each half year of a semi-annual service charge in lieu of taxes on the real property of the corporation in the project, whether acquired by purchase or lease, in a semi-annual amount of not less than seven and one-half per cent of the annual gross revenues from each unit of the project, if the project is undertaken in units, or from the total project if the project is not to be undertaken in units, for each of the years of operation commencing with the date of the completion of such unit or of the project, as the case may be. Where, because of the nature of the development, ownership, use, or occupancy of the project or any unit thereof if the project is to be undertaken in units, the total annual gross rental cannot be reasonably ascertained, the governing body shall provide in the financial agreement that the annual service charge shall be a sum of not less than two per cent of the total project cost or total project unit cost, calculated from the first day of the month following the substantial completion of the project or any unit thereof if the project is undertaken in units. In no event shall such payment together with the taxes on the land, in any year after first occupancy of the project, be less than the total taxes assessed on all real property in the area covered by the project in the calendar year immediately preceding the acquisition of the said area by the municipality or its agency.

Against such annual charge the corporation is entitled to credit for the amount, without interest, of the real estate taxes on land paid by it in the last two preceding semi-annual installments. On or before the fifteenth of January in each year each taxing district shall report to the county auditor, in such form as is approved by the tax commissioner, the amount of the service charge in excess of the taxes on the land chargeable for the preceding calendar year for each project or unit thereof subject to Chapter 1728. of the Revised Code. Such payments shall be distributed by the county auditor to the taxing subdivision levying taxes in the subdivisions in which the property is located, in the same proportions in which the current general property tax is distributed. The county treasurer may secure the service charge payments, minus the credit, by a lien on the real property of the corporation in the project. Such a lien shall attach, and may be perfected, collected, and enforced, in the same manner as a mortgage lien on real property, and shall otherwise have the same force and effect as a mortgage lien on real property.

At the end of thirty years for one, two, or three family residential dwelling units and twenty years for all other uses of the improvements from the date of the execution of a financial agreement or earlier by agreement of the parties thereto, the tax exemption upon any unit, if the project is undertaken in units, or upon the entire project, if the project is not undertaken in units, ceases and the improvements and any other property of the corporation as well as the land shall be assessed and taxed, according to general law, like other property within the municipal corporation.

At the same date all restrictions and limitations upon the corporation shall terminate and be at an end upon the corporation's rendering its final account with the municipal corporation.

Sec. 1728.111. The community urban redevelopment corporation entering into a financial agreement with an impacted city shall pay to the county treasurer ~~of~~ an annual service charge in lieu of taxes on the improvements made by the corporation in the project that are exempted from taxation pursuant to section 1728.10 of the Revised Code. The annual service charge shall be charged and paid in two equal installments at the same time and in the same manner as real property taxes. The amount of the annual service charge shall be set forth in the financial agreement and shall be not more than the annual amount of real property taxes that would have been charged against the percentage of the assessed valuation of such improvements exempted from taxation had that percentage not been exempted from taxation, and not less than an amount which, together with the taxes on the land in any year, equals the total taxes assessed on all real property in the area covered by the project in the calendar year immediately preceding the initial acquisition of the area or any part thereof by the municipality or the corporation, whichever occurred first. The county treasurer may secure the service charge payments by a lien on the exempted improvements. Such a lien shall attach, and may be perfected, collected, and enforced, in the same manner as a mortgage lien on real property, and shall otherwise have the same force and effect as a mortgage lien on real property.

The service charge in lieu of taxes shall be distributed by the county auditor to the taxing subdivision levying taxes in the subdivisions in which the property is located, in the same proportions in which the current general property tax is distributed, or upon the adoption of a resolution by the municipal legislative authority, which shall be certified to the county auditor, the full amount of the service charge shall be distributed at the same time and in the same manner as real property tax payments to the municipal corporation, and shall be deposited in an urban redevelopment tax increment

equivalent fund established pursuant to section 1728.112 of the Revised Code.

At the end of thirty years for one, two, or three family residential dwelling units and twenty years for all other uses of the improvements from the date of the execution of a financial agreement, or earlier by agreement of the parties thereto, the exemption from taxation of any unit if the project is undertaken in units, or of the entire project if the project is not undertaken in units, ceases and the improvements and any other property of the corporation as well as the land shall be assessed and taxed like other property within the municipal corporation.

At the same date all restrictions and limitation upon the corporation shall terminate upon the corporation's rendering its final account with the municipal corporation.

Sec. 3735.671. (A) If construction or remodeling of commercial or industrial property is to be exempted from taxation pursuant to section 3735.67 of the Revised Code, the legislative authority and the owner of the property, prior to the commencement of construction or remodeling, shall enter into a written agreement, binding on both parties for a period of time that does not end prior to the end of the period of the exemption, that includes all of the information and statements prescribed by this section. Agreements may include terms not prescribed by this section, but such terms shall in no way derogate from the information and statements prescribed by this section.

(1) Except as otherwise provided in division (A)(2) or (3) of this section, an agreement entered into under this section shall not be approved by the legislative authority unless 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 the agreement. For the purpose of obtaining such approval, the legislative authority shall certify a copy of the agreement to the board of education not later than forty-five days prior to approving the agreement, excluding Saturday, Sunday, and a legal holiday as defined in section 1.14 of the Revised Code. 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 the resolution conditions under which the board would approve the agreement. The legislative authority may approve an agreement at any time after the board of education certifies its resolution approving the agreement.

to the legislative authority, or, if the board approves the agreement conditionally, at any time after the conditions are agreed to by the board and the legislative authority.

(2) Approval of an agreement by the board of education is not required under division (A)(1) of this section if, for each tax year the real property is exempted from taxation, the sum of the following quantities, as estimated at or prior to the time the agreement is formally approved by the legislative authority, equals or exceeds fifty per cent of the amount of taxes, as estimated at or prior to that time, that would have been charged and payable that year upon the real property had that property not been exempted from taxation:

(a) The amount of taxes charged and payable on any portion of the assessed valuation of the new structure or remodeling that will not be exempted from taxation under the agreement;

(b) The amount of taxes charged and payable on tangible personal property located on the premises of the new structure or of the structure to be remodeled under the agreement, whether payable by the owner of the structure or by a related member, as defined in section 5733.042 of the Revised Code without regard to division (B) of that section.

(c) The amount of any cash payment by the owner of the new structure or structure to be remodeled to the school district, the dollar value, as mutually agreed to be by the owner and the board of education, of any property or services provided by the owner of the property to the school district, whether by gift, loan, or otherwise, and any payment by the legislative authority to the school district pursuant to section 5709.82 of the Revised Code.

The estimates of quantities used for purposes of division (A)(2) of this section shall be estimated by the legislative authority. The legislative authority shall certify to the board of education that the estimates have been made in good faith. Departures of the actual quantities from the estimates subsequent to approval of the agreement by the board of education do not invalidate the agreement.

(3) If a board of education has adopted a resolution waiving its right to approve agreements and the resolution remains in effect, approval of an agreement by the board is not required under this division. If a board of education has adopted a resolution allowing a legislative authority to deliver the notice required under this division fewer than forty-five business days prior to the legislative authority's execution of the agreement, the legislative authority shall deliver the notice to the board not later than the number of days prior to such execution as prescribed by the board in its resolution. If a

board of education adopts a resolution waiving its right to approve agreements or shortening the notification period, the board shall certify a copy of the resolution to the legislative authority. If the board of education rescinds such a resolution, it shall certify notice of the rescission to the legislative authority.

(B) Each agreement shall include the following information:

(1) The names of all parties to the agreement;

(2) A description of the remodeling or construction, whether or not to be exempted from taxation, including existing or new structure size and cost thereof; the value of machinery, equipment, furniture, and fixtures, including an itemization of the value of machinery, equipment, furniture, and fixtures used at another location in this state prior to the agreement and relocated or to be relocated from that location to the property, and the value of machinery, equipment, furniture, and fixtures at the facility prior to the execution of the agreement; the value of inventory at the property, including an itemization of the value of inventory held at another location in this state prior to the agreement and relocated or to be relocated from that location to the property, and the value of inventory held at the property prior to the execution of the agreement;

(3) The scheduled starting and completion dates of remodeling or construction of real property or of investments made in machinery, equipment, furniture, fixtures, and inventory;

(4) Estimates of the number of employee positions to be created each year of the agreement and of the number of employee positions retained by the owner due to the remodeling or construction, itemized as to the number of full-time, part-time, permanent, and temporary positions;

(5) Estimates of the dollar amount of payroll attributable to the positions set forth in division (B)(4) of this section, similarly itemized;

(6) The number of employee positions, if any, at the property and at any other location in this state at the time the agreement is executed, itemized as to the number of full-time, part-time, permanent, and temporary positions.

(C) Each agreement shall set forth the following information and incorporate the following statements:

(1) A description of real property to be exempted from taxation under the agreement, the percentage of the assessed valuation of the real property exempted from taxation, and the period for which the exemption is granted, accompanied by the statement: "The exemption commences the first year for which the real property would first be taxable were that property not exempted from taxation. No exemption shall commence after ..... (insert date) nor extend beyond ..... (insert date)."

(2) "..... (insert name of owner) shall pay such real property taxes as are not exempted under this agreement and are charged against such property and shall file all tax reports and returns as required by law. If ..... (insert name of owner) fails to pay such taxes or file such returns and reports, exemptions from taxation granted under this agreement are rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and thereafter."

(3) "..... (insert name of owner) hereby certifies that at the time this agreement is executed, ..... (insert name of owner) does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State of Ohio, and does not owe delinquent taxes for which ..... (insert name of owner) is liable under Chapter 5733., 5735., 5739., 5741., 5743., 5747., or 5753. of the Ohio Revised Code, or, if such delinquent taxes are owed, ..... (insert name of owner) currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State of Ohio or an agent or instrumentality thereof, has filed a petition in bankruptcy under 11 U.S.C.A. 101, et seq., or such a petition has been filed against ..... (insert name of owner). For the purposes of this certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Revised Code governing payment of those taxes."

(4) "..... (insert name of municipal corporation or county) shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve, and maintain exemptions from taxation granted under this agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions."

(5) "If for any reason ..... (insert name of municipal corporation or county) revokes the designation of the area, entitlements granted under this agreement shall continue for the number of years specified under this agreement, unless ..... (insert name of owner) materially fails to fulfill its obligations under this agreement and ..... (insert name of municipal corporation or county) terminates or modifies the exemptions from taxation pursuant to this agreement."

(6) "If ..... (insert name of owner) materially fails to fulfill its obligations under this agreement, or if ..... (insert name of municipal corporation or county) determines that the certification as to delinquent taxes required by this agreement is fraudulent, ..... (insert name of municipal corporation or county) may terminate or modify the exemptions from taxation granted under this agreement."

(7) "..... (insert name of owner) shall provide to the proper tax

incentive review council any information reasonably required by the council to evaluate the applicant's compliance with the agreement, including returns filed pursuant to section 5711.02 of the Ohio Revised Code if requested by the council."

(8) "This agreement is not transferable or assignable without the express, written approval of ..... (insert name of municipal corporation or county)."

(9) "Exemptions from taxation granted under this agreement shall be revoked if it is determined that ..... (insert name of owner), any successor to that person, or any related member (as those terms are defined in division (E) of section 3735.671 of the Ohio Revised Code) has violated the prohibition against entering into this agreement under division (E) of section 3735.671 or section 5709.62 or 5709.63 of the Ohio Revised Code prior to the time prescribed by that division or either of those sections."

(10) "..... (insert name of owner) and ..... (insert name of municipal corporation or county) acknowledge that this agreement must be approved by formal action of the legislative authority of ..... (insert name of municipal corporation or county) as a condition for the agreement to take effect. This agreement takes effect upon such approval."

The statement described in division (C)(6) of this section may include the following statement, appended at the end of the statement: ", and may require the repayment of the amount of taxes that would have been payable had the property not been exempted from taxation under this agreement." If the agreement includes a statement requiring repayment of exempted taxes, it also may authorize the legislative authority to secure repayment of such taxes by a lien on the exempted property in the amount required to be repaid. Such a lien shall attach, and may be perfected, collected, and enforced, in the same manner as a mortgage lien on real property, and shall otherwise have the same force and effect as a mortgage lien on real property.

(D) Except as otherwise provided in this division, an agreement entered into under this section shall require that the owner pay an annual fee equal to the greater of one per cent of the amount of taxes exempted under the agreement or five hundred dollars; provided, however, that if the value of the incentives exceeds two hundred fifty thousand dollars, the fee shall not exceed two thousand five hundred dollars. The fee shall be payable to the legislative authority once per year for each year the agreement is effective on the days and in the form specified in the agreement. Fees paid shall be deposited in a special fund created for such purpose by the legislative authority and shall be used by the legislative authority exclusively for the

purpose of complying with section 3735.672 of the Revised Code and by the tax incentive review council created under section 5709.85 of the Revised Code exclusively for the purposes of performing the duties prescribed under that section. The legislative authority may waive or reduce the amount of the fee, but such waiver or reduction does not affect the obligations of the legislative authority or the tax incentive review council to comply with section 3735.672 or 5709.85 of the Revised Code.

(E) If any person that is party to an agreement granting an exemption from taxation discontinues operations at the structure to which that exemption applies prior to the expiration of the term of the agreement, that person, any successor to that person, and any related member shall not enter into an agreement under this section or section 5709.62, 5709.63, or 5709.632 of the Revised Code, and no legislative authority shall enter into such an agreement with such a person, successor, or related member, prior to the expiration of five years after the discontinuation of operations. As used in this division, "successor" means a person to which the assets or equity of another person has been transferred, which transfer resulted in the full or partial nonrecognition of gain or loss, or resulted in a carryover basis, both as determined by rule adopted by the tax commissioner. "Related member" has the same meaning as defined in section 5733.042 of the Revised Code without regard to division (B) of that section.

The director of development shall review all agreements submitted to the director under division (F) of this section for the purpose of enforcing this division. If the director determines there has been a violation of this division, the director shall notify the legislative authority of such violation, and the legislative authority immediately shall revoke the exemption granted under the agreement.

(F) When an agreement is entered into under this section, the legislative authority authorizing the agreement shall forward a copy of the agreement to the director of development within fifteen days after the agreement is entered into.

Sec. 5709.631. Each agreement entered into under sections 5709.62, 5709.63, and 5709.632 of the Revised Code on or after April 1, 1994, shall be in writing and shall include all of the information and statements prescribed by this section. Agreements may include terms not prescribed by this section, but such terms shall in no way derogate from the information and statements prescribed by this section.

(A) Each agreement shall include the following information:

- (1) The names of all parties to the agreement;
- (2) A description of the investments to be made by the applicant

enterprise or by another party at the facility whether or not the investments are exempted from taxation, including existing or new building size and cost thereof; the value of machinery, equipment, furniture, and fixtures, including an itemization of the value of machinery, equipment, furniture, and fixtures used at another location in this state prior to the agreement and relocated or to be relocated from that location to the facility and the value of machinery, equipment, furniture, and fixtures at the facility prior to the execution of the agreement that will not be exempted from taxation; the value of inventory at the facility, including an itemization of the value of inventory held at another location in this state prior to the agreement and relocated or to be relocated from that location to the facility, and the value of inventory held at the facility prior to the execution of the agreement that will not be exempted from taxation;

(3) The scheduled starting and completion dates of investments made in building, machinery, equipment, furniture, fixtures, and inventory;

(4) Estimates of the number of employee positions to be created each year of the agreement and of the number of employee positions retained by the applicant enterprise due to the project, itemized as to the number of full-time, part-time, permanent, and temporary positions;

(5) Estimates of the dollar amount of payroll attributable to the positions set forth in division (A)(4) of this section, similarly itemized;

(6) The number of employee positions, if any, at the project site and at any other location in the state at the time the agreement is executed, itemized as to the number of full-time, part-time, permanent, and temporary positions.

(B) Each agreement shall set forth the following information and incorporate the following statements:

(1) A description of real property to be exempted from taxation under the agreement, the percentage of the assessed valuation of the real property exempted from taxation, and the period for which the exemption is granted, accompanied by the statement: "The exemption commences the first year for which the real property would first be taxable were that property not exempted from taxation. No exemption shall commence after ..... (insert date) nor extend beyond ..... (insert date)." The tax commissioner shall adopt rules prescribing the form the description of such property shall assume to ensure that the property to be exempted from taxation under the agreement is distinguishable from property that is not to be exempted under that agreement.

(2) A description of tangible personal property to be exempted from taxation under the agreement, the percentage of the assessed value of the

tangible personal property exempted from taxation, and the period for which the exemption is granted, accompanied by the statement: "The minimum investment for tangible personal property to qualify for the exemption is \$..... (insert dollar amount) to purchase machinery and equipment first used in business at the facility as a result of the project, \$..... (insert dollar amount) for furniture and fixtures and other noninventory personal property first used in business at the facility as a result of the project, and \$..... (insert dollar amount) for new inventory. The maximum investment for tangible personal property to qualify for the exemption is \$..... (insert dollar amount) to purchase machinery and equipment first used in business at the facility as a result of the project, \$..... (insert dollar amount) for furniture and fixtures and other noninventory personal property first used in business at the facility as a result of the project, and \$..... (insert dollar amount) for new inventory. The exemption commences the first year for which the tangible personal property would first be taxable were that property not exempted from taxation. No exemption shall commence after tax return year ..... (insert year) nor extend beyond tax return year ..... (insert year). In no instance shall any tangible personal property be exempted from taxation for more than ten return years unless, under division (D)(2) of section 5709.62 or under division (C)(1)(b) of section 5709.63 of the Revised Code, the board of education approves exemption for a number of years in excess of ten, in which case the tangible personal property may be exempted from taxation for that number of years, not to exceed fifteen return years." No exemption shall be allowed for any type of tangible personal property if the total investment is less than the minimum dollar amount specified for that type of property. If, for a type of tangible personal property, there are no minimum or maximum investment dollar amounts specified in the statement or the dollar amounts are designated in the statement as not applicable, the exemption shall apply to the total cost of that type of tangible personal property first used in business at the facility as a result of the project. The tax commissioner shall adopt rules prescribing the form the description of such property shall assume to ensure that the property to be exempted from taxation under the agreement is distinguishable from property that is not to be exempted under that agreement.

(3) "..... (insert name of enterprise) shall pay such real and tangible personal property taxes as are not exempted under this agreement and are charged against such property and shall file all tax reports and returns as required by law. If ..... (insert name of enterprise) fails to pay such taxes or file such returns and reports, all incentives granted under this agreement

are rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and thereafter."

(4) "..... (insert name of enterprise) hereby certifies that at the time this agreement is executed, ..... (insert name of enterprise) does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State of Ohio, and does not owe delinquent taxes for which ..... (insert name of enterprise) is liable under Chapter 5727., 5733., 5735., 5739., 5741., 5743., 5747., or 5753. of the Revised Code, or, if such delinquent taxes are owed, ..... (insert name of enterprise) currently is paying the delinquent taxes pursuant to a delinquent tax contract enforceable by the State of Ohio or an agent or instrumentality thereof, has filed a petition in bankruptcy under 11 U.S.C.A. 101, et seq., or such a petition has been filed against ..... (insert name of enterprise). For the purposes of the certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Revised Code governing payment of those taxes."

(5) "..... (insert name of municipal corporation or county) shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve, and maintain exemptions from taxation granted under this agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions."

(6) "If for any reason the enterprise zone designation expires, the Director of the Ohio Department of Development revokes certification of the zone, or ..... (insert name of municipal corporation or county) revokes the designation of the zone, entitlements granted under this agreement shall continue for the number of years specified under this agreement, unless ..... (insert name of enterprise) materially fails to fulfill its obligations under this agreement and ..... (insert name of municipal corporation or county) terminates or modifies the exemptions from taxation granted under this agreement."

(7) "If ..... (insert name of enterprise) materially fails to fulfill its obligations under this agreement, other than with respect to the number of employee positions estimated to be created or retained under this agreement, or if ..... (insert name of municipal corporation or county) determines that the certification as to delinquent taxes required by this agreement is fraudulent, ..... (insert name of municipal corporation or county) may terminate or modify the exemptions from taxation granted under this agreement."

(8) "..... (insert name of enterprise) shall provide to the proper tax

incentive review council any information reasonably required by the council to evaluate the enterprise's compliance with the agreement, including returns or annual reports filed pursuant to section 5711.02 or 5727.08 of the Ohio Revised Code if requested by the council."

(9) "..... (insert name of enterprise) and ..... (insert name of municipal corporation or county) acknowledge that this agreement must be approved by formal action of the legislative authority of ..... (insert name of municipal corporation or county) as a condition for the agreement to take effect. This agreement takes effect upon such approval."

(10) "This agreement is not transferable or assignable without the express, written approval of ..... (insert name of municipal corporation or county)."

(11) "Exemptions from taxation granted under this agreement shall be revoked if it is determined that ..... (insert name of enterprise), any successor enterprise, or any related member (as those terms are defined in section 5709.61 of the Ohio Revised Code) has violated the prohibition against entering into this agreement under division (E) of section 3735.671 or section 5709.62, 5709.63, or 5709.632 of the Ohio Revised Code prior to the time prescribed by that division or either of those sections."

(12) "In any three-year period during which this agreement is in effect, if the actual number of employee positions created or retained by ..... (insert name of enterprise) is not equal to or greater than seventy-five per cent of the number of employee positions estimated to be created or retained under this agreement during that three-year period, ..... (insert name of enterprise) shall repay the amount of taxes on property that would have been payable had the property not been exempted from taxation under this agreement during that three-year period. In addition, the ..... (insert name of municipal corporation or county) may terminate or modify the exemptions from taxation granted under this agreement."

The statement described in division (B)(7) of this section may include the following statement, appended at the end of the statement: "and may require the repayment of the amount of taxes that would have been payable had the property not been exempted from taxation under this agreement." If the agreement includes a statement requiring repayment of exempted taxes, it also may authorize the legislative authority to secure repayment of such taxes by a lien on the exempted property in the amount required to be repaid. Such a lien on exempted real property shall attach, and may be perfected, collected, and enforced, in the same manner as a mortgage lien on real property, and shall otherwise have the same force and effect as a mortgage lien on real property. Notwithstanding section 5719.01 of the

Revised Code, such a lien on exempted tangible personal property shall attach, and may be perfected, collected, and enforced, in the same manner as a security interest in goods under Chapter 1309. of the Revised Code, and shall otherwise have the same force and effect as such a security interest.

(C) If the director of development had to issue a waiver under section 5709.633 of the Revised Code as a condition for the agreement to be executed, the agreement shall include the following statement:

"Continuation of this agreement is subject to the validity of the circumstance upon which ..... (insert name of enterprise) applied for, and the Director of the Ohio Department of Development issued, the waiver pursuant to section 5709.633 of the Ohio Revised Code. If, after formal approval of this agreement by ..... (insert name of municipal corporation or county), the Director or ..... (insert name of municipal corporation or county) discovers that such a circumstance did not exist, ..... (insert name of enterprise) shall be deemed to have materially failed to comply with this agreement."

If the director issued a waiver on the basis of the circumstance described in division (B)(3) of section 5709.633 of the Ohio Revised Code, the conditions enumerated in divisions (B)(3)(a)(i) and (ii) or divisions (B)(3)(b)(i) and (ii) of that section shall be incorporated in the information described in divisions (A)(2), (3), and (4) of this section.

Sec. 5709.831. (A) As used in this section:

(1) "Exempted improvements" means improvements exempted from taxation under section 5709.40, 5709.41, 5709.73, or 5709.78 of the Revised Code.

(2) "Political subdivision" means the county, township, or municipal corporation granting an exemption from taxation under section 5709.40, 5709.41, 5709.73, or 5709.78 of the Revised Code.

(B) The legislative authority of a ~~municipal corporation, township, or county~~ political subdivision that grants an exemption from taxation for an improvement under section 5709.40, 5709.41, 5709.73, or 5709.78 of the Revised Code may require the owner of the improvement to reimburse the local taxing authorities within whose taxing jurisdiction the exempted improvement is located for the amount of real property taxes that would have been payable to the taxing authorities had the improvement not been exempted from taxation. If the legislative authority requires the owner of the exempted improvements to make payments in lieu of taxes, the legislative authority may require such reimbursement only to the extent that the owner failed to make those payments as required. The legislative authority may secure any reimbursement authorized by this section by a lien on the

exempted property, which shall attach, and may be perfected, collected, and enforced, in the same manner as a mortgage lien on real property, and which shall otherwise have the same force and effect as a mortgage lien on real property.

SECTION 2. That existing sections 166.06, 166.07, 166.21, 725.04, 1728.11, 1728.111, 3735.671, 5709.631, and 5709.831 of the Revised Code are hereby repealed.

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*Speaker \_\_\_\_\_ of the House of Representatives.*

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*President \_\_\_\_\_ of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

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

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 20\_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_