

As Passed by the House

**125th General Assembly
Regular Session
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Sub. S. B. No. 165

Senators Schuring, Schuler, Fedor, Dann, Harris

Representatives D. Evans, Miller, S. Patton, Hagan, Schmidt, Willamowski

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A B I L L

To amend sections 166.06, 166.07, 166.21, 725.04, 1
1728.11, 1728.111, 3735.671, 5709.631, and 2
5709.831 and to enact section 9.661 of the Revised 3
Code to authorize liens that may be used to secure 4
the performance of obligations by recipients of 5
development loans and local property tax 6
incentives. 7

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

Section 1. That sections 166.06, 166.07, 166.21, 725.04, 8
1728.11, 1728.111, 3735.671, 5709.631, and 5709.831 be amended and 9
section 9.661 of the Revised Code be enacted to read as follows: 10

Sec. 9.661. (A) As used in this section: 11

(1) "Borrower" means any person obligated to repay a 12
development loan pursuant to a development loan agreement or 13
obligated to repay a loan guaranteed pursuant to a loan guarantee 14
agreement. 15

(2) "Development inducement agreement" means an agreement 16
making a grant or inducement under the authority of Section 13 of 17
Article VIII, Ohio Constitution, including an inducement made 18
under section 166.02 of the Revised Code or a grant made under 19

section 184.02 of the Revised Code. 20

(3) "Development loan" means any loan made under the 21
authority of Section 13 of Article VIII, Ohio Constitution, 22
including any loan made under the authority of Chapter 122., 165., 23
166., 184., or 1724. of the Revised Code. 24

(4) "Development loan agreement" means an agreement making a 25
development loan. 26

(5) "Grantee" means any grantee or other recipient of 27
anything of value under a development inducement agreement. 28

(6) "Guaranteed loan" means a loan guaranteed by this state, 29
a state agency, or a political subdivision under the authority of 30
Section 13 of Article VIII, Ohio Constitution, including any loan 31
guarantee authorized under Chapter 166. of the Revised Code. 32

(7) "Loan guarantee agreement" means an agreement providing 33
for the guarantee of a guaranteed loan. 34

(8) "Secured party" means the state, a state agency, or a 35
political subdivision that enters into a development loan 36
agreement, loan guarantee agreement, or development inducement 37
agreement. 38

(B) The obligations of a borrower under each development loan 39
agreement or loan guarantee agreement may be secured by a lien of 40
the secured party on the borrower's real property and personal 41
property the acquisition of which was funded in whole or in part 42
by the proceeds of the loan. Any such lien shall be in an amount 43
not exceeding the amount financed under the development loan 44
agreement, or the amount guaranteed under the loan guarantee 45
agreement, and used to fund acquisition of the property. The lien 46
may be in addition to any other security required by the 47
development loan agreement or loan guarantee agreement, but the 48
sum of the lien amount and the value of any such other security 49

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.

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(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.

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(D) A secured party may enforce such liens against real
property by civil action in the court of common pleas of the

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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.

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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.

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

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

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(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

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facilities establishment fund, subject to controlling board	113
approval.	114
(3) The principal amount to be guaranteed has a satisfactory	115
maturity date or dates, which in no case shall be later than	116
twenty years from the effective date of the guarantee;	117
(4) The rate of interest on the loan to be guaranteed and on	118
any other loan made by the same parties or related persons for the	119
eligible project is not excessive;	120
(5) The principal obligor, or primary guarantor, is	121
responsible and is reasonably expected to be able to meet the	122
payments under the loan, bonds, notes, or other certificates;	123
(6) The loan or documents pertaining to the bonds, notes, or	124
other certificates to be guaranteed contains provisions for	125
payment by the principal obligor, and is in such form and contains	126
such terms and provisions for the protection of the lenders as are	127
generally consistent with commercial practice, including, where	128
applicable, provisions with respect to property insurance,	129
repairs, alterations, payment of taxes and assessments,	130
delinquency charges, default remedies, acceleration of maturity,	131
prior, additional and secondary liens, and other matters as the	132
director may approve.	133
(C) The contract of guarantee may make provision for the	134
conditions of, time for and manner of fulfillment of the guarantee	135
commitment, subrogation of the state to the rights of the parties	136
guaranteed and exercise of such parties' rights by the state,	137
giving the state the options of making payment of the principal	138
amount guaranteed in one or more installments and, if deferred, to	139
pay interest thereon from the loan guarantee fund and the	140
facilities establishment fund, any other terms or conditions	141
customary to such guarantees and as the director may approve, and	142
may contain provisions for securing the guarantee in the manner	143

consistent with this section, including, at the discretion of the 144
director, a lien provided for under section 9.661 of the Revised 145
Code, and may contain covenants on behalf of the state for the 146
maintenance of the loan guarantee fund created by this section and 147
of receipts to it permitted by this chapter, including covenants 148
on behalf of the state to issue obligations under section 166.08 149
of the Revised Code to provide moneys to the loan guarantee fund 150
to fulfill such guarantees and covenants authorized by division 151
(R)(1) of section 166.08 of the Revised Code, and covenants 152
restricting the aggregate amount of guarantees that may be 153
contracted under this section and obligations that may be issued 154
under section 166.08 of the Revised Code, and terms pertinent to 155
either, to better secure the parties guaranteed. 156

(D) The "loan guarantee fund" of the economic development 157
program is hereby created as a special revenue fund and a trust 158
fund which shall be in the custody of the treasurer of state but 159
shall be separate and apart from and not a part of the state 160
treasury to consist of all grants, gifts, and contributions of 161
moneys or rights to moneys lawfully designated for or deposited in 162
such fund, all moneys and rights to moneys lawfully appropriated 163
and transferred to such fund, including moneys received from the 164
issuance of obligations under section 166.08 of the Revised Code, 165
and moneys deposited to such fund pursuant to division (F) of this 166
section; provided that the loan guarantee fund shall not be 167
comprised, in any part, of moneys raised by taxation. 168

(E) The director may fix service charges for making a 169
guarantee. Such charges shall be payable at such times and place 170
and in such amounts and manner as may be prescribed by the 171
director. 172

(F) The treasurer of state shall serve as agent for the 173
director in the making of deposits and withdrawals and maintenance 174
of records pertaining to the loan guarantee fund. Prior to the 175

director's entry into a contract providing for the making of a 176
guarantee payable from the loan guarantee fund, the treasurer of 177
state shall cause to be transferred from the facilities 178
establishment fund to the loan guarantee fund an amount sufficient 179
to make the aggregate balance therein, taking into account the 180
proposed loan guarantee, equal to the loan guarantee reserve 181
requirement. Thereafter, the treasurer of state shall cause the 182
balance in the loan guarantee fund to be at least equal to the 183
loan guarantee reserve requirement. Funds from the loan guarantee 184
fund shall be disbursed under a guarantee made pursuant to this 185
section to satisfy a guaranteed repayment or payment which is in 186
default. The treasurer of state shall first withdraw and transfer 187
moneys then on deposit in the loan guarantee fund. Whenever these 188
moneys are inadequate to meet the requirements of a guarantee, the 189
treasurer of state shall, without need of appropriation or further 190
action by the director, provide for a withdrawal and transfer to 191
the loan guarantee fund and then to the guaranteed party of moneys 192
in such amount as is necessary to meet the guarantee from 193
unencumbered and available moneys in the facilities establishment 194
fund. Such disbursements shall be made in the manner and at the 195
times provided in such guarantees. Within ninety days following a 196
disbursement of moneys from the loan guarantee fund, the treasurer 197
of state, without need of appropriation or further action by the 198
director, shall provide for a withdrawal and transfer to the loan 199
guarantee fund from unencumbered and available moneys in the 200
facilities establishment fund, including moneys from the repayment 201
of loans made from that fund, of an amount sufficient to cause the 202
balance in the loan guarantee fund to be at least equal to the 203
loan guarantee reserve requirement. 204

(G) Any guaranteed parties under this section, except to the 205
extent that their rights are restricted by the guarantee 206
documents, may by any suitable form of legal proceedings, protect 207

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 270
director. 271

(C) Fees, charges, rates of interest, times of payment of 272
interest and principal, and other terms, conditions, and 273
provisions of and security for loans made from the facilities 274
establishment fund pursuant to this section shall be such as the 275
director determines to be appropriate and in furtherance of the 276
purpose for which the loans are made. The moneys used in making 277
such loans shall be disbursed from the facilities establishment 278
fund upon order of the director. The director shall give special 279
consideration in setting the required job creation ratios and 280
interest rates for loans that are for voluntary actions. 281

(D) The director may take actions necessary or appropriate to 282
collect or otherwise deal with any loan made under this section, 283
including any action authorized by section 9.661 of the Revised 284
Code. 285

(E) The director may fix service charges for the making of a 286
loan. Such charges shall be payable at such times and place and in 287
such amounts and manner as may be prescribed by the director. 288

Sec. 166.21. (A) The director of development, with the 289
approval of the controlling board and subject to other applicable 290
provisions of this chapter, may lend moneys in the research and 291
development loan fund to persons for the purpose of paying 292
allowable costs of eligible research and development projects, if 293
the director determines that all of the following conditions are 294
met: 295

(1) The project is an eligible research and development 296
project and is economically sound; 297

(2) The amount to be lent from the research and development 298
loan fund will not exceed seventy-five per cent of the total costs 299

of the eligible research and development project; 300

(3) The repayment of the loan from the research and 301
development loan fund will be secured by a mortgage, ~~lien~~, 302
assignment, pledge, lien provided for under section 9.661 of the 303
Revised Code, or other interest in property or other assets of the 304
borrower, at such level of priority and value as the director 305
considers necessary, provided that, in making such a 306
determination, the director shall take into account the value of 307
any rights granted by the borrower to the director to control the 308
use of any assets of the borrower under the circumstances 309
described in the loan documents. 310

(B) The determinations of the director under division (A) of 311
this section shall be conclusive for purposes of the validity of a 312
loan commitment evidenced by a loan agreement signed by the 313
director. 314

(C) Fees, charges, rates of interest, times of payment of 315
interest and principal, and other terms and conditions of, and 316
security for, loans made from the research and development loan 317
fund shall be such as the director determines to be appropriate 318
and in furtherance of the purpose for which the loans are made. 319
The moneys used in making loans shall be disbursed from the fund 320
upon order of the director. Unless otherwise specified in any 321
indenture or other instrument securing obligations under division 322
(D) of section 166.08 of the Revised Code, any payments of 323
principal and interest from loans made from the fund shall be paid 324
to the fund and used for the purpose of making loans under this 325
section. 326

(D)(1) As used in this division, "qualified research and 327
development loan payments" means payments of principal and 328
interest on a loan made from the research and development loan 329
fund. 330

(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 362
this section, moneys referred to in that division may be deposited 363
to the credit of separate accounts established by the director of 364
development within the research and development loan fund or in 365
the bond service fund and pledged to the security of obligations, 366
applied to the payment of bond service charges without need for 367
appropriation, released from any such pledge and transferred to 368
the research and development loan fund, all as and to the extent 369
provided in the bond proceedings pursuant to written directions of 370
the director of development. Accounts may be established by the 371
director in the research and development loan fund for particular 372
projects or otherwise. The director may withdraw from the fund or, 373
subject to provisions of the applicable bond proceedings, from any 374
special funds established pursuant to the bond proceedings, or 375
from any accounts in such funds, any amounts of investment income 376
required to be rebated and paid to the federal government in order 377
to maintain the exemption from federal income taxation of interest 378
on obligations issued under this chapter, which withdrawal and 379
payment may be made without the necessity for appropriation. 380

Sec. 725.04. A development agreement shall contain an 381
agreement binding on the owner or owners of the improvements, and 382
all subsequent owners of the improvements, to make semiannual 383
urban renewal service payments, in lieu of taxes upon the 384
improvements during the exemption period, equal annually in the 385
aggregate to the amount of real property taxes that would have 386
been paid on the portion of the assessed valuation of the 387
improvements declared to be a public purpose had an exemption 388
period not been specified by the municipal corporation. All 389
semiannual urban renewal service payments shall be collected at 390
the same time that real property taxes are collected. The entire 391
amount of these urban renewal service payments, when collected, 392
shall be deposited in an urban renewal debt retirement fund 393

established pursuant to section 725.03 of the Revised Code. 394

If the municipal corporation owns the improvements, it may 395
require the lessee of the improvements to make the semiannual 396
urban renewal service payments required under this section. 397

The legislative authority of the municipal corporation may 398
secure the urban renewal service payments by a lien on the 399
improvements. Such a lien shall attach, and may be perfected, 400
collected, and enforced, in the same manner as a mortgage lien on 401
real property, and shall otherwise have the same force and effect 402
as a mortgage lien on real property. 403

Sec. 1728.11. The community urban redevelopment corporation 404
entering into a financial agreement with a municipal corporation 405
other than an impacted city shall make payment to the county 406
treasurer on or before the final date for payment of real estate 407
taxes in the county for each half year of a semi-annual service 408
charge in lieu of taxes on the real property of the corporation in 409
the project, whether acquired by purchase or lease, in a 410
semi-annual amount of not less than seven and one-half per cent of 411
the annual gross revenues from each unit of the project, if the 412
project is undertaken in units, or from the total project if the 413
project is not to be undertaken in units, for each of the years of 414
operation commencing with the date of the completion of such unit 415
or of the project, as the case may be. Where, because of the 416
nature of the development, ownership, use, or occupancy of the 417
project or any unit thereof if the project is to be undertaken in 418
units, the total annual gross rental cannot be reasonably 419
ascertained, the governing body shall provide in the financial 420
agreement that the annual service charge shall be a sum of not 421
less than two per cent of the total project cost or total project 422
unit cost, calculated from the first day of the month following 423
the substantial completion of the project or any unit thereof if 424

the project is undertaken in units. In no event shall such payment 425
together with the taxes on the land, in any year after first 426
occupancy of the project, be less than the total taxes assessed on 427
all real property in the area covered by the project in the 428
calendar year immediately preceding the acquisition of the said 429
area by the municipality or its agency. 430

Against such annual charge the corporation is entitled to 431
credit for the amount, without interest, of the real estate taxes 432
on land paid by it in the last two preceding semi-annual 433
installments. On or before the fifteenth of January in each year 434
each taxing district shall report to the county auditor, in such 435
form as is approved by the tax commissioner, the amount of the 436
service charge in excess of the taxes on the land chargeable for 437
the preceding calendar year for each project or unit thereof 438
subject to Chapter 1728. of the Revised Code. Such payments shall 439
be distributed by the county auditor to the taxing subdivision 440
levying taxes in the subdivisions in which the property is 441
located, in the same proportions in which the current general 442
property tax is distributed. The county treasurer may secure the 443
service charge payments, minus the credit, by a lien on the real 444
property of the corporation in the project. Such a lien shall 445
attach, and may be perfected, collected, and enforced, in the same 446
manner as a mortgage lien on real property, and shall otherwise 447
have the same force and effect as a mortgage lien on real 448
property. 449

At the end of thirty years for one, two, or three family 450
residential dwelling units and twenty years for all other uses of 451
the improvements from the date of the execution of a financial 452
agreement or earlier by agreement of the parties thereto, the tax 453
exemption upon any unit, if the project is undertaken in units, or 454
upon the entire project, if the project is not undertaken in 455
units, ceases and the improvements and any other property of the 456

corporation as well as the land shall be assessed and taxed,
according to general law, like other property within the municipal
corporation.

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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.

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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.

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The service charge in lieu of taxes shall be distributed by

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the county auditor to the taxing subdivision levying taxes in the 488
subdivisions in which the property is located, in the same 489
proportions in which the current general property tax is 490
distributed, or upon the adoption of a resolution by the municipal 491
legislative authority, which shall be certified to the county 492
auditor, the full amount of the service charge shall be 493
distributed at the same time and in the same manner as real 494
property tax payments to the municipal corporation, and shall be 495
deposited in an urban redevelopment tax increment equivalent fund 496
established pursuant to section 1728.112 of the Revised Code. 497

At the end of thirty years for one, two, or three family 498
residential dwelling units and twenty years for all other uses of 499
the improvements from the date of the execution of a financial 500
agreement, or earlier by agreement of the parties thereto, the 501
exemption from taxation of any unit if the project is undertaken 502
in units, or of the entire project if the project is not 503
undertaken in units, ceases and the improvements and any other 504
property of the corporation as well as the land shall be assessed 505
and taxed like other property within the municipal corporation. 506

At the same date all restrictions and limitation upon the 507
corporation shall terminate upon the corporation's rendering its 508
final account with the municipal corporation. 509

Sec. 3735.671. (A) If construction or remodeling of 510
commercial or industrial property is to be exempted from taxation 511
pursuant to section 3735.67 of the Revised Code, the legislative 512
authority and the owner of the property, prior to the commencement 513
of construction or remodeling, shall enter into a written 514
agreement, binding on both parties for a period of time that does 515
not end prior to the end of the period of the exemption, that 516
includes all of the information and statements prescribed by this 517
section. Agreements may include terms not prescribed by this 518

section, but such terms shall in no way derogate from the 519
information and statements prescribed by this section. 520

(1) Except as otherwise provided in division (A)(2) or (3) of 521
this section, an agreement entered into under this section shall 522
not be approved by the legislative authority unless the board of 523
education of the city, local, or exempted village school district 524
within the territory of which the property is or will be located 525
approves the agreement. For the purpose of obtaining such 526
approval, the legislative authority shall certify a copy of the 527
agreement to the board of education not later than forty-five days 528
prior to approving the agreement, excluding Saturday, Sunday, and 529
a legal holiday as defined in section 1.14 of the Revised Code. 530
The board of education, by resolution adopted by a majority of the 531
board, shall approve or disapprove the agreement and certify a 532
copy of the resolution to the legislative authority not later than 533
fourteen days prior to the date stipulated by the legislative 534
authority as the date upon which approval of the agreement is to 535
be formally considered by the legislative authority. The board of 536
education may include in the resolution conditions under which the 537
board would approve the agreement. The legislative authority may 538
approve an agreement at any time after the board of education 539
certifies its resolution approving the agreement to the 540
legislative authority, or, if the board approves the agreement 541
conditionally, at any time after the conditions are agreed to by 542
the board and the legislative authority. 543

(2) Approval of an agreement by the board of education is not 544
required under division (A)(1) of this section if, for each tax 545
year the real property is exempted from taxation, the sum of the 546
following quantities, as estimated at or prior to the time the 547
agreement is formally approved by the legislative authority, 548
equals or exceeds fifty per cent of the amount of taxes, as 549
estimated at or prior to that time, that would have been charged 550

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, 582
the legislative authority shall deliver the notice to the board 583
not later than the number of days prior to such execution as 584
prescribed by the board in its resolution. If a board of education 585
adopts a resolution waiving its right to approve agreements or 586
shortening the notification period, the board shall certify a copy 587
of the resolution to the legislative authority. If the board of 588
education rescinds such a resolution, it shall certify notice of 589
the rescission to the legislative authority. 590

(B) Each agreement shall include the following information: 591

(1) The names of all parties to the agreement; 592

(2) A description of the remodeling or construction, whether 593
or not to be exempted from taxation, including existing or new 594
structure size and cost thereof; the value of machinery, 595
equipment, furniture, and fixtures, including an itemization of 596
the value of machinery, equipment, furniture, and fixtures used at 597
another location in this state prior to the agreement and 598
relocated or to be relocated from that location to the property, 599
and the value of machinery, equipment, furniture, and fixtures at 600
the facility prior to the execution of the agreement; the value of 601
inventory at the property, including an itemization of the value 602
of inventory held at another location in this state prior to the 603
agreement and relocated or to be relocated from that location to 604
the property, and the value of inventory held at the property 605
prior to the execution of the agreement; 606

(3) The scheduled starting and completion dates of remodeling 607
or construction of real property or of investments made in 608
machinery, equipment, furniture, fixtures, and inventory; 609

(4) Estimates of the number of employee positions to be 610
created each year of the agreement and of the number of employee 611
positions retained by the owner due to the remodeling or 612

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 644
property taxes to any taxing authority of the State of Ohio, and 645
does not owe delinquent taxes for which (insert name of 646
owner) is liable under Chapter 5733., 5735., 5739., 5741., 5743., 647
5747., or 5753. of the Ohio Revised Code, or, if such delinquent 648
taxes are owed, (insert name of owner) currently is 649
paying the delinquent taxes pursuant to an undertaking enforceable 650
by the State of Ohio or an agent or instrumentality thereof, has 651
filed a petition in bankruptcy under 11 U.S.C.A. 101, et seq., or 652
such a petition has been filed against (insert name of 653
owner). For the purposes of this certification, delinquent taxes 654
are taxes that remain unpaid on the latest day prescribed for 655
payment without penalty under the chapter of the Revised Code 656
governing payment of those taxes." 657

(4) "..... (insert name of municipal corporation or 658
county) shall perform such acts as are reasonably necessary or 659
appropriate to effect, claim, reserve, and maintain exemptions 660
from taxation granted under this agreement including, without 661
limitation, joining in the execution of all documentation and 662
providing any necessary certificates required in connection with 663
such exemptions." 664

(5) "If for any reason (insert name of municipal 665
corporation or county) revokes the designation of the area, 666
entitlements granted under this agreement shall continue for the 667
number of years specified under this agreement, unless 668
(insert name of owner) materially fails to fulfill its obligations 669
under this agreement and (insert name of 670
municipal corporation or county) terminates or modifies the 671
exemptions from taxation pursuant to this agreement." 672

(6) "If (insert name of owner) materially fails to 673
fulfill its obligations under this agreement, or if 674
(insert name of municipal corporation or county) determines that 675

the certification as to delinquent taxes required by this 676
agreement is fraudulent, (insert name of municipal 677
corporation or county) may terminate or modify the exemptions from 678
taxation granted under this agreement." 679

(7) "..... (insert name of owner) shall provide to the 680
proper tax incentive review council any information reasonably 681
required by the council to evaluate the applicant's compliance 682
with the agreement, including returns filed pursuant to section 683
5711.02 of the Ohio Revised Code if requested by the council." 684

(8) "This agreement is not transferable or assignable without 685
the express, written approval of (insert name of 686
municipal corporation or county)." 687

(9) "Exemptions from taxation granted under this agreement 688
shall be revoked if it is determined that (insert name 689
of owner), any successor to that person, or any related member (as 690
those terms are defined in division (E) of section 3735.671 of the 691
Ohio Revised Code) has violated the prohibition against entering 692
into this agreement under division (E) of section 3735.671 or 693
section 5709.62 or 5709.63 of the Ohio Revised Code prior to the 694
time prescribed by that division or either of those sections." 695

(10) "..... (insert name of owner) and 696
(insert name of municipal corporation or county) acknowledge that 697
this agreement must be approved by formal action of the 698
legislative authority of (insert name of municipal 699
corporation or county) as a condition for the agreement to take 700
effect. This agreement takes effect upon such approval." 701

The statement described in division (C)(6) of this section 702
may include the following statement, appended at the end of the 703
statement: ", and may require the repayment of the amount of taxes 704
that would have been payable had the property not been exempted 705
from taxation under this agreement." If the agreement includes a 706

statement requiring repayment of exempted taxes, it also may 707
authorize the legislative authority to secure repayment of such 708
taxes by a lien on the exempted property in the amount required to 709
be repaid. Such a lien shall attach, and may be perfected, 710
collected, and enforced, in the same manner as a mortgage lien on 711
real property, and shall otherwise have the same force and effect 712
as a mortgage lien on real property. 713

(D) Except as otherwise provided in this division, an 714
agreement entered into under this section shall require that the 715
owner pay an annual fee equal to the greater of one per cent of 716
the amount of taxes exempted under the agreement or five hundred 717
dollars; provided, however, that if the value of the incentives 718
exceeds two hundred fifty thousand dollars, the fee shall not 719
exceed two thousand five hundred dollars. The fee shall be payable 720
to the legislative authority once per year for each year the 721
agreement is effective on the days and in the form specified in 722
the agreement. Fees paid shall be deposited in a special fund 723
created for such purpose by the legislative authority and shall be 724
used by the legislative authority exclusively for the purpose of 725
complying with section 3735.672 of the Revised Code and by the tax 726
incentive review council created under section 5709.85 of the 727
Revised Code exclusively for the purposes of performing the duties 728
prescribed under that section. The legislative authority may waive 729
or reduce the amount of the fee, but such waiver or reduction does 730
not affect the obligations of the legislative authority or the tax 731
incentive review council to comply with section 3735.672 or 732
5709.85 of the Revised Code. 733

(E) If any person that is party to an agreement granting an 734
exemption from taxation discontinues operations at the structure 735
to which that exemption applies prior to the expiration of the 736
term of the agreement, that person, any successor to that person, 737
and any related member shall not enter into an agreement under 738

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;	770
(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;	771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787
(3) The scheduled starting and completion dates of investments made in building, machinery, equipment, furniture, fixtures, and inventory;	788 789 790
(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;	791 792 793 794 795
(5) Estimates of the dollar amount of payroll attributable to the positions set forth in division (A)(4) of this section, similarly itemized;	796 797 798
(6) The number of employee positions, if any, at the project site and at any other location in the state at the time the	799 800

agreement is executed, itemized as to the number of full-time, 801
part-time, permanent, and temporary positions. 802

(B) Each agreement shall set forth the following information 803
and incorporate the following statements: 804

(1) A description of real property to be exempted from 805
taxation under the agreement, the percentage of the assessed 806
valuation of the real property exempted from taxation, and the 807
period for which the exemption is granted, accompanied by the 808
statement: "The exemption commences the first year for which the 809
real property would first be taxable were that property not 810
exempted from taxation. No exemption shall commence after 811
..... (insert date) nor extend beyond (insert 812
date)." The tax commissioner shall adopt rules prescribing the 813
form the description of such property shall assume to ensure that 814
the property to be exempted from taxation under the agreement is 815
distinguishable from property that is not to be exempted under 816
that agreement. 817

(2) A description of tangible personal property to be 818
exempted from taxation under the agreement, the percentage of the 819
assessed value of the tangible personal property exempted from 820
taxation, and the period for which the exemption is granted, 821
accompanied by the statement: "The minimum investment for tangible 822
personal property to qualify for the exemption is \$..... 823
(insert dollar amount) to purchase machinery and equipment first 824
used in business at the facility as a result of the project, 825
\$..... (insert dollar amount) for furniture and fixtures and 826
other noninventory personal property first used in business at the 827
facility as a result of the project, and \$..... (insert 828
dollar amount) for new inventory. The maximum investment for 829
tangible personal property to qualify for the exemption is 830
\$..... (insert dollar amount) to purchase machinery and 831
equipment first used in business at the facility as a result of 832

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 928
shall be revoked if it is determined that (insert 929
name of enterprise), any successor enterprise, or any related 930
member (as those terms are defined in section 5709.61 of the Ohio 931
Revised Code) has violated the prohibition against entering into 932
this agreement under division (E) of section 3735.671 or section 933
5709.62, 5709.63, or 5709.632 of the Ohio Revised Code prior to 934
the time prescribed by that division or either of those sections." 935

(12) "In any three-year period during which this agreement is 936
in effect, if the actual number of employee positions created or 937
retained by (insert name of enterprise) is not 938
equal to or greater than seventy-five per cent of the number of 939
employee positions estimated to be created or retained under this 940
agreement during that three-year period, (insert 941
name of enterprise) shall repay the amount of taxes on property 942
that would have been payable had the property not been exempted 943
from taxation under this agreement during that three-year period. 944
In addition, the (insert name of municipal corporation 945
or county) may terminate or modify the exemptions from taxation 946
granted under this agreement." 947

The statement described in division (B)(7) of this section 948
may include the following statement, appended at the end of the 949
statement: "and may require the repayment of the amount of taxes 950
that would have been payable had the property not been exempted 951
from taxation under this agreement." If the agreement includes a 952
statement requiring repayment of exempted taxes, it also may 953
authorize the legislative authority to secure repayment of such 954
taxes by a lien on the exempted property in the amount required to 955
be repaid. Such a lien on exempted real property shall attach, and 956
may be perfected, collected, and enforced, in the same manner as a 957
mortgage lien on real property, and shall otherwise have the same 958
force and effect as a mortgage lien on real property. 959

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 990
municipal corporation granting an exemption from taxation under 991
section 5709.40, 5709.41, 5709.73, or 5709.78 of the Revised Code. 992

(B) The legislative authority of a ~~municipal corporation,~~ 993
~~township, or county~~ political subdivision that grants an exemption 994
from taxation for an improvement under section 5709.40, 5709.41, 995
5709.73, or 5709.78 of the Revised Code may require the owner of 996
the improvement to reimburse the local taxing authorities within 997
whose taxing jurisdiction the exempted improvement is located for 998
the amount of real property taxes that would have been payable to 999
the taxing authorities had the improvement not been exempted from 1000
taxation. If the legislative authority requires the owner of the 1001
exempted improvements to make payments in lieu of taxes, the 1002
legislative authority may require such reimbursement only to the 1003
extent that the owner failed to make those payments as required. 1004
The legislative authority may secure any reimbursement authorized 1005
by this section by a lien on the exempted property, which shall 1006
attach, and may be perfected, collected, and enforced, in the same 1007
manner as a mortgage lien on real property, and which shall 1008
otherwise have the same force and effect as a mortgage lien on 1009
real property. 1010

Section 2. That existing sections 166.06, 166.07, 166.21, 1011
725.04, 1728.11, 1728.111, 3735.671, 5709.631, and 5709.831 of the 1012
Revised Code are hereby repealed. 1013