

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

**125th General Assembly
Regular Session
2003-2004**

Sub. S. B. No. 165

**Senators Schuring, Schuler, Fedor, Dann, Harris
Representatives D. Evans, Miller, S. Patton**

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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

<u>Sec. 9.661. (A) As used in this section:</u>	11
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<u>(1) "Borrower" means any person obligated to repay a</u>	12
<u>development loan pursuant to a development loan agreement or</u>	13
<u>obligated to repay a loan guaranteed pursuant to a loan guarantee</u>	14
<u>agreement.</u>	15

<u>(2) "Development inducement agreement" means an agreement</u>	16
<u>making a grant or inducement under the authority of Section 13 of</u>	17
<u>Article VIII, Ohio Constitution, including an inducement made</u>	18

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 81
county where the real property is located in the same manner as 82
mortgage liens are enforced. A secured party may enforce such 83
liens against personal property in the manner provided for the 84
enforcement of security interests under Chapter 1309. of the 85
Revised Code. 86

Sec. 166.06. (A) Subject to any limitations as to aggregate 87
amounts thereof that may from time to time be prescribed by the 88
general assembly and to other applicable provisions of this 89
chapter, the director of development may, on behalf of the state, 90
enter into contracts to guarantee the repayment or payment of not 91
more than ninety per cent of the unpaid principal amount of loans 92
made, including bonds, notes, or other certificates issued or 93
given to provide funds, to pay allowable costs of eligible 94
projects. Such guarantees shall be secured solely by and payable 95
solely from the loan guarantee fund created by this section and 96
unencumbered and available moneys in the facilities establishment 97
fund in the manner and to the extent provided in such guarantee 98
contracts consistent with this section. Such guarantees shall not 99
constitute general obligations of the state or of any political 100
subdivision, and moneys raised by taxation shall not be obligated 101
or pledged for the payment of such guarantees. 102

(B) Before guaranteeing any such repayments or payments the 103
director shall determine that: 104

(1) The project is an eligible project and is economically 105
sound; 106

(2) The principal amount to be guaranteed does not exceed 107
ninety per cent of the allowable costs of the eligible project as 108
determined by the director. To assist the director in making this 109
determination, the director may, in the director's discretion, 110
engage an independent engineer, architect, appraiser, or other 111

professional pursuant to a contract to be paid solely from the 112
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
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.

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(G) Any guaranteed parties under this section, except to the
extent that their rights are restricted by the guarantee

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documents, may by any suitable form of legal proceedings, protect 207
and enforce any rights under the laws of this state or granted by 208
such guarantee or guarantee documents. Such rights include the 209
right to compel the performance of all duties of the director and 210
the treasurer of state required by this section or the guarantee 211
or guarantee documents; and in the event of default with respect 212
to the payment of any guarantees, to apply to a court having 213
jurisdiction of the cause to appoint a receiver to receive and 214
administer the moneys pledged to such guarantee with full power to 215
pay, and to provide for payment of, such guarantee, and with such 216
powers, subject to the direction of the court, as are accorded 217
receivers in general equity cases, excluding any power to pledge 218
or apply additional revenues or receipts or other income or moneys 219
of the state or governmental agencies of the state to the payment 220
of such guarantee. Each duty of the director and the treasurer of 221
state and their officers and employees, and of each governmental 222
agency and its officers, members, or employees, required or 223
undertaken pursuant to this section or a guarantee made under 224
authority of this section, is hereby established as a duty of the 225
director and the treasurer of state, and of each such officer, 226
member, or employee having authority to perform such duty, 227
specifically enjoined by the law resulting from an office, trust, 228
or station within the meaning of section 2731.01 of the Revised 229
Code. The persons who are at the time the director and treasurer 230
of state, or their officers or employees, are not liable in their 231
personal capacities on any guarantees or contracts to make 232
guarantees by the director. 233

(H) The determinations of the director under divisions (B) 234
and (C) of this section shall be conclusive for purposes of the 235
validity of a guarantee evidenced by a contract signed by the 236
director, and such guarantee shall be incontestable as to moneys 237
advanced under loans to which such guarantees are by their terms 238

applicable. 239

Sec. 166.07. (A) The director of development, with the 240
approval of the controlling board and subject to the other 241
applicable provisions of this chapter, may lend moneys in the 242
facilities establishment fund to persons for the purpose of paying 243
allowable costs of an eligible project if the director determines 244
that: 245

(1) The project is an eligible project and is economically 246
sound; 247

(2) The borrower is unable to finance the necessary allowable 248
costs through ordinary financial channels upon comparable terms; 249

(3) The amount to be lent from the facilities establishment 250
fund will not exceed seventy-five per cent of the total allowable 251
costs of the eligible project, except that if any part of the 252
amount to be lent from the facilities establishment fund is 253
derived from the issuance and sale of project financing 254
obligations the amount to be lent will not exceed ninety per cent 255
of the total allowable costs of the eligible project; 256

(4) The eligible project could not be achieved in the local 257
area in which it is to be located if the portion of the project to 258
be financed by the loan instead were to be financed by a loan 259
guaranteed under section 166.06 of the Revised Code; 260

(5) The repayment of the loan from the facilities 261
establishment fund will be adequately secured by a mortgage, ~~lien,~~ 262
assignment, ~~or~~ pledge, or lien provided for under section 9.661 of 263
the Revised Code, at such level of priority as the director may 264
require; 265

(6) The borrower will hold at least a ten per cent equity 266
interest in the eligible project at the time the loan is made. 267

(B) The determinations of the director under division (A) of 268

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 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 331
certificate to a borrower of moneys from the research and 332
development loan fund indicating the amount of the qualified 333
research and development loan payments made by or on behalf of the 334
borrower during the calendar year immediately preceding the tax 335
year, as defined in section 5733.04 of the Revised Code, or 336
taxable year, as defined in section 5747.01 of the Revised Code, 337
for which the certificate is issued. In addition to indicating the 338
amount of qualified research and development loan payments, the 339
certificate shall include a determination of the director that as 340
of the thirty-first day of December of the calendar year for which 341
the certificate is issued, the borrower is not in default under 342
the loan agreement, lease, or other instrument governing repayment 343
of the loan, including compliance with the job creation and 344
retention commitments that are part of the qualified research and 345
development project. The director shall not issue a certificate in 346
an amount that exceeds one hundred fifty thousand dollars. 347

(E) The director may take actions necessary or appropriate to 348
collect or otherwise deal with any loan made under this section. 349

(F) The director may fix service charges for the making of a 350
loan. The charges shall be payable at such times and place and in 351
such amounts and manner as may be prescribed by the director. 352

(G)(1) There shall be credited to the research and 353
development loan fund moneys received by this state from the 354
repayment of loans, including interest thereon, made from the 355
fund, and moneys received from the sale, lease, or other 356
disposition of property acquired or constructed with moneys in the 357
fund derived from the proceeds of the sale of obligations under 358
section 166.08 of the Revised Code. Moneys in the fund shall be 359
applied as provided in this chapter pursuant to appropriations 360

made by the general assembly.

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(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.

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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

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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
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. 486

The service charge in lieu of taxes shall be distributed by 487
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 551
been exempted from taxation: 552

(a) The amount of taxes charged and payable on any portion of 553
the assessed valuation of the new structure or remodeling that 554
will not be exempted from taxation under the agreement; 555

(b) The amount of taxes charged and payable on tangible 556
personal property located on the premises of the new structure or 557
of the structure to be remodeled under the agreement, whether 558
payable by the owner of the structure or by a related member, as 559
defined in section 5733.042 of the Revised Code without regard to 560
division (B) of that section. 561

(c) The amount of any cash payment by the owner of the new 562
structure or structure to be remodeled to the school district, the 563
dollar value, as mutually agreed to ~~be~~ by the owner and the board 564
of education, of any property or services provided by the owner of 565
the property to the school district, whether by gift, loan, or 566
otherwise, and any payment by the legislative authority to the 567
school district pursuant to section 5709.82 of the Revised Code. 568

The estimates of quantities used for purposes of division 569
(A)(2) of this section shall be estimated by the legislative 570
authority. The legislative authority shall certify to the board of 571
education that the estimates have been made in good faith. 572
Departures of the actual quantities from the estimates subsequent 573
to approval of the agreement by the board of education do not 574
invalidate the agreement. 575

(3) If a board of education has adopted a resolution waiving 576
its right to approve agreements and the resolution remains in 577
effect, approval of an agreement by the board is not required 578
under this division. If a board of education has adopted a 579

resolution allowing a legislative authority to deliver the notice 580
required under this division fewer than forty-five business days 581
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
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 642
at the time this agreement is executed, (insert name of 643
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 739
Revised Code, and no legislative authority shall enter into such 740
an agreement with such a person, successor, or related member, 741
prior to the expiration of five years after the discontinuation of 742
operations. As used in this division, "successor" means a person 743
to which the assets or equity of another person has been 744
transferred, which transfer resulted in the full or partial 745
nonrecognition of gain or loss, or resulted in a carryover basis, 746
both as determined by rule adopted by the tax commissioner. 747
"Related member" has the same meaning as defined in section 748
5733.042 of the Revised Code without regard to division (B) of 749
that section. 750

The director of development shall review all agreements 751
submitted to the director under division (F) of this section for 752
the purpose of enforcing this division. If the director determines 753
there has been a violation of this division, the director shall 754
notify the legislative authority of such violation, and the 755
legislative authority immediately shall revoke the exemption 756
granted under the agreement. 757

(F) When an agreement is entered into under this section, the 758
legislative authority authorizing the agreement shall forward a 759
copy of the agreement to the director of development within 760
fifteen days after the agreement is entered into. 761

Sec. 5709.631. Each agreement entered into under sections 762
5709.62, 5709.63, and 5709.632 of the Revised Code on or after 763
April 1, 1994, shall be in writing and shall include all of the 764
information and statements prescribed by this section. Agreements 765
may include terms not prescribed by this section, but such terms 766
shall in no way derogate from the information and statements 767

prescribed by this section. 768

(A) Each agreement shall include the following information: 769

(1) The names of all parties to the agreement; 770

(2) A description of the investments to be made by the 771
applicant enterprise or by another party at the facility whether 772
or not the investments are exempted from taxation, including 773
existing or new building size and cost thereof; the value of 774
machinery, equipment, furniture, and fixtures, including an 775
itemization of the value of machinery, equipment, furniture, and 776
fixtures used at another location in this state prior to the 777
agreement and relocated or to be relocated from that location to 778
the facility and the value of machinery, equipment, furniture, and 779
fixtures at the facility prior to the execution of the agreement 780
that will not be exempted from taxation; the value of inventory at 781
the facility, including an itemization of the value of inventory 782
held at another location in this state prior to the agreement and 783
relocated or to be relocated from that location to the facility, 784
and the value of inventory held at the facility prior to the 785
execution of the agreement that will not be exempted from 786
taxation; 787

(3) The scheduled starting and completion dates of 788
investments made in building, machinery, equipment, furniture, 789
fixtures, and inventory; 790

(4) Estimates of the number of employee positions to be 791
created each year of the agreement and of the number of employee 792
positions retained by the applicant enterprise due to the project, 793
itemized as to the number of full-time, part-time, permanent, and 794
temporary positions; 795

(5) Estimates of the dollar amount of payroll attributable to 796
the positions set forth in division (A)(4) of this section, 797
similarly itemized; 798

(6) The number of employee positions, if any, at the project 799
site and at any other location in the state at the time the 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
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 895
revokes certification of the zone, or (insert name of 896
municipal corporation or county) revokes the designation of the 897
zone, entitlements granted under this agreement shall continue for 898
the number of years specified under this agreement, unless 899
..... (insert name of enterprise) materially fails to fulfill 900
its obligations under this agreement and (insert name 901
of municipal corporation or county) terminates or modifies the 902
exemptions from taxation granted under this agreement." 903

(7) "If (insert name of enterprise) materially 904
fails to fulfill its obligations under this agreement, other than 905
with respect to the number of employee positions estimated to be 906
created or retained under this agreement, or if (insert 907
name of municipal corporation or county) determines that the 908
certification as to delinquent taxes required by this agreement is 909
fraudulent, (insert name of municipal corporation or 910
county) may terminate or modify the exemptions from taxation 911
granted under this agreement." 912

(8) "..... (insert name of enterprise) shall provide to 913
the proper tax incentive review council any information reasonably 914
required by the council to evaluate the enterprise's compliance 915
with the agreement, including returns or annual reports filed 916
pursuant to section 5711.02 or 5727.08 of the Ohio Revised Code if 917
requested by the council." 918

(9) "..... (insert name of enterprise) and 919
(insert name of municipal corporation or county) acknowledge that 920
this agreement must be approved by formal action of the 921
legislative authority of (insert name of municipal 922
corporation or county) as a condition for the agreement to take 923
effect. This agreement takes effect upon such approval." 924

(10) "This agreement is not transferable or assignable 925

without the express, written approval of (insert name
of municipal corporation or county)." 926
927

(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 960
on exempted tangible personal property shall attach, and may be 961
perfected, collected, and enforced, in the same manner as a 962
security interest in goods under Chapter 1309. of the Revised 963
Code, and shall otherwise have the same force and effect as such a 964
security interest. 965

(C) If the director of development had to issue a waiver 966
under section 5709.633 of the Revised Code as a condition for the 967
agreement to be executed, the agreement shall include the 968
following statement: 969

"Continuation of this agreement is subject to the validity of 970
the circumstance upon which (insert name of enterprise) 971
applied for, and the Director of the Ohio Department of 972
Development issued, the waiver pursuant to section 5709.633 of the 973
Ohio Revised Code. If, after formal approval of this agreement by 974
..... (insert name of municipal corporation or county), the 975
Director or (insert name of municipal corporation or 976
county) discovers that such a circumstance did not exist, 977
..... (insert name of enterprise) shall be deemed to have 978
materially failed to comply with this agreement." 979

If the director issued a waiver on the basis of the 980
circumstance described in division (B)(3) of section 5709.633 of 981
the Ohio Revised Code, the conditions enumerated in divisions 982
(B)(3)(a)(i) and (ii) or divisions (B)(3)(b)(i) and (ii) of that 983
section shall be incorporated in the information described in 984
divisions (A)(2), (3), and (4) of this section. 985

Sec. 5709.831. (A) As used in this section: 986

(1) "Exempted improvements" means improvements exempted from 987
taxation under section 5709.40, 5709.41, 5709.73, or 5709.78 of 988

the Revised Code. 989

(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