

**As Reported by the House State Government and Elections
Committee**

**127th General Assembly
Regular Session
2007-2008**

Am. H. B. No. 286

Representatives Sykes, Batchelder

**Cosponsors: Representatives Celeste, Luckie, Collier, Bacon, Webster,
Strahorn, Williams, S., Healy, Evans, Harwood, Huffman, Fessler, Otterman,
Brown, Mallory, Schindel, Daniels, Stewart, D., Domenick, Flowers**

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A B I L L

To amend sections 119.03 and 3519.01 of the Revised Code to require the committee named in an initiative petition to file, at the time the petition is filed, a statement identifying the petitioner's intent in proposing the initiated statute or constitutional amendment and to permit the Joint Committee on Agency Rule Review to recommend that a proposed rule be invalidated if the proposed rule conflicts with the petitioners' intent in adopting the statute or constitutional amendment on which the rule is based.

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

Section 1. That sections 119.03 and 3519.01 of the Revised Code be amended to read as follows:

Sec. 119.03. In the adoption, amendment, or rescission of any rule, an agency shall comply with the following procedure:

(A) Reasonable public notice shall be given in the register

of Ohio at least thirty days prior to the date set for a hearing, 17
in the form the agency determines. The agency shall file copies of 18
the public notice under division (B) of this section. (The agency 19
gives public notice in the register of Ohio when the public notice 20
is published in the register under that division.) 21

The public notice shall include: 22

(1) A statement of the agency's intention to consider 23
adopting, amending, or rescinding a rule; 24

(2) A synopsis of the proposed rule, amendment, or rule to be 25
rescinded or a general statement of the subject matter to which 26
the proposed rule, amendment, or rescission relates; 27

(3) A statement of the reason or purpose for adopting, 28
amending, or rescinding the rule; 29

(4) The date, time, and place of a hearing on the proposed 30
action, which shall be not earlier than the thirty-first nor later 31
than the fortieth day after the proposed rule, amendment, or 32
rescission is filed under division (B) of this section. 33

In addition to public notice given in the register of Ohio, 34
the agency may give whatever other notice it reasonably considers 35
necessary to ensure notice constructively is given to all persons 36
who are subject to or affected by the proposed rule, amendment, or 37
rescission. 38

The agency shall provide a copy of the public notice required 39
under division (A) of this section to any person who requests it 40
and pays a reasonable fee, not to exceed the cost of copying and 41
mailing. 42

(B) The full text of the proposed rule, amendment, or rule to 43
be rescinded, accompanied by the public notice required under 44
division (A) of this section, shall be filed in electronic form 45
with the secretary of state and with the director of the 46

legislative service commission. (If in compliance with this 47
division an agency files more than one proposed rule, amendment, 48
or rescission at the same time, and has prepared a public notice 49
under division (A) of this section that applies to more than one 50
of the proposed rules, amendments, or rescissions, the agency 51
shall file only one notice with the secretary of state and with 52
the director for all of the proposed rules, amendments, or 53
rescissions to which the notice applies.) The proposed rule, 54
amendment, or rescission and public notice shall be filed as 55
required by this division at least sixty-five days prior to the 56
date on which the agency, in accordance with division (D) of this 57
section, issues an order adopting the proposed rule, amendment, or 58
rescission. 59

If the proposed rule, amendment, or rescission incorporates a 60
text or other material by reference, the agency shall comply with 61
sections 121.71 to 121.76 of the Revised Code. 62

The proposed rule, amendment, or rescission shall be 63
available for at least thirty days prior to the date of the 64
hearing at the office of the agency in printed or other legible 65
form without charge to any person affected by the proposal. 66
Failure to furnish such text to any person requesting it shall not 67
invalidate any action of the agency in connection therewith. 68

If the agency files a substantive revision in the text of the 69
proposed rule, amendment, or rescission under division (H) of this 70
section, it shall also promptly file the full text of the proposed 71
rule, amendment, or rescission in its revised form in electronic 72
form with the secretary of state and with the director of the 73
legislative service commission. 74

The agency shall file the rule summary and fiscal analysis 75
prepared under section 121.24 or 127.18 of the Revised Code, or 76
both, in electronic form along with a proposed rule, amendment, or 77
rescission or proposed rule, amendment, or rescission in revised 78

form that is filed with the secretary of state or the director of 79
the legislative service commission. 80

The director of the legislative service commission shall 81
publish in the register of Ohio the full text of the original and 82
each revised version of a proposed rule, amendment, or rescission; 83
the full text of a public notice; and the full text of a rule 84
summary and fiscal analysis that is filed with the director under 85
this division. 86

(C) On the date and at the time and place designated in the 87
notice, the agency shall conduct a public hearing at which any 88
person affected by the proposed action of the agency may appear 89
and be heard in person, by the person's attorney, or both, may 90
present the person's position, arguments, or contentions, orally 91
or in writing, offer and examine witnesses, and present evidence 92
tending to show that the proposed rule, amendment, or rescission, 93
if adopted or effectuated, will be unreasonable or unlawful. An 94
agency may permit persons affected by the proposed rule, 95
amendment, or rescission to present their positions, arguments, or 96
contentions in writing, not only at the hearing, but also for a 97
reasonable period before, after, or both before and after the 98
hearing. A person who presents a position or arguments or 99
contentions in writing before or after the hearing is not required 100
to appear at the hearing. 101

At the hearing, the testimony shall be recorded. Such record 102
shall be made at the expense of the agency. The agency is required 103
to transcribe a record that is not sight readable only if a person 104
requests transcription of all or part of the record and agrees to 105
reimburse the agency for the costs of the transcription. An agency 106
may require the person to pay in advance all or part of the cost 107
of the transcription. 108

In any hearing under this section the agency may administer 109
oaths or affirmations. 110

(D) After complying with divisions (A), (B), (C), and (H) of 111
this section, and when the time for legislative review and 112
invalidation under division (I) of this section has expired, the 113
agency may issue an order adopting the proposed rule or the 114
proposed amendment or rescission of the rule, consistent with the 115
synopsis or general statement included in the public notice. At 116
that time the agency shall designate the effective date of the 117
rule, amendment, or rescission, which shall not be earlier than 118
the tenth day after the rule, amendment, or rescission has been 119
filed in its final form as provided in section 119.04 of the 120
Revised Code. 121

(E) Prior to the effective date of a rule, amendment, or 122
rescission, the agency shall make a reasonable effort to inform 123
those affected by the rule, amendment, or rescission and to have 124
available for distribution to those requesting it the full text of 125
the rule as adopted or as amended. 126

(F) If the governor, upon the request of an agency, 127
determines that an emergency requires the immediate adoption, 128
amendment, or rescission of a rule, the governor shall issue an 129
order, the text of which shall be filed in electronic form with 130
the agency, the secretary of state, the director of the 131
legislative service commission, and the joint committee on agency 132
rule review, that the procedure prescribed by this section with 133
respect to the adoption, amendment, or rescission of a specified 134
rule is suspended. The agency may then adopt immediately the 135
emergency rule, amendment, or rescission and it becomes effective 136
on the date the rule, amendment, or rescission, in final form and 137
in compliance with division (A)(2) of section 119.04 of the 138
Revised Code, ~~are~~ is filed in electronic form with the secretary 139
of state, the director of the legislative service commission, and 140
the joint committee on agency rule review. If all filings are not 141
completed on the same day, the emergency rule, amendment, or 142

rescission shall be effective on the day on which the latest 143
filing is completed. The director shall publish the full text of 144
the emergency rule, amendment, or rescission in the register of 145
Ohio. 146

The emergency rule, amendment, or rescission shall become 147
invalid at the end of the ninetieth day it is in effect. Prior to 148
that date the agency may adopt the emergency rule, amendment, or 149
rescission as a nonemergency rule, amendment, or rescission by 150
complying with the procedure prescribed by this section for the 151
adoption, amendment, and rescission of nonemergency rules. The 152
agency shall not use the procedure of this division to readopt the 153
emergency rule, amendment, or rescission so that, upon the 154
emergency rule, amendment, or rescission becoming invalid under 155
this division, the emergency rule, amendment, or rescission will 156
continue in effect without interruption for another ninety-day 157
period, except when division (I)(2)(a) of this section prevents 158
the agency from adopting the emergency rule, amendment, or 159
rescission as a nonemergency rule, amendment, or rescission within 160
the ninety-day period. 161

This division does not apply to the adoption of any emergency 162
rule, amendment, or rescission by the tax commissioner under 163
division (C)(2) of section 5117.02 of the Revised Code. 164

(G) Rules adopted by an authority within the department of 165
job and family services for the administration or enforcement of 166
Chapter 4141. of the Revised Code or of the department of taxation 167
shall be effective without a hearing as provided by this section 168
if the statutes pertaining to such agency specifically give a 169
right of appeal to the board of tax appeals or to a higher 170
authority within the agency or to a court, and also give the 171
appellant a right to a hearing on such appeal. This division does 172
not apply to the adoption of any rule, amendment, or rescission by 173
the tax commissioner under division (C)(1) or (2) of section 174

5117.02 of the Revised Code, or deny the right to file an action 175
for declaratory judgment as provided in Chapter 2721. of the 176
Revised Code from the decision of the board of tax appeals or of 177
the higher authority within such agency. 178

(H) When any agency files a proposed rule, amendment, or 179
rescission under division (B) of this section, it shall also file 180
in electronic form with the joint committee on agency rule review 181
the full text of the proposed rule, amendment, or rule to be 182
rescinded in the same form and the public notice required under 183
division (A) of this section. (If in compliance with this division 184
an agency files more than one proposed rule, amendment, or 185
rescission at the same time, and has given a public notice under 186
division (A) of this section that applies to more than one of the 187
proposed rules, amendments, or rescissions, the agency shall file 188
only one notice with the joint committee for all of the proposed 189
rules, amendments, or rescissions to which the notice applies.) If 190
the agency makes a substantive revision in a proposed rule, 191
amendment, or rescission after it is filed with the joint 192
committee, the agency shall promptly file the full text of the 193
proposed rule, amendment, or rescission in its revised form in 194
electronic form with the joint committee. The latest version of a 195
proposed rule, amendment, or rescission as filed with the joint 196
committee supersedes each earlier version of the text of the same 197
proposed rule, amendment, or rescission. An agency shall file the 198
rule summary and fiscal analysis prepared under section 121.24 or 199
127.18 of the Revised Code, or both, in electronic form along with 200
a proposed rule, amendment, or rescission, and along with a 201
proposed rule, amendment, or rescission in revised form, that is 202
filed under this division. 203

This division does not apply to: 204

(1) An emergency rule, amendment, or rescission; 205

(2) Any proposed rule, amendment, or rescission that must be 206

adopted verbatim by an agency pursuant to federal law or rule, to 207
become effective within sixty days of adoption, in order to 208
continue the operation of a federally reimbursed program in this 209
state, so long as the proposed rule contains both of the 210
following: 211

(a) A statement that it is proposed for the purpose of 212
complying with a federal law or rule; 213

(b) A citation to the federal law or rule that requires 214
verbatim compliance. 215

If a rule or amendment is exempt from legislative review 216
under division (H)(2) of this section, and if the federal law or 217
rule pursuant to which the rule or amendment was adopted expires, 218
is repealed or rescinded, or otherwise terminates, the rule or 219
amendment, or its rescission, is thereafter subject to legislative 220
review under division (H) of this section. 221

(I)(1) The joint committee on agency rule review may 222
recommend the adoption of a concurrent resolution invalidating a 223
proposed rule, amendment, rescission, or part thereof if it finds 224
any of the following: 225

(a) That the rule-making agency has exceeded the scope of its 226
statutory authority in proposing the rule, amendment, or 227
rescission; 228

(b) That the proposed rule, amendment, or rescission 229
conflicts with another rule, amendment, or rescission adopted by 230
the same or a different rule-making agency; 231

(c) That the proposed rule, amendment, or rescission 232
conflicts with the legislative intent in enacting the statute 233
under which the rule-making agency proposed the rule, amendment, 234
or rescission, if the statute was enacted by the general assembly; 235

~~(d) , or, that the proposed rule, amendment, or rescission~~ 236

conflicts with the petitioners' intent in enacting the statute or 237
constitutional amendment under which the rule-making agency 238
proposed the rule, amendment, or rescission, if the statute or 239
constitutional amendment was enacted by initiative under Section 240
1a or 1b of Article II of the Ohio Constitution; 241

(d) That the rule-making agency has failed to prepare a 242
complete and accurate rule summary and fiscal analysis of the 243
proposed rule, amendment, or rescission as required by section 244
121.24 or 127.18 of the Revised Code, or both, or that the 245
proposed rule, amendment, or rescission incorporates a text or 246
other material by reference and either the rule-making agency has 247
failed to file the text or other material incorporated by 248
reference as required by section 121.73 of the Revised Code or, in 249
the case of a proposed rule or amendment, the incorporation by 250
reference fails to meet the standards stated in section 121.72, 251
121.75, or 121.76 of the Revised Code. 252

The joint committee shall not hold its public hearing on a 253
proposed rule, amendment, or rescission earlier than the 254
forty-first day after the original version of the proposed rule, 255
amendment, or rescission was filed with the joint committee. 256

The house of representatives and senate may adopt a 257
concurrent resolution invalidating a proposed rule, amendment, 258
rescission, or part thereof. The concurrent resolution shall state 259
which of the specific rules, amendments, rescissions, or parts 260
thereof are invalidated. A concurrent resolution invalidating a 261
proposed rule, amendment, or rescission shall be adopted not later 262
than the sixty-fifth day after the original version of the text of 263
the proposed rule, amendment, or rescission is filed with the 264
joint committee, except that if more than thirty-five days after 265
the original version is filed the rule-making agency either files 266
a revised version of the text of the proposed rule, amendment, or 267
rescission, or revises the rule summary and fiscal analysis in 268

accordance with division (I)(4) of this section, a concurrent 269
resolution invalidating the proposed rule, amendment, or 270
rescission shall be adopted not later than the thirtieth day after 271
the revised version of the proposed rule or rule summary and 272
fiscal analysis is filed. If, after the joint committee on agency 273
rule review recommends the adoption of a concurrent resolution 274
invalidating a proposed rule, amendment, rescission, or part 275
thereof, the house of representatives or senate does not, within 276
the time remaining for adoption of the concurrent resolution, hold 277
five floor sessions at which its journal records a roll call vote 278
disclosing a sufficient number of members in attendance to pass a 279
bill, the time within which that house may adopt the concurrent 280
resolution is extended until it has held five such floor sessions. 281

Within five days after the adoption of a concurrent 282
resolution invalidating a proposed rule, amendment, rescission, or 283
part thereof, the clerk of the senate shall send the rule-making 284
agency, the secretary of state, and the director of the 285
legislative service commission in electronic form a certified text 286
of the resolution together with a certification stating the date 287
on which the resolution takes effect. The secretary of state and 288
the director of the legislative service commission shall each note 289
the invalidity of the proposed rule, amendment, rescission, or 290
part thereof, and shall each remove the invalid proposed rule, 291
amendment, rescission, or part thereof from the file of proposed 292
rules. The rule-making agency shall not proceed to adopt in 293
accordance with division (D) of this section, or to file in 294
accordance with division (B)(1) of section 111.15 of the Revised 295
Code, any version of a proposed rule, amendment, rescission, or 296
part thereof that has been invalidated by concurrent resolution. 297

Unless the house of representatives and senate adopt a 298
concurrent resolution invalidating a proposed rule, amendment, 299
rescission, or part thereof within the time specified by this 300

division, the rule-making agency may proceed to adopt in 301
accordance with division (D) of this section, or to file in 302
accordance with division (B)(1) of section 111.15 of the Revised 303
Code, the latest version of the proposed rule, amendment, or 304
rescission as filed with the joint committee. If by concurrent 305
resolution certain of the rules, amendments, rescissions, or parts 306
thereof are specifically invalidated, the rule-making agency may 307
proceed to adopt, in accordance with division (D) of this section, 308
or to file in accordance with division (B)(1) of section 111.15 of 309
the Revised Code, the latest version of the proposed rules, 310
amendments, rescissions, or parts thereof as filed with the joint 311
committee that are not specifically invalidated. The rule-making 312
agency may not revise or amend any proposed rule, amendment, 313
rescission, or part thereof that has not been invalidated except 314
as provided in this chapter or in section 111.15 of the Revised 315
Code. 316

(2)(a) A proposed rule, amendment, or rescission that is 317
filed with the joint committee under division (H) of this section 318
or division (D) of section 111.15 of the Revised Code shall be 319
carried over for legislative review to the next succeeding regular 320
session of the general assembly if the original or any revised 321
version of the proposed rule, amendment, or rescission is filed 322
with the joint committee on or after the first day of December of 323
any year. 324

(b) The latest version of any proposed rule, amendment, or 325
rescission that is subject to division (I)(2)(a) of this section, 326
as filed with the joint committee, is subject to legislative 327
review and invalidation in the next succeeding regular session of 328
the general assembly in the same manner as if it were the original 329
version of a proposed rule, amendment, or rescission that had been 330
filed with the joint committee for the first time on the first day 331
of the session. A rule-making agency shall not adopt in accordance 332

with division (D) of this section, or file in accordance with 333
division (B)(1) of section 111.15 of the Revised Code, any version 334
of a proposed rule, amendment, or rescission that is subject to 335
division (I)(2)(a) of this section until the time for legislative 336
review and invalidation, as contemplated by division (I)(2)(b) of 337
this section, has expired. 338

(3) Invalidation of any version of a proposed rule, 339
amendment, rescission, or part thereof by concurrent resolution 340
shall prevent the rule-making agency from instituting or 341
continuing proceedings to adopt any version of the same proposed 342
rule, amendment, rescission, or part thereof for the duration of 343
the general assembly that invalidated the proposed rule, 344
amendment, rescission, or part thereof unless the same general 345
assembly adopts a concurrent resolution permitting the rule-making 346
agency to institute or continue such proceedings. 347

The failure of the general assembly to invalidate a proposed 348
rule, amendment, rescission, or part thereof under this section 349
shall not be construed as a ratification of the lawfulness or 350
reasonableness of the proposed rule, amendment, rescission, or any 351
part thereof or of the validity of the procedure by which the 352
proposed rule, amendment, rescission, or any part thereof was 353
proposed or adopted. 354

(4) In lieu of recommending a concurrent resolution to 355
invalidate a proposed rule, amendment, rescission, or part thereof 356
because the rule-making agency has failed to prepare a complete 357
and accurate fiscal analysis, the joint committee on agency rule 358
review may issue, on a one-time basis, for rules, amendments, 359
rescissions, or parts thereof that have a fiscal effect on school 360
districts, counties, townships, or municipal corporations, a 361
finding that the rule summary and fiscal analysis is incomplete or 362
inaccurate and order the rule-making agency to revise the rule 363
summary and fiscal analysis and refile it with the proposed rule, 364

amendment, rescission, or part thereof. If an emergency rule is 365
filed as a nonemergency rule before the end of the ninetieth day 366
of the emergency rule's effectiveness, and the joint committee 367
issues a finding and orders the rule-making agency to refile under 368
division (I)(4) of this section, the governor may also issue an 369
order stating that the emergency rule shall remain in effect for 370
an additional sixty days after the ninetieth day of the emergency 371
rule's effectiveness. The governor's orders shall be filed in 372
accordance with division (F) of this section. The joint committee 373
shall send in electronic form to the rule-making agency, the 374
secretary of state, and the director of the legislative service 375
commission a certified text of the finding and order to revise the 376
rule summary and fiscal analysis, which shall take immediate 377
effect. 378

An order issued under division (I)(4) of this section shall 379
prevent the rule-making agency from instituting or continuing 380
proceedings to adopt any version of the proposed rule, amendment, 381
rescission, or part thereof until the rule-making agency revises 382
the rule summary and fiscal analysis and refiles it in electronic 383
form with the joint committee along with the proposed rule, 384
amendment, rescission, or part thereof. If the joint committee 385
finds the rule summary and fiscal analysis to be complete and 386
accurate, the joint committee shall issue a new order noting that 387
the rule-making agency has revised and refiled a complete and 388
accurate rule summary and fiscal analysis. The joint committee 389
shall send in electronic form to the rule-making agency, the 390
secretary of state, and the director of the legislative service 391
commission a certified text of this new order. The secretary of 392
state and the director of the legislative service commission shall 393
each link this order to the proposed rule, amendment, rescission, 394
or part thereof. The rule-making agency may then proceed to adopt 395
in accordance with division (D) of this section, or to file in 396
accordance with division (B)(1) of section 111.15 of the Revised 397

Code, the proposed rule, amendment, rescission, or part thereof 398
that was subject to the finding and order under division (I)(4) of 399
this section. If the joint committee determines that the revised 400
rule summary and fiscal analysis is still inaccurate or 401
incomplete, the joint committee shall recommend the adoption of a 402
concurrent resolution in accordance with division (I)(1) of this 403
section. 404

(J) As used in this section, "petitioners' intent" means the 405
intent of a majority of the members the committee established in 406
section 3519.02 of the Revised Code to represent the petitioners 407
for the applicable initiated statute or constitutional amendment 408
as expressed in the statement of intent filed under section 409
3519.01 of the Revised Code. 410

Sec. 3519.01. (A) Only one proposal of law or constitutional 411
amendment to be proposed by initiative petition shall be contained 412
in an initiative petition to enable the voters to vote on that 413
proposal separately. A petition shall include the text of any 414
existing statute or constitutional provision that would be amended 415
or repealed if the proposed law or constitutional amendment is 416
adopted. 417

Whoever seeks to propose a law or constitutional amendment by 418
initiative petition shall, by a written petition signed by one 419
thousand qualified electors, submit the proposed law or 420
constitutional amendment and a summary of it to the attorney 421
general for examination. Within The petitioners also shall submit 422
with the proposed law or constitutional amendment and summary a 423
statement of intent that specifies the intent of a majority of the 424
members of the committee named in the submitted petition. 425

Within ten days after the receipt of the written petition and 426
the summary of it, the attorney general shall conduct an 427
examination of the summary. If, in the opinion of the attorney 428

general, the summary is a fair and truthful statement of the 429
proposed law or constitutional amendment, the attorney general 430
shall so certify and then forward the submitted petition to the 431
Ohio ballot board for its approval under division (A) of section 432
3505.062 of the Revised Code. If the Ohio ballot board returns the 433
submitted petition to the attorney general with its certification 434
as described in that division, the attorney general shall then 435
file with the secretary of state a verified copy of the proposed 436
law or constitutional amendment ~~together with~~, its summary ~~and~~, 437
the attorney general's certification, and the statement of intent 438
filed by the petitioners. 439

Whenever the Ohio ballot board divides an initiative petition 440
into individual petitions containing only proposed law or 441
constitutional amendment under division (A) of section 3505.062 of 442
the Revised Code resulting in the need for the petitioners to 443
resubmit to the attorney general appropriate summaries for each of 444
the individual petitions arising from the board's division of the 445
initiative petition, the attorney general shall review the 446
resubmitted summaries, within ten days after their receipt, to 447
determine if they are a fair and truthful statement of the 448
respective proposed laws or constitutional amendments and, if so, 449
certify them. These resubmissions shall contain no new 450
explanations or arguments but may contain separate statements of 451
intent for each divided petition. Then, the attorney general shall 452
file with the secretary of state a verified copy of each of the 453
proposed laws or constitutional amendments ~~together with~~, their 454
respective summaries ~~and~~, the attorney general's certification of 455
each, and the statements of intent filed by the petitioners. 456

(B)(1) Whoever seeks to file a referendum petition against 457
any law, section, or item in any law shall, by a written petition 458
signed by one thousand qualified electors, submit the measure to 459
be referred and a summary of it to the secretary of state and, on 460

the same day or within one business day before or after that day, 461
submit a copy of the petition, measure, and summary to the 462
attorney general. 463

(2) Not later than ten business days after receiving the 464
petition, measure, and summary, the secretary of state shall do 465
both of the following: 466

(a) Have the validity of the signatures on the petition 467
verified; 468

(b) After comparing the text of the measure to be referred 469
with the copy of the enrolled act on file in the secretary of 470
state's office containing the law, section, or item of law, 471
determine whether the text is correct and, if it is, so certify. 472

(3) Not later than ten business days after receiving a copy 473
of the petition, measure, and summary, the attorney general shall 474
examine the summary and, if in the attorney general's opinion, the 475
summary is a fair and truthful statement of the measure to be 476
referred, so certify. 477

(C) Any person who is aggrieved by a certification decision 478
under division (A) or (B) of this section may challenge the 479
certification or failure to certify of the attorney general in the 480
supreme court, which shall have exclusive, original jurisdiction 481
in all challenges of those certification decisions. 482

Section 2. That existing sections 119.03 and 3519.01 of the 483
Revised Code are hereby repealed. 484