

**As Introduced**

**128th General Assembly  
Regular Session  
2009-2010**

**H. B. No. 436**

**Representatives Balderson, Boose**

**Cosponsors: Representatives Adams, J., Adams, R., Bacon, Baker,  
Blessing, Combs, Evans, Grossman, Huffman, Jordan, Morgan, Stebelton,  
Wagner, Zehringer**

—

**A BILL**

To enact sections 107.35 and 121.80 to 121.88 of the 1  
Revised Code to authorize a state agency to 2  
contract out its provision of a good or service to 3  
a private contractor under specific contractual 4  
provisions; to require the state agency to prepare 5  
a business case before executing such a contract; 6  
to create the Council on Efficient Government to 7  
review business cases, issue advisory reports, and 8  
undertake other duties regarding contracting out 9  
the provision of a good or service; to require the 10  
Council to prepare an annual report; and to 11  
require the Governor to select goods or services 12  
that could be provided by a private contractor and 13  
submit the selections for Council review. 14

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

**Section 1.** That sections 107.35, 121.80, 121.81, 121.82, 15  
121.83, 121.84, 121.85, 121.86, 121.87, and 121.88 of the Revised 16  
Code be enacted to read as follows: 17

Sec. 107.35. (A) As used in this section, "state agency" has 18  
the same meaning as in section 121.80 of the Revised Code. 19

(B) Beginning July 1, 2012, the governor, at least once every 20  
two fiscal years, shall select at least three goods or services 21  
that are being provided by a state agency, the provision of which 22  
the governor believes could be contracted out to a private 23  
contractor. The governor shall submit the selections to the 24  
council on efficient government for its review and evaluation 25  
under section 121.86 of the Revised Code. 26

Sec. 121.80. As used in sections 121.81 to 121.88 of the 27  
Revised Code, "state agency" means every department, board, 28  
bureau, commission, council, office, institution of higher 29  
education, or other organized body established by the constitution 30  
or laws of this state for the exercise of any function of state 31  
government. "State agency" does not include the office of the 32  
governor, attorney general, auditor of state, secretary of state, 33  
treasurer of state, the general assembly or any legislative 34  
agency, or a court or any judicial agency. In the case of the 35  
department of transportation, "state agency" does not include 36  
contracts in support of the planning, development, implementation, 37  
operation, or maintenance of the department's road, bridge, and 38  
public transportation construction program. 39

Sec. 121.81. (A) A state agency, in accordance with this 40  
section and with sections 121.82 to 121.84 of the Revised Code, 41  
may contract out to a private contractor the state agency's duty 42  
to provide a good or service. The state agency shall select the 43  
private contractor by issuing a request for proposals. The request 44  
for proposals shall state the relative importance of price and 45  
other evaluation criteria selected by the state agency. The state 46  
agency shall develop a process to be used in issuing the request 47

for proposals, receiving responses to the request, and evaluating 48  
the responses on a competitive basis. The award of a contract 49  
under this section may be made to the private contractor whose 50  
proposal is determined to be the most advantageous to the state, 51  
taking into consideration factors such as price, the evaluation 52  
criteria set forth in the request for proposals, and the advisory 53  
report of the council on efficient government issued under 54  
division (A) of section 121.83 of the Revised Code. 55

(B) To ensure fair and impartial evaluation, proposals and 56  
related documents submitted in response to a request for proposals 57  
are not available for public inspection and copying under section 58  
149.43 of the Revised Code until after the award of the contract. 59

**Sec. 121.82.** (A) A state agency proposing to contract out the 60  
provision of a good or service shall prepare a written business 61  
case that justifies the proposal to contract out and shall submit 62  
the business case to the council on efficient government on or 63  
before the time required by section 121.83 of the Revised Code. 64  
The business case shall include all of the following: 65

(1) A detailed description of the good or service proposed to 67  
be contracted out; 68

(2) An analysis of the state agency's current performance and 69  
costs incurred in providing the good or service, if the state 70  
agency currently is providing the good or service; 71

(3) Identification of statutory amendments or enactments, if 72  
any, needed to authorize the contracting out of the provision of 73  
the good or service; 74

(4) The goals desired to be achieved by contracting out the 75  
provision of the proposed good or service and the rationale for 76  
the goals; 77

(5) A description of available options for achieving those goals, including at least one option where the state agency provides the good or service, if the state agency is currently providing the good or service; 78  
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(6) An analysis of the advantages and disadvantages of each option described under division (A)(5) of this section, including, at a minimum, the potential performance improvements resulting from, and the risks of, contracting out the provision of a good or service; 82  
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(7)(a) A cost-benefit analysis that specifies all of the following: 87  
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(i) The direct and indirect estimated savings, baseline costs, and qualitative and quantitative benefits that would be involved in or would be the result of implementing each option described under division (A)(5) of this section; 89  
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(ii) The time schedule that must be adhered to in order to achieve the estimated savings; 93  
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(iii) The costs of the option, supported by records and reports. 95  
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(b) The head of the state agency proposing to contract out the provision of a good or service shall attest that, based on the data and information underlying the business case and to the best of the state agency head's knowledge, all estimated savings, costs, and benefits specified under division (A)(7)(a) of this section are valid and achievable. 97  
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(c) As used in divisions (A)(7)(a) and (b) of this section: 103

(i) "Costs" means reasonable, relevant, and verifiable costs, including cost elements such as personnel, materials and supplies, services, equipment, capital depreciation, rent, maintenance and repairs, utilities, insurance, personnel travel, overhead, and 104  
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interim and final payments. The appropriate cost elements included 108  
in "costs" shall depend on the nature of the specific good or 109  
service proposed to be contracted out. 110

(ii) "Savings" means the difference between the direct and 111  
indirect actual annual baseline costs of an option compared to the 112  
projected annual costs for providing a good or service in any 113  
succeeding state fiscal year during the term of the contract to 114  
contract out the provision of the good or service. 115

(8) A description of the current market for the goods or 116  
services the provision of which is proposed to be contracted out; 117

(9) A description of the specific performance standards a 118  
private contractor, at a minimum, must meet to ensure adequate 119  
performance under a contract to contract out; 120

(10) The projected time frame for key events, from the 121  
beginning of the proposed contracting out through the expiration 122  
of the contract to contract out; 123

(11) A plan to ensure a private contractor's compliance with 124  
section 149.43 of the Revised Code and with any other public 125  
records law that applies to the state agency contracting out the 126  
provision of a good or service; 127

(12) A specific and feasible contingency plan addressing 128  
private contractor nonperformance, and a description of the tasks 129  
involved in and costs required for the plan's implementation; 130

(13) The state agency's transition plan for addressing 131  
changes in the number of agency personnel, affected business 132  
processes, employee transition issues, and communication with 133  
affected stakeholders, such as agency clients and the public. The 134  
transition plan must contain a re-employment and retraining 135  
assistance plan for employees who are not retained by the state 136  
agency or are not employed by the private contractor. 137

(14) A plan for ensuring access to the private contractor's place of business by persons with disabilities, in compliance with applicable state and federal laws; and 138  
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(15) A description of legislative budgetary actions, if any, necessary to accomplish contracting out the provision of the good or service. 141  
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(B) A business case prepared under this section shall not be subject to challenge or protest by any person. 144  
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**Sec. 121.83.** (A)(1) At least sixty days before a state agency issues a request for proposals to contract out the provision of a good or service having a projected cost of more than ten million dollars in any fiscal year, the state agency shall submit its business case to the council on efficient government for its review under section 121.86 of the Revised Code. The council shall evaluate the business case and issue an advisory report to the state agency not later than thirty days after receiving the business case. 146  
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(2) The state agency shall submit a final business case to the council at least thirty days before execution of a contract to contract out. The final business case shall reflect any changes to the business case submitted under division (A)(1) of this section as the result of contract negotiations. 155  
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(B)(1) At least thirty days before a state agency issues a request for proposals to contract out the provision of a good or service having a projected cost of at least one million dollars but not more than ten million dollars in any fiscal year, the state agency shall submit its business case to the council for its review under section 121.86 of the Revised Code. 160  
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(2) The state agency shall submit a final business case to the council at least thirty days before execution of a contract to 166  
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contract out. The final business case shall reflect any changes to 168  
the business case submitted under division (B)(1) of this section 169  
as the result of contract negotiations. 170

(C) After the conclusion of contract negotiations regarding 171  
contracting out the provision of a good or service having a 172  
projected cost of less than one million dollars in any fiscal 173  
year, but at least thirty days before the execution of a contract 174  
to contract out, the state agency shall submit a final business 175  
case to the council for its review under section 121.86 of the 176  
Revised Code. The final business case is the business case 177  
prepared under section 121.82 of the Revised Code, as amended to 178  
reflect any changes to it as the result of contract negotiations. 179

**Sec. 121.84.** Each contract to contract out the provision of a 180  
good or service under section 121.81 of the Revised Code shall, at 181  
a minimum, include all of the following articles: 182

(A) A scope-of-work article that clearly specifies and 183  
describes each quantifiable, measurable, and verifiable good or 184  
service to be provided by the private contractor. This article 185  
shall include a clause stating that if a particular good or 186  
service is inadvertently omitted or not clearly specified, but is 187  
determined to be operationally necessary and is verified to have 188  
been performed by the state agency within the twelve-month period 189  
before execution of the contract, the good or service will be 190  
provided by the contractor by amending the contract through the 191  
amendment process under division (B) of this section. 192

(B) A quality level article that describes all goods or 193  
services to be provided by the private contractor under the terms 194  
of the contract; the quality level of the goods or services and 195  
the service requirements to be met by the contractor; the specific 196  
responsibilities of the state agency and the contractor; and the 197  
process for amending any portion of the article. The article shall 198

contain an exclusivity clause that allows the state agency to 199  
retain the right to provide the good or service directly, or to 200  
contract with another contractor, if quality levels or service 201  
requirements are not being met or specific responsibilities are 202  
not performed. 203

(C) An article that identifies all required performance 204  
standards to be met by the private contractor, which shall 205  
include, at a minimum, all of the following: 206

(1) Detailed and measurable acceptance criteria for each good 207  
and service to be provided to the state agency under the terms of 208  
the contract; 209

(2) A method for monitoring and reporting progress in 210  
achieving the performance standards; 211

(3) The sanctions or disincentives that will be imposed for 212  
the private contractor's and state agency's nonperformance. 213

(D) An article that identifies all associated costs, specific 214  
payment terms, and payment schedules, including financial 215  
incentives and disincentives and other criteria governing 216  
payments; 217

(E) An article that identifies a clear and specific 218  
transition plan that shall be implemented in order to complete all 219  
required activities needed to transfer the provision of a good or 220  
service, or an activity, from the state agency to the private 221  
contractor, and to make such transfer successful; 222

(F) An article that describes a contingency plan for 223  
continuing the operation of providing a good or service, including 224  
transferring the provision of the good or service back to the 225  
state agency or a successor contractor, if the private contractor 226  
fails to perform and comply with the contract's performance 227  
standards and the contract is terminated; 228



(G) An article that requires the private contractor and its subcontractors to maintain adequate accounting records that comply with all applicable federal and state laws and generally accepted accounting principles; 229  
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(H) An article that authorizes the state agency to have access to and review all records related to the contract or to any subcontract, or related to any responsibilities or functions under the contract or any subcontract, for purposes of legislative oversight; 233  
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(I) An article that requires audits of the private contractor or subcontractor by the auditor of state; 238  
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(J) An article that requires the private contractor to interview and consider for employment with the private contractor each state employee who is interested in such employment and who was or will be displaced because the provision of a good or service was or will be contracted out; 240  
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(K) An article that requires the private contractor and its subcontractors to comply with section 149.43 of the Revised Code and any other public records laws that apply to the state agency that contracted out the provision of the good or service, specifically to: 245  
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(1) Keep and maintain the public records that ordinarily and necessarily would be required by the state agency regarding a good or service contracted out; 250  
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(2) Provide the public with access to the public records on the same terms and conditions that the state agency would have provided the records; 253  
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(3) Ensure that confidential or exempt records are not disclosed, except as authorized by law; 256  
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(4) Meet all requirements for retaining records; 258

(5) Require the transfer to the state agency, at no cost, of all public records in the private contractor's or a subcontractor's possession on termination of the contract and to require the destruction of any duplicate public records that are exempt or confidential. The article shall include a clause that requires all records stored electronically to be provided to the state agency in a format that is compatible with the state agency's information technology systems. 259  
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(L) An article that addresses ownership of intellectual property. This division does not provide the specific authority needed by a state agency to obtain a copyright or trademark. 267  
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(M) If applicable, an article that allows the state agency to purchase from the private contractor, at its depreciated value, assets used by the contractor in the performance of the contract. If assets have not depreciated, the state agency shall retain the right to negotiate to purchase them at an agreed-to cost. 270  
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**Sec. 121.85.** (A) The council on efficient government is established. The council shall consist of the following seven members: 275  
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(1) The chief executive or head administrative officer of a state agency, appointed by the governor; 278  
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(2) Two members who are engaged in private enterprise, appointed by the governor; 280  
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(3) Two members who are engaged in private enterprise, appointed by the president of the senate; 282  
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(4) Two members who are engaged in private enterprise, appointed by the speaker of the house of representatives. 284  
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(B) Initial appointments to the council shall be made on or before January 1, 2011. Of the initial appointments made to the council, the term of office of one member engaged in private 286  
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enterprise appointed by the governor, by the president of the 289  
senate, and by the speaker of the house of representatives shall 290  
be for a term ending December 31, 2011. The remaining initial 291  
appointments shall be for terms ending December 31, 2012. 292  
Thereafter, terms of office shall be for two years, with each term 293  
ending on the thirty-first day of December. The member appointed 294  
under division (A)(1) of this section shall be a member only so 295  
long as the member is the chief executive or head administrative 296  
officer of a state agency. Each member shall hold office from the 297  
date of appointment until the end of the term for which the member 298  
was appointed. Members may be reappointed one time. Vacancies 299  
shall be filled in the same manner provided for original 300  
appointments. Any member appointed to fill a vacancy occurring 301  
prior to the expiration of the term for which the member's 302  
predecessor was appointed shall hold office for the remainder of 303  
that term. A member shall continue in office subsequent to the 304  
expiration date of the member's term until the member's successor 305  
takes office, or until a period of sixty days has elapsed, 306  
whichever occurs first. 307

(C) The council shall meet not less than four times per 308  
calendar year. The council shall elect a chairperson from among 309  
its members. Four members of the council constitute a quorum. No 310  
action of the council is valid without the concurrence of four 311  
members. 312

(D) Members of the council shall serve without compensation, 313  
but members who are engaged in private enterprise shall be 314  
reimbursed for their actual and necessary expenses incurred in the 315  
performance of council duties. 316

(E) A council member may not participate in review of a 317  
business case under section 121.86 of the Revised Code if the 318  
member is the chief executive or head administrative officer of 319  
the state agency that submitted the business case, or, in the case 320

of a council member engaged in private enterprise, if the member 321  
has a business relationship with a private contractor that is 322  
involved or potentially could be involved in the proposed 323  
contracting out. 324

(F) A member of the council who is engaged in private 325  
enterprise may not delegate the membership to a designee. 326

(G) The auditor of state shall employ an adequate number of 327  
staff who collectively possess significant expertise and 328  
experience to assist the council in carrying out its duties under 329  
sections 121.86 to 121.88 of the Revised Code. 330

(H) The council may appoint advisory groups to conduct 331  
studies, research, or analyses, to prepare reports, and to make 332  
recommendations with respect to a matter within the council's 333  
jurisdiction. At least one member of the council shall serve on 334  
each advisory group. Members of an advisory group shall serve 335  
without compensation and shall not be reimbursed for their 336  
expenses. 337

**Sec. 121.86.** The council on efficient government shall do all 338  
of the following: 339

(A) Review business cases submitted by state agencies to the 340  
council under section 121.83 of the Revised Code and if required 341  
by division (A) of that section, provide to the state agency an 342  
advisory report. The advisory report shall contain a copy of the 343  
business case, an evaluation of the business case, any relevant 344  
council recommendations, and sufficient information to assist the 345  
state agency proposing to contract out the provision of a good or 346  
service in determining whether the business case should be 347  
included with the state agency's legislative budget request. 348

(B) Implement a standard process for council review of 349  
business cases submitted under section 121.83 of the Revised Code, 350

<u>including templates for use by state agencies in submitting</u>	351
<u>business cases to the council;</u>	352
<u>(C) Recommend standards, procedures, and guidelines for use</u>	353
<u>by state agencies in developing business cases;</u>	354
<u>(D) Review, evaluate, and make written recommendations in the</u>	355
<u>annual report prepared under section 121.88 of the Revised Code</u>	356
<u>regarding whether to contract out the provision of a good or</u>	357
<u>service selected by the governor under section 107.35 of the</u>	358
<u>Revised Code;</u>	359
<u>(E) Review contracting out the provision of a good or service</u>	360
<u>at the request of a state agency or a private contractor;</u>	361
<u>(F) Evaluate whether a good or service provided by a state</u>	362
<u>agency could be provided by a private contractor at the same</u>	363
<u>quality and service levels as provided by the state agency, and</u>	364
<u>whether contracting out the provision of the good or service would</u>	365
<u>result in cost savings to the state. The council may hold public</u>	366
<u>hearings as part of this evaluation process.</u>	367
<u>(G) Recommend to a state agency contracting out the provision</u>	368
<u>of a good or service if the council determines that contracting</u>	369
<u>out the provision is a more cost-efficient or a more effective</u>	370
<u>manner of providing a good or service;</u>	371
<u>(H) Review issues concerning state agency competition with</u>	372
<u>one or more private contractors to determine ways to eliminate any</u>	373
<u>unfair competition with them;</u>	374
<u>(I) Incorporate any lessons learned from contracting out the</u>	375
<u>provision of goods and services into council standards,</u>	376
<u>procedures, and guidelines, as appropriate, and identify and</u>	377
<u>disseminate to state agencies information regarding best practices</u>	378
<u>in efforts to contract out;</u>	379
<u>(J) Develop guidelines for assisting state employees whose</u>	380

jobs are eliminated as a result of the contracting out; 381

(K) Receive complaints of violations of sections 121.81 to 382  
121.84 of the Revised Code and transmit a copy of the complaint to 383  
the state agency alleged to be in violation. Within thirty days 384  
after receiving the complaint, the state agency shall file a 385  
response to the complaint with the council. 386

(L) Hold public hearings on the complaints, determine whether 387  
the state agency violated sections 121.81 to 121.84 of the Revised 388  
Code, and issue a written report of its findings to the 389  
complainant within ninety days after receiving the state agency's 390  
response; and 391

(M) Solicit from private contractors petitions of interest 392  
regarding contracting out the provision of a good or service, as 393  
the council considers appropriate. The council may evaluate the 394  
petitions and may hold public hearings as part of the evaluation 395  
process. The council may refer petitions to the governor's office 396  
for further consideration. A private contractor shall not have a 397  
cause of action based on the council's failure to evaluate a 398  
petition of interest or to refer a petition to the governor's 399  
office. 400

**Sec. 121.87.** The council on efficient government shall adopt 401  
rules that establish an accounting method to be used by state 402  
agencies in preparing, and by the council in reviewing, business 403  
cases under section 121.86 of the Revised Code that: 404

(A) Is similar to generally accepted governmental accounting 405  
standards; 406

(B) Allows a state agency to identify the total actual cost 407  
of engaging in a commercial activity in a manner similar to how a 408  
private contractor identifies the total actual cost of engaging in 409  
the same commercial activity, including identifying the following: 410

(1) Labor expenses, such as compensation and benefits; costs of training, of paying overtime, and of supervising labor; and other personnel expenses; 411  
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(2) Operating costs, such as vehicle maintenance and repair, marketing, advertising and other sales expenses, and office expenses; costs of accounting operations, such as billing, insurance expenses, real estate, or equipment costs; debt service costs; and overhead or capital expenses, such as vehicle depreciation and depreciation of other fixed assets; 414  
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(3) Contract management costs; 420

(4) Other costs particular to the provision of a good or service. 421  
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(C) Provides a process to estimate the federal, state, and local taxes a state agency would pay related to engaging in a commercial activity if the state agency were required to pay such taxes to the same extent as a private contractor engaging in the commercial activity. 423  
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**Sec. 121.88.** (A) The council on efficient government shall prepare an annual report that contains all of the following: 428  
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(1) Recommendations on innovative methods of delivering goods or services provided by state agencies that would improve the efficiency, effectiveness, or competition in the delivery of those goods or services; 430  
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(2) A summary for the previous calendar year of each state agency's efforts to contract out the provision of a good or service, including the number of business cases submitted to the council under section 121.83 of the Revised Code; the number of requests for proposals issued by state agencies under section 121.81 of the Revised Code; the number and dollar value of contracts to contract out executed; descriptions of contract 434  
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<u>performance results, as applicable; any contract violations or</u>	441
<u>slippages; and the status of extensions and renewals of, and</u>	442
<u>amendments to, contracts to contract out;</u>	443
<u>(3) Information about the council's activities;</u>	444
<u>(4) Copies of the business cases submitted to the council</u>	445
<u>under section 121.83 of the Revised Code;</u>	446
<u>(5) The minutes of each council meeting;</u>	447
<u>(6) Copies of advisory reports issued by the council under</u>	448
<u>section 121.83 of the Revised Code;</u>	449
<u>(7) The council's written recommendations regarding whether</u>	450
<u>to contract out the provision of a good or service selected by the</u>	451
<u>governor under section 107.35 of the Revised Code.</u>	452
<u>(B) The council shall submit a copy of the annual report to</u>	453
<u>the governor, the president and minority leader of the senate, and</u>	454
<u>the speaker and minority leader of the house of representatives on</u>	455
<u>or before the fifteenth day of January immediately following the</u>	456
<u>calendar year for which the report was made. The council shall</u>	457
<u>provide each year to the house of representatives and senate</u>	458
<u>committees that primarily deal with finances an oral report that</u>	459
<u>summarizes the annual report.</u>	460
<u>(C) Each state agency shall submit to the council all</u>	461
<u>information, documents, and other materials requested by the</u>	462
<u>council for preparation of the annual report.</u>	463