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I. Introduction

Appellees could not adequately respond to the arguments that Appellant set forth in its Merit Brief.

Appellees attempt to keep their opposing argument afloat by grasping on to the one thing that they believe can save their argument: this Court's 43 year old decision in *Philada Home Fund v. Board of Tax Appeals* (1966), 5 Ohio St.2d 135, 214 N.E.2d 431. However, it is clear from Appellees' arguments that neither the Board of Education (the "BOE") nor the Tax Commissioner understands the true meaning of *Philada Home Fund*.

Appellees continuously point to one proposition from *Philada Home Fund*: "property partly or incidentally used for private residence is nonexempt as not used exclusively for charitable purposes." *Philada Home Fund*, 5 Ohio St.2d at 137. However in the combined 47 pages of Appelles' briefs, not once do they address an equally important proposition that this Court set forth in *Philada Home Fund*: "The reason for exemption is the present benefit to the general public sufficient to justify the loss of tax revenue." *Id* at 139. Thus, this Court made clear that "[u]ntil the Legislature chooses to permit a similar exemption to all equally aged and needy residents of this state, **or until the code of regulations and practice of Philada gives assurance that a benefit to the public generally commensurate with the loss of tax revenue is clearly present**, we must hold that the claimed exemption violates the fundamental constitutional requirement of tax uniformity and equality, and that the proposed use is not exclusively charitable." *Id* (emphasis added).

In 1990, the voters of the State of Ohio amended the Ohio Constitution thereby providing the exact assurances demanded by this Court in *Philada Home Fund*. Section 16 of Article VIII of the Ohio Constitution permits deficit spending for the purpose of housing assistance. Article VIII, Section 16 of the Ohio Constitution provides in pertinent part:

It determined to be in the public interest and a proper public purpose for the state or its political subdivisions, directly or through a public authority, agency, or instrumentality, **to provide, or assist in providing**, by grants, loans, subsidies to loans, loans to lenders, purchase of loans, guarantees of loans, or otherwise as determined by the general assembly, **housing**, including shelters to provide temporary housing, in the state for individuals and families by the acquisition, financing, construction, leasing, rehabilitation, remodeling, improvement, or equipping of publicly or privately owned housing, including the acquisition of real property and interests in real property. (Appx. 1-2) (Emphasis added).

The 1990 Constitutional amendment clearly indicates that low-income housing provides a great public benefit. Moreover, pursuant to the Constitutional Amendment, funds from the State of Ohio are now being used for the purpose of providing housing. In 2008 and 2009, the Ohio Legislature appropriated \$53 million each year for the purpose of improving Ohio's housing condition. *See* Ohio Dpt. of Development, Ohio Housing Trust Fund: 2009 Annual Report (2009); (Appx. 3-11). Thus, not only is it clear that housing provides a great public benefit, but also, by providing low-income housing, charitable organizations such as Appellant help relieve the government of a burden it would otherwise bear.

Notwithstanding this clear change in public policy with respect to low-income housing, Appellant's use of the subject property is still distinguishable from those cases in which this Court has denied an exemption for the provision of low-income housing. As will be explained in the next section, Appellees fail to recognize the unique facts of

this case. Further, Appellees fail to consider how amendments to R.C. 5709.12, R.C. 5709.121, and R.C. 5701.13 impa this Court’s prior decisions that analyze those statutes.

II. Factual Clarification

Although Appellant has previously referred to itself as a “charitable religious organization,” Appellant never suggested that it operated a “place of worship.” Appellant is strictly a charitable institution. Appellant refers to itself as a “charitable religious institution” since its “mission” to provide “safe, comfortable and affordable housing that will allow men and women to live with dignity and pride, in a place they can proudly call home” is rooted in the Christian value of charity. (Supp. 33-35). While a place of worship is undoubtedly not a charitable institution, an institution does not lose its charitable nature simply because its charitable purpose is based upon a religious belief. Likewise, a Jewish nonprofit organization whose purpose is to “educate the Jewish community in which it’s situated” does not loose its status as an educational institution simply because its educational purpose coincides with a religious one. *See Cincinnati Community Kollel v. Levin* (2007), 113 Ohio St.3d 138, 863 N.E.2d 147.

Argument

A. Federal law does not prohibit a tax exemption for subsidizing housing projects.

The Tax Commissioner claimed that various federal statutes prohibit tax exemptions for any subsidized housing projects. The Tax Commissioner’s bold claim in the introduction to its Merit Brief is not correct. Property tax exemptions are governed by state statutes and not federal statutes.

B. The BTA had jurisdiction to apply the R.C. 5709.121 definition of “used exclusively for charitable purposes.”

The BTA undoubtedly had jurisdiction to apply the R.C. 5709.121 definition of “used exclusively for charitable purposes” in determining whether the subject property is exempt from taxation under R.C. 5709.12. Appellees seek to broaden an appellant’s duty under R.C. 5717.02 by requiring an appellant to explicitly mention every section of the Ohio Revised Code that may be even slightly applicable to an appellant’s appeal. Further, Appellees seek to eradicate this Court’s well-established principle that a court should not deny review by a hypertechnical reading of a notice of appeal. *Abex Corp. v. Kosydar* (1973), 35 Ohio St.2d 13, 64 O.O.2d 8, 289 N.E.2d 584.

Both Appellees attempt to classify R.C. 5709.121 as an independent exemption. While Appellees are correct in asserting that the definition provided by R.C. 5709.121 is not all encompassing, the fact that the definition is only applicable to charitable institutions does not render the definition an independent exemption. As this Court has explained, “R.C. 5709.121 does not itself grant any exemption. It merely sets forth certain situations in which real and personal property belonging to charitable or educational institutions or to the state or a political subdivision may be considered as used exclusively for charitable or public purposes.” *First Baptist Church of Milford, Inc. v. Wilkins* (2006), 110 Ohio St.3d 496, 2006-Ohio-4966 at ¶16. The definition of exemption is a “[f]reedom from a duty, liability, or other requirement; an exception.” BLACK’S LAW DICTIONARY (8th ed. 2004). By contrast, a definition means “[t]he meaning of a term as explicitly stated in a drafted document such as a contract, a corporate bylaw, an ordinance, or a statute; a definiens.” *Id* The plain language of R.C. 5709.121 clearly indicates that the section provides a definition and not an independent exemption:

(A) Real property and tangible personal property belonging to a charitable or educational institution or to the state or a political subdivision, shall be considered as used exclusively for charitable or public purposes by such institution, the state, or political subdivision, if it meets one of the following requirements:

(1) It is used by such institution, the state, or political subdivision, or by one or more other such institutions, the state, or political subdivisions under a lease, sublease, or other contractual arrangement:

(a) As a community or area center in which presentations in music, dramatics, the arts, and related fields are made in order to foster public interest and education therein;

(b) For other charitable, educational, or public purposes.

(2) It is made available under the direction or control of such institution, the state, or political subdivision for use in furtherance of or incidental to its charitable, educational, or public purposes and not with the view to profit.

(3) It is used by an organization described in division (D) of section 5709.12 of the Revised Code. If the organization is a corporation that receives a grant under the Thomas Alva Edison grant program authorized by division (C) of section 122.33 of the Revised Code at any time during the tax year, "used," for the purposes of this division, includes holding property for lease or resale to others.***

Nothing in the text of R.C. 5709.121 purports to free a property owner from the duty of paying taxes with respect to property it owns and uses exclusively for charitable purposes. The statute simply provides the meaning of the term "used exclusively for charitable purposes" as it applies to charitable institutions. The title of R.C. 5709.121, "Certain Property Declared to Be Used Exclusively for Charitable or Public Purposes" further bolsters the fact that the section is not an independent exemption. By contrast, R.C. 5709.12, similar to other exemption statutes, specifically includes the word "exemption" in its title.

Question 13 of The Application for Real Property Exemption and Remission asks, "Under what sections of the Ohio Revised Code is exemption sought." (Supp. 2). Appellant, following the plain language of the question, responded with "O.R.C. 5709.12." (Supp. 2). Nonetheless, Appellees argue that Appellant should have included R.C. 5709.121 in its response. According to Appellees' argument, a taxpayer must read beyond the plain language of Question 13 and

include any statute that may be applicable to its case, regardless of whether such statute grants an exemption.

On page 3 of its Merit Brief, the BOE cites *Community Health Professionals, Inc. v. Levin*, 113 Ohio St.3d 432, as standing for the proposition that a taxpayer's notice of appeal must at least reference the taxpayer's "charitable nature" in order for a judicial body to apply R.C. 5709.121. In *Community Health Professionals, Inc.*, an institution that provided in-home nursing services, sought an exemption under R.C. 5709.12 as incorporating R.C. 5709.121. The Tax Commissioner initially found the taxpayer to be a charitable institution, but the Commissioner denied the taxpayer an exemption on the ground that the taxpayer did not use the subject property exclusively for a charitable purpose or in furtherance of its charitable purpose and without the view to profit. *Community Health Professionals, Inc.*, 113 Ohio St.3d 432. The BTA subsequently reversed the decision of the Tax Commissioner. *Id.* On appeal to this Court, the Tax Commissioner argued that the taxpayer did not use "the property in furtherance of a charitable purpose, because [the taxpayer] accepts reimbursement from private and government sources and writes off unpaid balances." *Id.* at 435. This Court held that it did not have jurisdiction to hear such an argument since it addressed the issue of whether the taxpayer was a charitable institution. *Id.* at 437. Thus, at most, *Community Health Professionals* stands for the proposition that, once the tax commissioner makes a finding of fact, it cannot later raise an argument that contradicts such finding of fact. By contrast, in the case at bar, the Tax Commissioner originally noted that Appellant "may be a charitable institution." (Supp. 25).

C. Property belonging to a charitable institution and that is leased to a non-charitable institution or individual is exclusively used for charitable purposes if the property owner uses the property in furtherance of its charitable purpose.

The BOE argues that the General Assembly did not intend for property that is leased by a charitable institution to be exempt under R.C. 5709.121(B).¹ This argument ignores the clear language of R.C. 5709.121 and this Court's well established interpretations of the statute. "[A] court must look to the statute itself to determine the legislative intent, and if such intent is clearly expressed therein, the statute may not be restricted, construed, qualified, narrowed, enlarged or abridged ***." *Wachendorf v. Shaver* (1948), 149 Ohio St. 231, 78 N.E.2d 370. As this Court has previously found, R.C. 5709.121 clearly establishes "what property is deemed under it to be used exclusively for charitable purposes." *Cincinnati Nature Ctr. Assn. v. Bd. Of Tax Appeal* (1976), 48 Ohio St.2d 122, 125, 2 O.O.3d 275, 357 N.E.2d 381. R.C. 5709.121 provides, "Real and tangible personal property belonging to a charitable institution *** shall be considered as used exclusively for charitable or public purposes by such institution *** **if it meets one of the following requirements**: (1) It is used by such institution *** under a lease, sublease or other contractual arrangement *** (2) If it is made available under the direction or control of such institution *** for use in furtherance of or incidental to its charitable, educational, or public purposes and not with the view for profit." (Emphasis added). The plain language of R.C. 5709.121 clearly indicates that property owned by a charitable institution that meets either of the two requirements will be deemed as being used exclusively for charitable purposes.

In *Cincinnati Nature Ctr. Assn. v. Bd. Of Tax Appeal* (1976), 48 Ohio St.2d 122, 125, 2 O.O.3d 275, 357 N.E.2d 381, a nature center sought an exemption under R.C. 5709.12 as incorporating R.C. 5709.121 for houses it owned and used as residences for its employees. This Court clearly rejected the BTA's argument that "R.C. 5709.121 applies 'only when two or more

¹ It should be noted that while the BOE refers to R.C. 5709.121(B), it is clear the BOE intended to refer to R.C. 5709.121(A)(2). The differences in section numbering is the result of recent amendments to R.C. 5709.121. These amendments have no real effect on Appellant's use of the subject property. For the purpose of this section, Appellant will continue to cite to the former R.C. 5709.121 in order to avoid confusion.

charitable organizations use the same property' or, in the alternative, when the subject property is made available for use by the public." *Cincinnati Nature*, 48 Ohio St.2d at 125. This Court further noted that "[b]oth contentions are based upon information not included in the language of the statute." *Id* Likewise, in this case, the BOE's contention that property owned by a charitable institution that is leased to residential tenants cannot be exempt under R.C. 5709.121 is entirely based on information not included in the statute.

This Court's recent decision in *Case Western Reserve Univ. v. Wilkins* (2005), 105 Ohio St.3d 276, 825 N.E.2d 146, further illustrates that the BOE's claim is without merit. In *Case Western Reserve Univ.*, a university sought an exemption under R.C. 5709.12 as incorporating R.C. 5709.121 for a house that it owned and leased to the Zeta Pi Chapter of Alpha Phi Fraternity Housing Corporation. This Court found that R.C. 5709.121(A)(2) was not applicable because the Housing Corporation did not use the property for a charitable, educational, or public purpose. *Case Western Reserve Univ.*, 105 Ohio St.3d at 280. Nonetheless, this Court continued to determine if the property was used exclusively for charitable purposes under R.C. 5709.121(B). *Id* Although this Court ultimately found that the property did not meet the standards set forth under R.C. 5709.121(B), the case still clearly indicates that property that is leased to another individual or institution can still be deemed to be used exclusively for charitable purposes under R.C. 5709.121(B).

Moreover, in *Case Western Reserve Univ.*, this Court readily found that the property at issue was made available under the direction or control of the property owner. *Case Western Reserve Univ.*, 105 Ohio St.3d at 280. Further, this court noted that the lease agreement between the property owner and the lessee clearly evidenced that the property was made available under the direction or control of the property owner. *Id*

D. Appellant is a charitable institution.

On page 27 of its brief, the Tax Commissioner argues that Appellant is not a charitable institution since “the provision of such housing is not, in itself, a charitable purpose.” In raising such an argument, the Tax Commissioner clearly fails to distinguish the differences between an institution that uses property “exclusively for charitable purposes” as set forth in R.C. 5709.12 and a charitable institution that uses property “in furtherance of its charitable purpose” as set forth in R.C. 5709.121.

This Court has found that the provision of residential housing “is not, in and of itself, an exclusive use of the property for charitable purposes.”² *Cogswell Hall, Inc. v. Kinney* (1987), 30 Ohio St.3d 43, 44 (emphasis added); *See also Philada Home Fund v. Board of Tax Appeals* (1966), 5 Ohio St.2d 135, 214 N.E.2d 431; *National Church Residences v. Lindley* (1985), 18 Ohio St.3d 53, 4798 N.E.2d 870. However, property owned by a charitable institution is exempt from taxation if the institution uses the property in furtherance of its charitable purpose. R.C. 5709.121. The test for determining whether an institution is charitable is whether the overall purpose of the institution must be charitable. *See OCLC Online Computer Library Ctr., Inc. v. Kinney* (1984), 11 Ohio St.3d 198, 11 OBR 509, 464 N.E.2d 572. Appellant’s purpose is to provide “safe, comfortable and affordable housing that will allow men and women to live with dignity and pride, in a place they can proudly call home.” (Supp. 35). It is inconceivable how such a purpose could be viewed as anything but charitable. In *Philada*, Justice Brown noted, “[t]he charitable purpose of the nonprofit corporation which owns this housing and hold it for rent only to aged and needy persons at below cost may be admitted, but

² Appellant is by no means conceding that it does not use the property exclusively for charitable purposes under R.C. 5709.12. As Appellant explained in its merit brief, its use of the subject property is distinguishable from those in which this Court has previously denied a charitable exemption.

the exemption is claimed under Section 5709.12, Revised Code, which extends exemption only to property ‘that is used exclusively for charitable purposes.’” *Philada Home Fund*, 5 Ohio St.2d at 137. Therefore, Appellant, who shares a similar purpose as the property owner in *Philada*, is clearly a charitable institution.

E. Granting Appellant an exemption under R.C. 5709.12 for property used exclusively for charitable purposes will not render the specific exemption for homes for the aged meaningless.

Appellant is not prohibited from seeking an exemption under R.C. 5709.12 simply because it fails to meet the criteria of a home for the aged as set forth in R.C. 5701.13. Once the General Assembly chooses “a specific subject for tax exemption, and defined the criteria, the function of the executive and judicial branches is limited to applying those criteria to a particular case, or to interpreting them if necessary.” *Toledo Business & Professional Women’s Retirement Living, Inc. v. Board of Tax Appeals* (1971), 27 Ohio St.2d 255, 257, 272 N.E. 359, 362, 56 O.O.2d 153. The “home for the aged” exemption is only applicable to licensed nursing homes, licensed residential care facilities, and licensed adult care facilities. *See* R.C. 5701.13. All of the entities that are exempt by R.C. 5701.13 have a significantly different purpose than that of Appellant. There is only one similarity between Appellant’s use of the subject property and those that are exempt under R.C. 5701.13: a majority of their tenants are elderly. However, such a similarity is based solely on the name of the exemption: “home for the aged.” In fact, certain entities, such as nursing homes, can qualify for an exemption as a “home for the aged” regardless of whether any of its residents are elderly. *See* R.C. 3721.01. Appellant should not be denied an exemption solely due to the fact that it shares one characteristic with some of the entities that are exempt by R.C. 5701.13.

Although this Court has previously found that certain institutions that provide low-income housing could not seek an exemption under R.C. 5709.12 unless they qualified for a home for the aged pursuant to R.C. 5701.13, these cases were based on an older version of R.C. 5701.13. Prior to 1987, R.C. 5701.13 provided:

As used in Title LVII(57) of the Revised Code, and for the purpose of other sections of the Revised Code which refer specifically to Chapter 5701 or Section 5701.13 of the Revised Code, a 'home for the aged' means a place of residence for aged persons which meets all of the following standards:

(A) It is owned or operated by a corporation, unincorporated association, or trust of a charitable, religious, or fraternal nature, which is organized and operated not for profit, and which is not formed for the pecuniary gain or profit of, and whose net earnings or any part thereof is not distributable to, its members, trustees, officers, or other private persons.

(D) The following services are available, as needed by residents of the home, and shall be provided, at or below reasonable cost, for the life of each resident without regard to his ability to continue payment for the full cost thereof:

- (1) Lodging;
- (2) Prepared food;
- (3) Custodial care;
- (4) Medical and nursing care;
- (5) Such additional services as may be required for the full care of the resident.

A service is provided, within the meaning of this division, if the home pays, or guarantees the payment, for all reasonable costs of securing such service on behalf of each resident and it can be secured without unreasonable inconvenience to the residents.

Exemption from taxation shall be accorded, on proper application, only to those homes which meet the standards and provide the services specified in this section. (Appx. 12-14).

Thus, the home for the aged exemption was applicable to any property used as a "place of residence for aged persons." Accordingly, this Court generally prohibited low income housing for aged residents from claiming an exemption under the general exemption for "property used exclusively for charitable purposes." See *Toledo Business & Professional Women's Retirement Living, Inc. v. Board of Tax Appeals* (1971), 27 Ohio St.2d 255; *Cogswell Hall, Inc. v. Kinney*

(1987), 30 Ohio St.3d 43; *National Church Residences v. Lindley* (1985), 18 Ohio St.3d 53, 4798 N.E.2d 870. The reasoning behind this Court's analysis in those cases was that low-income housing for aged residents could not be exempt under the general charitable use statute since the legislature already set forth specific criteria for exempting a place of residence for aged persons. However, under the revised statute, it is clear that the age of a property's tenants is not the factor upon which the General Assembly decided to enact the special exemption for homes for the aged. Rather, the General Assembly sought to provide specific criteria for exempting licensed nursing homes, licensed residential care facilities, and licensed adult care facilities.

F. Granting Appellant an exemption under R.C. 5709.12 (B) will not render R.C. 5709.12(C) meaningless.

Appellees argue that granting Appellant an exemption under R.C. 5709.12 (B) will render R.C. 5709.12(C) meaningless. R.C. 5709.12(C) provides criteria for exempting independent living facilities that are operated in conjunction with a "home for the aged." R.C. 5709.12(A) defines independent living facilities as "any residential housing facilities and related property that are not a nursing home, residential care facility, or adult care facility as defined in division (A) of section 5701.13 of the Revised Code."

Although Appellant meets this definition of an independent living facility, it is clear that the General Assembly did not intend to bar every residential housing facility that is not operated in conjunction with or at the same site as a nursing home, residential care facility, or adult care facility from an exemption. The purpose of R.C. 5709.12 (C)(2) was to exempt unlicensed independent living facilities that are operated in conjunction with nursing homes. In fact, the language of R.C. 5701.13(B)(2) mimics the language of R.C. 5709.12(C)(2). R.C. 5701.13(B)(2) provides:

A place of residence that satisfies divisions (B)(1)(b), (d), and (e) of this section; **that satisfies the definition of “nursing home,” “residential care facility,” or “adult care facility” under section 3721.01 or 3722.01 of the Revised Code regardless of whether it is licensed as such a home or facility;** and that is provided at no charge to individuals on account of their service without compensation to a charitable, religious, fraternal, or educational institution, which individuals are aged or infirm and are members of the corporation, association, or trust that owns the place of residence. For the purposes of division (B)(2) of this section, “compensation” does not include furnishing room and board, clothing, health care, or other necessities, or stipends or other de minimis payments to defray the cost thereof. (emphasis added).

The exemption for “homes for the aged” and the “independent living facilities” exemption both apply to nursing homes, residential care facilities, and adult care facilities. The only difference between the two is that the independent living facilities exemption removes the licensing requirement, but additionally requires the home to be provided at no charge to at no compensation to the organization’s retired, aged, or infirm members in consideration for their service to a charitable, religious, fraternal, or educational institution. The legislative history of the act further bolsters the proposition that the independent living facilities exemption only applies to nursing homes, residential care facilities, and adult care facilities. “Under prior law, independent living facilities were not themselves exempted from taxation, but certain common areas used by both residents of the affiliated nursing home and residents of the independent living facility were exempted, as were common areas used primarily by residents of the nursing home. *** The kinds of homes qualifying for tax exemption under the act must satisfy definitions of continuing law for ‘nursing home,’ ‘residential care facility,’ or ‘adult care facility,’ but they do not have to be licensed as such.” OH B. An., 2002 H.B. 416; (Appx. 16).

If this Court were to hold that R.C. 5709.12 (C) prohibits all other residential facilities from obtaining an exemption, it would render a large portion of its previous case law meaningless. As the BOE explained, this court has long exempted residential facilities when “the

persons who occupy the apartments perform any function for [the owner of the units] that would make it crucial for that person to be housed in these apartments.” *First Baptist Church of Milford v. Wilkins* (2006), 110 Ohio St.3d 496, 500, 854 N.E.2d 494.³ Thus, a holding that would limit exemptions for residential facilities to the criteria set forth in R.C. 5709.12(C) would strip many institutions of all or part of their exemptions. It is clear that, by enacting R.C. 5709.12(C), the legislature did not intend to deny such institutions exemptions simply because their property is not a licensed nursing home, licensed residential care facility, or licensed adult care facility.

G. Appellant is not seeking a vicarious exemption.

The Tax Commissioner argues that the Love Zion Baptist Church, and not Appellant, provides many of the services at the subject property. The Tax Commissioner is correct in asserting that the Love Zion Manner is simply Appellant’s sponsor. However, the taxpayer is not seeking to obtain a vicarious charitable exemption.

In *National Church Residences v. Lindley* (1985), 18 Ohio St.3d 53, the property owner arranged for various community agencies to provide services to its tenants. These entities included Meals on Wheels and organizations that provide community health services. *National Church Residences v. Lindley* (1985), 18 Ohio St.3d 53. However, these institutions are significantly different than the Love Zion Church. First, the purpose of the institutions described in *National Church Residences* was to provide the exact services that they provided to the tenants. Thus, in *National Church Residences*, the tenants could have independently contacted these agencies and received these services themselves. By contrast, the purpose of Love Zion Church is to serve as a place of worship. It is doubtful that volunteers from the Church make it a point to adopt tenants and provide Bible studies at every low-income housing project. Rather,

³ It should be noted that the BOE incorrectly cites to *True Christianity Evangelism v. Zaino* (2001), 91 Ohio St.3d 117, for this proposition.

due to the Love Zion Church's unique relationship to Appellant, the Church has made it its mission to provide services specifically to the tenants of the Love Zion Manner. *See* (Supp. 34). Second, all of the institutions providing services to the tenants at National Church Residences were charitable organizations. A taxpayer who seeks to obtain a vicarious charitable exemption relies "upon the charitable status of its customers as the basis for its charitable exemption." *OCLC Online Computer Library Ctr., Inc. v. Kinney* (1984), 11 Ohio St.3d 198, 201 However, the Love Zion Church is a religious institution and not a charitable organization. Accordingly, Appellant cannot be obtaining "a vicarious charitable exemption" from an institution that is not in and of itself charitable.

CONCLUSION

For the reasons set forth in Appellant's Merit Brief and this Reply Brief, Appellant respectfully requests the Supreme Court of Ohio to reverse the unlawful and unreasonable decision of the BTA.

Respectfully submitted,

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§ 8.16 State and political subdivisions to provide housing for individuals

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To enhance the availability of adequate housing in the state and to improve the being of the people of the state, it is determined to be in the public interest and a the state or its political subdivisions, directly or through a public authority, agency provide, or assist in providing, by grants, loans, subsidies to loans, loans to lenders guarantees of loans, or otherwise as determined by the general assembly, housing provide temporary housing, in the state for individuals and families by the acquisition leasing, rehabilitation, remodeling, improvement, or equipping of publicly or private including the acquisition of real property and interests in real property. Laws, including and resolutions, may be passed to carry into effect those purposes, including but authorization of the making of grants, loans, subsidies to loans, loans to lenders, guarantees of loans by the state or its political subdivisions, directly or through a instrumentality, which laws, charters, ordinances, resolutions, grants, loans, subsidies to lenders, purchase of loans, guarantees of loans, and any other actions authorized shall not be subject to the requirement, limitations, or prohibitions of any other sections Sections 6 and 11 of Article XII, Ohio Constitution.

The general assembly also may authorize the issuance by the state, directly or through agencies, or instrumentalities, or obligations to provide moneys for the provision of housing, including shelters to provide temporary housing, in the state which obligations are not supported by the full faith and credit of the state, and shall not be secured by debts or bonded indebtedness of the state under other provisions of this constitution secured by a pledge under law, without necessity for further appropriation, of all or any part of the general assembly authorizes of revenues or receipts of the state or its public authority instrumentalities, and this provision may be implemented by law to better provide

The powers granted under this section are independent of, in addition to, and not powers under laws, charters, ordinances, resolutions, or this constitution, including

Section 14 of Article VIII and Articles X and XVIII, and the provision of any capita Section 2i of Article VIII, Ohio Constitution. The powers granted under this section charter, ordinance, or resolution enacted prior to the effective date of this section under such law, charter, ordinance, or resolution. The powers granted under this power of the general assembly to regulate taxation and debt of political subdivisic of municipal taxation and debt pursuant to Section 6 of Article XIII and Section 1: Constitution.

The powers granted to political subdivisions under this section shall be operative 1991, or on an earlier date that an act of the general assembly declares such pow

(Adopted November 6, 1990.)

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OHIO HOUSING TRUST FUND
OHIO HOUSING TRUST FUND

Ohio Housing Trust Fund 2009 Annual Report

Presented by
Ohio Housing Trust Fund
Ohio Housing Trust Fund
Ohio Housing Trust Fund
Ohio Housing Trust Fund

Ted Strickland, Governor
Lee Fisher, Lt. Governor
Lisa Patt-McDaniel, Secretary
Ohio Housing Trust Fund

State Fiscal Year 2009
Ohio Housing Trust Fund
Annual Report

For the period: July 1, 2008-June 30, 2009

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Introduction

According to Ohio Revised Code Section 174.05, the Ohio Department of Development is required to submit an annual report to the President of the Ohio Senate and the Speaker of the Ohio House of Representatives describing the activities of the department under Ohio Revised Code Section 174.01 to 174.07 during the previous state fiscal year.

History

To address Ohio's housing needs, Ohio's housing advocates, led by the Coalition on Homelessness and Housing in Ohio began a grass roots campaign to improve Ohio's housing conditions. The campaign's first success came in November 1990 when Ohio's voters approved Issue 1, a constitutional amendment making housing a public purpose. During the following year, the Ohio Legislature passed implementing legislation (House Bill 339) to establish the Ohio Housing Trust Fund and an Advisory Committee to work with the Ohio Department of Development, the administering agency, to develop the fund's housing programs and policies. In the 1992-1993 Ohio Biennium Budget, \$5 million of state general revenue was allocated to the fund. Immediately, Ohio's housing advocates began lobbying for an Ohio Housing Trust Fund permanent, stable funding source.

For the next 12 years, the fund's allocation level was affected by the state's sluggish economy and the high demand for other state-funded services, including education. During that period, the allocation level fluctuated from \$5 million for a biennium to \$20 million for one year. In 2002, to expand the lines of communication with housing providers, housing developers, bankers, real estate agents, local governments, nonprofit organizations, housing advocates and citizens, the Ohio Department of Development Director established the Affordable Housing Taskforce. After full consideration of the various funding options and housing needs, the taskforce recommended an increase in recordation fees to provide a permanent, dedicated funding source for the Ohio Housing Trust Fund. This was the third committee to recommend an increase in the recordation fees in order to permanently fund the Ohio Housing Trust Fund. Throughout the process, there was a virtual consensus regarding the extent of the affordable housing crisis and the critical role state resources could play in cementing and invigorating the public/private partnerships in Ohio's communities to save, maintain and increase affordable housing for low- and moderate-income families. During the process, the Coalition on Homelessness and Housing in Ohio and the Ohio Department of Development served as advocates and the primary initiators for the permanent funding source by building a statewide advocacy network and encouraging continued communication with the Governor's Office and the State Legislature. In addition, the Coalition on Homelessness and Housing in Ohio collected endorsements for the permanent funding source and launched an e-advocacy tool to increase participation, efficiency and effectiveness of advocacy efforts.

In June 2003, the Ohio Legislature responded to the taskforce's recommendation and the endorsements of more than 900 local governments, businesses, nonprofit service providers, financial institutions and religious organizations from all 88 Ohio counties and included an increase in the recordation fees in the 2004-2005 Ohio Biennium Budget, as a permanent, dedicated funding source for the Ohio Housing Trust Fund.

In the 2008-2009 Ohio Biennium Budget, the Ohio Legislature appropriated \$53 million each year to the Ohio Housing Trust Fund.

OHTF Advisory Committee Members

Ohio Revised Code Section 174.06 governs the Ohio Housing Trust Fund Advisory Committee. The committee consists of 14 members appointed by the Governor, with each representing an organization committed to housing and housing assistance for low- and moderate-income persons, as listed below:

Grady Appleton

Representing: Nonprofit Organizations
Term Expires: December 10, 2011

Mary Burke Rivers

Representing: Individuals and families included in the income groups targeted by Ohio Revised Code Section 174.03
Term Expires: December 10, 2010

Ronald Burson

Representing: For-Profit Rental Housing Industry
Term Expires: October 10, 2009

Lewis Ellis

Representing: Nonprofit Organizations
Term Expires: December 10, 2011

Bill Faith

Representing: A Religious, Civic or Social Service Organization
Term Expires: December 10, 2010

Heidi Fought

Representing: Townships
Term Expires: December 10, 2011

Donald Freels

Representing: Licensed Real Estate Brokers
Term Expires: October 10, 2009

Craig Garrelts

Representing: Local Housing Authorities
Term Expires: December 10, 2010

Jerry Katz

Representing: Lenders
Term Expires: October 10, 2009

Evelyn King

Representing: City Governments
Term Expires: December 10, 2011

Deborah Lieberman

Representing: County Governments
Term Expires: December 10, 2010

David Petroni

Representing: For-Profit Builders and Developers
Term Expires: October 10, 2009

Rachel Robinson

Representing: Fair Housing Organizations
Term Expires: December 10, 2010

Cheryl Thiessen

Representing: Nonprofit Organizations
Term Expires: December 10, 2010

Funding Set-Asides

The Ohio Housing Trust Fund appropriation authority is restricted by Ohio Revised Code Section 174.02, as follows:

- Not more than 7 percent of the current year appropriation authority¹ can be used for the emergency shelter housing grants program.

In State Fiscal Year 2009, the Ohio Department of Development allocated \$3,710,000 of Ohio Housing Trust Fund appropriation authority to emergency shelter grant programs (7 percent) and awarded the full allocation.
- Not more than 6 percent of the current year's appropriation authority can be used for the transitional and permanent housing programs.

In State Fiscal Year 2009, the Department allocated \$3,180,000 of Ohio Housing Trust Fund appropriation authority to transitional and permanent housing programs (6 percent) and awarded the full allocation.
- Not more than 5 percent of the current year appropriation authority for the fund shall be allocated between grants to community development corporations for the community development corporation grant program and grants and loans to the Ohio community development finance fund, a private nonprofit corporation.

In State Fiscal Year 2009, the Department allocated 5 percent (\$2,650,000) of Ohio Housing Trust Fund appropriation authority to community development corporations and the Ohio community development finance fund and awarded the full allocation.
- In any year that funds exceed \$100,000, not less than \$100,000 can be used to provide training and technical assistance and capacity building assistance to nonprofit development organizations.

In State Fiscal Year 2009, the Department awarded \$160,000 of Ohio Housing Trust Fund dollars to provide training and technical assistance and capacity building assistance to nonprofit development organizations.
- Not less than 50 percent of the funds awarded during any one fiscal year, excluding the 5 percent, 6 percent and 7 percent restrictions listed above, shall be for grants and loans that provide housing and housing assistance to families and individuals in rural areas and small cities that are not eligible to participate as a participating jurisdiction under the HOME Investment Partnerships Act.

In State Fiscal Year 2009, 71 percent (\$28,772,113) of the funds awarded², excluding the 5 percent, 6 percent and 7 percent restrictions listed above (\$9,540,000), were for grants or loans that provide housing and housing assistance to families and individuals in rural areas that are not eligible to participate as a participating jurisdiction under the HOME Investment Partnerships Act.
- In any year that funds exceed \$250,000, at least \$250,000 of the fund shall be provided to the Ohio Department of Aging for the resident services coordinator program.

In State Fiscal Year 2009, the Department awarded \$315,000 of Ohio Housing Trust Fund dollars, including administration, to the Ohio Department of Aging for the resident services coordinator program.
- Not more than 5 percent of all the money in the fund shall be used for administration.

In State Fiscal Year 2009, 5 percent (\$2,645,326) was expended for administration.
- Not less than 45 percent of all funds awarded during any one fiscal year shall be awarded to nonprofit organizations.

In State Fiscal Year 2009, 96 percent (\$48,068,400) of the Ohio Housing Trust Fund awarded dollars were awarded to nonprofit organizations.

¹ In State Fiscal Year 2009, the Ohio Housing Trust Fund appropriation authority was \$53 million.

² In State Fiscal Year 2009, a total of \$50,168,400 was awarded.

Income Targeting

Ohio Revised Code Section 174.03 also includes the following income targeting requirements:

- No more than 20 percent of the current year's appropriation authority, excluding the 5 percent, 6 percent and 7 percent restrictions listed previously, may be awarded for supportive services.

In State Fiscal Year 2009, 11 percent (\$4,802,650) of the appropriation authority, excluding the 5 percent, 6 percent and 7 percent restrictions listed previously (\$9,540,000), was awarded for supportive services.
- At least 75 percent of the money granted and loaned must be for activities that provide affordable housing/housing assistance to families and individuals whose incomes are equal to or less than 50 percent of the area median income.

In State Fiscal Year 2009, 93 percent (\$46,733,100) of the money granted and loaned was dedicated to activities that provide affordable housing/housing assistance to families and individuals whose incomes are equal to or less than 50 percent of the area median income.
- The remainder of funds not granted or loaned above shall be for activities that provide affordable housing and housing assistance to families and individuals whose incomes are equal to or less than 80 percent of the area median income.

In State Fiscal Year 2009, 7 percent (\$3,435,300) of all funds granted or loaned benefitted families and individuals whose incomes are greater than 50 percent of the area median income but less than or equal to 80 percent of the area median income.
- The department shall give preference to viable projects and activities that benefit those families and individuals whose incomes are equal to or less than 35 percent of the area median income.

In State Fiscal Year 2009, 50 percent of the Ohio Housing Trust Fund awarded dollars (\$24,944,600) were awarded to projects and activities benefiting those families and individuals whose incomes were equal to or less than 35 percent of the area median income.

Eligible Housing and Housing Assistance Award Recipients and Activities

The Ohio Housing Trust Fund provides funding to nonprofit organizations, public housing authorities, private developers and lenders, local governments and consortia of eligible applicants that are interested in increasing affordable housing opportunities, expanding housing services and improving housing conditions for Ohio's low- and moderate-income residents.

Grants, loans, loan guarantees and loan subsidies may be used for:

- acquiring, financing, constructing, leasing, rehabilitating, remodeling, improving and equipping publicly or privately owned housing;
- providing matching money for federal funds received by the state, counties, municipal corporations and townships;
- providing to counties, townships, municipal corporations and nonprofit organizations technical assistance, design and finance services and consultation and payment of predevelopment and administrative costs related to any of the activities listed above; and
- providing supportive services related to housing and the homeless, including counseling.

State Fiscal Year 2009 Ohio Housing Trust Fund Allocations

On June 3, 2008, the Ohio Housing Trust Fund Advisory Committee recommended the allocation of the State Fiscal Year 2009 Ohio Housing Trust fund dollars and, on June 9, 2008, the Ohio Department of Development approved the recommended allocations. The following is the final State Fiscal Year 2009 Ohio Housing Trust Fund approved allocations:

Restricted Funds

Community Development Corporations	\$2,650,000
Emergency Shelter Housing	3,710,000
Resident Services Coordinator Program	300,000
Transitional and Permanent Housing	3,180,000
Administration	2,650,000
Restricted Subtotal.....	\$12,490,000

Nonrestricted Funds

Community Housing Improvement Program.....	\$1,800,000
Discretionary Grant Program	1,697,500
Homeless Assistance Grant Program.....	12,012,500
Housing Assistance Grant Program	6,000,000
Housing Development Assistance Program	19,000,000
Nonrestricted Subtotal	\$40,510,000

TOTAL.....	\$53,000,000
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State Fiscal Year 2009 Ohio Housing Trust Fund Awards and Administration

Restricted

Community Development Corporations	\$2,650,000
Community Development Finance Fund	1,900,000
Microenterprise Business Development Program.....	590,000
Training/Technical Assistance and Capacity Building.....	160,000
Emergency Shelter Housing	3,710,000
Homeless Assistance Grant Program	3,710,000
Resident Services Coordinator Program	300,000
Transitional and Permanent Housing	3,180,000
Homeless Assistance Grant Program	3,180,000
Administration	2,645,326
Office of Housing and Community Partnerships	1,630,326
Ohio Housing Finance Agency.....	1,000,000
Ohio Department of Aging	15,000
Restricted Subtotal.....	\$12,485,326

Nonrestricted

Community Housing Improvement Program.....	\$ 1,800,000
Discretionary Grant Program	
AmeriCorps/VISTA Project.....	110,000
Coalition on Homelessness and Housing in Ohio Training and Technical Assistance Program.....	180,000
Habitat for Humanity of Ohio -- Participating Jurisdictions Project	200,000
Individual Development Account Homeownership Project	47,400
Ohio Home Rescue Fund	1,000,000
Preserving Ohio's Affordable Housing Program/Youth Empowerment Program.....	137,500
Homeless Assistance Grant Program.....	12,012,500
Housing Assistance Grant Program	6,000,000
Housing Development Assistance Program	18,841,000
Nonrestricted Subtotal	\$40,328,400

TOTAL.....	\$52,813,726
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Accomplishments

The following are some of the major accomplishments achieved as a result of the allocation of the State Fiscal Year 2009 Ohio Housing Trust Fund monies:

- supportive services/essential services (case management; service referrals; budgeting, life skills, goal setting counseling; etc.) provided to 2,448 households;
- downpayment assistance/homebuyer counseling provided to 411 households;
- construction/rehabilitation/repair of 1,610 rental units and 2,737 homeownership units;
- homelessness prevention (short-term rental assistance, utility assistance, mortgage assistance, etc.) provided to 10,158 households;
- business assistance provided to 65 businesses;
- training and technical assistance provided to 8,037 households; and
- senior service coordination provided to 987 persons.

Beneficiaries

<u>Allocations By Income Levels</u>	<u>Amount</u>	<u>Beneficiaries</u>
Extremely Low-Income Persons Assisted ($\leq 35\%$)	\$24,944,600	68,587
Very Low-Income Persons ($>35\%$ and $\leq 50\%$)	21,788,500	15,550
Moderately Low-Income Persons Assisted ($>50\%$ and $\leq 65\%$)	785,300	2,261
Low-Income Persons ($>65\%$ and $\leq 80\%$)	2,650,000	931
All Persons Assisted	\$50,168,400	87,329

<u>Percent of Funds by Income Category of Funds Awarded</u>	<u>Percent</u>
Income $\leq 35\%$	50%
Income $>35\%$ and $\leq 50\%$	43%
Income >50 and $\leq 80\%$	7%

<u>Allocations By Geographic Area</u>	<u>Amount</u>	<u>Beneficiaries</u>
Funds Awarded in Participating Jurisdictions	\$12,689,987	28,226
Funds Awarded in Non-Participating Jurisdictions	33,743,513	44,827
Statewide Organizations	3,734,900	14,276
Total for All Funds Awarded	\$50,168,400	87,329

Percent of Funds by Geographic Area

Percent

Participating Jurisdictions	25.3%
Non-Participating Jurisdictions	67.3%
Statewide Organizations	7.4%

Award Recipient Type

Amount

Beneficiaries

Nonprofit Organizations	\$48,068,400	86,430
Units of Local Government	1,800,000	607
For Profit Organizations	300,000	292
Total	\$50,168,400	87,329

Percent of Funds by Award Recipient Type

Percent

Nonprofit Organizations	96%
Units of Local Government	3.5%
For Profit Organizations	.5%

(2) Any depreciation charge related to structures or improvements on land which exceeds a two per cent annual straight-line depreciation;

(3) Any depreciation charge related to tangible personal property which exceeds a twenty per cent annual straight-line depreciation;

(C) The home does not pay, directly or indirectly, compensation for services rendered, interest on debts incurred, or purchase price for land, building, equipment, supplies, or other goods or chattels, which compensation, interest, or purchase price is unreasonably high.

(D) The following services are available, as needed by residents of the home, and shall be provided, at or below reasonable cost, for the life of each resident without regard to his ability to continue payment for the full cost thereof:

- (1) Lodging;
- (2) Prepared food;
- (3) Custodial care;
- (4) Medical and nursing care;

(5) Such additional services as may be required for the full care of the resident.

A service is provided, within the meaning of this division, if the home pays, or guarantees the payment, for all reasonable costs of securing such service on behalf of each resident and it can be secured without unreasonable inconvenience to the residents.

Exemption from taxation shall be accorded, on proper application, only to those homes which meet the standards and provide the services specified in this section. (*Enacted in Amended Substitute Senate Bill No. 207*)

Powers and duties of board of tax appeals.

Sec. 5703.02. The board of tax appeals shall exercise the following powers and perform the following duties of the department of taxation:

(A) Exercise the authority provided by law relative to consenting to the exempting of property from taxation, and revising the list of exempted property in any county except as provided in sections 5709.20 to 5709.26, inclusive, of the Revised Code;

(B) Exercise the authority provided by law relative to determining the date as of which the taxable deposits in financial institutions shall be listed and assessed;

(C) Exercise the authority provided by law relative to de-



Sub. H.B. 416

124th General Assembly

(As Passed by the General Assembly)

Reps. Trakas, Evans, Seitz, Sullivan, Seaver, Patton, Schmidt, Jerse, Oakar, Carano, Faber, Collier, Allen, Schneider, Schaffer, Britton, Williams, Latta, Kilbane, Gilb, Niehaus, Callender, Hartnett, Brown, Olman, Calvert, Blasdel, Grendell, Carey, Aslanides, Cates, Sulzer, Willamowski, Perry, Distel, Flannery, DePiero, Jolivette, Ogg, Hughes, Carmichael, Womer Benjamin, Webster, Reidelbach, Otterman, G. Smith, Roman, Hoops, Coates, Latell

Sens. Amstutz, Roberts, Blessing, Spada, Harris, Jacobson, Fingerhut, Randy Gardner, Robert Gardner, Prentiss, Mumper, Hagan, Nein, Wachtmann, Finan, Hottinger, Coughlin

Effective date: *

ACT SUMMARY

- Grants a property tax exemption for homes for the aged, and independent living facilities operated in conjunction with them, that are owned by a church or a charitable or fraternal organization and occupied by clergy, members of a religious order, or other organization members who have retired from unpaid service to the church or a charitable, fraternal, or educational institution.

CONTENT AND OPERATION

Homes for the aged: tax exemption under continuing law

(sec. 5701.13(B))

Under continuing law, property tax exemption is granted for nursing homes, retirement homes, and similar homes for persons who are elderly or who

* The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.

require nursing or assistance with daily activities. But to be exempted from taxation, such a home must satisfy certain conditions, as follows:

(1) It must be licensed as a nursing home, residential care facility, or adult care facility (these terms are defined under "Definitions," below).

(2) It must be owned by a nonprofit, federally tax-exempt organization formed for a religious, charitable, or fraternal purpose.

(3) It must be open to the public without regard to "race, color, or national origin."

(4) It does not pay unreasonably high compensation, unreasonably high prices for land, building, equipment, or supplies, or unreasonably high interest.

(5) It provides care for the remaining lifetime of residents, even if the resident is unable to continue paying the whole cost of the care.

If only part of a home satisfies these five conditions, then only that part qualifies for exemption from taxation.

Exemption granted to homes for retired members of certain institutions

(secs. 5701.13(B)(2) and 5709.12(C)(2))

The act extends qualification for property tax exemption to certain kinds of homes for the aged satisfying some, but not all, of the foregoing conditions, as well as satisfying certain other conditions. To qualify under the act's extended exemption, a home must satisfy the conditions described in paragraphs (2), (4), and (5), above, and two additional conditions:

- It is a "nursing home," "residential care facility," or "adult care facility," except that the home need not be licensed as such.
- It is provided at no charge to aged or infirm members of the organization owning the home on account of their uncompensated service to a religious, charitable, educational, or fraternal organization (not necessarily service to the organization that owns the home).^{*} For the purpose of determining whether a member was compensated, the following cash or in-kind payments do not count: room and board,

^{*} For example, nuns who are members of a religious order and who have worked in a school or hospital.

clothing, health care, or necessities provided to the member, or a stipend or other form of minimal payment to cover living expenses.

Independent living facilities

(sec. 5709.12(C)(2))

The act also extends qualification for property tax exemption to independent living facilities affiliated with these homes for the aged. "Independent living facilities" are residential facilities that do not meet the statutory definitions for nursing homes, residential care facilities, or adult care facilities (because the occupants do not receive the same care, or necessarily have the same living arrangements, as do occupants of those homes and facilities).

To be exempted from taxation under the act, the independent living facility must be operated by the religious, charitable, or fraternal organization in conjunction with, or at the same location as, a home for the aged qualifying for exemption as described above. The facility must be operated exclusively for the benefit of the organization's retired, aged, or infirm members in consideration of their uncompensated service to a religious, charitable, educational, or fraternal institution, and it must be provided to them at no charge. ("Uncompensated service" is determined as explained above.)

Under prior law, independent living facilities were not themselves exempted from taxation, but certain common areas used by both residents of the affiliated nursing home and residents of the independent living facility were exempted, as were common areas used primarily by residents of the nursing home.

Effective date

(Section 3)

The exemption first applies to property tax year 2002 (i.e., it first affects taxes payable in 2003).

Definitions

The kinds of homes qualifying for tax exemption under the act must satisfy definitions in continuing law for "nursing home," "residential care facility," or "adult care facility," but they do not have to be licensed as such. Homes are distinguished primarily on the basis of living arrangements and the kind of care provided, as evidenced by the following definitions:

- A "nursing home" is a home providing accommodations for three or more unrelated persons who require skilled nursing care or personal



care services (e.g., assistance with daily living activities) because of illness or physical or mental impairment. (Sec. 3721.01.)

- A "residential care facility" is a home providing accommodations for 17 or more unrelated persons, at least three of whom require supervision and personal care services because of age or physical or mental impairment. (Sec. 3721.01.)
- An "adult care facility" is a home providing accommodations for between three and 16 unrelated persons, at least three of whom require personal care services. (Sec. 3722.01.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-23-01	pp. 974-975
Reported, H. Ways & Means	03-14-02	p. 1551
Passed House (97-0)	03-20-02	pp. 1583-1584
Reported, S. Ways & Means	05-15-02	p. 1774
Passed Senate (33-0)	05-15-02	pp. 1775-1776

02-hb416.124/jc

