

IN THE SUPREME COURT OF OHIO

Original action in mandamus; case no. 2010-2029

STATE ex rel. DATA TRACE INFORMATION SERVICES, LLC, et al.,

Relators,

-v-

RECORDER OF CUYAHOGA COUNTY, OHIO,

Respondent.

Reply Brief of Relators

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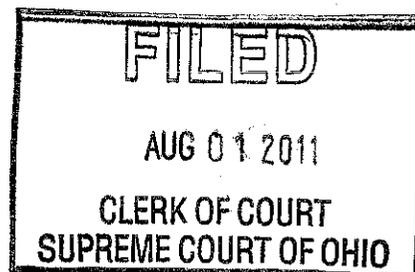


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Preliminary Statement

If you go to the Recorder's office and ask for a copy of a recorded lease that might affect land you want to buy, the Recorder will give you a copy on paper, printed one page at a time.

The recorders' law – R.C. 317.32 – says that the Recorder must charge you a fee of \$2 “per page, size eight and one-half inches by fourteen inches, or fraction thereof.” That's how much that statute says to charge for “photocopying a document.” So if the copy is 10 pages, you pay \$20. No one disputes that.¹

When college senior Jayson Gerbec went to the Recorder's office this spring, and asked the Recorder to duplicate onto CD the Recorder's digital copies of deeds filed on four recent dates, Gerbec supplied four blank CDs for the copying. After twice refusing, the Recorder eventually demanded over \$35,000 from him.² The Recorder insisted on \$2 for every paper page represented digitally by the many electronic 1s and 0s comprising the Recorder's digital copies, which the Recorder's CD burner could duplicate in minutes onto Gerbec's blank CDs.

An economics major, Gerbec had worked during the summer of 2010 for the Federal Reserve Bank.³ There, he had to download digital copies of a large volume of recorded deeds from the Recorder's website, but found it too slow and cumbersome.

¹ Relators' merits brief at 34-35; (Shulman report at 13, Vol. 3, tab 34).

² (Gerbec Aff. ¶ 16, see ¶s 7-15, Vol. 3, tab 27.)

³ (Gerbec Aff. ¶s 2-6, Vol. 3, tab 27.)

From that experience, Gerbec saw the benefit of relators wanting digital copies on CD.⁴ Using the Recorder's website to view and copy a large quantity of recorded deeds is, as a practical matter, unworkable, Gerbec attests here.⁵

The Recorder claims that R.C. 9.01 gives it no choice but to charge Gerbec over \$35,000 for those four CDs, nearly equaling the cost of tuition and room & board for his four years of college at Cleveland State. If the college student doesn't want to pay \$35,000, he should go the legislature, the Recorder effectively says, or make do without the CDs as he did at the Federal Reserve Bank.

But if the Recorder wants \$35,000 for four CDs that costs only pennies apiece to make, it is the Recorder who should go to the legislature. This Court should rule that the Recorder misreads R.C. 9.01, and also reject the Recorder's other arguments.

Argument in Reply

1. The relators did not concede anything about R.C. 9.01.

The Recorder says that "relators do not cite, let alone analyze," R.C. 9.01, so it is "therefore . . . undisputed" that R.C. 9.01 causes the \$2 per page fee for "photocopying a document" to apply to producing the digital CDs requested here. (Recorder's brief at 3.)

Relators *did* cite R.C. 9.01, saying that they "see nothing about that law to justify" demanding \$417,000 for a small stack of CDs that costs only 32¢ apiece to make. (Relators' merits brief at 48.) They explained that they couldn't envision how the Recorder was interpreting R.C. 9.01 to get that result, and would respond in a reply brief

⁴ (Gerbec Aff. ¶s 2-6, Vol. 3, tab 27.)

⁵ (Gerbec Aff. ¶s 2-6, Vol. 3, tab 27.)

to the Recorder's expressed view of that law. Now that relators see how the Recorder is trying to apply it, they address that in the next two sections of this reply.

2. The relators agree that R.C. 9.01 allows public offices to record, store, display, and furnish copies of recorded information on media other than paper.

Neither the legislature nor the Recorder has made it easy to nail down the meaning of the seemingly nonstop block of verbiage that the legislature adopted in "bulk" as R.C. 9.01. The appendix to this reply breaks R.C. 9.01's nine mostly run-on sentences apart to try to make it easier to follow and discuss.

Any discussion of R.C. 9.01 should start with a basic understanding that an original paper record is separate from the information that it contains. The paper is just a tangible and portable medium for recording, storing, and displaying information in a convenient and reliable way that allows humans to read the information with their own eyes, unaided by any device. But paper's physical characteristics have some inherent limitations and inconveniences. So we have developed a variety of substitutes for paper as media for recording, storing, searching, and displaying information for people to read, popularly but broadly and vaguely dubbed as "technology." R.C. 9.01 is about those paper substitutes.

The key to the Recorder's claimed interpretation lies in R.C. 9.01's first and sixth sentences. The parties seem to agree on the upshot of the first sentence. It allows state and local public offices to use a wide variety of technological alternatives to paper when recording, storing, or furnishing copies of recorded information.

So if a public office wants to keep all of its records on "microfilm" instead of paper, the first sentence of R.C. 9.01 says that it can. If it wants to keep its records digitally by

“electronic data processing,” it can. If it wants to furnish copies on “magnetic tape,” it can.

The substitute for paper must be one that “correctly and accurately copies, records, or reproduces” the “original record.” (R.C. 9.01, 1st sentence.) Since physical paper doesn’t comprise such substitutes as microfilm, replicating an original paper record must mean replicating the paper’s symbols and verbiage so that the microfilm will display all of the information that was on the paper record and in a way that looks as it did on the paper record.

3. **R.C. 9.01 does not require the Recorder to treat electronically copying digitally-recorded deeds onto CD as “photocopying a document” under the recorders’ law, R.C. 317.32.**
 - A. **The Recorder claims that the sixth sentence of R.C. 9.01 automatically expands and changes the specific meaning of “photocopying a document” under the recorder’s law, R.C. 317.32.**

The Recorder’s claimed interpretation of the sixth sentence of R.C. 9.01 is vital to the Recorder’s case here. R.C. 9.01’s sixth sentence contains the “same effect at law” phrase upon which the Recorder relies so heavily.

The Recorder says that sentence automatically expands the specific word “photocopying” in R.C. 317.32 so that the word no longer specifies a particular kind of copy or method of copying. Rather, it means *every* particular kind of copy or method of copying.

R.C. 9.01 changes the real meaning of “photocopying,” the Recorder says, to encompass every means and medium for replicating recorded information that exists at any time – even though no actual “photocopying” takes place and no copies would be

produced by the “page.”

So “photocopying a document” also would mean manually typing a copy of it line-by-line with a mechanical typewriter; handwriting a copy by pen and ink; making a copy by typesetting a printing press; making a copy from one magnetic tape to another or by duplicating one roll of microfilm onto another – every different means of reproducing recorded information that Professor Shulman described in his summary of the history of information technology.⁶

Through R.C. 9.01, each of those becomes “photocopying.” The Recorder mistakes what the statute says.

B. R.C. 9.01 does not say that the *method* of copying a document has “the same effect at law” as every other *method* of copying a document; it mandates only the “effect at law” of the copy ultimately produced.

The sixth sentence of R.C. 9.01 doesn’t transform “photocopying a document” into something else. It doesn’t say that the *method* of copying recorded information has “the same effect at law” as every other *method* of copying recorded information. Using a recorded deed as an example, it says that the copy of the recorded deed ultimately produced by various methods of copying has “the same effect at law” as the original, regardless of whether the copy is produced on paper or on some other accepted medium.

That becomes apparent when you choose one of the many forms for copies that R.C. 9.01’s sixth sentence lists. One is “microfilms.” Assume that microfilm is the county’s paper-substitute for storing, displaying, and furnishing copies of recorded deeds. Singling out “microfilms” and breaking the sixth sentence apart for ease of reading, it says

⁶ (Shulman report at 13, Vol. 3, tab 34.)

that:

such . . . microfilms . . .

when properly identified by the officer by whom or under whose supervision they were made, or who has their custody,

have the same effect at law as the original record

or of a record made by any other legally authorized means,

and

may be offered in like manner and shall be received in evidence in any court where the original record,

or record made by other legally authorized means,

could have been so introduced and received.

The upshot of that sentence is this: Using an authorized substitute for paper doesn't alter or diminish the "effect at law" of the recorded deed or an official copy of it. So, for example, assume that an "effect at law" of a recorded deed is to endow all strangers with "record notice" of who holds title to the tract of land described on the deed. The sixth sentence of R.C. 9.01 ensures that recording the deed will still give "record notice" to all strangers even though the county no longer uses paper to store and display the content of the recorded deed, or no longer furnishes authenticated copies of the deed on paper.

Indeed, R.C. 9.01's sixth sentence reserves the "same effect at law" only for those copies of government records that the government custodian affirmatively authenticates. That is, to have the "same effect at law," the copy must be "properly identified by the officer by whom or under whose supervision they were made, or who has their custody."

The sixth sentence does not bestow its “same effect at law” broadly upon every copy of every government record that an agency happens to furnish to any requesting member of the public. To have the “same effect at law,” the copy can’t be just another sheet of paper from the government.

The clause that follows “the same effect at law” clause reinforces that the sixth sentence targets only the substantive legal effect of an officially-authenticated copy of a government record that various technologies ultimately produce. The clause says: “and . . . shall be received in evidence in any court where the original record, or record made by other legally authorized means, could have been so introduced and received.”

The “shall be received in evidence” clause and the “same effect at law” clause are not independent of each other. If R.C. 9.01 did not say that a microfilm copy of the government record has the “same effect at law” as the original, then there would be nothing to admit as evidence. The microfilm copy of a recorded deed would be just a piece of microfilm, and mandating courts to admit it as “evidence” would impose an empty gesture. To give it life as “evidence,” R.C. 9.01 had to decree that an officially-authenticated copy has “the same effect at law” as the original.

C. The “effect at law” of a recorded deed does not include requiring a county recorder to charge the public any particular fee for copying the deed.

A government record’s “effect at law” is the substantive legal relation that its content and formalities create, alter, or extinguish, or the substantive legal consequence that flows from its particular content, such as an evidentiary “admission.” Wills, deeds, and contracts are examples of writings whose words and formalities have the power to

create, modify, or extinguish substantive legal relations, which our courts will enforce as described in the writing.⁷

A deed formally expresses the act of granting or creating an estate or use in land, and it bespeaks a present act, rather than a promise for future action.⁸ That is the “effect at law” of a deed. It creates, alters, or extinguishes the legal relations between specific persons and a specific tract of land.

To determine a more specific “effect at law” of a particular deed, the courts ordinarily assess only the words and formalities within the “four corners” of the instrument. That is, courts analyze the deed’s content to adjudge what legal relations between persons and land the deed’s content has the effect of creating, modifying, or extinguishing.⁹

A recorded deed gives public notice of the legal relationship between the parties to the instrument and the described land, not the legal relationship between the county recorder and random strangers who happen to ask the recorder for a copy of the deed. The legislature could change the amount of the \$2 per page fee for “photocopying a document,” but that would have no impact on a recorded deed’s “effect at law.” It isn’t as though someone could invalidate the deed or escape its “record notice” by proving that the county recorder repeatedly failed to charge the fee when providing copies to

⁷ Black’s Law Dictionary (5th ed. 1979); Bouvier’s Law Dictionary (8th ed. 1914); see e.g. Restatement (Second) of Contracts, Introduction & § 1; Restatement of Property, Introductory note & § 3 with comments and illustrations.

⁸ See *HIN, LLC v. Cuya. Cty Bd. of Revision*, 124 Ohio St.3d 481, 486-487, 2010-Ohio-687, 923 N.E.2d 1144, 1150, ¶¶ 21, 22.

strangers.

An analogous set of hypothetical statutes further illuminates the flaw in the way that the Recorder combines R.C. 9.01 with “photocopying a document” under the recorders’ law, R.C. 317.32. Suppose that a statute said that all courts shall charge \$2 to every person who enters the courthouse, and that the money collected shall defray the cost of the metal detectors through which all courthouse entrants must pass.

Suppose that a second statute in another part of the Revised Code said that an attorney’s appearance before the court by electronic video conferencing or other authorized technology shall have “the same effect at law” as the attorney being physically present.

The Recorder effectively says that, when read together, those statutes would require the court to charge \$2 to an attorney who appears by video at a status hearing because appearing by video has “the same effect at law” as being physically present. But the “effect at law” of an attorney’s presence at a court hearing is its substantive effect in the lawsuit, *e.g.* whether a party obeyed a court order to appear or whether the court gave a party an opportunity to be heard as due process requires. It has nothing to do with entering the building to defray the cost of the metal detectors.

4. The 1933 Ohio Attorney General’s opinion has no bearing on this Court adjudging the Recorder’s statutory duties here.

Although the Recorder relies heavily on the 1933 Ohio Attorney General’s opinion, this Court should not rely on it at all. Although the Attorney General issued it 78 years

⁹ *E.g., Hinman v. Barnes* (1946), 146 Ohio St. 497, 507-508, 66 N.E.2d 911, 916; *Jolliff v. Hardin Cable Television Co.*(1971), 26 Ohio St.2d 103, 106-107, 269 N.E.2d 588, 590.

ago, the Recorder hasn't provided, and the relators cannot find, any Ohio appellate opinion that has ever cited it. 1933 OAG No. 167.

The 1933 opinion applied General Code 32-1, which is a precursor only to the first sentence of today's R.C. 9.01. G.C. 32-1 said that public offices could record and store records by photostatic or photographic process instead of paper. The statute did not contain the "same effect at law" phrase upon which the Recorder stakes this case. So the 1933 Attorney General opinion is silent on the Recorder's most vital point. (G.C. 32-1 is at pg. 8 of the appendix to the Recorder's brief.)

Also, the 1933 opinion said nothing about how much a county recorder should charge the public for copies of recorded instruments; the opinion addressed only the fee to be charged to someone who files an instrument with the county to be recorded.

But most importantly, the Ohio Attorney General has no power to deprive this Court of its plenary power and authority to adjudge independently what statutes mean and require. Attorney General opinions are advisory only; they are not the product of adversarial advocacy; and they are not issued by any member of the judicial branch of government.

Moreover, the Ohio Attorney General's opinions are not uniformly consistent with each other. Here, for example, a much more recent opinion – issued in 1994 that *did* cite R.C. 9.01 – advised that the \$2 per page fee for "photocopying a document" does not apply where a county recorder keeps deeds on microfilm and microfiche and a member of the public wants a copy of it also on microfilm or microfiche. 1994 OAG Op. No. 006 at pgs. 2, 3.

So if the Court were to look to an Attorney General opinion, the 1994 opinion would be the one deserving the most influence because it addresses the same statutes and provisions at issue here in circumstances closely analogous to those at issue here.

5. This Court should reject the Recorder's feigned illusion that its master CDs are outside the scope of this case.

The Recorder's almost emotional adurance that its master CDs are outside the scope of this case suggests that the Recorder understands that dubbing a CD is more like copying a one-page document than like copying a 3,000-page document. And therefore can't justify the demanded \$417,000 fee even under the Recorder's purported view of photocopying a document.

When the relators first asked for copies of the deeds recorded on July and August, 2010, their letters of October 5, 2010, said: "I understand that these documents are currently maintained by your office in electronic form" and asked for "copies in electronic form on a compact disc (CD)."¹⁰

In March, 2011, relators sent a second letter: "This follows up on the request that I made for copies of recorded instruments on October 5, 2010." It explained that complying with the October 5 request "does not require your personnel to scan any paper record onto a compact disc." Instead, the "effect of my October 5 request is to ask your office to dub onto blank CDs the Master CDs covering July and August, 2010."¹¹

In 48 pages, the Recorder says at least 14 times that the "relators did not request copies of the 'master CDs.'" Yet those 48 pages acknowledge only twice that the October

¹⁰ (Oct. 5, 2010 letter, Vol. 3, Ex. 15.)

5 letter asked the Recorder to duplicate its electronic copies onto CD. The Recorder's brief does not even commit to providing electronic copies specifically on CD if this Court were to grant the writ.¹²

The Recorder says that the October requests "are the only public records requests identified in their Amended Complaint, so they are the only request at issue in this case."¹³ But when relators moved for leave to amend the complaint, they attached the proposed pleading for this Court's approval. That was in February, 2011; the follow-up letters hadn't been written yet. That's why the amended complaint doesn't cite them; relators filed only the amended pleading that the Court gave them permission to file.

Yet, those March letters *are* before the Court. The relators filed them as evidence.¹⁴ The Recorder never objected nor moved to strike. The March letters open by saying that they are "follow ups" to the October 5 requests, and explain that the "effect of my October 5 request is to ask your office to dub onto blank CDs the Master CDs covering July and August, 2010."¹⁵ So the March letters effectively merge with the October 5 requests.

The amended complaint itself refers to the master CDs repeatedly, including explaining that the Recorder had dubbed its master CDs for the relators for 11 years and

¹¹ (March, 2011, letter, Vol. 3, tab 16; Stutzman Affid. ¶s 86, 87, Vol. 3, tab 16.)

¹² See Recorder's brief at 1, 2, 5.

¹³ Recorder's brief at 34.

¹⁴ (Stutzman's March, 2011, letter, Vol. 3, tab 16; Stutzman Affid. ¶s 86, 87, Vol. 3, tab 16; Carsella's March, 2011 letter, Vol. 2, tab 13; Carsella Affid. ¶ 39, Vol. 2, tab 11.)

¹⁵ (March, 2011, letter, Vol. 3, tab 16; Stutzman Affid. ¶s 86, 87, Vol. 3, tab 16.)

then abruptly stopped, which triggered this lawsuit.¹⁶

Neither the Ohio Rules of Civil Procedure, which require no more than “notice pleading,” nor the Public Records Act tolerates hyper-technical “gotcha.” Indeed, this Court rejected that sort of gamesmanship in State ex rel. Cater v. North Olmsted, 69 Ohio St.3d 315, 1994-Ohio-4888, 631 N.E.2d 1048.

In Cater, this Court rejected the notion that “public information may be denied if the public does not guess correctly the format in which such information is kept.”¹⁷ Mr. Cater had asked the city of North Olmsted to see a list of how city police officers had scored on an aptitude test. The city kept the scores in the officers’ personnel files, and arranged the files based on each officer’s score, but had no specific “list.” So the city denied Cater’s request. This Court called that “quibbling” and ruled that the city should have produced the records that it did have.

Here, it really doesn’t matter whether the Recorder dubs its master CDs to comply with relators’ requests, which takes only a few minutes, or chooses to copy digital deeds directly from its server to a CD, which takes longer. Neither is “photocopying a document.” The Recorder tacitly admits as much by (mistakenly) touting R.C. 9.01 as the vehicle needed to create the fiction that digitally copying electronic signals is “photocopying a document.”

6. In 1999, the legislature overruled the dicta that the Recorder invokes from this Court’s *Margolius* opinion.

The Recorder devotes four pages trying to distinguish this Court’s opinion in State

¹⁶ (Am. Complaint ¶s 18, 19, 21, 41.)

ex rel. Margolius v. City of Cleveland (1992), 62 Ohio St. 3d 456, 584 N.E.2d 665. Relying on dicta, the Recorder argues that the opinion has two limitations: (1) that “computer files are [not] necessarily public records”; and (2) that “storing information in digital form does not make the medium of storage a public record.” (Recorders’ brief at 33, 25-37.)

But neither so-called “limitation” says *anything* about whether a compilation of public records is a separate public record as compared with each record that comprises the compilation. Yet that’s why the relators cited Margolius.

Moreover, the so-called “limitations” are no longer valid. With respect to the first – that computer files are not necessarily public records – see Toledo Blade v. Seneca Cty Bd. of Commrs., 120 Ohio St.3d 372, 2008-Ohio-6253, 899 N.E.2d 961 (the Public Records Act applies even to deleted emails).

As to the second – storing a document in digital form on CD does not make the CD a public record – the Recorder fails to mention that the General Assembly legislatively overruled that so-called “limitation” in 1999. That year, the legislature amended Section (B)(2) of the Public Records Act to expressly provide that copies of public records must be provided on the same non-paper medium that the government uses, or that the government *can* use. (Am.Sub.S.B. No. 78 in the appendix to this reply brief.)

The Act says:

SECTION 1. That section of 149.43 of the Revised Code be amended to read as follows: * * *

(B)(2) If any person chooses to obtain a copy of a public record in accordance with division (B)(1) of this section, the public office or person responsible for the public record shall

¹⁷ Cater, 69 Ohio St.3d at 320, 631 N.E.2d at 1053.

permit that person to choose to have the public record duplicated upon paper,

upon the same medium upon which the public office or person responsible for the public record keeps it,

or upon any other medium upon which the public office or person responsible for the public record determines that it reasonably can be duplicated as an integral part of the normal operations of the public office or person responsible for the public record.

In other words, if the government stores the record on CD, or can duplicate the record onto a CD, the government must provide the requesting citizen with a CD if that's what the citizen wants. The legislature imposes no condition of persuading anyone that that having copies on CD confers "enhanced" value.

7. This Court should reject the Recorder's sleight-of-hand in claiming that its recorded deeds are neither "records" nor "public records" under the Public Records Act.

The Recorder says that this Court's 1976 decision in Dayton Newspaper, Inc. v. City of Dayton has no relevance here because, in 1976, the Public Records Act defined "public records" as "records required to be kept by any public office." Today the Act defines "public records" as "~~records required to be kept by any public office.~~"

The Recorder says that the statutory change effectively means that a public record under this Court's analysis in Dayton Newspapers probably wouldn't be a public record under today's definition. But the opposite is true. Today's definition of "public record" is *broader* than it was when this Court decided Dayton Newspapers.

But more vitally: In 1976, the Ohio Revised Code defined "record" almost exactly as it does today. In 1976, the definition was R.C. 149.40. Today, its R.C. 149.011(G).

Compare the two statutory definitions:

The 1976 definition of “record” in R.C. 149.40:

Any document, device, or item, regardless of physical form or characteristic, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.

(See copy of the 1976 definition in the appendix to this reply brief.)

Today’s definition of “record” in R.C. 149.011(G):

[A]ny document, device, or item, regardless of physical form or characteristic, INCLUDING AN ELECTRONIC RECORD AS DEFINED IN SECTION 1306.01 OF THE REVISED CODE, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.

The only difference between today’s statutory definition of “record” and the 1976 statutory definition is the clause in capital letters shown in today’s definition.

In Dayton Newspapers, this Court ruled that, where keeping a particular kind of record is the “*raison d’etre*” for a particular public office, that record is a “public record.” To reach that conclusion, the Court necessarily also ruled that such a record satisfies the statutory definition of “record,” which is virtually the same today. 45 Ohio St.2d 107, 108-109, 341 N.E.2d 576, 577 (1976).

Here, keeping recorded deeds is the *raison d’etre* of all county recorders. Hence they are “records” as a matter of law, and because the county recorder keeps them, they are “public records” under the Public Records Act.

8. The master CDs don't qualify as "security records" under R.C. 149.433.

In a single sentence, the Recorder says that the master CDs are exempt as "security records" under R.C. 149.433(A). But they aren't. A "security record" is a "record that contains information directly used for protecting or maintaining the security of a public office against attack, interference, or sabotage." R.C. 149.433(A)(3).

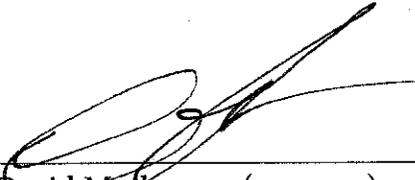
The Recorder has not claimed that the master CDs contain information that protects the Recorder's *office* from attack or sabotage. The statute is explicit that it is the "*office*," not particular records within the office, that is to be protected from attack or sabotage. A record detailing how to respond to a terrorist attack on the office would be a security record; back-up copies of recorded deeds are not.

Furthermore, the Recorder has multiple sets of back-up copies of its recorded deeds, including an additional set of microfilms kept offsite in an underground vault and back-up hard-drives. (Patterson Depo. 71-72, Vol. 1, tab E; video, Vol. 3, tab 18.)

Conclusion

For the foregoing reasons, and for the reasons explained in the relators' main brief, this Court should issue writ of mandamus that compels the respondent Recorder to:

- comply with the relators' requests to provide to Property Insight and Data Trace duplicates of the master CDs covering July and August, 2010, but at a fee no higher than the respondent's "cost" under the Public Records Act, R.C. 149.43(B)(1), and thus with no "per-page" fee;
- amend its public-records policy to allow for digital copies of recorded instruments on CD, at a fee no higher than the respondent's "cost" under the Public Records Act, and with no "per-page" fee;
- restore the public-records policy that is Exhibit 4 to the deposition of Lillian Greene as charging \$1 per disc for digital copies of recorded deeds on CD, with no per-page fee – as there is no evidence that respondent's "cost" under the Public Records Act exceeds \$1 per CD.



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Certificate of Service

The foregoing *reply brief of relators* has been sent via U.S. Mail on this 1st day of

August, 2011 to:

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600 Superior Avenue East - Suite 2100
Cleveland, Ohio 44114

Attorneys for Respondent



Attorney for Relators

Appendix

R.C. 9.01

Chapter 9. Miscellaneous

9.01 Reproduction of records

(1st sentence:)

- When any officer, office, court, commission, board, institution, department, agent, or employee of the state, of a county, or of any other political subdivision

who is charged with the duty or authorized or required by law

to

record,

preserve, keep,

maintain,

or file

any record, document, plat, court file, paper, or instrument in writing,

or to make or furnish copies of any of them,

deems it necessary or advisable,

when

recording

or

making a copy or reproduction of any of them

or

of any such record,

for the purpose of

recording
or
copying,
preserving, and protecting them,
reducing space required for storage,
or any similar purpose,
to do so
by means of any
photostatic,
photographic,
miniature photographic,
film,
microfilm,
or microphotographic process,
or perforated tape, magnetic tape, other magnetic means,
electronic data processing,
machine readable means,
or graphic or video display,
or any combination of those processes, means, or displays,
which correctly and accurately
copies, records, or reproduces,

or provides a medium of copying, recording, or reproducing,
the original record, document, plat, court file, paper, or instrument in writing,
such use of any of those processes, means, or displays
for any such purpose
is hereby authorized.

(2d sentence:) Any such records, copies, or reproductions may be made in duplicate,
and the duplicates shall be stored in different buildings.

(3rd sentence:) The film or paper used for a process shall comply with the minimum
standards of quality approved for permanent photographic records by the national bureau
of standards.

(4th sentence:) All such records, copies, or reproductions shall carry a certificate of
authenticity and completeness, on a form specified by the director of administrative
services through the state records program.

(5th sentence:)

- Any such
officer, office, court, commission,
board, institution, department,
agent, or employee of
the state, of a county, or of any other political subdivision
may purchase or rent
required equipment

for any such photographic process

and

may enter into contracts with private concerns or other governmental agencies

for the development of film

and the making of reproductions of film

as a part of any such photographic process.

(6th sentence:)

- When so recorded, or copied or reproduced to reduce space required for storage or filing of such records,

such

photographs,

microphotographs,

microfilms,

perforated tape,

magnetic tape,

other magnetic means,

electronic data processing,

machine readable means,

graphic or video display,

or combination of these processes, means, or displays, or films,

or prints made therefrom,

when properly identified by the officer by whom or under whose supervision they were

made, or who has their custody,

have the same effect at law

as the original record

or

of a record made by any other legally authorized means,

and

may be offered in like manner and shall be received in evidence in any court

where the original record,

or record made by other legally authorized means,

could have been so introduced and received.

(7th sentence:)

- Certified or authenticated copies

or prints of

such

photographs,

microphotographs,

films,

microfilms,

perforated tape,

magnetic tape,

other magnetic means,

electronic data processing,
machine readable means,
graphic or video display,
or combination of these processes, means, or displays,
shall be admitted in evidence equally with the original.

(8th sentence:)

- Such

photographs,

microphotographs,

microfilms,

or films

shall be placed and kept in

conveniently accessible,

fireproof,

and insulated files, cabinets, or containers,

and provisions shall be made

for

preserving, safekeeping,

using,

examining,

exhibiting,
projecting,
and enlarging them
whenever requested, during office hours.

(9th sentence:)

- All persons utilizing the methods described in this section

for keeping records and information

shall keep and make readily available to the public

the machines and equipment necessary to reproduce the records and information in a readable form.

(2003 H 95, eff. 9-26-03; 1985 H 238, eff. 7-1-85; 1975 H 205; 129 v 1528; 1953 H 1; GC 32-1)

Pre-1953 H 1 Amendments: 124 v S 44; 123 v 56; 121 v 338

Current through 2011 File 4 of the 129th GA (2011-2012), apv. by 3/11/11 and filed with the Secretary of State by 3/11/11.

-0-

THE STATE OF OHIO

VOLUME CXXXI

LEGISLATIVE ACTS

(EXCEPTING APPROPRIATION ACTS)

PASSED

AND

JOINT RESOLUTIONS

ADOPTED

BY THE

ONE HUNDRED AND SIXTH GENERAL ASSEMBLY
OF OHIO

At Its Regular Session
JANUARY 4, 1965, TO SEPTEMBER 1, 1965, INCLUSIVE

Issued by

TED W. BROWN

Secretary of State

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mission provided for under sections 149.32 to 149.42, inclusive, of the Revised Code. Such records shall be delivered by outgoing officials and employees to their successors and shall not be otherwise removed, transferred, or destroyed unlawfully. (*Enacted in Amended House Bill No. 631*)

Replevin of public records unlawfully removed.

Sec. 149.352. The attorney general may replevin any public records which have been unlawfully transferred or removed in violation of sections 149.31 to 149.44, inclusive, of the Revised Code or otherwise transferred or removed unlawfully. Such records shall be returned to the office of origin and safeguards shall be established to prevent further recurrence of unlawful transfer or removal. (*Enacted in Amended House Bill No. 631*)

Permission to destroy records that have been copied.

Sec. 149.37. The state records commission may order the destruction or other disposition, at any time, of any state record, document, plat, court file, paper, or instrument in writing that has been copied or reproduced in the manner and under the procedure prescribed in section 9.01 of the Revised Code. Before such order may be given by the commission *and before such destruction or disposition of copied or reproduced records*, the officer or person in charge, or the majority where there are more than one, of any office, court, commission, board, institution, department, or agency of the state shall request, **** in the manner and form prescribed by the state records commission*, that such permission be granted. (*Amended in Amended House Bill No. 631*)

Records and archives defined.

Sec. 149.40. Any document, device, or item, *regardless of physical form or characteristic*, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions which serves to document the organization, functions, policies, *decisions, procedures, operations*, or other activities of the office, **** is a record within the meaning of sections 149.31 to *** 149.44, inclusive, of the Revised Code.*

**** Any public record which is transferred to an archival institution pursuant to sections 149.31 to 149.44, inclusive, of the Revised Code because of the historical information contained therein shall be deemed to be an archive within the meaning of these sections. (Amended in Amended House Bill No. 631)*

Availability of records in centers and archival institutions.

Sec. 149.44. Any state records center or archival institution established pursuant to sections 149.31 and 149.331 of the Revised Code is an extension of the departments, offices, and institutions of the state and all state records transferred to records centers and archival institutions shall be available for use by the originating agencies and agencies or individuals so designated by the office of origin. The state records administrator and the state archivist shall establish regulations and procedures for the operation of state records centers and archival institutions respectively. *(Enacted in Amended House Bill No. 631)*

Penalty.

Sec. 149.99. Whoever violates section 149.43 or 149.351 of the Revised Code shall *** forfeit not more than one hundred dollars for each offense to the state. The attorney general shall collect the same by civil action. *(Amended in Amended House Bill No. 631)*

Building commission.

Sec. 153.21. When the board of county commissioners *** has determined *** to erect a courthouse or other county building, or to make an addition to, or to make an improvement of any existing county owned building, *** the board may appoint four suitable and competent freehold electors of the county, who shall, together with the board, constitute a building commission and serve until the courthouse or other county building, or the addition thereto, or the improvements thereof are completed. Not more than two of such appointees shall be of the same political party. *(Amended in Amended Senate Bill No. 81)*

Sec. 155.01. Existing section repealed in Amended House Bill No. 660.

Acquisition of mineral rights by purchase; procedure; deed.

Sec. 155.011. The owner of any tract of land in which the state has retained the gas, oil, coal, and other mineral rights and right of entry may acquire such rights by purchase from the state. Such owner desiring to purchase such rights shall make application to the director of public works. This application shall be in such manner and form and shall contain such information as prescribed by the director. The said application shall have a deposit of a sum sufficient to pay the appraisal fees together with evidence

(For the text of the law enacted see the first part of this volume.)

Repeal.

SECTION 2. That existing sections 121.21, 149.32, 149.34, 149.37, 149.40, and 149.99 of the Revised Code are hereby repealed.

ROBERT F. RECKMAN,
Speaker Pro Tem of the House of Representatives.

JOHN W. BROWN,
President of the Senate.

Passed July 12, 1965.

Approved July 31, 1965.

JAMES A. RHODES,
Governor.

The sectional numbers herein are in conformity with the Revised Code.

OHIO LEGISLATIVE SERVICE COMMISSION
LAUREN A. GLOSSER, *Director.*

Filed in the office of the Secretary of State at Columbus, Ohio,
on the 2nd day of August, A. D. 1965.

TED W. BROWN,
Secretary of State.

File No. 289.

Effective November 1, 1965.

(Amended House Bill No. 634)

AN ACT

To enact sections 3311.051 and 3311.052 of the Revised Code, in order to eliminate duplication of offices and administrators where there is only one local school district in a

INDEX

JOHN W. BROWN,
President of the Senate.

Passed July 26, 1965.

Approved August 6, 1965.

JAMES A. RHODES,
Governor.

The sectional number herein is in conformity with the Revised Code.

OHIO LEGISLATIVE SERVICE COMMISSION
LAUREN A. GLOSSER, *Director.*

Filed in the office of the Secretary of State at Columbus, Ohio,
on the 6th day of August, A. D. 1965.

TED W. BROWN,
Secretary of State.

File No. 369.

Effective November 5, 1965.

(Amended House Bill No. 681)

AN ACT

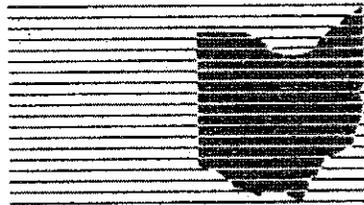
To amend sections 121.21, 149.32, 149.34, 149.37, 149.40, and 149.99, and to enact sections 121.211, 121.212, 149.33, 149.331, 149.332, 149.351, 149.352, and 149.44 of the Revised Code relative to the creation, maintenance, preservation, transfer, and disposal of the records of the state and its political subdivisions.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That section 121.21, 149.32, 149.34, 149.37, 149.40, and 149.99 be amended and sections 121.211, 121.212, 149.33, 149.331, 149.332, 149.351, 149.352, and 149.44 of the Revised Code be enacted to read as follows:

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Assembly (effective September 11, 1985). The amendments of Am. Sub. H.B. 146 are included in this act in lower case to confirm the intention to retain them, but are not intended to be effective until September 11, 1985.

SECTION 4. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity lies in the fact that its enactment at the earliest possible time will facilitate completion and operation of facilities for the benefit of the general public and will create urgently needed jobs and employment opportunities for the benefit of the taxpayers of the state. Therefore, this act shall go into immediate effect.

AMENDED SUBSTITUTE HOUSE BILL No. 238

Act Effective Date:	7-1-85
Date Passed:	6-28-85
Date Approved by Governor:	7-1-85
Date Filed:	7-1-85
File Number:	47
Chief Sponsor:	HINIG

Line Item Veto: Pursuant to O Const Art II, § 16, the Governor disapproved certain provisions of this Act.

Section Effective Date(s): This Act contains provisions which take effect on dates different from the effective date of the Act itself. See Act section(s) 9.

Future Repeal: This Act repeals certain provisions of law, the repeal of which takes effect on dates different from the effective date of the Act itself. See Act section(s) 3 and 7.

General and Permanent Nature: Per the Director of the Ohio Legislative Service Commission, this Act's section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code; however, LSC's certification required correcting the designation of 1980 H 361, § 4, 5, and 8 to RC 5733.122, 5733.064, and 5733.065, respectively (in Act Section 7).

To amend sections 9.01, 121.01, 121.211, 124.11, 126.23, 135.351, 149.31, 149.33, 149.331, 149.332, 149.34, 149.35, 149.351, 149.352, 149.38, 149.39, 149.41, 149.42, 149.43, 149.44, 1513.03, 1513.07, 1513.08, 1513.18, 1513.181, 3313.42, 3313.90, 3317.01, 3317.02, 3317.022, 3317.023, 3317.024, 3317.03, 3317.05, 3317.06, 3317.11, 3317.13, 3317.16, 3323.09, 3323.091, 3332.07, 3332.071, 3332.10, 3333.12, 3333.25, 3377.01, 3377.02, 3377.04, 3377.08, 3501.27, 3701.05, 3701.66, 3703.07, 3705.05, 3711.05, 3770.06, 3773.33, 3773.43, 3773.54, 3773.56, 4112.03, 4115.05, 4123.52, 4703.50, 4735.11, 5101.16, 5101.81, 5111.02, 5111.23, 5111.24, 5111.25, 5111.27, 5111.28, 5119.10, 5122.43, 5123.18, 5123.19, 5126.05, 5126.12, 5126.13, 5711.22, 5733.05, 5733.06, 5747.02, 5749.02, and 5749.021; to enact new sections 149.40 and 149.99 and sections 125.831, 149.011, 149.333, 1514.021, 3315.36, 3317.064, 3351.15, 3513.301, 3513.312, 3745.12, 5111.08, 5126.051, and 5747.023; and to repeal sections 121.21, 121.212, 149.32, 149.37, 149.40, and 149.99 of the Revised Code; to amend Section 3 of

VETOED

Am. Sub. H.B. 361 of the 113th General Assembly as amended by Am. Sub. H.B. 694 of the 114th General Assembly; to amend Sections 4, 5, 7, and 8 of Am. Sub. H.B. 361 of the 113th General Assembly; to amend Section 66 of Am. Sub. S.B. 530 of the 114th General Assembly, as amended by Section 38 of Am. Sub. S.B. 550 of the 114th General Assembly, Section 22 of Am. Sub. H.B. 100 of the 115th General Assembly, and Section 146 of Am. Sub. H.B. 291 of the 115th General Assembly; to make appropriations for the biennium beginning July 1, 1985, and ending June 30, 1987, and to provide authorization and conditions for the administration of state programs.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 9.01, 121.01, 121.211, 124.11, 126.23, 135.351, 149.31, 149.33, 149.331, 149.332, 149.34, 149.35, 149.351, 149.352, 149.38, 149.39, 149.41, 149.42, 149.43, 149.44, 1513.03, 1513.07, 1513.08, 1513.18, 1513.181, 3313.42, 3313.90, 3317.01, 3317.02, 3317.022, 3317.023, 3317.024, 3317.03, 3317.05, 3317.06, 3317.11, 3317.13, 3317.16, 3323.09, 3323.091, 3332.07, 3332.071, 3332.10, 3333.12, 3333.25, 3377.01, 3377.02, 3377.04, 3377.08, 3501.27, 3701.05, 3701.66, 3703.07, 3705.05, 3711.05, 3770.06, 3773.33, 3773.43, 3773.54, 3773.56, 4112.03, 4115.05, 4123.52, 4703.50, 4735.11, 5101.16, 5101.81, 5111.02, 5111.23, 5111.24, 5111.25, 5111.27, 5111.28, 5119.10, 5122.43, 5123.18, 5123.19, 5126.05, 5126.12, 5126.13, 5711.22, 5733.05, 5733.06, 5747.02, 5749.02, and 5749.021 be amended; and new sections 149.40 and 149.99 and sections 125.831, 149.011, 149.333, 1514.021, 3315.36, 3317.064, 3351.15, 3513.301, 3513.312, 3745.12, 5111.08, 5126.051, and 5747.023 of the Revised Code be enacted to read as follows:

9.01 Reproduction of records [Eff. 7-1-85]

When any officer, office, court, commission, board, institution, department, agent, or employee of the state, or of a county, or any political subdivision, who is charged with the duty or authorized or required by law to record, preserve, keep, maintain, or file any record, document, plat, court file, paper, or instrument in writing, or to make or furnish copies of any thereof, deems it necessary or advisable, when recording any such document, plat, court file, paper, or instrument in writing, or when making a copy or reproduction of any thereof or of any such record, for the purpose of recording or copying, preserving, and protecting the same, reducing space required for storage, or any similar purpose, to do so by means of any photostatic, photographic, miniature photographic, film, microfilm, or microphotographic process, or perforated tape, magnetic tape, other magnetic means, electronic data processing, machine readable means, graphic or video display, or any combination thereof, which correctly and accurately copies, records, or reproduces, or provides a medium of copying, recording, or reproducing, the original record, document, plat, court file, paper, or instrument in writing, such use of any such photographic or electro-magnetic processes, for any such purpose, is hereby authorized. Any such records, copies, or reproductions may be made in duplicate, and such duplicates shall be stored in different buildings. The film or paper used for this process shall be of acetate base and shall comply with the minimum standards of quality approved for permanent photographic records by the national bureau of standards. ALL SUCH RECORDS, COPIES, OR REPRODUCTIONS SHALL CARRY A CERTIFICATE OF AUTHENTICITY AND COMPLETENESS, ON A FORM SPECIFIED BY THE STATE RECORDS ADMINISTRATOR.

Any such officer, office, court, commission, board, institution, department, agent, or employee of the state, a county, or any political subdivision may purchase or rent required equipment for any such photographic process and may enter into contracts with private concerns or other governmental agencies for the development of film and the making of reproductions thereof as a part of any

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such photographic process. When so recorded, or copied or reproduced to reduce space required for storage or filing of such records, said photographs, microphotographs, microfilms, perforated tape, magnetic tape, other magnetic means, electronic data processing, machine readable means, graphic or video display, or any combination thereof, or films, or prints made therefrom, when properly identified by the officer by whom or under whose supervision the same were made, or who has the custody thereof, have the same effect at law as the original record or of a record made by any other legally authorized means, and may be offered in like manner and shall be received in evidence in any court where such original record, or record made by other legally authorized means, could have been so introduced and received. Certified or authenticated copies or prints of such photographs, microphotographs, films, microfilms, perforated tape, magnetic tape, other magnetic means, electronic data processing, machine readable means, graphic or video display, or any combination thereof, shall be admitted in evidence equally with the original photographs, microphotographs, films, or microfilms.

Such photographs, microphotographs, microfilms, or films shall be placed and kept in conveniently accessible, fireproof, and insulated files, cabinets, or containers, and provisions shall be made for preserving, safekeeping, using, examining, exhibiting, projecting, and enlarging the same whenever requested, during office hours.

All persons utilizing the methods described in this section for keeping records and information shall keep and make readily available to the public the machines and equipment necessary to reproduce the records and information in a readable form.

121.01 Definitions [Eff. 7-1-85]

As used in sections 121.01 to ~~121.21, inclusive,~~ 121.20 of the Revised Code:

(A) "Department" means the several departments of state administration enumerated in section 121.02 of the Revised Code.

(B) "Division" means a part of a department established as provided in section 121.07 of the Revised Code for the convenient performance of one or more of the functions committed to a department.

(C) "Departments, offices, and institutions" include every organized body, office, and agency established by the constitution and laws of the state for the exercise of any function of the state government, and every institution or organization which receives any support from the state.

121.211 Retention of records [Eff. 7-1-85]

Records in the custody of each agency shall be retained for time periods in accordance with law establishing specific retention periods, and in accordance with retention periods or disposition instructions established by the state records ~~commission~~ ADMINISTRATION.

124.11 Unclassified and classified service [Eff. 7-1-85]

The civil service of the state and the several counties, cities, civil service townships, city health districts, general health districts, and city school districts thereof shall be divided into the unclassified service and the classified service.

(A) The unclassified service shall comprise the following positions, which shall not be included in the classified service, and which shall be exempt from all examinations required by this chapter:

(1) All officers elected by popular vote or persons appointed to fill vacancies in such offices;

(2) All election officers and the employees appointed by boards of elections;

(3) The members of all boards and commissions, and heads of principal departments, boards, and commissions appointed by the governor or by and with his consent; and the members of all boards and commissions and all heads of departments appointed by the mayor, or, if there is no mayor such other similar chief appointing authority of any city or city school district; except as otherwise

provided in division (A)(17) or (C) of this section, this chapter does not exempt the chiefs of police departments and chiefs of fire departments of cities or civil service townships from the competitive classified service;

(4) The members of county or district licensing boards or commissions and boards of revision, and deputy county auditors;

(5) All officers and employees elected or appointed by either or both branches of the general assembly, and such employees of the city legislative authority as are engaged in legislative duties;

(6) All commissioned and noncommissioned officers and enlisted men in the military service of the state including military appointees in the office of the adjutant general;

(7)(a) All presidents, business managers, administrative officers, superintendents, assistant superintendents, principals, deans, assistant deans, instructors, teachers, and such employees as are engaged in educational or research duties connected with the public school system, colleges, and universities, as determined by the governing body of said public school system, colleges, and universities; and the

(b) THE library staff of any library in the state supported wholly or in part at public expense;

(8) Three secretaries, assistants, or clerks and one personal stenographer for each of the elective state officers; and two secretaries, assistants, or clerks and one personal stenographer for other elective officers and each of the principal appointive executive officers, boards, or commissions, except civil service commissions, authorized to appoint such secretary, assistant, or clerk and stenographer;

(9) The deputies and assistants of elective or principal executive officers authorized to act for and in the place of their principals, or holding a fiduciary relation to such principals and those persons employed by and directly responsible to elected county officials and holding a fiduciary or administrative relationship to such elected county officials, and the employees of such county officials whose fitness would be impracticable to determine by competitive examination, provided, that this subdivision shall not affect those persons in county employment in the classified service as of September 19, 1961. Nothing in this subdivision applies to any position in a county department of welfare HUMAN SERVICES created pursuant to sections 329.01 to 329.10 of the Revised Code.

(10) Bailiffs, constables, official stenographers, and commissioners of courts of record, deputies of clerks of the courts of common pleas who supervise, or who handle public moneys or secured documents, and such officers and employees of courts of record and such deputies of clerks of the courts of common pleas as the director of administrative services finds it impracticable to determine their fitness by competitive examination;

(11) Assistants to the attorney general, special counsel appointed or employed by the attorney general, assistants to county prosecuting attorneys, and assistants to city directors of law;

(12) Such teachers and employees in the agricultural experiment stations; such student employees in normal schools, colleges, and universities of the state; and such unskilled labor positions as the director of administrative services or any municipal civil service commission may find it impracticable to include in the competitive classified service; provided such exemptions shall be by order of the commission or the director, duly entered on the record of the commission or the director with the reasons for each such exemption;

(13) Any physician or dentist who is a full-time employee of the department of mental health or the department of mental retardation and developmental disabilities or of an institution under the jurisdiction of either department; and physicians who are in residency programs at the institutions;

(14) Up to twenty positions at each institution under the jurisdiction of the department of mental health or the department of mental retardation and developmental disabilities that the department director determines to be primarily administrative or managerial; and up to fifteen positions in any division of either department, excluding administrative assistants to the director and division chiefs, which are within the immediate staff of a division chief and

which the director determines to be primarily and distinctively administrative and managerial;

(15) Noncitizens of the United States employed by the state, its counties or cities, as physicians or nurses who are duly licensed to practice their respective professions under the laws of Ohio, or medical assistants, in mental, tuberculosis, or chronic disease hospitals, or institutions;

(16) Employees of the governor's office;

(17) Fire chiefs and chiefs of police in civil service townships appointed by boards of township trustees under section 505.38 or 505.49 of the Revised Code;

(18) Executive directors, deputy directors, and program directors employed by community mental health boards under Chapter 340. of the Revised Code, and secretaries of the executive directors, deputy directors, and program directors;

(19) Superintendents of county boards of mental retardation and developmental disabilities and not more than three other positions of employment with each board as designated by the board;

(20) Physicians, nurses, and other employees of a county hospital who are appointed pursuant to sections 339.03 and 339.06 of the Revised Code;

(21) INSPECTION OFFICERS OF COAL AND SURFACE MINING OPERATIONS DESIGNATED UNDER SECTION 1513.03 OF THE REVISED CODE.

(B) The classified service shall comprise all persons in the employ of the state and the several counties, cities, city health districts, general health districts, and city school districts thereof, not specifically included in the unclassified service. Upon the creation by the board of trustees of a civil service township civil service commission, the classified service shall also comprise, except as otherwise provided in division (A)(17) or (C) of this section, all persons in the employ of civil service township police or fire departments having ten or more full-time paid employees to be designated as the competitive class and the unskilled labor class.

(1) The competitive class shall include all positions and employments in the state and the counties, cities, city health districts, general health districts, and city school districts thereof, and upon the creation by the board of trustees of a civil service township of a township civil service commission all positions in civil service township police or fire departments having ten or more full-time paid employees, for which it is practicable to determine the merit and fitness of applicants by competitive examinations. Appointments shall be made to, or employment shall be given in, all positions in the competitive class that are not filled by the promotion, reinstatement, transfer, or reduction, as provided in this chapter, and the rules of the director of administrative services, by appointment from those certified to the appointing officer in accordance with this chapter.

(2) The unskilled labor class shall include ordinary unskilled laborers. Vacancies in the labor class shall be filled by appointment from lists of applicants registered by the director. The director or the commission shall in his rules require an applicant for registration in the labor class to furnish such evidence or take such tests as the director considers proper with respect to age, residence, physical condition, ability to labor, honesty, sobriety, industry, capacity, and experience in the work or employment for which he applies. Laborers who fulfill the requirements shall be placed on the eligible list for the kind of labor or employment sought, and preference shall be given in employment in accordance with the rating received from such evidence or in such tests. Upon the request of an appointing officer, stating the kind of labor needed, the pay and probable length of employment, and the number to be employed, the director shall certify from the highest on the list, double the number to be employed, from which the appointing officer shall appoint the number actually needed for the particular work. In the event of more than one applicant receiving the same rating, priority in time of application shall determine the order in which their names shall be certified for appointment.

(C) A municipal or civil service township civil service commission may place volunteer firemen who are paid on a fee-for-service basis in either the classified or the unclassified civil service.

125.831 Fleet management program; administrator; reporting system; rules; fees [Eff. 7-1-85]

THE DIRECTOR OF ADMINISTRATIVE SERVICES SHALL DESIGNATE A STATE FLEET ADMINISTRATOR, WHO SHALL ESTABLISH AND OPERATE A FLEET MANAGEMENT PROGRAM. THE STATE FLEET ADMINISTRATOR SHALL OPERATE THE FLEET MANAGEMENT PROGRAM FOR PURPOSES INCLUDING, BUT NOT LIMITED TO, COST-EFFECTIVE ACQUISITION, MAINTENANCE, MANAGEMENT, AND DISPOSAL OF ALL VEHICLES OWNED OR LEASED BY THE STATE. THIS SECTION DOES NOT APPLY TO ANY STATE-SUPPORTED INSTITUTION OF HIGHER EDUCATION, THE GENERAL ASSEMBLY OR ANY LEGISLATIVE AGENCY, OR ANY COURT OR JUDICIAL AGENCY.

THE STATE FLEET ADMINISTRATOR MAY ESTABLISH A FLEET REPORTING SYSTEM AND MAY REQUIRE STATE DEPARTMENTS, AGENCIES, INSTITUTIONS, COMMISSIONS, AND BOARDS TO SUBMIT INFORMATION RELATIVE TO STATE VEHICLES TO BE USED IN OPERATING THE FLEET MANAGEMENT PROGRAM. ALL REQUESTS FOR THE PURCHASE OR LEASE OF VEHICLES ARE SUBJECT TO APPROVAL BY THE STATE FLEET ADMINISTRATOR PRIOR TO ACQUISITION.

THE DIRECTOR MAY PROMULGATE RULES AND PROCEDURES FOR IMPLEMENTING THE STATE FLEET MANAGEMENT PROGRAM. THE FLEET MANAGEMENT PROGRAM SHALL BE SUPPORTED BY REASONABLE FEES CHARGED FOR THE SERVICES PROVIDED. SUCH FEES SHALL BE COLLECTED BY THE DIRECTOR AND DEPOSITED IN THE STATE TREASURY TO THE CREDIT OF THE TRANSPORTATION SERVICES SPECIAL ACCOUNT CREATED IN THE STATE INTRAGOVERNMENTAL SERVICES FUND BY SECTION 125.83 OF THE REVISED CODE.

126.23 Duties [Eff. 7-1-85]

The state forms management control center shall:

(A) Assist state agencies in establishing internal forms management capabilities;

(B) Study, develop, coordinate, and initiate forms of inter-agency and common administrative usage, and establish basic design and specification criteria to standardize state forms;

(C) Assist state agencies to design economical forms and compose art work for forms;

(D) Establish and supervise control procedures to prevent the undue creation and reproduction of state forms;

(E) Assist, train, and instruct state agencies and their forms management representatives in forms management techniques, and provide direct forms management assistance to new state agencies as they are created;

(F) Maintain a central cross index of state forms to facilitate standardization of the forms, eliminate redundant forms, and provide a central source of information on forms usage and availability;

(G) Utilize existing functions within the department of administrative services state printing to design economical forms and compose art work, as well as use appropriate procurement techniques to take advantage of competitive bidding, consolidated orders, and contract procurement of forms;

(H) Conduct an annual evaluation of the effectiveness of the forms management program and the forms management practices of individual state agencies, and maintain records that indicate dollar savings resulting from, and the number of forms eliminated, simplified, or standardized through, centralized forms manage-

ment. The results of the evaluation shall be reported to the speaker of the house of representatives and president of the senate not later than the fifteenth day of January each year, beginning in 1981. The state forms management control center shall report on the first day of each month to the state records ~~commission~~ ADMINISTRATOR on its activities during the preceding month.

135.351 Disposition of moneys held by county [Eff. 7-1-85]

(A) Except as provided in section SECTIONS 1545.22 AND 5126.05 of the Revised Code, all interest earned on money included within the county treasury shall be credited to the general fund of the county.

(B) Unless otherwise provided by law, with respect to moneys belonging to another political subdivision, taxing district, or special district that are deposited or invested by the county, the county shall, on or before the tenth day of the month following the month in which the county received such moneys or on or before such later date authorized by the legislative authority or other governing body of the other political subdivision or district, pay and distribute all such moneys to the treasurer or other appropriate officer of the other political subdivision or district. A county shall pay and distribute any advance authorized by section 321.34 or 321.341 of the Revised Code within five business days after the request for the advance is delivered to the county auditor.

(C) If the county fails to make any payment and distribution required by division (B) of this section within the time periods prescribed by that division, the county shall pay to the appropriate other political subdivision, taxing district, or special district any interest that the county has received or will receive on any moneys or advance described in that division which accrues after the date such moneys or advance should have been distributed, together with the principal amount of such moneys or advance. The county shall make this payment of principal and interest within five business days after the treasurer or other appropriate officer of such other political subdivision or district files a written demand for payment with the county auditor.

149.011 Definitions [Eff. 7-1-85]

AS USED IN THIS CHAPTER:

(A) "PUBLIC OFFICE" INCLUDES ANY STATE AGENCY, PUBLIC INSTITUTION, POLITICAL SUBDIVISION, OR ANY OTHER ORGANIZED BODY, OFFICE, AGENCY, INSTITUTION, OR ENTITY ESTABLISHED BY THE LAWS OF THIS STATE FOR THE EXERCISE OF ANY FUNCTION OF GOVERNMENT.

(B) "STATE AGENCY" INCLUDES EVERY DEPARTMENT, BUREAU, BOARD, COMMISSION, OFFICE, OR OTHER ORGANIZED BODY ESTABLISHED BY THE CONSTITUTION AND LAWS OF THIS STATE FOR THE EXERCISE OF ANY FUNCTION OF STATE GOVERNMENT, INCLUDING ANY STATE-SUPPORTED INSTITUTION OF HIGHER EDUCATION, THE GENERAL ASSEMBLY, OR ANY LEGISLATIVE AGENCY, ANY COURT OR JUDICIAL AGENCY, OR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF.

(C) "PUBLIC MONEY" INCLUDES ALL MONEY RECEIVED OR COLLECTED BY OR DUE A PUBLIC OFFICIAL, WHETHER IN ACCORDANCE WITH OR UNDER AUTHORITY OF ANY LAW, ORDINANCE, RESOLUTION, OR ORDER, UNDER COLOR OF OFFICE, OR OTHERWISE. IT ALSO INCLUDES ANY MONEY COLLECTED BY ANY INDIVIDUAL ON BEHALF OF A PUBLIC OFFICE OR AS A PURPORTED REPRESENTATIVE OR AGENT OF THE PUBLIC OFFICE.

(D) "PUBLIC OFFICIAL" INCLUDES ALL OFFICERS, EMPLOYEES, OR DULY AUTHORIZED REPRESENTATIVES OR AGENTS OF A PUBLIC OFFICE.

(E) "COLOR OF OFFICE" INCLUDES ANY ACT PURPORTED OR ALLEGED TO BE DONE UNDER ANY LAW,

ORDINANCE, RESOLUTION, ORDER, OR OTHER PRETENSION TO OFFICIAL RIGHT, POWER, OR AUTHORITY.

(F) "ARCHIVE" INCLUDES ANY PUBLIC RECORD THAT IS TRANSFERRED TO THE STATE ARCHIVES OR OTHER DESIGNATED ARCHIVAL INSTITUTIONS BECAUSE OF THE HISTORICAL INFORMATION CONTAINED ON IT.

(G) "RECORDS" INCLUDES ANY DOCUMENT, DEVICE, OR ITEM, REGARDLESS OF PHYSICAL FORM OR CHARACTERISTIC, CREATED OR RECEIVED BY OR COMING UNDER THE JURISDICTION OF ANY PUBLIC OFFICE OF THE STATE OR ITS POLITICAL SUBDIVISIONS, WHICH SERVES TO DOCUMENT THE ORGANIZATION, FUNCTIONS, POLICIES, DECISIONS, PROCEDURES, OPERATIONS, OR OTHER ACTIVITIES OF THE OFFICE.

149.31 Archives administration; state archivist; insurance [Eff. 7-1-85]

(A) The Ohio historical society, in addition to its other functions, shall be FUNCTION AS the STATE archives administration for the state and its political subdivisions.

It shall be the function of the STATE archives administration to preserve GOVERNMENT archives, documents, and records of historical value which may come into its possession from public or private sources.

The archives administration shall evaluate, preserve, arrange, service repair, or make other disposition, such as transfer to public libraries, county historical societies, state universities, or other public or quasi-public institutions, agencies, or corporations, of those public records of the state and its political subdivisions which may come into its possession under the provisions of this section. Such public records shall be transferred by written agreement only, and only to public or quasi-public institutions, agencies, or corporations capable of meeting accepted archival standards for housing and use.

The archives administration shall be headed by a trained archivist designated by the Ohio historical society, and shall make its services available to county, city, township, and school district records commissions upon request. THE ARCHIVIST SHALL BE DESIGNATED AS THE "STATE ARCHIVIST."

(B) The archives administration of the Ohio historical society may purchase or procure for itself, or authorize the board of trustees of an archival institution to purchase or procure from an insurance company licensed to do business in this state policies of insurance insuring the administration or the members of the board and their officers, employees, and agents against liability on account of damage or injury to persons and property resulting from any act or omission of the board members, officers, employees, and agents in their official capacity.

149.33 State records program; office of state records administration [Eff. 7-1-85]

~~The director DEPARTMENT of administrative services or his appointed representative is hereby designated the "state records administrator" and shall establish and administer a records management program as approved by the state records commission which will apply efficient and economical management methods to the creation, utilization, maintenance, retention, preservation, and disposition of state records SHALL HAVE FULL RESPONSIBILITY FOR ESTABLISHING AND ADMINISTERING A STATE RECORDS PROGRAM FOR ALL STATE AGENCIES. THE DEPARTMENT SHALL APPLY EFFICIENT AND ECONOMICAL MANAGEMENT METHODS TO THE CREATION, UTILIZATION, MAINTENANCE, RETENTION, PRESERVATION, AND DISPOSITION OF STATE RECORDS.~~

THERE IS HEREBY ESTABLISHED WITHIN THE DEPARTMENT OF ADMINISTRATIVE SERVICES AN

OFFICE OF STATE RECORDS ADMINISTRATION, WHICH SHALL BE UNDER THE CONTROL AND SUPERVISION OF THE DIRECTOR OF ADMINISTRATIVE SERVICES OR HIS APPOINTED DEPUTY. THE DIRECTOR SHALL DESIGNATE AN ADMINISTRATOR OF THE OFFICE OF STATE RECORDS ADMINISTRATION.

149.331 Functions of state record administration program [Eff. 7-1-85]

The state records administrator shall, with due regard for the functions of the departments, offices, and institutions concerned, ~~FUNCTIONS OF THE STATE RECORD ADMINISTRATION PROGRAM OF THE DEPARTMENT OF ADMINISTRATIVE SERVICES SHALL BE TO:~~

(A) Establish and promulgate in consultation with the state archivist standards, procedures, and techniques for the effective management of state records;

(B) Make continuing surveys of record-keeping operations and recommend improvements in current records management practices including the use of space, equipment, and supplies employed in creating, maintaining, storing, and servicing records;

(C) Establish and operate such state records centers AND AUXILIARY FACILITIES as may be authorized by appropriation and provide such related services as are deemed necessary for the preservation, screening, storage, and servicing of state records pending disposition;

(D) ~~Submit to the state records commission applications for records disposal and schedules of record retention and destruction initiated by the said administrator or by any department, office, and institution~~ REVIEW APPLICATIONS FOR ONE-TIME RECORDS DISPOSAL AND SCHEDULES OF RECORDS RETENTION AND DESTRUCTION SUBMITTED BY STATE AGENCIES IN ACCORDANCE WITH SECTION 149.333 OF THE REVISED CODE;

(E) ~~Submit to the state records commission at such times as deemed expedient, schedules designated~~ ESTABLISH "general schedules" proposing the disposal, after the lapse of specified periods of time, of records of specified form or character common to several or all agencies that either have accumulated or may accumulate in such agencies and that apparently will not, after the lapse of the periods specified, have sufficient administrative, legal, fiscal, or other value to warrant their further preservation by the state;

(F) Establish and maintain a records management training program for personnel involved in record-making and record-keeping functions of departments, offices, and institutions;

(G) Obtain reports from departments, offices, and institutions necessary for the effective administration of the program;

(H) Provide for the disposition of any remaining records of any state agency, board, or commission, whether in the executive, judicial, or legislative branch of government, that has terminated its operations;

(I) ESTABLISH A CENTRALIZED PROGRAM COORDINATING MICROGRAPHICS STANDARDS, TRAINING, AND SERVICES FOR THE BENEFIT OF ALL STATE AGENCIES;

(J) ESTABLISH AND PUBLISH IN ACCORDANCE WITH THE APPLICABLE LAW NECESSARY PROCEDURES AND RULES FOR THE RETENTION AND DISPOSAL OF STATE RECORDS.

149.332 Records management programs [Eff. 7-1-85]

Upon request the state records administrator and state archivist shall assist and advise in the establishment of records management programs in the legislative and judicial branches of state government and shall, as required by them, provide program services similar to those available to the executive branch pursuant to section 149.33 of the Revised Code. PRIOR TO THE DISPOSAL OF ANY RECORDS, THE STATE ARCHIVIST SHALL BE ALLOWED SIXTY DAYS TO SELECT FOR PRESERVATION IN THE STATE ARCHIVES THOSE RECORDS HE

DETERMINES TO HAVE CONTINUING HISTORICAL VALUE.

149.333 Disposal or transfer of state records [Eff. 7-1-85]

NO STATE AGENCY SHALL RETAIN, DESTROY, OR OTHERWISE TRANSFER ITS STATE RECORDS IN VIOLATION OF THIS SECTION.

EACH STATE AGENCY SHALL SUBMIT TO THE STATE RECORDS ADMINISTRATOR ALL APPLICATIONS FOR RECORDS DISPOSAL OR TRANSFER AND ALL SCHEDULES OF RECORDS RETENTION AND DESTRUCTION. THE STATE RECORDS ADMINISTRATOR SHALL REVIEW SUCH APPLICATIONS AND SCHEDULES AND PROVIDE WRITTEN APPROVAL, REJECTION, OR MODIFICATION OF THE APPLICATION OR SCHEDULE. THE STATE RECORDS ADMINISTRATOR SHALL THEN FORWARD THE APPLICATION FOR RECORDS DISPOSAL OR TRANSFER OR THE SCHEDULE FOR RETENTION OR DESTRUCTION, WITH THE ADMINISTRATOR'S RECOMMENDATION ATTACHED, TO THE AUDITOR OF STATE FOR REVIEW AND APPROVAL. THE DECISION OF THE AUDITOR OF STATE TO APPROVE, REJECT, OR MODIFY THE APPLICATIONS OR SCHEDULES SHALL BE BASED UPON THE CONTINUING ADMINISTRATIVE AND FISCAL VALUE OF THE STATE RECORDS TO THE STATE OR TO ITS CITIZENS. IF THE AUDITOR OF STATE DISAPPROVES THE ACTION BY THE STATE AGENCY, HE SHALL SO INFORM THE STATE AGENCY THROUGH THE STATE RECORDS ADMINISTRATOR WITHIN SIXTY DAYS AND THESE RECORDS SHALL NOT BE DESTROYED. AT THE SAME TIME, THE STATE RECORDS ADMINISTRATOR SHALL FORWARD THE APPLICATION FOR RECORDS DISPOSAL OR THE SCHEDULE FOR RETENTION OR DESTRUCTION TO THE STATE ARCHIVIST FOR REVIEW AND APPROVAL. THE STATE ARCHIVIST SHALL HAVE SIXTY DAYS TO SELECT FOR CUSTODY SUCH STATE RECORDS AS HE DETERMINES TO BE OF CONTINUING HISTORICAL VALUE. RECORDS NOT SO SELECTED SHALL BE DISPOSED OF IN ACCORDANCE WITH THIS SECTION.

149.34 Program for effective management of records [Eff. 7-1-85]

The head of each department STATE AGENCY, office, institution, board, OR commission, or other state agency shall:

(A) Establish, maintain, and direct an active continuing program for the effective management of the records of the STATE agency;

(B) Cooperate with the state records administrator in the conduct of surveys pursuant to section 149.331 of the Revised Code;

(C) Submit to the state records administrator, in accordance with the APPLICABLE standards and procedures established by him, schedules proposing the length of time each record series warrants retention for administrative, legal, or fiscal purposes after it has been received or created by the agency. The head of each STATE agency also shall submit to the state records administrator applications for disposal of records in his custody that are not needed in the transaction of current business and are not otherwise scheduled for retention or destruction.

(D) Transfer to a state records center OR AUXILIARY FACILITIES, in the manner prescribed by the state records commission and the state records administrator, those records of the agency that can be retained more efficiently and economically in such a center;

(E) WITHIN ONE YEAR AFTER THEIR DATE OF CREATION OR RECEIPT, SCHEDULE ALL RECORDS FOR DISPOSITION OR RETENTION IN THE MANNER PRESCRIBED BY APPLICABLE LAW AND PROCEDURES.

149.35 Laws prohibiting destruction of records [Eff. 7-1-85]

If any law prohibits the destruction of records, the state records ~~commission~~ ADMINISTRATOR shall not order their destruction or other disposition, and, if any law provides that records shall be kept for a specified period of time, the ~~commission~~ ADMINISTRATOR shall not order their destruction or other disposition prior to the expiration of such period.

149.351 Disposal and transfer of records in accordance with law [Eff. 7-1-85]

All records as defined in section ~~149.40~~ 149.011 of the Revised Code and ~~required by section 121.21 of the Revised Code~~ are the property of the ~~agency~~ PUBLIC OFFICE concerned and shall not be removed, destroyed, mutilated, transferred, or otherwise damaged or disposed of, in whole or in part, except as provided by law or under the rules and regulations adopted by the state records ~~commission~~ COMMISSIONS provided for under sections ~~149.32~~ 149.38 to 149.42, ~~inclusive~~, of the Revised Code. Such records shall be delivered by outgoing officials and employees to their successors and shall not be otherwise removed, transferred, or destroyed unlawfully.

149.352 Replacement of records [Eff. 7-1-85]

~~The~~ UPON REQUEST OF THE DEPARTMENT OF ADMINISTRATIVE SERVICES, THE attorney general may replevin any public records which have been unlawfully transferred or removed in violation of sections 149.31 to 149.44, ~~inclusive~~, of the Revised Code or otherwise transferred or removed unlawfully. Such records shall be returned to the office of origin and safeguards shall be established to prevent further recurrence of unlawful transfer or removal.

149.38 County records commission; Ohio historical society access before disposal [Eff. 7-1-85]

There is hereby created in each county a county records commission, composed of the president of the board of county commissioners as chairman, the prosecuting attorney, the auditor, the recorder, and the clerk of the court of common pleas. The commission shall appoint a secretary who may or may not be a member of the commission and who shall serve at the pleasure of the commission. The commission may employ an archivist to serve under its direction. The commission shall meet at least once every six months, and upon call of the chairman.

The functions of the commission shall be to provide rules for retention and disposal of records of the county and to review ~~records-disposal-lists~~ APPLICATIONS FOR ONE-TIME RECORDS DISPOSAL AND SCHEDULES OF RECORDS RETENTION AND DISPOSAL submitted by county offices. ~~The disposal lists shall contain those records which have been microfilmed or no longer have administrative, legal, or fiscal value to the county or to the citizens thereof.~~ Such records RECORDS may be disposed of by the commission pursuant to the procedure outlined in this section. THE COMMISSION MAY AT ANY TIME REVIEW ANY SCHEDULE IT HAS PREVIOUSLY APPROVED, AND FOR GOOD CAUSE SHOWN MAY REVISE THAT SCHEDULE.

When county records have been approved for disposal, a copy of such records list shall be sent to the bureau of inspection and supervision of public offices of the auditor of state. If the bureau disapproves the action by the county commission in whole or in part it shall so inform the commission within a period of sixty days and these records shall not be destroyed. Before public records are otherwise disposed of, the Ohio historical society shall be informed and given the opportunity for a period of sixty days to select for its custody or disposal such records as it considers to be of continuing historical value.

149.39 City records commission; Ohio historical society access before disposal [Eff. 7-1-85]

There is hereby created in each municipal corporation a records commission composed of the chief executive or his appointed representative, as chairman, and the chief fiscal officer, the chief legal officer, and a citizen appointed by the chief executive. The commission shall appoint a secretary, who may or may not be a member of the commission and who shall serve at the pleasure of the commission. The commission may employ an archivist to serve under its direction. The commission shall meet at least once every six months, and upon call of the chairman.

The functions of the commission shall be to provide rules for retention and disposal of records of the municipal corporation and to review ~~records-disposal-lists~~ APPLICATIONS FOR ONE-TIME RECORDS DISPOSAL AND SCHEDULES OF RECORDS RETENTION AND DISPOSAL submitted by municipal offices. ~~The disposal lists shall contain those records which have been microfilmed or no longer have administrative, legal, or fiscal value to the municipal corporation or to its citizens.~~ Such records RECORDS may be disposed of by the commission pursuant to the procedure outlined in this section. THE COMMISSION MAY AT ANY TIME REVIEW ANY SCHEDULE IT HAS PREVIOUSLY APPROVED, AND FOR GOOD CAUSE SHOWN MAY REVISE THAT SCHEDULE.

When municipal records have been approved for disposal, a list of such records shall be sent to the bureau of inspection and supervision of public offices of the auditor of state. If the bureau disapproves of the action by the municipal commission, in whole or in part, it shall so inform the commission within a period of sixty days and these records shall not be destroyed. Before public records are otherwise disposed of, the Ohio historical society shall be informed and given the opportunity for a period of sixty days to select for its custody or disposal such public records as it considers to be of continuing historical value.

149.40 Limitations on record-keeping [Eff. 7-1-85]

THE HEAD OF EACH PUBLIC OFFICE SHALL CAUSE TO BE MADE ONLY SUCH RECORDS AS ARE NECESSARY FOR THE ADEQUATE AND PROPER DOCUMENTATION OF THE ORGANIZATION, FUNCTIONS, POLICIES, DECISIONS, PROCEDURES, AND ESSENTIAL TRANSACTIONS OF THE AGENCY AND FOR THE PROTECTION OF THE LEGAL AND FINANCIAL RIGHTS OF THE STATE AND PERSONS DIRECTLY AFFECTED BY THE AGENCY'S ACTIVITIES.

149.41 School district records commission; procedures for review; Ohio historical society access before disposal; exceptions [Eff. 7-1-85]

There is hereby created in each county, city, and exempted village school district a school district records commission, to be composed of the president, the treasurer of the board of education, and the superintendent of schools in each such district. The commission shall meet at least once every twelve months.

The function of the commission shall be to review ~~records-disposal-lists~~ APPLICATIONS FOR ONE-TIME RECORDS DISPOSAL AND SCHEDULES OF RECORDS RETENTION AND DISPOSAL submitted by any employee of the school district. ~~The disposal lists shall contain those records which have been microfilmed or no longer have administrative, legal, or fiscal value to the school district or to the citizens thereof.~~ Such records RECORDS may be disposed of by the commission pursuant to the procedure outlined in this section. THE COMMISSION MAY AT ANY TIME REVIEW ANY SCHEDULE IT HAS PREVIOUSLY APPROVED, AND FOR GOOD CAUSE SHOWN MAY REVISE THAT SCHEDULE.

When school district records have been approved for disposal, a list of such records shall be sent to the bureau of inspection and supervision of public offices of the auditor of state. If the bureau disapproves the action by the school district records commission, in

whole or in part, it shall so inform the commission within a period of sixty days and these records shall not be destroyed. Before public records are otherwise disposed of, the Ohio historical society shall be informed and given the opportunity for a period of sixty days to select for its custody or disposal such public records as it considers to be of continuing historical value. The society may not review or select for its custody either of the following:

(A) Records containing personally identifiable information concerning any pupil attending a public school other than directory information, as defined in section 3319.321 of the Revised Code, without the written consent of the parent, guardian, or custodian of each such pupil who is less than eighteen years of age, or without the written consent of each such pupil who is eighteen years of age or older;

(B) Records the release of which would, according to the "Family Educational Rights and Privacy Act of 1974," 88 Stat. 571, 20 U.S.C.A. 1232g, disqualify a school or other educational institution from receiving federal funds.

149.42 Township records commission; procedures for review; Ohio historical society access before disposal [Eff. 7-1-85]

There is hereby created in each township a township records commission, to be composed of the chairman of the board of township trustees, the clerk of the township, and the auditor of the county wherein the township is situated. The commission shall meet at least once every twelve months, and upon call of the chairman.

The function of the commission shall be to review ~~records disposal lists~~ APPLICATIONS FOR ONE-TIME RECORDS DISPOSAL AND SCHEDULES OF RECORDS RETENTION AND DISPOSITION submitted by township offices. ~~The disposal lists shall contain those records which have been microfilmed or no longer have administrative, legal, or fiscal value to the township or to the citizens thereof. Such records~~ RECORDS may be disposed of by the commission pursuant to the procedure outlined in this section. THE COMMISSION MAY AT ANY TIME REVIEW ANY SCHEDULE IT HAS PREVIOUSLY APPROVED, AND FOR GOOD CAUSE SHOWN MAY REVISE THAT SCHEDULE.

When township records have been approved for disposal, a list of such records shall be sent to the bureau of inspection and supervision of public offices of the auditor of state. If the bureau disapproves the action by the township records commission, in whole or in part, it shall so inform the commission within a period of sixty days and these records shall not be destroyed. Before public records are otherwise disposed of, the Ohio historical society shall be informed and given the opportunity for a period of sixty days to select for its custody or disposal such public records as it considers to be of continuing historical value.

149.43 Availability of public records [Eff. 7-1-85]

(A) As used in this section:

(1) "Public record" means any record that is ~~required to be kept by any governmental unit~~ PUBLIC OFFICE, including, but not limited to, state, county, city, village, township, and school district units, except medical records, records pertaining to adoption, probation, and parole proceedings, records listed in division (A) of section 3107.42 of the Revised Code, trial preparation records, confidential law enforcement investigatory records, and records the release of which is prohibited by state or federal law.

(2) "Confidential law enforcement investigatory record" means any record that pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature, but only to the extent that the release of the record would create a high probability of disclosure of any of the following:

(a) The identity of a suspect who has not been charged with the offense to which the record pertains, or of an information source or witness to whom confidentiality has been reasonably promised;

(b) Information provided by an information source or witness to whom confidentiality has been reasonably promised, which information would reasonably tend to disclose his identity;

(c) Specific confidential investigatory techniques or procedures or specific investigatory work product;

(d) Information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source.

(3) "Medical record" means any document or combination of documents, except births, deaths, and the fact of admission to or discharge from a hospital, that pertains to the medical history, diagnosis, prognosis, or medical condition of a patient and that is generated and maintained in the process of medical treatment.

(4) "Trial preparation record" means any record that contains information that is specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding, including the independent thought processes and personal trial preparation of an attorney.

(B) All public records shall be promptly prepared and made available FOR INSPECTION to any member of the general public at all reasonable times ~~for inspection~~ DURING REGULAR BUSINESS HOURS. Upon request, a person responsible for public records shall make copies available at cost, within a reasonable period of time. In order to facilitate broader access to public records, governmental units shall maintain public records in such a manner that they can be made available for inspection in accordance with this division.

(C) Chapter 1347. of the Revised Code does not limit the provisions of this section.

149.44 Availability of records; rules [Eff. 7-1-85]

Any state records center or archival institution established pursuant to sections 149.31 and 149.331 of the Revised Code is an extension of the departments, offices, and institutions of the state and all state and local records transferred to records centers and archival institutions shall be available for use ~~by the originating agencies and agencies or individuals so designated by the office of origin~~ UNDER SECTION 149.43 OF THE REVISED CODE. The state records ~~administrator and~~ ADMINISTRATION, ASSISTED BY the state archivist, shall establish ~~regulations~~ RULES and procedures for the operation of state records centers and archival institutions HOLDING PUBLIC RECORDS, respectively.

149.99 Civil action; forfeitures [Eff. 7-1-85]

ANY PERSON AGGRIEVED BY A VIOLATION OF SECTION 149.351 OR 149.43 OF THE REVISED CODE, OR BOTH OF THESE SECTIONS, MAY BRING A CIVIL ACTION TO COMPEL COMPLIANCE, AND MAY RECOVER A FORFEITURE OF ONE THOUSAND DOLLARS AND REASONABLE ATTORNEYS FEES FOR EACH VIOLATION.

1513.03 Inspection officers [Eff. 7-1-85]

The chief of the division of reclamation shall designate certain employees of the division as inspection officers of coal and surface mining operations for the purpose of enforcing the coal mining laws and the surface mining laws. Such inspection officers may enter upon and inspect any coal or surface mining operation at any time and upon entering the permit area the inspector shall notify the operator and shall furnish proper identification. After the final maps have been approved, the inspector shall notify the nearest mine office of the operator and advise of the inspection. They may serve and execute warrants and other processes of law issued in the enforcement of Chapters 1513. and 1514. of the Revised Code and rules adopted thereunder.

Such inspection officers, while in the normal, lawful, and peaceful pursuit of their duties, may enter upon, cross over, and remain upon privately owned lands for such purposes, and shall not be subject to arrest for trespass while so engaged or for such cause thereafter.

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ANNOTATED

1999 BULLETIN #8

OCTOBER 1999

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CINCINNATI

1999 LEGISLATION

September 16, 1999 through December 10, 1999

(123rd General Assembly)
(Amended Substitute Senate Bill Number 78)

File 99 eff 12-16-99

AN ACT

To amend section 149.43 of the Revised Code to generally grant members of the public the option of choosing the medium in which they will receive copies of public records, to require a public office to transmit copies of a public record through the United States mail if so requested, and to generally exclude peace officer residential and familial information from the scope of the Open Records Law.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That section 149.43 of the Revised Code be amended to read as follows:

• **Sec. 149.43.** (A) As used in this section:

(1) "Public record" means any record that is kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, except that "public record" does not mean any of the following:

- (a) Medical records;
- (b) Records pertaining to probation and parole proceedings;
- (c) Records pertaining to actions under section 2151.85 and division (C) of section 2919.121 of the Revised Code and to appeals of actions arising under those sections;
- (d) Records pertaining to adoption proceedings, including the contents of an adoption file maintained by the department of health under section 3705.12 of the Revised Code;
- (e) Information in a record contained in the putative father registry established by section 3107.062 of the Revised Code, regardless of whether the information is held by the department of human services or, pursuant to section 5101.313 of the Revised Code, the division of child support in the department or a child support enforcement agency;
- (f) Records listed in division (A) of section 3107.42 of the Revised Code or specified in division (A) of section 3107.52 of the Revised Code;
- (g) Trial preparation records;
- (h) Confidential law enforcement investigatory records;
- (i) Records containing information that is confidential under section 2317.023 or 4112.05 of the Revised Code;
- (j) DNA records stored in the DNA database pursuant to section 109.573 of the Revised Code;
- (k) Inmate records released by the department of rehabilitation and correction to the department of youth services or a court of record pursuant to division (E) of section 5120.21 of the Revised Code;
- (l) Records maintained by the department of youth services pertaining to children in its custody released by the department of youth services to the department of rehabilitation and correction pursuant to section 5139.05 of the Revised Code;
- (m) Intellectual property records;
- (n) Donor profile records;
- (o) Records maintained by the department of human services pursuant to section 5101.312 of the Revised Code;
- (p) PEACE OFFICER RESIDENTIAL AND FAMILIAL INFORMATION;

(q) Records the release of which is prohibited by state or federal law.

(2) "Confidential law enforcement investigatory record" means any record that pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature, but only to the extent that the release of the record would create a high probability of disclosure of any of the following:

(a) The identity of a suspect who has not been charged with the offense to which the record pertains, or of an information source or witness to whom confidentiality has been reasonably promised;

(b) Information provided by an information source or witness to whom confidentiality has been reasonably promised, which information would reasonably tend to disclose the source's or witness's identity;

(c) Specific confidential investigatory techniques or procedures or specific investigatory work product;

(d) Information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source.

(3) "Medical record" means any document or combination of documents, except births, deaths, and the fact of admission to or discharge from a hospital, that pertains to the medical history, diagnosis, prognosis, or medical condition of a patient and that is generated and maintained in the process of medical treatment.

(4) "Trial preparation record" means any record that contains information that is specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding, including the independent thought processes and personal trial preparation of an attorney.

(5) "Intellectual property record" means a record, other than a financial or administrative record, that is produced or collected by or for faculty or staff of a state institution of higher learning in the conduct of or as a result of study or research on an educational, commercial, scientific, artistic, technical, or scholarly issue, regardless of whether the study or research was sponsored by the institution alone or in conjunction with a governmental body or private concern, and that has not been publicly released, published, or patented.

(6) "Donor profile record" means all records about donors or potential donors to a public institution of higher education except the names and reported addresses of the actual donors and the date, amount, and conditions of the actual donation.

(7) "PEACE OFFICER RESIDENTIAL AND FAMILIAL INFORMATION" MEANS INFORMATION THAT DISCLOSES ANY OF THE FOLLOWING:

(a) THE ADDRESS OF THE ACTUAL PERSONAL RESIDENCE OF A PEACE OFFICER, EXCEPT FOR THE STATE OR POLITICAL SUBDIVISION IN WHICH THE PEACE OFFICER RESIDES;

(b) INFORMATION COMPILED FROM REFERRAL TO OR PARTICIPATION IN AN EMPLOYEE ASSISTANCE PROGRAM;

(c) THE SOCIAL SECURITY NUMBER, THE RESIDENTIAL TELEPHONE NUMBER, ANY BANK ACCOUNT, DEBIT CARD, CHARGE CARD, OR CREDIT CARD NUMBER, OR THE EMERGENCY TELEPHONE NUMBER OF, OR ANY MEDICAL INFORMATION PERTAINING TO, A PEACE OFFICER;

(d) THE NAME OF ANY BENEFICIARY OF EMPLOYMENT BENEFITS, INCLUDING, BUT NOT LIMITED

TO, LIFE INSURANCE BENEFITS, PROVIDED TO A PEACE OFFICER BY THE PEACE OFFICER'S EMPLOYER;

(e) THE IDENTITY AND AMOUNT OF ANY CHARITABLE OR EMPLOYMENT BENEFIT DEDUCTION MADE BY THE PEACE OFFICER'S EMPLOYER FROM THE PEACE OFFICER'S COMPENSATION UNLESS THE AMOUNT OF THE DEDUCTION IS REQUIRED BY STATE OR FEDERAL LAW;

(f) THE NAME, THE RESIDENTIAL ADDRESS, THE NAME OF THE EMPLOYER, THE ADDRESS OF THE EMPLOYER, THE SOCIAL SECURITY NUMBER, THE RESIDENTIAL TELEPHONE NUMBER, ANY BANK ACCOUNT, DEBIT CARD, CHARGE CARD, OR CREDIT CARD NUMBER, OR THE EMERGENCY TELEPHONE NUMBER OF THE SPOUSE, A FORMER SPOUSE, OR ANY CHILD OF A PEACE OFFICER.

AS USED IN DIVISIONS (A)(7) AND (B)(5) OF THIS SECTION, "PEACE OFFICER" HAS THE SAME MEANING AS IN SECTION 109.71 OF THE REVISED CODE, EXCEPT THAT "PEACE OFFICER" DOES NOT INCLUDE THE SHERIFF OF A COUNTY OR A SUPERVISORY EMPLOYEE WHO, IN THE ABSENCE OF THE SHERIFF, IS AUTHORIZED TO STAND IN FOR, EXERCISE THE AUTHORITY OF, AND PERFORM THE DUTIES OF THE SHERIFF.

(B) (1) SUBJECT TO DIVISION (B)(4) OF THIS SECTION, ALL public records shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Upon SUBJECT TO DIVISION (B)(4) OF THIS SECTION, UPON request, a PUBLIC OFFICE OR person responsible for public records shall make copies available at cost, within a reasonable period of time. In order to facilitate broader access to public records, governmental units PUBLIC OFFICES shall maintain public records in a manner that they can be made available for inspection in accordance with this division.

(2) IF ANY PERSON CHOOSES TO OBTAIN A COPY OF A PUBLIC RECORD IN ACCORDANCE WITH DIVISION (B)(1) OF THIS SECTION, THE PUBLIC OFFICE OR PERSON RESPONSIBLE FOR THE PUBLIC RECORD SHALL PERMIT THAT PERSON TO CHOOSE TO HAVE THE PUBLIC RECORD DUPLICATED UPON PAPER, UPON THE SAME MEDIUM UPON WHICH THE PUBLIC OFFICE OR PERSON RESPONSIBLE FOR THE PUBLIC RECORD KEEPS IT, OR UPON ANY OTHER MEDIUM UPON WHICH THE PUBLIC OFFICE OR PERSON RESPONSIBLE FOR THE PUBLIC RECORD DETERMINES THAT IT REASONABLY CAN BE DUPLICATED AS AN INTEGRAL PART OF THE NORMAL OPERATIONS OF THE PUBLIC OFFICE OR PERSON RESPONSIBLE FOR THE PUBLIC RECORD. WHEN THE PERSON SEEKING THE COPY MAKES A CHOICE UNDER THIS DIVISION, THE PUBLIC OFFICE OR PERSON RESPONSIBLE FOR THE PUBLIC RECORD SHALL PROVIDE A COPY OF IT IN ACCORDANCE WITH THE CHOICE MADE BY THE PERSON SEEKING THE COPY.

(3) UPON A REQUEST MADE IN ACCORDANCE WITH DIVISION (B)(1) OF THIS SECTION, A PUBLIC OFFICE OR PERSON RESPONSIBLE FOR PUBLIC RECORDS SHALL TRANSMIT A COPY OF A PUBLIC RECORD TO ANY PERSON BY UNITED STATES MAIL WITHIN A REASONABLE PERIOD OF TIME AFTER RECEIVING THE REQUEST FOR THE COPY. THE PUBLIC OFFICE OR PERSON RESPONSIBLE FOR THE PUBLIC RECORD MAY REQUIRE THE PERSON MAKING THE REQUEST TO PAY IN ADVANCE THE COST

OF POSTAGE AND OTHER SUPPLIES USED IN THE MAILING.

ANY PUBLIC OFFICE MAY ADOPT A POLICY AND PROCEDURES THAT IT WILL FOLLOW IN TRANSMITTING, WITHIN A REASONABLE PERIOD OF TIME AFTER RECEIVING A REQUEST, COPIES OF PUBLIC RECORDS BY UNITED STATES MAIL PURSUANT TO THIS DIVISION. A PUBLIC OFFICE THAT ADOPTS A POLICY AND PROCEDURES UNDER THIS DIVISION SHALL COMPLY WITH THEM IN PERFORMING ITS DUTIES UNDER THIS DIVISION.

IN ANY POLICY AND PROCEDURES ADOPTED UNDER THIS DIVISION, A PUBLIC OFFICE MAY LIMIT THE NUMBER OF RECORDS REQUESTED BY A PERSON THAT THE OFFICE WILL TRANSMIT BY UNITED STATES MAIL TO TEN PER MONTH, UNLESS THE PERSON CERTIFIES TO THE OFFICE IN WRITING THAT THE PERSON DOES NOT INTEND TO USE OR FORWARD THE REQUESTED RECORDS, OR THE INFORMATION CONTAINED IN THEM, FOR COMMERCIAL PURPOSES. FOR PURPOSES OF THIS DIVISION, "COMMERCIAL" SHALL BE NARROWLY CONSTRUED AND DOES NOT INCLUDE REPORTING OR GATHERING NEWS, REPORTING OR GATHERING INFORMATION TO ASSIST CITIZEN OVERSIGHT OR UNDERSTANDING OF THE OPERATION OR ACTIVITIES OF GOVERNMENT, OR NONPROFIT EDUCATIONAL RESEARCH.

(4) A PUBLIC OFFICE OR PERSON RESPONSIBLE FOR PUBLIC RECORDS IS NOT REQUIRED TO PERMIT A PERSON WHO IS INCARCERATED PURSUANT TO A CRIMINAL CONVICTION OR A JUVENILE ADJUDICATION TO INSPECT OR TO OBTAIN A COPY OF ANY PUBLIC RECORD CONCERNING A CRIMINAL INVESTIGATION OR PROSECUTION OR CONCERNING WHAT WOULD BE A CRIMINAL INVESTIGATION OR PROSECUTION IF THE SUBJECT OF THE INVESTIGATION OR PROSECUTION WERE AN ADULT, UNLESS THE REQUEST TO INSPECT OR TO OBTAIN A COPY OF THE RECORD IS FOR THE PURPOSE OF ACQUIRING INFORMATION THAT IS SUBJECT TO RELEASE AS A PUBLIC RECORD UNDER THIS SECTION AND THE JUDGE WHO IMPOSED THE SENTENCE OR MADE THE ADJUDICATION WITH RESPECT TO THE PERSON, OR THE JUDGE'S SUCCESSOR IN OFFICE, FINDS THAT THE INFORMATION SOUGHT IN THE PUBLIC RECORD IS NECESSARY TO SUPPORT WHAT APPEARS TO BE A JUSTICIABLE CLAIM OF THE PERSON.

(5) UPON WRITTEN REQUEST MADE AND SIGNED BY A JOURNALIST ON OR AFTER THE EFFECTIVE DATE OF THIS AMENDMENT, A PUBLIC OFFICE, OR PERSON RESPONSIBLE FOR PUBLIC RECORDS, HAVING CUSTODY OF THE RECORDS OF THE AGENCY EMPLOYING A SPECIFIED PEACE OFFICER SHALL DISCLOSE TO THE JOURNALIST THE ADDRESS OF THE ACTUAL PERSONAL RESIDENCE OF THE PEACE OFFICER AND, IF THE PEACE OFFICER'S SPOUSE, FORMER SPOUSE, OR CHILD IS EMPLOYED BY A PUBLIC OFFICE, THE NAME AND ADDRESS OF THE EMPLOYER OF THE PEACE OFFICER'S SPOUSE, FORMER SPOUSE, OR CHILD. THE REQUEST SHALL INCLUDE THE JOURNALIST'S NAME AND TITLE AND THE NAME AND ADDRESS OF THE JOURNALIST'S EMPLOYER AND SHALL STATE THAT DISCLOSURE OF THE INFORMATION SOUGHT WOULD BE IN THE PUBLIC INTEREST.

AS USED IN DIVISION (B)(5) OF THIS SECTION, "JOURNALIST" MEANS A PERSON ENGAGED IN, CON-

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NECTED WITH, OR EMPLOYED BY ANY NEWS MEDIUM, INCLUDING A NEWSPAPER, MAGAZINE, PRESS ASSOCIATION, NEWS AGENCY, OR WIRE SERVICE, A RADIO OR TELEVISION STATION, OR A SIMILAR MEDIUM, FOR THE PURPOSE OF GATHERING, PROCESSING, TRANSMITTING, COMPILING, EDITING, OR DISSEMINATING INFORMATION FOR THE GENERAL PUBLIC.

(C) If a person allegedly is aggrieved by the failure of a governmental unit PUBLIC OFFICE to promptly prepare a public record and to make it available to the person for inspection in accordance with division (B) of this section, or if a person who has requested a copy of a public record allegedly is aggrieved by the failure of a PUBLIC OFFICE OR THE person responsible for the public record to make a copy available to the person allegedly aggrieved in accordance with division (B) of this section, the person allegedly aggrieved may commence a mandamus action to obtain a judgment that orders the governmental unit PUBLIC OFFICE or the person responsible for the public record to comply with division (B) of this section and that awards reasonable attorney's fees to the person that instituted the mandamus action. The mandamus action may be commenced in the court of common pleas of the county in which division (B) of this section allegedly was not complied with, in the supreme court pursuant to its original jurisdiction under Section 2 of Article IV, Ohio Constitution, or in the court of appeals for the appellate district in which division (B) of this section allegedly was not complied with pursuant to its original jurisdiction under Section 3 of Article IV, Ohio Constitution.

(D) Chapter 1347. of the Revised Code does not limit the provisions of this section.

(E)(1) The bureau of motor vehicles may adopt rules pursuant to Chapter 119. of the Revised Code to reasonably limit the number of bulk commercial special extraction requests made by a person for the same records or for updated records during a calendar year. The rules may include provisions for charges to be made for bulk commercial special extraction requests for the actual cost of the bureau, plus special extraction costs, plus ten per cent. The bureau may charge for expenses for redacting information, the release of which is prohibited by law.

(2) As used in ~~division~~ DIVISIONS (B)(3) AND (E)(1) of this section:

(a) "Actual cost" means the cost of depleted supplies, records storage media costs, actual mailing and alternative delivery costs, or other transmitting costs, and any direct equipment operating and maintenance costs, including actual costs paid to private contractors for copying services.

(b) "Bulk commercial special extraction request" means a request for copies of a record for information in a format other than the format already available, or information that cannot be extracted without examination of all items in a records series, class of records, or data base by a person who intends to use or forward the copies for surveys, marketing, solicitation, or resale for commercial purposes. "Bulk commercial special extraction request" does not include a request by a person who gives assurance to the bureau that the person making the request does not intend to use or forward the requested copies for surveys, marketing, solicitation, or resale for commercial purposes.

(c) "Commercial" means profit-seeking production, buying, or selling of any good, service, or other product.

(d) "Special extraction costs" means the cost of the time spent by the lowest paid employee competent to perform the task, the actual amount paid to outside private contractors employed by the bureau, or the actual cost incurred to create computer programs to make the special extraction. "Special

extraction costs" include any charges paid to a public agency for computer or records services.

(3) For purposes of divisions (E)(1) and (2) of this section, "commercial surveys, marketing, solicitation, or resale" shall be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.

SECTION 2. That existing section 149.43 of the Revised Code is hereby repealed.

SECTION 3. Division (B) of section 149.43 of the Revised Code, as amended by this act, shall apply only to requests for the inspection or copying of public records or releases of information made on or after the effective date of that section.

(123rd General Assembly)
(Amended Senate Bill Number 142)

File 100 eff 02-03-00

AN ACT

To amend sections 2903.11, 2903.12, 2903.13, 2929.13, and 2937.23 of the Revised Code to require the court to impose a mandatory prison term for felonious assault, aggravated assault, and assault if the victim of the offense is a peace officer and suffers serious physical harm as a result of the offense and to explicitly require the judge or a magistrate to set bail in cases involving the felonious assault, aggravated assault, or assault of a peace officer.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 2903.11, 2903.12, 2903.13, 2929.13, and 2937.23 of the Revised Code be amended to read as follows:

• **Sec. 2903.11.** (A) No person shall knowingly:

(1) Cause serious physical harm to another or to another's unborn;

(2) Cause or attempt to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance, as defined in section 2923.11 of the Revised Code.

(B) Whoever violates this section is guilty of felonious assault, a felony of the second degree. If the victim of the offense is a peace officer, as defined in section 2935.01 of the Revised Code, felonious assault is a felony of the first degree. IF THE VICTIM OF THE OFFENSE IS A PEACE OFFICER, AS DEFINED IN SECTION 2935.01 OF THE REVISED CODE, AND IF THE VICTIM SUFFERED SERIOUS PHYSICAL HARM AS A RESULT OF THE COMMISSION OF THE OFFENSE, FELONIOUS ASSAULT IS A FELONY OF THE FIRST DEGREE, AND THE COURT, PURSUANT TO DIVISION (F) OF SECTION 2929.13 OF THE REVISED CODE, SHALL IMPOSE AS A MANDATORY PRISON TERM ONE OF THE PRISON TERMS PRESCRIBED FOR A FELONY OF THE FIRST DEGREE.

• **Sec. 2903.12.** (A) No person, while under the influence of sudden passion or in a sudden fit of rage, either of which is brought on by serious provocation occasioned by the victim that is reasonably sufficient to incite the person into using deadly force, shall knowingly:

(1) Cause serious physical harm to another or to another's unborn;

(2) Cause or attempt to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance, as defined in section 2923.11 of the Revised Code.