

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 5123-1-01

Rule Type: New

Rule Title/Tagline: Community capital assistance funds - non-residential capital facilities.

Agency Name: Department of Developmental Disabilities

Division:

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I. Rule Summary

1. **Is this a five year rule review?** No
 - A. **What is the rule's five year review date?**
2. **Is this rule the result of recent legislation?** No
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 5123.04, 5123.351
5. **What statute(s) does the rule implement or amplify?** 5123.04, 5123.351, 5123.36
6. **Does the rule implement a federal law or rule in a manner that is more stringent or burdensome than the federal law or regulation requires?** No
 - A. **If so, what is the citation to the federal law or rule?** Not Applicable
7. **What are the reasons for proposing the rule?**

The Department is rescinding rule 5123:1-1-01 and adopting replacement rule 5123-1-01. In addition to being renumbered, the replacement rule reflects "clean up" revisions to align wording with newer rules.
8. **Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

The rule sets forth a process for the Department to make available community capital assistance funds to boards of county commissioners, county boards of developmental disabilities, and nonprofit corporations for the purchase, construction, and renovation of non-residential capital facilities.

9. **Does the rule incorporate material by reference? Yes**
10. **If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.75, please explain the basis for the exemption and how an individual can find the referenced material.**

The incorporated references are to the Revised Code and the Administrative Code. Pursuant to Section 121.75 of the Revised Code, the requirements in Sections 121.71 to 121.74 do not apply. The Revised Code and the Administrative Code are available at libraries and on the internet at <https://codes.ohio.gov>.

11. **If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

Not Applicable

II. Fiscal Analysis

12. **Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.**

This will have no impact on revenues or expenditures.

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Rescinding rule 5123:1-1-01 and adopting replacement rule 5123-1-01 will neither increase nor decrease revenues or expenditures of the Department.

13. **What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?**

The rule requires persons seeking community capital assistance funds to submit an application to the Department. Preparing the application, gathering supporting documentation, and discussing the application with Department representatives requires staff time, the cost of which will vary based on the nature of the request and the wages paid to staff.

14. **Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No**
15. **Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No**
16. **If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.**

Not applicable.

III. Common Sense Initiative (CSI) Questions

17. **Was this rule filed with the Common Sense Initiative Office? Yes**
18. **Does this rule have an adverse impact on business? Yes**

A. **Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? No**

B. **Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? Yes**

Paragraph (D)(6) sets forth that the Department may withdraw funds at any time if the project is not proceeding in a timely manner.

Paragraph (E)(16) sets forth that the Department may bring action to recoup funds expended for purposes other than the project, not expended in conformance with procedures, or if the applicant breaches the project agreement.

C. **Does this rule require specific expenditures or the report of information as a condition of compliance? Yes**

The rule requires applicants to submit information and documents to the Department.

D. **Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business of which it will apply or applies? No**

IV. Regulatory Restriction Requirements under S.B. 9. Note: This section only applies to agencies described in R.C. 121.95(A).

19. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? Yes

A. How many new regulatory restrictions do you propose adding to this rule? 0

B. How many existing regulatory restrictions do you propose removing from this rule? 51

5123:1-1-01 (B): As used throughout this rule, the following definitions shall apply:

5123:1-1-01 (B)(1)(c)(i): The articles of incorporation shall contain, in addition to provisions otherwise required by law, a specific statement of purpose that the corporation will provide a developmental disability service.

5123:1-1-01 (B)(1)(c)(ii): The code of regulations shall contain the following provisions in addition to those specifically required by law:

5123:1-1-01 (B)(1)(c)(ii)(b): A provision that upon dissolution of the corporation, if such dissolution occurs within the length of the project agreement, the department or its successor shall be a party to any judicial proceeding or dissolution agreement and that the department or its successor may be a distributee under such order or agreement to the extent of its participation and to the extent provided by law or the project agreement which originally set forth disbursement of funds to the corporation;

5123:1-1-01 (B)(1)(c)(ii)(c): A provision that no persons related by blood, marriage, or adoption (to a degree of first cousin) shall constitute a majority of the board of directors; and

5123:1-1-01 (B)(5): "Construction" means the construction of new buildings or renovation of existing buildings provided by section 154.01 of the Revised Code, except that renovation shall not include work that consists primarily of maintenance repairs and replacement due to normal use, wear and tear, or deterioration.

5123:1-1-01 (C)(2): The department shall evaluate applications based upon:

5123:1-1-01 (D)(1): The department shall inform the applicant in writing of approval or disapproval of a project.

5123:1-1-01 (D)(1): If a project is approved, the letter shall indicate the amount of state funding approved, subject to favorable fund release action by the controlling board.

5123:1-1-01 (D)(2): The agreement shall also assure operation of the capital facility in accordance with the agreement.

5123:1-1-01 (D)(2): If the project is not used for said purpose, the applicant shall pay to the department on a pro rata basis any state funds reimbursed to the applicant, or shall permit the department to operate or transfer the operation of the project, including the assignment of any contracts or other interests, to another approved organization for the balance of the agreement.

5123:1-1-01 (D)(2): The terms of the agreement shall expire as of the earlier of:

5123:1-1-01 (D)(3): The department shall participate at a percentage level of the total project cost based upon a funding formula developed by the department.

5123:1-1-01 (D)(4)(a): The department shall have final discretion to:

5123:1-1-01 (D)(4)(b): The property value to be used in the participation schedule for projects involving property owned by the applicant for less than one year shall be based on the purchase price or the appraised value, whichever is less.

5123:1-1-01 (D)(4)(b): For projects involving property owned by the applicant for one year or more, the value to be used shall be based on the appraised value.

5123:1-1-01 (D)(4)(b): The appraised value shall be determined by an appraisal made by an accredited appraiser.

5123:1-1-01 (D)(4)(b): The appraisal shall be based on the fair market value of the property as determined by the appraisal.

5123:1-1-01 (D)(4)(b): The appraisal fee shall be considered as an element or project cost eligible for state participation.

5123:1-1-01 (E)(1): The department shall pay the applicant for approved costs for an amount up to but not exceeding the maximum state share of project cost stated in the approved application.

5123:1-1-01 (E)(3): The applicant agrees that if design fees for the project equal or exceed twenty-five thousand dollars, any architectural or engineering services shall meet the requirements of sections 153.65 to 153.70 of the Revised Code.

5123:1-1-01 (E)(3): On the basis of on-site observations as an architect, the architect shall keep the applicant informed of the progress and quality of the work, and shall endeavor to guard the applicant against defects and deficiencies in the work.

5123:1-1-01 (E)(4): No funds for the project shall be used by the applicant for renovation, rehabilitation, or construction unless the mechanics, laborers, or workers are paid the prevailing wage rates as described in section 4115.04 of the Revised Code.

5123:1-1-01 (E)(8): The agreement between the department and the applicant shall include the following terms:

5123:1-1-01 (E)(8)(b): The applicant further covenants that the premises are, and shall remain for the term of the agreement, free and clear of all liens, encumbrances, restrictions, and conditions, which prevent or interfere with the use of the project facilities, except such as may be imposed by zoning ordinances and regulations.

5123:1-1-01 (E)(8)(c): That requirements for approval of title on capital projects as approved by the office of the attorney general shall include a current title insurance policy (no more than sixty days old) or current attorney opinion of title, a map outlining the project site, and a deed.

5123:1-1-01 (E)(8)(d)(i): The term of the lease shall be at least fifteen years.

5123:1-1-01 (E)(8)(d)(ii): The department shall have an opportunity to absolutely cure any default to avoid the reversion of the property to the lessor, and the department may at its option assume operation of the facility or may transfer or assign the leasehold interest and the operation of the program in the facility, upon approval of the lessor, which approval shall not be unreasonably withheld, to a nonprofit corporation or other agency to provide substantially similar services in the facility for the remainder of the lease term.

5123:1-1-01 (E)(8)(d)(ii): The department shall have an opportunity to absolutely cure any default to avoid the reversion of the property to the lessor, and the department may at its option assume operation of the facility or may transfer or assign the leasehold interest and the operation of the program in the facility, upon approval of the lessor, which approval shall not be unreasonably withheld, to a nonprofit corporation or other agency to provide substantially similar services in the facility for the remainder of the lease term.

5123:1-1-01 (E)(8)(d)(iii): The lease shall state the exact location of the space being leased, if only a portion of the property is being leased.

5123:1-1-01 (E)(8)(d)(iv): Documentation shall be submitted establishing who owns the underlying land or building. If the applicant is subleasing part of a building, a copy of the prime lease with a certification that the copy is a true copy as well as the document that gives the lessor permission to sublet the property must be provided.

5123:1-1-01 (E)(8)(d)(v): Proof shall be submitted to the department that all leasehold interests are recorded in the county recorder's office.

5123:1-1-01 (E)(9)(a): All real property proposed as a project site shall be evaluated by the department as applicable to cost adaptability for renovation, programmatic suitability, economic feasibility, and ability or potential to meet applicable building and fire codes, licensure, and department or other governmental requirements and with consideration of the following criteria for construction project sites:

5123:1-1-01 (E)(9)(b)(i): The value of real property proposed for a project shall be based on a descriptive narrative appraisal made by a qualified appraiser.

5123:1-1-01 (E)(9)(b)(i): The appraised value shall be based on the fair market value of the property as determined by the appraisal and approved by the department.

5123:1-1-01 (E)(9)(b)(ii): Department participation in real property shall be based on the purchase price or approved appraised value, whichever is the lesser.

5123:1-1-01 (E)(9)(c)(i): In addition to all other provisions of this rule, for projects involving the purchase or purchase and renovation of

existing buildings, the department shall determine the maximum approved renovation/acquisition cost excluding land.

5123:1-1-01 (E)(9)(c)(i): This maximum approved renovation/acquisition cost plus land cost shall be the basis upon which maximum state participation is calculated.

5123:1-1-01 (E)(9)(c)(ii): To reflect the fact that older buildings generally are less suitable than newer buildings, the maximum approved project cost shall in all cases be less than one hundred per cent of the cost of new construction.

5123:1-1-01 (E)(9)(c)(ii): This percentage shall be eighty-five per cent less one per cent for each year of age of the existing building.

5123:1-1-01 (E)(9)(c)(ii): For buildings which have had additions, the age shall be the weighted average age of the various portions of the building.

5123:1-1-01 (E)(9)(c)(ii): For existing buildings fifteen years old or older, the maximum percentage shall be seventy per cent.

5123:1-1-01 (E)(10)(a): An initial award installment that equals fifteen per cent of the total approved project costs shall be forwarded to the applicant at that point.

5123:1-1-01 (E)(10)(a): Additional installments shall be made to the applicant in accordance with the construction project payment schedule contained in the appendix to this rule.

5123:1-1-01 (E)(10)(c): The applicant shall keep records of all receipts and expenditures for a project in a separate account which shall be available for inspection or audit by the department.

5123:1-1-01 (E)(10)(c): The department, after appropriate audit or required documentation is received and a determination is made of the percentage level of project completion, shall promptly take necessary action to forward the next installment.

5123:1-1-01 (E)(11): The final submission of receipts for payment shall include a letter from the contractor(s) certifying that the work has been completed in accordance with the approved application, the drawings and specifications, and contract documents; that prevailing wages have been paid during the

project; and that affidavits of release of liens from all prime contractors on the project have been obtained.

5123:1-1-01 (E)(12): All contracts awarded by the applicant for the project shall contain provisions by which:

5123:1-1-01 (E)(15): Documentation to support each action shall be filed in a manner allowing it to be readily located.

5123:1-1-01 (E)(15): Such documentation shall be maintained by the applicant until bond debt is retired.

5123:1-1-01 (F): The director's decision with regard to waiving a condition or requirement of this rule may not be appealed.

C. If you are not removing existing regulatory restrictions from this rule, please list the rule number(s) from which you are removing restrictions.

5123:1-1-01

D. Please justify the adoption of the new regulatory restriction(s).

Not Applicable

5123:1-1-01

[NEW RULE WILL BE NUMBERED 5123-1-01.] Community capital assistance funds - non-residential capital facilities.

(A) Purpose

This rule sets forth a process for the department to make available community capital assistance funds to boards of county commissioners, county boards of developmental disabilities, and nonprofit corporations for the purchase, construction, and renovation of non-residential capital facilities.

(B) Definitions

~~As used throughout~~ For the purposes of this rule, the following definitions ~~shall~~ apply:

- (1) "Applicant" means any of the following who submit an application to the department for community capital assistance funds:
 - (a) A board of county commissioners;
 - (b) A county board of developmental disabilities; or
 - (c) A nonprofit corporation incorporated pursuant to Chapter 1702. of the Revised Code, granted 501(c)(3) status by the internal revenue service, and specifically chartered to provide a developmental disability service when such service fulfills a public purpose as provided by section 154.20 of the Revised Code. When the applicant is a nonprofit corporation, the applicant shall submit with the application, in addition to all other documents required by this rule, a copy of its articles of incorporation, code of regulations, and a current list of all directors, officers, and members.
 - (i) The articles of incorporation ~~shall~~ will contain, in addition to provisions otherwise required by law, a specific statement of purpose that the corporation will provide a developmental disability service.
 - (ii) The code of regulations ~~shall~~ will contain the following provisions in addition to those specifically required by law:
 - (a) A provision stating that services will neither be rendered nor denied on the basis of race, color, religion, national origin, disability, age, or unless programmatically justifiable, sex;

- (b) A provision that upon dissolution of the corporation, if such dissolution occurs within the length of the project agreement, the department or its successor ~~shall~~ will be a party to any judicial proceeding or dissolution agreement and that the department or its successor may be a distributee under such order or agreement to the extent of its participation and to the extent provided by law or the project agreement which originally set forth disbursement of funds to the corporation;
- (c) A provision that no persons related by blood, marriage, or adoption (to a degree of first cousin) ~~shall~~ will constitute a majority of the board of directors; and
- (d) A provision requiring disclosure of potential conflicts of interest of a director, procedures for determining whether there is a conflict of interest, and establishing a course of action if a conflict of interest is identified.
- (2) "Approved project costs" means total costs of capital facilities and includes, without limitation thereto, site acquisition, design and project administration fees paid to an outside consultant, construction costs, costs of permits and inspections, bid advertising, construction document printing costs, and equipping the capital facility to accommodate the approved program. The applicant must obtain written approval from the department for costs other than those items listed in this paragraph.
- (3) "Capital facilities" has the same meaning as in section 154.01 of the Revised Code.
- (4) "Community capital assistance funds" means funds appropriated by the general assembly to the department for capital projects.
- (5) "Construction" means the construction of new buildings or renovation of existing buildings provided by section 154.01 of the Revised Code, except that renovation ~~shall~~ does not include work that consists primarily of maintenance repairs and replacement due to normal use, wear and tear, or deterioration.
- (6) "Controlling board" means the board established by section 127.11 of the Revised Code.

- (7) "Department" means the Ohio department of developmental disabilities.
- (8) "Renovation" means work done to a building to restore it to an acceptable condition meeting Ohio basic building code and to make it functional for the ~~purpose(s)~~ purpose set forth in an application for community capital assistance funds, including architectural and structural changes and the modernization of mechanical and electrical systems. Renovation does not include work that consists primarily of maintenance repairs and replacement due to normal use, wear and tear, or deterioration.

(C) Application

- (1) Prior to purchasing a capital facility or initiating a construction or renovation project, the applicant shall submit an application for community capital assistance funds to the department in a form and manner prescribed the department.
- (2) The department ~~shall~~ will evaluate applications based upon:
 - (a) Submission of a complete and accurate application;
 - (b) Projects that are programmatically acceptable;
 - (c) Impact on the local service delivery system; and
 - (d) Availability of local matching funds.

(D) Awarding of funds

- (1) The department ~~shall~~ will inform the applicant in writing of approval or disapproval of a project. If a project is approved, the letter ~~shall~~ will indicate the amount of state funding approved, subject to favorable fund release action by the controlling board.
- (2) ~~The~~Upon approval of a project and prior to payment of community capital assistance funds, an applicant shall enter into ~~an~~ a project agreement with the department that assures ~~the completion of the project in accordance with standards set forth by the department and other applicable federal, state, and local statutes. The agreement shall also assure operation of the capital facility in accordance with the agreement. The applicant agrees to use and maintain~~

~~the project for the length of the agreement for the purposes stated in the application unless otherwise agreed to in writing by the department. If the project is not used for said purpose, the applicant shall pay to the department on a pro rata basis any state funds reimbursed to the applicant, or shall permit the department to operate or transfer the operation of the project, including the assignment of any contracts or other interests, to another approved organization for the balance of the agreement. The terms of the agreement shall expire as of the earlier of:~~

(a) The completion of the project in accordance with standards set forth by the department and other applicable federal, state, and local statutes.

(b) The operation of the capital facility in accordance with the project agreement.

(c) The applicant will use and maintain the capital facility for the length of the project agreement for the purpose stated in the application unless otherwise agreed to in writing by the department.

(d) If the capital facility is not used for said purpose, the applicant shall pay to the department, on a pro rata basis, any community capital assistance funds disbursed to the applicant or permit the department to operate or transfer the operation of the capital facility, including the assignment of any contracts or other interests, to another approved organization for the balance of the project agreement. The terms of the project agreement will expire as of the earlier of:

~~(a)~~(i) Fifteen years from the date of the project agreement; or

~~(b)~~(ii) The date when all capital bonds, any of the proceeds of which were expended for project costs, are no longer outstanding.

(3) The department ~~shall~~ will participate at a percentage level of the total project cost based upon a funding formula developed by the department.

(4) The department, as a part of a construction or purchase and renovation project and contingent upon the availability of department funds, may consider and include in the development of the participation schedule the value of property purchased by an applicant and may use such value as part or all of the applicant's share of approved project costs under the following provisions:

(a) The department ~~shall have~~ has final discretion to:

(i) Approve the use of the value of property and/or buildings thereon

which are owned by an applicant as part or all of the local participation share in a project;

(ii) Determine the part or percentage of a building and/or property which may be used as local participation share; and

(iii) Determine that the property and/or buildings thereon are suitable for the intended purpose both programmatically and economically.

(b) The property value to be used in the participation schedule for projects involving property owned by the applicant for less than one year ~~shall~~ will be based on the purchase price or the appraised value, whichever is less. For projects involving property owned by the applicant for one year or more, the value to be used ~~shall~~ will be based on the appraised value. The appraised value ~~shall~~ will be determined by an appraisal made by an accredited appraiser. The appraisal ~~shall~~ will be based on the fair market value of the property as determined by the appraisal. The appraisal fee ~~shall~~ will be considered as an element or project cost eligible for state participation. Two appraisals are required if the value exceeds one hundred thousand dollars, and the appraisals must be descriptive narratives.

(5) The applicant shall verify that sufficient funds will be available to meet ~~its~~ the applicant's share of project cost from project initiation through project completion.

(6) The applicant has one year from the date of controlling board approval to begin the construction/renovation project. The department has the discretion to withdraw funds at ~~anytime~~ any time if the project is not proceeding in a timely manner.

(E) Standards of construction, design criteria, site criteria, and reimbursement

(1) The department ~~shall~~ will pay the applicant for approved costs for an amount up to but not exceeding the maximum state share of project cost stated in the approved application. No additional funds will be approved over the maximum state share of project cost once the funds are released from the controlling board.

(2) The applicant shall hold the department harmless for any liability resulting from liens issued against the project by any contractors, subcontractors, material

suppliers, or laborers.

- (3) The applicant shall obtain the services of registered architects or engineers to perform any design work required for the project. The applicant agrees that if design fees for the project equal or exceed twenty-five thousand dollars, any architectural or engineering services ~~shall~~ will meet the requirements of sections 153.65 to 153.70 of the Revised Code. The applicant shall provide and maintain competent and adequate architectural or engineering supervision and observation at the construction site. On the basis of on-site observations as an architect, the architect shall keep the applicant informed of the progress and quality of the work; and ~~shall~~ endeavor to guard the applicant against defects and deficiencies in the work.
- (4) No funds for the project ~~shall~~ will be used by the applicant for renovation, rehabilitation, or construction unless the mechanics, laborers, or workers are paid the prevailing wage rates as described in section 4115.04 of the Revised Code.
- (5) The applicant shall agree to solicit or cause to be solicited through a public solicitation or an invitation for bids, bids in accordance with federal, state, and local laws.
- (6) The applicant shall agree to complete a life cycle cost analysis when required by Chapter 123:4-1 of the Administrative Code.
- (7) The applicant shall agree to provide and maintain insurance or self-insurance against general liability for accidents or injuries that may occur on the premises of the project. The applicant shall also ensure that the capital facility design and construction ~~conforms~~ conform to all applicable building codes, standards, zoning, and licensing requirements.
- (8) The project agreement between the department and the applicant ~~shall~~ will include the following terms:
 - (a) That all contractors agree to comply with all applicable federal, state, and local laws in the conduct of the work hereunder. The contractors shall accept full responsibility for payment of all unemployment compensation, insurance premiums, income tax deductions, social security deductions, and any and all other taxes or payroll deductions required for all employees engaged by contractors in the performance of the work authorized by ~~this~~ the project agreement.

- (b) That the project is located upon, or will be located upon, real estate which the applicant owns in fee simple or in which it has a leasehold interest; the terms of lease are subject to the department's approval. The applicant further covenants that the premises are, and ~~shall~~ will remain for the term of the project agreement, free and clear of all liens, encumbrances, restrictions, and conditions, which prevent or interfere with the use of the project facilities, except such as may be imposed by zoning ordinances and regulations.
- (c) That requirements for approval of title on capital projects as approved by the office of the attorney general ~~shall~~ will include a current title insurance policy (no more than sixty days old) or current attorney opinion of title, a map outlining the project site, and a deed.
- (d) That if leased property is being used, ~~the following is required:~~
 - (i) The term of the lease ~~shall~~ will be at least fifteen years.
 - (ii) The department ~~shall~~ will have an opportunity to absolutely cure any default to avoid the reversion of the property to the lessor, and the department may at its option assume operation of the capital facility or may transfer or assign the leasehold interest and the operation of the program in the capital facility, upon approval of the lessor, which approval ~~shall~~ will not be unreasonably withheld, to a nonprofit corporation or other agency to provide substantially similar services in the capital facility for the remainder of the lease term.
 - (iii) The lease ~~shall~~ will state the exact location of the space being leased, if only a portion of the property is being leased.
 - (iv) Documentation ~~shall~~ will be submitted establishing who owns the underlying land or building. If the applicant is subleasing part of a building, a copy of the prime lease with a certification that the copy is a true copy as well as the document that gives the lessor permission to sublet the property must be provided.
 - (v) Proof ~~shall~~ will be submitted to the department that all leasehold interests are recorded in the county recorder's office.
- (e) That a certified copy of a resolution with a secretary's certificate that the persons who signed the lease or sublease were authorized to do so must

be provided.

(f) That the lease provision is consistent with the series II lease agreements and attachment A of the [project](#) agreement and clearly stated that the property is to be leased for a minimum of fifteen years.

(9) The department may participate in the cost or value of real property to be used for capital facilities. Such property may include land only or land with existing buildings thereon which is to be purchased.

(a) All real property proposed as a project site ~~shall~~ [will](#) be evaluated by the department as applicable to cost adaptability for renovation, programmatic suitability, economic feasibility, and ability or potential to meet applicable building and fire codes, licensure, and department or other governmental requirements and with consideration of the following criteria for construction project sites:

(i) Location, including sociological and demographic considerations of area and access to site;

(ii) Program needs;

(iii) Cost of property, including comparison of similar property in the area;

(iv) Size, including needs for future expansion;

(v) Zoning, transportation, and utilities, including gas, electric, water, and sewerage;

(vi) Configuration, topography, suitability for construction; and

(vii) Environmental assessment that includes, but is not limited to, asbestos, polyvinyl chlorides, and chemical contaminants that may be present on the site.

(b) Property value determination

(i) The value of real property proposed for a project ~~shall~~ [will](#) be based on a descriptive narrative appraisal made by a qualified appraiser.

The appraised value ~~shall~~ will be based on the fair market value of the property as determined by the appraisal and approved by the department.

- (ii) Department participation in real property ~~shall~~ will be based on the purchase price or approved appraised value, whichever is the lesser.

(c) Existing buildings

- (i) In addition to all other provisions of this rule, for projects involving the purchase or purchase and renovation of existing buildings, the department ~~shall~~ will determine the maximum approved renovation/acquisition cost excluding land. This maximum approved renovation/acquisition cost plus land cost ~~shall~~ will be the basis upon which maximum state participation is calculated.

- (ii) To reflect the fact that older buildings generally are less suitable than newer buildings, the maximum approved project cost ~~shall~~ will in all cases be less than one hundred per cent of the cost of new construction. This percentage ~~shall~~ will be eighty-five per cent less one per cent for each year of age of the existing building. For buildings which have had additions, the age ~~shall~~ will be the weighted average age of the various portions of the building. For existing buildings fifteen years old or older, the maximum percentage ~~shall~~ will be seventy per cent.

(10) Payment schedule

- (a) Once the project has been bid and the contractors have been awarded their contracts, the applicant shall notify the department of the contract amount and also certify that the selected construction ~~contractor(s)~~ contractor submitted the lowest best bid. An initial award installment that equals fifteen per cent of the total approved project costs ~~shall~~ will be forwarded to the applicant at that point. Additional installments ~~shall~~ will be made to the applicant in accordance with the construction project payment schedule contained in the appendix to this rule.
- (b) The department may adjust the construction project payment schedule based upon written justification provided by the applicant.
- (c) The applicant shall keep records of all receipts and expenditures for a

project in a separate account which ~~shall~~ will be available for inspection or audit by the department. The applicant shall submit paid receipts to the department when requesting the next installment. The department, after appropriate audit or required documentation is received and a determination is made of the percentage level of project completion, ~~shall~~ will promptly take necessary action to forward the next installment.

- (d) The department reserves the right to withhold an installment for any project.
- (11) The final submission of receipts for payment ~~shall~~ will include a letter from the contractor(s) certifying that the work has been completed in accordance with the approved application, the drawings and specifications, and contract documents; that prevailing wages have been paid during the project; and that affidavits of release of liens from all prime contractors on the project have been obtained. The applicant shall certify that ~~it~~ the applicant or ~~its~~ the applicant's agent has inspected the work and that it complies with the approved application, the drawings and specifications, and all other contract documents.
- (12) All contracts awarded by the applicant for the project ~~shall~~ will contain provisions by which:
 - (a) The contractor agrees that in the hiring of employees for the performance of work under the contract or any subcontract, no contractor, subcontractor, ~~or~~ nor any person acting on ~~his or her~~ the contractor's behalf shall by reason of race, creed, sex, disability or military status as defined in section 4112.01 of the Revised Code, or color, discriminate against or intimidate any citizen of the state of Ohio in the employment of labor or workers who are qualified and available to perform the work to which the employment relates.
 - (b) The contractor agrees that no contractor, subcontractor, nor any person acting on ~~his or her~~ the contractor's behalf shall in any manner discriminate against or intimidate any employee hired for the performance of work under the contract on account of race, creed, sex, disability or military status as defined in section 4112.01 of the Revised Code, or color.
- (13) The applicant shall ensure that the contractor(s) provide for an affirmative action program for the employment and effective utilization of disadvantaged

persons whose disadvantage may arise from cultural, racial, or ethnic background, or other similar cause, including but not limited to, race, religion, sex, disability or military status as defined in section 4112.01 of the Revised Code, national origin, or ancestry.

- (14) In awarding contracts for the project, the applicant shall ensure that equal consideration is given to contractors, subcontractors, or joint venturers who qualify as a minority business enterprise as defined in section 122.71 of the Revised Code.
- (15) The applicant shall keep all financial records in a manner consistent with generally accepted accounting procedures. Documentation to support each action ~~shall~~ will be filed in a manner allowing it to be readily located. Such documentation ~~shall~~ will be maintained by the applicant until ~~bond debt is retired~~ fifteen years after the project is completed, or the date when all capital bonds, any of which were expended for project costs, are no longer outstanding, whichever is earlier.
- (16) The department reserves the right to audit the expenditure of community capital assistance funds to determine whether they were applied to the project. The department may bring action to recoup any funds expended for purposes other than the project or not expended in conformance with the procedures outlined in the project agreement and in this rule, or if the applicant breaches the project agreement in any manner.

(F) Waiving a condition or requirement of this rule

The director of the department may, for good cause, waive a condition or requirement of this rule. The director's decision with regard to waiving a condition or requirement of this rule ~~may not be appealed~~ is not subject to appeal.