

I_133_2873

**133rd General Assembly
Regular Session
2019-2020**

Sub. H. B. No. 246

A BILL

To amend sections 121.95, 1509.02, 4901.10, 1
4905.10, 4905.402, 4905.92, 4905.95, 4906.01, 2
4906.02, 4906.03, 4906.20, 4906.201, 4907.44, 3
4911.02, 4911.15, 4911.17, 4911.18, 4923.01, 4
4923.07, 4927.03, 4928.06, 4928.08, 4929.20, and 5
4933.11; to enact sections 164.30, 164.31, 6
4901.022, 4903.26, 4905.061, 4905.062, 4905.063, 7
4905.101, 4905.102, 4906.15, 4928.1410, 4933.30, 8
4933.35, 4933.351, 4933.354, 4933.355, 4933.356, 9
4933.357, 4933.3510, 4933.3511, 4933.3514, 10
4933.3515, 4963.60, 4963.601, 4963.603, 11
4963.604, 4963.605, 4963.606, 4963.607, 12
4963.608, 4963.6011, 4963.6012, 4963.6013, 13
4963.6014, 4963.6015, 4963.6018, 4963.6019, 14
4963.6020, 4963.6023, 4963.6024, 4963.6025, 15
4963.6026, 4963.6030, 4963.6031, 4963.6032, 16
4963.6034, 4963.6035, 4963.6038, 4963.6041, 17
4963.6042, 4963.6043, 4963.6044, 4963.6045, 18
4963.6048, 4963.6049, 4963.6052, 4963.6053, 19
4963.6054, 4963.6057, 4963.6058, 4963.6059, 20
4963.6062, 4963.6063, 4963.6065, 4963.6067, 21
5301.075, 5301.076, 5301.077, 5311.195, 22



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5311.196, and 5311.197; and to repeal section 23
4928.71 of the Revised Code to make various 24
changes to the law governing the Public 25
Utilities Commission and the Ohio Consumers' 26
Counsel and various other changes regarding 27
utilities law. 28

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

Section 1. That sections 121.95, 1509.02, 4901.10, 29
4905.10, 4905.402, 4905.92, 4905.95, 4906.01, 4906.02, 4906.03, 30
4906.20, 4906.201, 4907.44, 4911.02, 4911.15, 4911.17, 4911.18, 31
4923.01, 4923.07, 4927.03, 4928.06, 4928.08, 4929.20, and 32
4933.11 be amended and sections 164.30, 164.31, 4901.022, 33
4903.26, 4905.061, 4905.062, 4905.063, 4905.101, 4905.102, 34
4906.15, 4928.1410, 4933.30, 4933.35, 4933.351, 4933.354, 35
4933.355, 4933.356, 4933.357, 4933.3510, 4933.3511, 4933.3514, 36
4933.3515, 4963.60, 4963.601, 4963.603, 4963.604, 4963.605, 37
4963.606, 4963.607, 4963.608, 4963.6011, 4963.6012, 4963.6013, 38
4963.6014, 4963.6015, 4963.6018, 4963.6019, 4963.6020, 39
4963.6023, 4963.6024, 4963.6025, 4963.6026, 4963.6030, 40
4963.6031, 4963.6032, 4963.6034, 4963.6035, 4963.6038, 41
4963.6041, 4963.6042, 4963.6043, 4963.6044, 4963.6045, 42
4963.6048, 4963.6049, 4963.6052, 4963.6053, 4963.6054, 43
4963.6057, 4963.6058, 4963.6059, 4963.6062, 4963.6063, 44
4963.6065, 4963.6067, 5301.075, 5301.076, 5301.077, 5311.195, 45
5311.196, and 5311.197 of the Revised Code be enacted to read as 46
follows: 47

Sec. 121.95. (A) As used in this section, "state agency" 48
means an administrative department created under section 121.02 49

of the Revised Code, an administrative department head appointed 50
under section 121.03 of the Revised Code, and a state agency 51
organized under an administrative department or administrative 52
department head. "State agency" also includes the department of 53
education, the state lottery commission, the Ohio casino control 54
commission, and the state racing commission, ~~and the public-~~ 55
~~utilities commission of Ohio.~~ Rules adopted by an otherwise 56
independent official or entity organized under a state agency 57
shall be attributed to the agency under which the official or 58
entity is organized for the purposes of this section. 59

(B) Not later than December 31, 2019, a state agency shall 60
review its existing rules to identify rules having one or more 61
regulatory restrictions that require or prohibit an action and 62
prepare a base inventory of the regulatory restrictions in its 63
existing rules. Rules that include the words "shall," "must," 64
"require," "shall not," "may not," and "prohibit" shall be 65
considered to contain regulatory restrictions. 66

(C) In the base inventory, the state agency shall indicate 67
all of the following concerning each regulatory restriction: 68

(1) A description of the regulatory restriction; 69

(2) The rule number of the rule in which the regulatory 70
restriction appears; 71

(3) The statute under which the regulatory restriction was 72
adopted; 73

(4) Whether state or federal law expressly and 74
specifically requires the agency to adopt the regulatory 75
restriction or the agency adopted the regulatory restriction 76
under the agency's general authority; 77

(5) Whether removing the regulatory restriction would 78

require a change to state or federal law, provided that removing 79
a regulatory restriction adopted under a law granting the agency 80
general authority shall be presumed not to require a change to 81
state or federal law; 82

(6) Any other information the joint committee on agency 83
rule review considers necessary. 84

(D) The state agency shall compute and state the total 85
number of regulatory restrictions indicated in the base 86
inventory, shall post the base inventory on its web site, and 87
shall electronically transmit a copy of the inventory to the 88
joint committee. The joint committee shall review the base 89
inventory, then transmit it electronically to the speaker of the 90
house of representatives and the president of the senate. 91

(E) The following types of rules or regulatory 92
restrictions are not required to be included in a state agency's 93
inventory of regulatory restrictions: 94

(1) An internal management rule; 95

(2) An emergency rule; 96

(3) A rule that state or federal law requires the state 97
agency to adopt verbatim; 98

(4) A regulatory restriction contained in materials or 99
documents incorporated by reference into a rule pursuant to 100
sections 121.71 to 121.75 of the Revised Code; 101

(5) A rule adopted pursuant to section 1347.15 of the 102
Revised Code; 103

(6) A rule concerning instant lottery games; 104

(7) Any other rule that is not subject to review under 105

Chapter 106. of the Revised Code. 106

(F) Beginning on the effective date of this section and 107
ending on June 30, 2023, a state agency may not adopt a new 108
regulatory restriction unless it simultaneously removes two or 109
more other existing regulatory restrictions. The state agency 110
may not satisfy this section by merging two or more existing 111
regulatory restrictions into a single surviving regulatory 112
restriction. 113

Sec. 164.30. (A) As used in this section, "natural gas 114
company" has the same meaning as in section 4929.01 of the 115
Revised Code. 116

(B) The director of the Ohio public works commission shall 117
establish a natural gas supply access investment program for the 118
purpose of facilitating investment in planning, developing, 119
designing, acquiring, constructing, operating, and maintaining 120
physical facilities useful in meeting the natural gas supply 121
needs, both as of the effective date of this section and 122
reasonably expected for the future, of areas of this state in 123
which there is, as of the effective date of this section, 124
insufficient natural gas supply access to meet those needs. 125
Under the program, the director may make grants and loans to 126
businesses, nonprofit organizations, and units of local 127
government in coordination with the public utilities commission. 128

(C) The director of the Ohio public works commission shall 129
adopt rules in accordance with Chapter 119. of the Revised Code 130
that are necessary for the administration of the natural gas 131
supply access investment program. In no event shall the director 132
or the rules authorize any grants or loans in an amount or 133
amounts that are not fully funded from the natural gas supply 134
access development fund, created under section 164.31 of the 135

<u>Revised Code. The rules shall establish at least all of the</u>	136
<u>following:</u>	137
<u>(1) An application form and procedures governing the</u>	138
<u>application process for receiving grants and loans under the</u>	139
<u>program;</u>	140
<u>(2) Criteria for prioritizing the award of grants and</u>	141
<u>loans under the program. The criteria shall include all of the</u>	142
<u>following:</u>	143
<u>(a) The projected number of customers that will be</u>	144
<u>provided access or increased access to natural gas service by</u>	145
<u>the proposed project;</u>	146
<u>(b) The projected natural gas demand or growth in demand</u>	147
<u>to be generated by the proposed investment;</u>	148
<u>(c) Any economic impacts of the proposed investment,</u>	149
<u>including customer fuel cost savings;</u>	150
<u>(d) Any impacts the proposed investment may have on the</u>	151
<u>reliability of natural gas service in this state;</u>	152
<u>(e) Any other issue related to the development of natural</u>	153
<u>gas infrastructure to enhance economic development and retention</u>	154
<u>that the director deems relevant.</u>	155
<u>(D) This section does not do any of the following:</u>	156
<u>(1) Prohibit a natural gas company from filing an</u>	157
<u>application to change, modify, or alter rates and charges, or to</u>	158
<u>enter into a reasonable arrangement or schedule under section</u>	159
<u>4905.31 of the Revised Code.</u>	160
<u>(2) Inhibit the authority of the public utilities</u>	161
<u>commission to approve rate adjustment mechanisms for natural gas</u>	162

infrastructure expansion or replacement programs. 163

(3) Prohibit the public utilities commission from 164
approving an infrastructure investment plan and an 165
infrastructure expansion recovery mechanism as part of a general 166
rate application. 167

Sec. 164.31. There is hereby created the natural gas 168
infrastructure supply access development fund. The fund shall be 169
in the custody of the treasurer of state but shall not be part 170
of the state treasury. The fund shall consist of money 171
transferred to the fund under section 1509.02 of the Revised 172
Code and money that is appropriated to it by the general 173
assembly. Money in the fund shall be used to make grants and 174
loans under the natural gas infrastructure development program 175
and by the director in the administration of that program. The 176
interest generated by the fund shall be retained by the fund. 177

Sec. 1509.02. There is hereby created in the department of 178
natural resources the division of oil and gas resources 179
management, which shall be administered by the chief of the 180
division of oil and gas resources management. The division has 181
sole and exclusive authority to regulate the permitting, 182
location, and spacing of oil and gas wells and production 183
operations within the state, excepting only those activities 184
regulated under federal laws for which oversight has been 185
delegated to the environmental protection agency and activities 186
regulated under sections 6111.02 to 6111.028 of the Revised 187
Code. The regulation of oil and gas activities is a matter of 188
general statewide interest that requires uniform statewide 189
regulation, and this chapter and rules adopted under it 190
constitute a comprehensive plan with respect to all aspects of 191
the locating, drilling, well stimulation, completing, and 192

operating of oil and gas wells within this state, including site 193
construction and restoration, permitting related to those 194
activities, and the disposal of wastes from those wells. In 195
order to assist the division in the furtherance of its sole and 196
exclusive authority as established in this section, the chief 197
may enter into cooperative agreements with other state agencies 198
for advice and consultation, including visitations at the 199
surface location of a well on behalf of the division. Such 200
cooperative agreements do not confer on other state agencies any 201
authority to administer or enforce this chapter and rules 202
adopted under it. In addition, such cooperative agreements shall 203
not be construed to dilute or diminish the division's sole and 204
exclusive authority as established in this section. Nothing in 205
this section affects the authority granted to the director of 206
transportation and local authorities in section 723.01 or 207
4513.34 of the Revised Code, provided that the authority granted 208
under those sections shall not be exercised in a manner that 209
discriminates against, unfairly impedes, or obstructs oil and 210
gas activities and operations regulated under this chapter. 211

 The chief shall not hold any other public office, nor 212
shall the chief be engaged in any occupation or business that 213
might interfere with or be inconsistent with the duties as 214
chief. 215

 Money collected by the chief pursuant to sections 1509.06, 216
1509.061, 1509.062, 1509.071, 1509.13, 1509.22, 1509.222, 217
1509.28, 1509.34, 1509.50, and 5749.02 of the Revised Code, all 218
civil penalties paid under section 1509.33 of the Revised Code, 219
and, notwithstanding any section of the Revised Code relating to 220
the distribution or crediting of fines for violations of the 221
Revised Code, all fines imposed under divisions (A) and (B) of 222
section 1509.99 of the Revised Code and fines imposed under 223

divisions (C) and (D) of section 1509.99 of the Revised Code for 224
all violations prosecuted by the attorney general and for 225
violations prosecuted by prosecuting attorneys that do not 226
involve the transportation of brine by vehicle shall be 227
deposited into the state treasury to the credit of the oil and 228
gas well fund, which is hereby created. Fines imposed under 229
divisions (C) and (D) of section 1509.99 of the Revised Code for 230
violations prosecuted by prosecuting attorneys that involve the 231
transportation of brine by vehicle and penalties associated with 232
a compliance agreement entered into pursuant to this chapter 233
shall be paid to the county treasury of the county where the 234
violation occurred. 235

The fund shall be used solely and exclusively for the 236
purposes enumerated in division (B) of section 1509.071 of the 237
Revised Code, for the expenses of the division associated with 238
the administration of this chapter and Chapter 1571. of the 239
Revised Code and rules adopted under them, and for expenses that 240
are critical and necessary for the protection of human health 241
and safety and the environment related to oil and gas production 242
in this state. ~~The~~ Any excess money remaining in the fund at the 243
end of a fiscal year that was not used for the foregoing 244
purposes shall be transferred to the credit of the natural gas 245
infrastructure supply access development fund, created under 246
section 164.31 of the Revised Code. Any expenses of the division 247
in excess of the moneys available in the oil and gas well fund 248
shall be paid from general revenue fund appropriations to the 249
department. 250

Sec. 4901.022. The public utilities commission shall make 251
available to the public on the commission's web site information 252
about the operations of the public utilities commission 253
nominating council, including the following: 254

<u>(A) Meeting notices;</u>	255
<u>(B) Meeting minutes;</u>	256
<u>(C) Biographical information for each member of the</u>	257
<u>council, which shall be provided by the appointing authority or</u>	258
<u>the member if there is no appointing authority;</u>	259
<u>(D) Biographical information and submitted applications</u>	260
<u>for each commissioner applicant, with the commissioner</u>	261
<u>applicants' personal telephone numbers, email addresses, and</u>	262
<u>residential addresses redacted.</u>	263
Sec. 4901.10. The office of the public utilities	264
commission shall be at the seat of government in Columbus, in	265
suitable quarters provided by the state, and shall be open	266
between eight thirty a.m. and five thirty p.m. throughout the	267
year, Saturdays, Sundays, and legal holidays excepted. The	268
commission shall hold its sessions at least once in each	269
calendar month in Columbus, but also may meet at such other	270
times and places as are necessary for the proper performance of	271
its duties. For the purpose of holding sessions in places other	272
than the seat of government, the commission may rent quarters or	273
offices, the expense of which, in connection therewith, shall be	274
paid in the same manner as other authorized expenses.	275
Sec. 4903.26. <u>The public utilities commission may require</u>	276
<u>all parties and intervenors to a proceeding to be consolidated</u>	277
<u>when the parties and intervenors have sufficiently common</u>	278
<u>interests and it will expedite the proceeding.</u>	279
Sec. 4905.061. (A) (1) <u>Beginning on the effective date of</u>	280
<u>this section, no public utility shall provide service to a</u>	281
<u>consumer in this state without first being authorized by the</u>	282
<u>public utilities commission to provide public utility service.</u>	283

In granting that authorization, the commission shall determine 284
that the public utility has the managerial, technical, and 285
financial capability to provide that service. Authorization 286
shall be granted pursuant to procedures and standards the 287
commission shall prescribe in rule. 288

(2) Following the effective date of this section, any 289
public utility that violates division (A) (1) of this section 290
shall be subject to the supervision, powers, remedies, 291
forfeitures, and penalties provided by law, including those 292
provided by section 4905.99 of the Revised Code. 293

(B) Division (A) of this section does not apply to a 294
public utility that filed an annual report for calendar year 295
2018. 296

Sec. 4905.062. No public utility shall transfer its 297
authority to provide public utility service to any person 298
without prior approval of the public utilities commission. The 299
commission shall review applications to transfer that authority, 300
to the extent the commission may approve the transfer without 301
holding a hearing, to ensure the transaction is consistent with 302
the public interest, convenience, and necessity and sections 303
4905.05 and 4905.061 of the Revised Code. 304

Sec. 4905.063. The enactment of sections 4905.061 and 305
4905.062 of the Revised Code by H.B. 246 of the 133rd general 306
assembly is not intended to supersede the certification and 307
renewal requirements in sections 4928.08 and 4929.20 of the 308
Revised Code. 309

Sec. 4905.10. (A) For every calendar year beginning in 310
calendar year 2021 and for the sole purpose of maintaining and 311
administering the public utilities commission and exercising its 312

supervision and jurisdiction over the railroads ~~and, public~~ 313
utilities, and competitive retail suppliers of this state, in 314
each calendar year an amount equivalent to the appropriation 315
from the public utilities fund created under division ~~(B)~~ (D) of 316
this section to the public utilities commission for railroad 317
~~and, public utilities, and competitive retail suppliers~~ 318
regulation in each for the fiscal year ending in the current 319
calendar year shall be apportioned among and assessed against 320
each railroad ~~and, public utility, and competitive retail~~ 321
supplier within this state ~~by~~. 322

(B) Determining the individual assessment for each 323
railroad, public utility, and competitive retail supplier shall 324
be a four-part computation, in accordance with the following: 325

(1) First, the commission by first computing an shall 326
compute the assessment of each railroad, public utility, and 327
competitive retail supplier as though it were to be made in 328
proportion to the intrastate gross earnings or receipts, 329
excluding earnings or receipts from sales to other public 330
utilities for resale, of the railroad ~~or, public utility, or~~ 331
competitive retail supplier for the calendar year ~~next~~ 332
immediately preceding that in which the assessment is made. The 333
commission may include in ~~that this~~ first computation any amount 334
of a railroad's ~~or, public utility's, or competitive retail~~ 335
supplier's intrastate gross earnings or receipts that were 336
underreported in a prior year. In addition to whatever penalties 337
apply under the Revised Code to such underreporting, the 338
commission shall assess the railroad ~~or, public utility, or~~ 339
competitive retail supplier interest at the rate stated in 340
division (A) of section 1343.01 of the Revised Code. The 341
commission shall deposit any interest so collected into the 342
public utilities fund. The commission may exclude from ~~that this~~ 343

first computation any such amounts that were overreported in a 344
prior year. 345

~~The final computation of the assessment~~ (2) Second, the 346
computation shall consist of imposing assess upon each railroad- 347
and, public utility, and competitive retail supplier whose 348
assessment under ~~the first computation~~ division (B) (1) of this 349
section would have been one hundred dollars or less ~~an~~ 350
assessment, a minimum assessment in the amount of one hundred 351
dollars ~~and recomputing the assessments of the remaining~~ 352
~~railroads and public utilities by apportioning an~~. For a 353
competitive retail supplier subject to this minimum assessment, 354
the minimum assessment shall be paid through compliance with 355
section 4905.101 of the Revised Code, in accordance with rules 356
adopted under section 4905.102 of the Revised Code. 357

(3) Third, the commission shall reduce the amount equal to 358
the appropriation to the ~~public utilities~~ commission for 359
administration of the utilities division in ~~each the current~~ 360
fiscal year ~~less by~~ the total amount ~~to be recovered from those~~ 361
~~paying the~~ of minimum assessment, assessments under division (B) 362
(2) of this section, in accordance with rules adopted under 363
section 4905.102 of the Revised Code. 364

(4) Fourth, the commission shall apportion the remaining 365
amount of the appropriation, after the reduction is made under 366
division (B) (3) of this section, among the railroads, public 367
utilities, and competitive retail suppliers who were not 368
assessed a minimum assessment under division (B) (2) of this 369
section, in proportion to the intrastate gross earnings or 370
receipts of the remaining railroads ~~and, public utilities, and~~ 371
competitive retail suppliers for the calendar year next 372
immediately preceding that in which the assessments ~~computations~~ 373

are made. 374

(5) The individual assessment of a railroad, public utility, or competitive retail supplier shall be either the one-hundred-dollar minimum assessment determined under division (B) (2) of this section or the amount determined under division (B) (4) of this section, as applicable. 375
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(C) (1) In the case of an assessment based on intrastate gross receipts under this section against a public utility that is an electric utility as defined in section 4928.01 of the Revised Code, or ~~an electric services company, electric cooperative, or governmental aggregator~~ a competitive retail supplier subject to certification under section 4928.08 of the Revised Code, such receipts shall be those specified in the utility's, ~~company's, cooperative's, or aggregator's~~ or competitive retail supplier's most recent report of intrastate gross receipts and sales of kilowatt hours of electricity, filed with the commission pursuant to division (F) of section 4928.06 of the Revised Code, and verified by the commission. 380
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(2) In the case of an assessment based on intrastate gross receipts under this section against a ~~retail natural gas competitive supplier or governmental aggregator~~ subject to certification under section 4929.20 of the Revised Code, such receipts shall be those specified in the supplier's ~~or aggregator's~~ most recent report of intrastate gross receipts and sales of hundred cubic feet of natural gas, filed with the commission pursuant to division (B) of section 4929.23 of the Revised Code, and verified by the commission. However, no such ~~retail natural gas competitive supplier or such governmental aggregator~~ serving or proposing to serve customers of a particular natural gas company, as defined in section 4929.01 of 392
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the Revised Code, shall be assessed under this section until 404
after the commission, pursuant to section 4905.26 or 4909.18 of 405
the Revised Code, has removed from the base rates of the ~~natural~~ 406
~~gas company~~ competitive retail supplier the amount of assessment 407
under this section that is attributable to the value of 408
commodity sales service, as defined in section 4929.01 of the 409
Revised Code, in the base rates paid by those customers of the 410
~~company~~ supplier that do not purchase that service from the 411
~~natural gas company~~ supplier. 412

~~(B) Through calendar year 2005,~~ (D) In accordance with 413
rules adopted under section 4905.102 of the Revised Code, on or 414
before the ~~first~~ fifteenth day of ~~October~~ June in each year, the 415
commission shall notify each ~~such~~ railroad and, public utility, 416
and competitive retail supplier that is subject to an assessment 417
determined under division (B) (4) of this section of whether an 418
initial payment of the sum assessed against it, whereupon 419
payment fifty per cent of its individual assessment shall be 420
made to the commission, which and the date by which that initial 421
payment is due. The payment shall be made to the commission by 422
that date. The commission shall deposit it into the state 423
treasury to the credit of the public utilities fund, which is 424
hereby created. ~~Beginning in calendar year 2006, on or before~~ 425
~~the fifteenth day of May in each year, the commission shall~~ 426
~~notify each railroad and public utility that had a sum assessed~~ 427
~~against it for the current fiscal year of more than one thousand~~ 428
~~dollars that fifty per cent of that amount shall be paid to the~~ 429
~~commission by the twentieth day of June of that year as an~~ 430
~~initial payment of the assessment against the company for the~~ 431
~~next fiscal year. On~~ If a competitive retail supplier that is 432
required to make this initial payment paid, during the 433
immediately preceding calendar year, an assessment prepayment 434

under section 4905.101 of the Revised Code, that assessment 435
prepayment shall be credited toward the initial payment due 436
under this division. 437

(E) In accordance with rules adopted under section 438
4905.102 of the Revised Code, on or before the first-fifteenth 439
day of October in each year, the commission shall do both of the 440
following: 441

(1) For each railroad, public utility, and competitive 442
retail supplier that is subject to an assessment determined 443
under division (B)(4) of this section, make a final 444
determination of the ~~sum~~ remaining amount of the individual 445
assessment against each railroad and public utility and shall 446
notify each railroad and public utility of the sum assessed 447
against it. The commission shall deduct due by deducting from 448
the assessment for each railroad or public utility amount 449
determined under division (B)(4) of this section any initial 450
payment received under division (D) of this section and, for a 451
competitive retail supplier, applying any credit in accordance 452
with rules adopted under section 4905.102 of the Revised Code. 453
The commission shall notify the railroad, public utility, or 454
competitive retail supplier of the remaining amount due and the 455
date by which the payment is due. Payment of the ~~assessment~~ 456
remaining amount due shall be made to the commission by the 457
first day of November of that year that date. 458

(2) For each railroad and public utility that is subject 459
to a one-hundred-dollar minimum assessment determined under 460
division (B)(2) of this section, notify each such railroad and 461
public utility that the one-hundred-dollar minimum assessment 462
shall be paid to the commission and the date by which that 463
payment is due. The payment shall be made to the commission by 464

that date. 465

(F) Assessment prepayments made by a competitive retail 466
supplier under section 4905.101 of the Revised Code shall be 467
fully credited toward the supplier's other obligations under 468
this section in accordance with rules adopted under section 469
4905.102 of the Revised Code. 470

(G) The commission shall deposit the payments received 471
under this section and section 4905.101 of the Revised Code 472
into the state treasury to the credit of the public utilities fund. 473
Any such amounts paid into the fund but not expended by the 474
commission shall be credited ratably, after first deducting any 475
deficits accumulated from prior years, by the commission to 476
railroads and, public utilities, and competitive retail 477
suppliers that pay more than the one-hundred-dollar minimum 478
assessment, according to the respective portions of such sum 479
assessable against them for the ensuing fiscal next assessment 480
computation in the following calendar year. The assessments for 481
such fiscal calendar year shall be reduced correspondingly. 482

~~(C)-(H) Within five-thirty days after the beginning of~~ 483
~~each fiscal year through fiscal year 2006, the director of~~ 484
~~budget and management shall transfer from the general revenue~~ 485
~~fund to the public utilities fund an amount sufficient for~~ 486
~~maintaining and administering the public utilities commission~~ 487
~~and exercising its supervision and jurisdiction over the~~ 488
~~railroads and public utilities of the state during the first~~ 489
~~four months of the fiscal year. The director shall transfer the~~ 490
~~same amount back to the general revenue fund from the public~~ 491
~~utilities fund at such time as the director determines that the~~ 492
~~balance of the public utilities fund is sufficient to support~~ 493
~~the appropriations from the fund for the fiscal year. The~~ 494

~~director may transfer less than that amount if the director-~~ 495
~~determines that the revenues of the public utilities fund during~~ 496
~~the fiscal year will be insufficient to support the-~~ 497
~~appropriations from the fund for the fiscal year, in which case-~~ 498
~~the amount not paid back to the general revenue fund shall be-~~ 499
~~payable to the general revenue fund in future fiscal years~~ 500
of a 501
railroad, public utility, or competitive retail supplier ceasing 502
operations, the railroad, public utility, or competitive retail 503
supplier shall file its annual report for the year in which it 504
ceased operations with the commission and the office of the Ohio 505
consumers' counsel. The contents of the report shall be governed 506
by the provisions of section 4905.14 of the Revised Code that 507
are not inconsistent with this division. Thereafter, the 508
commission shall issue a final assessment within thirty days of 509
receiving the annual report. The amount of the final assessment 510
shall be based upon the intrastate gross earnings or receipts 511
reported for the year in which the railroad, public utility, or 512
competitive retail supplier ceased operations, consistent with 513
the provisions of this section and any applicable rules adopted 514
under section 4905.102 of the Revised Code.

~~(D)-(I)~~ For the purpose of this section only, "public- 515
utility" includes sections 4905.10 to 4905.102 of the Revised 516
Code, "competitive retail supplier" means both of the following: 517

(1) ~~In addition to an electric utility as defined in-~~ 518
~~section 4928.01 of the Revised Code, an~~ An electric services 519
company, an electric cooperative, or a governmental aggregator 520
subject to certification under section 4928.08 of the Revised 521
Code, to the extent of the company's, cooperative's, or 522
aggregator's engagement in the business of supplying or 523
arranging for the supply in this state of any retail electric 524
service for which it must be so certified; 525

(2) ~~In addition to a natural gas company as defined in~~ 526
~~section 4929.01 of the Revised Code, a~~ A retail natural gas 527
supplier or governmental aggregator subject to certification 528
under section 4929.20 of the Revised Code, to the extent of the 529
supplier's or aggregator's engagement in the business of 530
supplying or arranging for the supply in this state of any 531
competitive retail natural gas service for which it must be 532
certified. 533

~~(E)~~ (J) Each public utilities commissioner shall receive a 534
salary fixed at the level set by pay range 49 under schedule E-2 535
of section 124.152 of the Revised Code. 536

Sec. 4905.101. Beginning in calendar year 2021, all 537
competitive retail suppliers shall make an assessment prepayment 538
of two hundred dollars to the public utilities commission at the 539
time that the competitive retail supplier files its application 540
for certification or biennial certification renewal under 541
section 4928.08 or 4929.20 of the Revised Code, as applicable. 542

Sec. 4905.102. (A) The public utilities commission shall 543
adopt rules governing the administration of sections 4905.10 and 544
4905.101 of the Revised Code. Those rules may include provisions 545
establishing a threshold for payment of initial fifty per cent 546
payments under division (D) of section 4905.10 of the Revised 547
Code, transitional provisions related to the implementation of 548
the amendments and enactments of H.B. 246 of the 133rd general 549
assembly, and any other provisions for the administration of 550
sections 4905.10 and 4905.101 of the Revised Code. The rules 551
shall include provisions governing the crediting of assessment 552
prepayments made under section 4905.101 of the Revised Code. 553

(B) Rules adopted under this section are internal 554
management rules for purposes of division (D) (4) of section 555

<u>111.15 of the Revised Code.</u>	556
Sec. 4905.402. (A) As used in this section:	557
(1) "Control" means the possession of the power to direct the management and policies of a domestic telephone company or a holding company of a domestic telephone company, or the management and policies of a domestic electric utility or a holding company of a domestic electric utility through the ownership of voting securities, by contract, or otherwise, but does not include the power that results from holding an official position or the possession of corporate office with the domestic company or utility or the holding company. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds the power to vote, or holds with the power to vote proxies that constitute, twenty per cent or more of the total voting power of the domestic company or utility or the holding company.	558 559 560 561 562 563 564 565 566 567 568 569 570
(2) "Electric utility" has the same meaning as in section 4928.07 of the Revised Code.	571 572
(3) "Holding company" excludes any securities broker performing the usual and customary broker's function.	573 574
(4) "Telephone company" means any company described in division (A) of section 4905.03 of the Revised Code that is a public utility under section 4905.02 of the Revised Code and provides basic local exchange service, as defined in section 4927.01 of the Revised Code.	575 576 577 578 579
(B) Except as provided in division (H) (1) of this section:	580
(1) No person shall acquire control, directly or indirectly, of <u>a-any of the following unless that person obtains the prior approval of the public utilities commission under this section:</u>	581 582 583 584

(a) Any public utility or railroad, even if the property 585
of the public utility or railroad lies partly within and partly 586
without this state; 587

(b) A domestic telephone company or a holding company 588
controlling a domestic telephone company ~~or of a;~~ 589

(c) A domestic electric utility or a holding company 590
controlling a domestic electric utility ~~unless that person~~ 591
~~obtains the prior approval of the public utilities commission~~ 592
~~under this section.~~ 593

(2) To obtain approval required under division (B) (1) of 594
this section, the person seeking the approval shall file an 595
application with the public utilities commission demonstrating 596
that the acquisition will promote public convenience and result 597
in the provision of adequate service for a reasonable rate, 598
rental, toll, or charge. The application shall contain such 599
information as the public utilities commission may require. If 600
the public utilities commission considers a hearing necessary, 601
it may fix a time and place for hearing. If, after review of the 602
application and after any necessary hearing, the public 603
utilities commission is satisfied that approval of the 604
application will promote public convenience and result in the 605
provision of adequate service for a reasonable rate, rental, 606
toll, or charge, the public utilities commission shall approve 607
the application and make such order as it considers proper. If 608
the public utilities commission fails to issue an order within 609
thirty days of the filing of the application under this 610
division, or within twenty days of the conclusion of a hearing, 611
if one is held, the application shall be deemed approved by 612
operation of law. 613

(C) Except as provided in division (H) (2) of this section: 614

(1) No domestic telephone company shall merge with another 615
domestic telephone company unless the merging companies obtain 616
the prior approval of the public utilities commission. 617

(2) An application seeking approval required under 618
division (C)(1) of this section shall be filed, processed, and 619
decided in the manner provided for an application under division 620
(B)(2) of this section. 621

(D) The public utilities commission shall adopt such rules 622
as it finds necessary to carry out the provisions of this 623
section. The rules shall specify the time and manner in which a 624
company must file the notice required under division (G) of this 625
section. 626

(E) If it appears to the public utilities commission or to 627
any person that may be adversely affected that any person is 628
engaged in or about to engage in any acts or practices that 629
would violate division (B) or (C) of this section or any 630
provision of a rule adopted under this section, the attorney 631
general, when directed to do so by the public utilities 632
commission, or the person claiming to be adversely affected may 633
bring an action in any court of common pleas that has 634
jurisdiction and venue to enjoin such acts or practices and 635
enforce compliance. Upon a proper showing, the court shall 636
grant, without bond, a restraining order or temporary or 637
permanent injunction. 638

(F) The courts of this state have jurisdiction over every 639
person not a resident of or domiciled or authorized to do 640
business in this state that files, or is prohibited from acting 641
without first filing, an application under division (B) or (C) 642
of this section, and over all actions involving such person 643
arising out of violations of any provision of this section or of 644

a rule adopted under this section. The secretary of state shall 645
be the agent for service of process for any such person in any 646
action, suit, or proceeding arising out of such violations. 647
Copies of all such lawful process shall be served upon the 648
secretary of state and transmitted by certified mail, with 649
return receipt requested, by the secretary of state to such 650
person at the person's last known address. 651

(G) A domestic telephone company or a holding company 652
controlling a domestic telephone company that files an 653
application with the federal communications commission seeking 654
authority for a merger or transfer of control shall file notice 655
of the application with the public utilities commission. The 656
notice shall include an internet link to the application. 657

(H) (1) Divisions (B) (1) and (2) of this section do not 658
apply to the acquisition of control of a domestic telephone 659
company or a holding company controlling a domestic telephone 660
company if there is a pending application with the federal 661
communications commission regarding the acquisition. If the 662
federal communications commission waives the exercise of its 663
authority regarding the acquisition or otherwise chooses not to 664
exercise its authority regarding the acquisition, then divisions 665
(B) (1) and (2) of this section apply. 666

(2) Divisions (C) (1) and (2) of this section do not apply 667
if there is a pending application with the federal 668
communications commission regarding a merger of domestic 669
telephone companies. If the federal communications commission 670
waives the exercise of its authority regarding the merger or 671
otherwise chooses not to exercise its authority regarding the 672
merger, then divisions (C) (1) and (2) of this section apply. 673

(I) Nothing in division (G) or (H) of this section shall 674

affect the obligations and rights described in division (A) of 675
section 4927.101 of the Revised Code. 676

(J) The amendment to this section by H.B. 246 of the 133rd 677
general assembly is not intended to supersede the certification 678
and renewal requirements in sections 4928.08 and 4929.20 of the 679
Revised Code. 680

Sec. 4905.92. (A) In addition to the assessment required 681
by section 4905.10 of the Revised Code, the public utilities 682
commission shall assess against all operators an amount equal to 683
the appropriation in each fiscal year from the pipe-line safety 684
fund. The assessment against each operator shall be based on the 685
total Mcfs of gas it supplied or delivered in this state during 686
the calendar year ~~next~~ immediately preceding the assessment. The 687
commission shall not assess against any operator an amount 688
exceeding five one-hundredths of one cent multiplied by such 689
total Mcfs of gas it supplied or delivered, except that, if the 690
commission determines that an assessment so computed will amount 691
to seventy-five dollars or less, the commission shall assess the 692
operator seventy-five dollars. 693

(B) For the purpose of computing the assessment under 694
division (A) of this section, each operator designated by the 695
commission shall ~~notify~~ file a report with the commission, ~~no~~ 696
~~later than ninety days after the end of the calendar year next~~ 697
~~preceding the assessment~~ in a form and by a date designated by 698
the commission, including, ~~of~~ at a minimum, the total Mcfs of 699
gas it supplied or delivered in this state during ~~that~~ the 700
calendar year that immediately preceded the assessment. 701

(C) On or before the ~~first~~ fifteenth day of October in 702
each year, the commission shall notify each operator of the 703
amount assessed against it under this section. No later than 704

~~thirty days after the date the notice is given~~the fifteenth day 705
of November, the operator shall pay the assessment to the 706
commission. 707

(D) There is hereby created in the state treasury the 708
pipe-line safety fund into which shall be deposited all 709
assessments paid under this section. Money in the fund shall be 710
for the exclusive use of the commission for the administration 711
and enforcement of sections 4905.90 to 4905.96 of the Revised 712
Code and the pipe-line safety code. Any such assessments paid 713
into the pipe-line safety fund, but not expended by the 714
commission, shall be credited ratably, after first deducting any 715
deficits accumulated from prior years, by the commission to 716
operators that pay more than the minimum assessment, according 717
to the respective portions of the sums assessable against them 718
for the ensuing calendar year. The assessments for that calendar 719
year shall be reduced correspondingly. 720

Sec. 4905.95. (A) Except as otherwise provided in division 721
(C) of this section: 722

(1) The public utilities commission, regarding any 723
proceeding under this section, shall provide reasonable notice 724
and the opportunity for a hearing in accordance with rules 725
adopted under section 4901.13 of the Revised Code. 726

(2) Sections 4903.02 to 4903.082, 4903.09 to 4903.16, and 727
4903.20 to 4903.23 of the Revised Code apply to all proceedings 728
and orders of the commission under this section and to all 729
operators subject to those proceedings and orders. 730

(B) If, pursuant to a proceeding it specially initiates or 731
to any other proceeding and after the hearing provided for under 732
division (A) of this section, the commission finds that: 733

(1) An operator has violated or failed to comply with, or is violating or failing to comply with, sections 4905.90 to 4905.96 of the Revised Code or the pipe-line safety code, the commission by order:

(a) Shall require the operator to comply and to undertake corrective action necessary to protect the public safety;

(b) May assess upon the operator forfeitures of not more than ~~one~~ two hundred thousand dollars for each day of each violation or noncompliance, except that the aggregate of such forfeitures shall not exceed ~~one~~ two million dollars for any related series of violations or noncompliances. In determining the amount of any such forfeiture, the commission shall consider all of the following:

(i) The gravity of the violation or noncompliance;

(ii) The operator's history of prior violations or noncompliances;

(iii) The operator's good faith efforts to comply and undertake corrective action;

(iv) The operator's ability to pay the forfeiture;

(v) The effect of the forfeiture on the operator's ability to continue as an operator;

(vi) Such other matters as justice may require.

All forfeitures collected under this division or section 4905.96 of the Revised Code shall be deposited in the state treasury to the credit of the general revenue fund.

(c) May direct the attorney general to seek the remedies provided in section 4905.96 of the Revised Code.

(2) An intrastate pipe-line transportation facility is hazardous to life or property, the commission by order:

(a) Shall require the operator of the facility to take corrective action to remove the hazard. Such corrective action may include suspended or restricted use of the facility, physical inspection, testing, repair, replacement, or other action.

(b) May direct the attorney general to seek the remedies provided in section 4905.96 of the Revised Code.

(c) If, pursuant to a proceeding it specially initiates or to any other proceeding, the commission finds that an emergency exists due to a condition on an intrastate pipe-line transportation facility posing a clear and immediate danger to life or health or threatening a significant loss of property and requiring immediate corrective action to protect the public safety, the commission may issue, without notice or prior hearing, an order reciting its finding and may direct the attorney general to seek the remedies provided in section 4905.96 of the Revised Code. The order shall remain in effect for not more than forty days after the date of its issuance. The order shall provide for a hearing as soon as possible, but not later than thirty days after the date of its issuance. After the hearing the commission shall continue, revoke, or modify the order and may make findings under and seek appropriate remedies as provided in division (B) of this section.

Sec. 4906.01. As used in Chapter 4906. of the Revised Code:

(A) "Person" means an individual, corporation, business trust, association, estate, trust, or partnership or any

officer, board, commission, department, division, or bureau of 790
the state or a political subdivision of the state, or any other 791
entity. 792

(B) (1) "Major utility facility" means: 793

(a) Electric generating plant and associated facilities 794
designed for, or capable of, operation at a capacity of fifty 795
megawatts or more; 796

(b) An electric transmission line and associated 797
facilities ~~of a design capacity designed for or capable of one-~~ 798
~~hundred operating at sixty-nine kilovolts or more;~~ 799

(c) A gas pipeline that is greater than five hundred feet 800
in length, and its associated facilities, is more than nine 801
inches in outside diameter and is designed for transporting gas 802
at a maximum allowable operating pressure in excess of one 803
hundred twenty-five pounds per square inch. 804

(2) "Major utility facility" does not include any of the 805
following: 806

(a) Gas transmission lines over which an agency of the 807
United States has exclusive jurisdiction; 808

(b) Any solid waste facilities as defined in section 809
6123.01 of the Revised Code; 810

(c) Electric distributing lines and associated facilities 811
as defined by the power siting board; 812

(d) Any manufacturing facility that creates byproducts 813
that may be used in the generation of electricity as defined by 814
the power siting board; 815

(e) Gathering lines, gas gathering pipelines, and 816

processing plant gas stub pipelines as those terms are defined	817
in section 4905.90 of the Revised Code and associated	818
facilities;	819
(f) Any gas processing plant as defined in section 4905.90	820
of the Revised Code;	821
(g) Natural gas liquids finished product pipelines;	822
(h) Pipelines from a gas processing plant as defined in	823
section 4905.90 of the Revised Code to a natural gas liquids	824
fractionation plant, including a raw natural gas liquids	825
pipeline, or to an interstate or intrastate gas pipeline;	826
(i) Any natural gas liquids fractionation plant;	827
(j) A production operation as defined in section 1509.01	828
of the Revised Code, including all pipelines upstream of any	829
gathering lines;	830
(k) Any compressor stations used by the following:	831
(i) A gathering line, a gas gathering pipeline, a	832
processing plant gas stub pipeline, or a gas processing plant as	833
those terms are defined in section 4905.90 of the Revised Code;	834
(ii) A natural gas liquids finished product pipeline, a	835
natural gas liquids fractionation plant, or any pipeline	836
upstream of a natural gas liquids fractionation plant; or	837
(iii) A production operation as defined in section 1509.01	838
of the Revised Code.	839
(C) "Commence to construct" means any clearing of land,	840
excavation, or other action that would adversely affect the	841
natural environment of the site or route of a major utility	842
facility, but does not include surveying changes needed for	843

temporary use of sites or routes for nonutility purposes, or 844
uses in securing geological data, including necessary borings to 845
ascertain foundation conditions. 846

(D) "Certificate" means a certificate of environmental 847
compatibility and public need issued by the power siting board 848
under section 4906.10 of the Revised Code or a construction 849
certificate issued by the board under rules adopted under 850
division (E) or (F) of section 4906.03 of the Revised Code. 851

(E) "Gas" means natural gas, flammable gas, or gas that is 852
toxic or corrosive. 853

(F) "Natural gas liquids finished product pipeline" means 854
a pipeline that carries finished product natural gas liquids to 855
the inlet of an interstate or intrastate finished product 856
natural gas liquid transmission pipeline, rail loading facility, 857
or other petrochemical or refinery facility. 858

(G) "Natural gas liquids fractionation plant" means a 859
facility that takes a feed of raw natural gas liquids and 860
produces finished product natural gas liquids. 861

(H) "Raw natural gas" means hydrocarbons that are produced 862
in a gaseous state from gas wells and that generally include 863
methane, ethane, propane, butanes, pentanes, hexanes, heptanes, 864
octanes, nonanes, and decanes, plus other naturally occurring 865
impurities like water, carbon dioxide, hydrogen sulfide, 866
nitrogen, oxygen, and helium. 867

(I) "Raw natural gas liquids" means naturally occurring 868
hydrocarbons contained in raw natural gas that are extracted in 869
a gas processing plant and liquefied and generally include 870
mixtures of ethane, propane, butanes, and natural gasoline. 871

(J) "Finished product natural gas liquids" means an 872

individual finished product produced by a natural gas liquids 873
fractionation plant as a liquid that meets the specifications 874
for commercial products as defined by the gas processors 875
association. Those products include ethane, propane, iso-butane, 876
normal butane, and natural gasoline. 877

(K) "Major solar project" means a solar electric 878
generating plant that is a major utility facility. 879

Sec. 4906.02. (A) There is hereby created within the 880
public utilities commission the power siting board, composed of 881
the ~~chairman~~chairperson of the public utilities commission, the 882
director of environmental protection, the director of health, 883
the director of development, the director of natural resources, 884
the director of agriculture, and a representative of the public 885
who shall be an engineer and shall be appointed by the governor, 886
from a list of three nominees submitted to the governor by the 887
office of the consumers' counsel, with the advice and consent of 888
the senate and shall serve for a term of four years. The 889
~~chairman~~chairperson of the public utilities commission shall be 890
~~chairman~~chairperson of the board and its chief executive 891
officer. The ~~chairman~~chairperson shall designate one of the 892
voting members of the board to act as ~~vice-chairman~~vice- 893
chairperson who shall possess during the absence or disability 894
of the ~~chairman~~chairperson all of the powers of the ~~chairman~~chair- 895
chairperson. All hearings, studies, and consideration of 896
applications for certificates shall be conducted by the board or 897
representatives of its members. 898

In addition, the board shall include four legislative 899
members who may participate fully in all the board's 900
deliberations and activities except that they shall serve as 901
nonvoting members. The speaker of the house of representatives 902

shall appoint one legislative member, and the president of the senate and minority leader of each house shall each appoint one legislative member. Each such legislative leader shall designate an alternate to attend meetings of the board when the regular legislative member ~~he~~ appointed by the legislative leader is unable to attend. Each legislative member and alternate shall serve for the duration of the elected term that ~~he~~ the legislative member is serving at the time of ~~his~~ appointment. A quorum of the board is a majority of its voting members.

The representative of the public and, notwithstanding section 101.26 of the Revised Code, legislative members of the board or their designated alternates, when engaged in their duties as members of the board, shall be paid at the per diem rate of step 1, pay range 32, under schedule B of section 124.15 of the Revised Code and shall be reimbursed for the actual and necessary expenses they incur in the discharge of their official duties.

(B) The ~~chairman~~ chairperson shall keep a complete record of all proceedings of the board, issue all necessary process, writs, warrants, and notices, keep all books, maps, documents, and papers ordered filed by the board, conduct investigations pursuant to section 4906.07 of the Revised Code, and perform such other duties as the board may prescribe.

(C) The ~~chairman~~ chairperson of the public utilities commission may assign or transfer duties among the commission's staff. However, the board's authority to grant certificates under section 4906.10 of the Revised Code shall not be exercised by any officer, employee, or body other than the board itself.

(D) (1) The ~~chairman~~ chairperson may call to ~~his~~ the chairperson's assistance, temporarily, any employee of the

environmental protection agency, the department of natural 933
resources, the department of agriculture, the department of 934
health, or the department of development, for the purpose of 935
making studies, conducting hearings, investigating applications, 936
or preparing any report required or authorized under this 937
chapter. Such employees shall not receive any additional 938
compensation over that which they receive from the agency by 939
which they are employed, but they shall be reimbursed for their 940
actual and necessary expenses incurred while working under the 941
direction of the ~~chairman~~chairperson. All contracts for special 942
services are subject to the approval of the ~~chairman~~ 943
chairperson. 944

(2) The chairperson may hire, temporarily, any other 945
expert or analyst for the purposes described in division (D)(1) 946
of this section. Any such expert or analyst shall be compensated 947
at the direction of the chairperson from a supplemental 948
application fee assessed in accordance with division (F) of 949
section 4906.06 of the Revised Code. All contracts for services 950
under division (D)(2) of this section are subject to the 951
approval of the chairperson. 952

(E) The board's offices shall be located in those of the 953
public utilities commission. 954

Sec. 4906.03. The power siting board shall: 955

(A) Require such information from persons subject to its 956
jurisdiction as it considers necessary to assist in the conduct 957
of hearings and any investigations or studies it may undertake; 958

(B) Conduct any studies or investigations that it 959
considers necessary or appropriate to carry out its 960
responsibilities under this chapter; 961

(C) Adopt rules establishing criteria for evaluating the 962
effects on environmental values of proposed and alternative 963
sites, and projected needs for electric power, and such other 964
rules as are necessary and convenient to implement this chapter, 965
including rules governing application fees, supplemental 966
application fees, and other reasonable fees to be paid by 967
persons subject to the board's jurisdiction. ~~The~~ At the end of 968
the fiscal year, the board shall make an annual accounting of 969
its collection and use of these fees and shall issue an annual 970
report of its accounting, in the form and manner prescribed by 971
its rules, and shall be filed in a manner consistent with 972
section 149.01 of the Revised Code, not later than the ~~last~~ 973
~~first day of June of the year following the calendar year to~~ 974
~~which the report applies~~ August. 975

(D) Approve, disapprove, or modify and approve 976
applications for certificates; 977

(E) Notwithstanding sections 4906.06 to 4906.14 of the 978
Revised Code, the board may adopt rules to provide for an 979
accelerated review of an application for a construction 980
certificate for construction of a major utility facility related 981
to a coal research and development project as defined in section 982
1555.01 of the Revised Code, or to a coal development project as 983
defined in section 1551.30 of the Revised Code, submitted to the 984
Ohio coal development office for review under division (B) (7) of 985
section 1551.33 of the Revised Code. Applications for 986
construction certificates for construction of major utility 987
facilities for Ohio coal research and development shall be filed 988
with the board on the same day as the proposed facility or 989
project is submitted to the Ohio coal development office for 990
review. 991

The board shall render a decision on an application for a construction certificate within ninety days after receipt of the application and all of the data and information it may require from the applicant. In rendering a decision on an application for a construction certificate, the board shall only consider the criteria and make the findings and determinations set forth in divisions (A) (2), (3), (5), and (7) and division (B) of section 4906.10 of the Revised Code.

(F) Notwithstanding sections 4906.06 to 4906.14 of the Revised Code, the board shall adopt rules to provide for an accelerated review of an application for a construction certificate for any of the following:

(1) An electric transmission line that is:

(a) Not more than two miles in length;

(b) Primarily needed to attract or meet the requirements of a specific customer or specific customers;

(c) Necessary to maintain reliable electric service as a result of the retirement or shutdown of an electric generating facility located within the state; or

(d) A rebuilding of an existing transmission line.

(2) An electric generating facility that uses waste heat or natural gas and is primarily within the current boundary of an existing industrial or electric generating facility;

(3) A gas pipeline that is not more than five miles in length or is primarily needed to meet the requirements of a specific customer or specific customers.

The board shall adopt rules that provide for the automatic certification to any entity described in this division when an

application by any such entity is not suspended by the board, an 1020
administrative law judge, or the chairperson or executive 1021
director of the board for good cause shown, within ninety days 1022
of submission of the application. If an application is 1023
suspended, the board shall approve, disapprove, or modify and 1024
approve the application not later than ninety days after the 1025
date of the suspension. 1026

Sec. 4906.15. (A) Not later than December 1, 2020, the 1027
power siting board shall adopt rules for notifying neighboring 1028
landowners of a major solar project site and prescribing a 1029
minimum setback for major solar projects. 1030

(B) A major solar project that has submitted an 1031
application for a certificate for construction of a major 1032
utility facility or a change or amendment of a certificate for 1033
an existing certificate from the board prior to December 1, 1034
2020, is exempt from rules adopted under division (A) of this 1035
section. 1036

Sec. 4906.20. (A) No person shall commence to construct an 1037
economically significant wind farm in this state without first 1038
having obtained a certificate from the power siting board. An 1039
economically significant wind farm with respect to which such a 1040
certificate is required shall be constructed, operated, and 1041
maintained in conformity with that certificate and any terms, 1042
conditions, and modifications it contains. A certificate shall 1043
be issued only pursuant to this section. The certificate may be 1044
transferred, subject to the approval of the board, to a person 1045
that agrees to comply with those terms, conditions, and 1046
modifications. 1047

(B) The board shall adopt rules governing the 1048
certificating of economically significant wind farms under this 1049

section. Initial rules shall be adopted within one hundred 1050
twenty days after June 24, 2008. 1051

(1) The rules shall provide for an application process for 1052
certificating economically significant wind farms that is 1053
identical to the extent practicable to the process applicable to 1054
certificating major utility facilities under sections 4906.06, 1055
4906.07, 4906.08, 4906.09, 4906.10, 4906.11, and 4906.12 of the 1056
Revised Code and shall prescribe a reasonable schedule of 1057
application filing fees structured in the manner of the schedule 1058
of filing fees required for major utility facilities. 1059

(2) Additionally, the rules shall prescribe reasonable 1060
regulations regarding any wind turbines and associated 1061
facilities of an economically significant wind farm, including, 1062
but not limited to, their location, erection, construction, 1063
reconstruction, change, alteration, maintenance, removal, use, 1064
or enlargement and including erosion control, aesthetics, 1065
recreational land use, wildlife protection, interconnection with 1066
power lines and with regional transmission organizations, 1067
independent transmission system operators, or similar 1068
organizations, ice throw, sound and noise levels, blade shear, 1069
shadow flicker, decommissioning, and necessary cooperation for 1070
site visits and enforcement investigations. 1071

(a) The rules also shall prescribe a minimum setback for a 1072
wind turbine of an economically significant wind farm. That 1073
minimum shall be equal to a horizontal distance, from the 1074
turbine's base to the property line of the wind farm property, 1075
equal to one and one-tenth times the total height of the turbine 1076
structure as measured from its base to the tip of its highest 1077
blade and be at least one thousand one hundred twenty-five feet 1078
in horizontal distance from the tip of the turbine's nearest 1079

blade at ninety degrees to the property line of the nearest 1080
adjacent property at the time of the certification application. 1081

(b) (i) For any existing certificates and amendments 1082
thereto, and existing certification applications that have been 1083
found by the chairperson to be in compliance with division (A) 1084
of section 4906.06 of the Revised Code before the effective date 1085
of the amendment of this section by H.B. 59 of the 130th general 1086
assembly, September 29, 2013, the distance shall be seven 1087
hundred fifty feet instead of one thousand one hundred twenty- 1088
five feet. 1089

(ii) Any change or amendment made to an existing 1090
certificate after the effective date of the amendment of this 1091
section by H.B. 483 of the 130th general assembly, September 15, 1092
2014, shall be subject to the setback provision of this section 1093
as amended by that act. The amendments to this section by that 1094
act shall not be construed to limit or abridge any rights or 1095
remedies in equity or under the common law. 1096

(c) The setback shall apply in all cases except those in 1097
which all owners of nonparticipating property adjacent to the 1098
wind farm property waive application of the setback, including, 1099
in a particular case, when the board determines that a setback 1100
greater than the minimum is necessary, to that property pursuant 1101
to a procedure the board shall establish by rule ~~and except in~~ 1102
~~which, in a particular case, the board determines that a setback~~ 1103
~~greater than the minimum is necessary.~~ 1104

(C) For purposes of this section: 1105

(1) "Nonparticipating property" means a property that: 1106

(a) Is not under lease or agreement with the person 1107
seeking to construct the economically significant wind farm; and 1108

(b) The setback overlaps to any extent. 1109

(2) "Wind farm property" means all land within a 1110
contiguous geographic boundary that contains the economically 1111
significant wind farm, associated setbacks, and properties under 1112
lease or agreement that contain any components of the 1113
economically significant wind farm. 1114

Sec. 4906.201. (A) An electric generating plant that 1115
consists of wind turbines and associated facilities with a 1116
single interconnection to the electrical grid that is designed 1117
for, or capable of, operation at an aggregate capacity of fifty 1118
megawatts or more is subject to the minimum setback requirements 1119
under division (B) (2) of section 4906.20 of the Revised Code and 1120
established in rules adopted by the power siting board under 1121
~~division (B) (2) of section 4906.20 of the Revised Code~~that 1122
section. 1123

(B) (1) For any existing certificates and amendments 1124
thereto, and existing certification applications that have been 1125
found by the chairperson to be in compliance with division (A) 1126
of section 4906.06 of the Revised Code before the effective date 1127
of the amendment of this section by H.B. 59 of the 130th general 1128
assembly, September 29, 2013, the distance shall be seven 1129
hundred fifty feet instead of one thousand one hundred twenty- 1130
five feet. 1131

(2) Any change or amendment made to an existing 1132
certificate after the effective date of the amendment of this 1133
section by H.B. 483 of the 130th general assembly, September 15, 1134
2014, shall be subject to the setback provision of this section 1135
as amended by that act. The amendments to this section by that 1136
act shall not be construed to limit or abridge any rights or 1137
remedies in equity or under the common law. 1138

Sec. 4907.44. A-(A) As used in this section, "railroad 1139
bridge inspector" has the same meaning as in 49 C.F.R. 237.53. 1140

(B) In accordance with 49 C.F.R. 237, a railroad subject 1141
to regulation by the public utilities commission shall, 1142
in accordance with American railway engineers association codes of 1143
rules for inspection or other standards approved by the public 1144
utilities commission, inspect annually every bridge used for 1145
transportation of freight, passengers, or railroad crews on 1146
which the railroad performs all or part of the structural 1147
maintenance work for which it has inspection responsibility. 1148
Inspection shall be made or supervised by a professional 1149
engineer railroad bridge inspector. A copy of the inspection 1150
report for each bridge shall be maintained by the railroad in 1151
accordance with 49 C.F.R. 237. The commission may request a 1152
public version of an inspection report from the federal railroad 1153
administration. 1154

If at any time, as a result of an inspection, a bridge is 1155
found to be dangerous or unfit for transportation of passengers, 1156
freight, or railroad crews, the railroad shall immediately 1157
report the have a deficient condition of the bridge to that 1158
requires the bridge to be taken out of service, the railroad 1159
shall immediately notify the public utilities commission and 1160
shall take appropriate remedial action to ensure that the 1161
structure is safe. When the bridge passes over a public highway, 1162
such report notification shall also be given to the public 1163
authority having jurisdiction over such highway. The Upon 1164
completion of remedial action, the railroad shall file the 1165
annual inspection report with notify the commission on forms 1166
furnished by the commission or in a form acceptable to the 1167
commission. The commission shall examine all inspection reports 1168
and, if applicable, the public authority that received the 1169

bridge deficiency notice, of the remedial action taken. 1170

~~If, as a result of examination of inspection reports, on 1171
complaint, or otherwise, the public utilities commission has 1172
reasonable grounds to believe that any of the tracks, bridges, 1173
or other structures of a railroad are in a condition which 1174
renders them dangerous or unfit for the transportation of 1175
passengers, freight, or railroad crews, it shall forthwith 1176
inspect and examine them. If the commission is of the opinion 1177
that such structures are unfit for the transportation of 1178
passengers, freight, or railroad crews with safety, it shall 1179
immediately give to the superintendent, or other executive 1180
officer of the company operating such railroad, notice of the 1181
condition thereof, and of the repairs or reconstruction 1182
necessary to place them in a safe condition. The commission 1183
shall prescribe the time within which such repairs or 1184
reconstruction must be made, and the rate of speed for trains 1185
passing over such dangerous or defective track, bridge, or other 1186
structure, until the repairs or reconstruction required are 1187
made. If of the opinion that it is needful and proper, the 1188
commission shall forbid the running of all trains over such 1189
defective track, bridge, or other structure.~~ 1190

Sec. 4911.02. (A) The mission of the Ohio consumers' 1191
counsel is to represent residential consumers before the public 1192
utilities commission to ensure the availability of safe, 1193
adequate, and reliable utility services at rates and charges 1194
that are just and reasonable. 1195

(B) The consumers' counsel shall be appointed by the 1196
consumers' counsel governing board, and shall hold office at the 1197
pleasure of the board. 1198

~~(B)(1)~~ (C)(1) The counsel may sue or be sued and has the 1199

powers and duties granted the counsel under this chapter, and 1200
all necessary powers to carry out the purposes of this chapter. 1201

(2) Without limitation because of enumeration, the 1202
counsel: 1203

(a) Shall have all the rights and powers of any party in 1204
interest appearing before the public utilities commission 1205
regarding examination and cross-examination of witnesses, 1206
presentation of evidence, and other matters in any proceeding 1207
that may affect the services or service rates and charges 1208
available to residential consumers; 1209

(b) May take appropriate action with respect to 1210
residential consumer complaints concerning quality of service, 1211
or service charges, and the operation of the public utilities 1212
commission; 1213

(c) May only institute, intervene in, or otherwise 1214
participate in proceedings in both state and federal courts and 1215
administrative agencies on behalf of the residential consumers 1216
concerning review of decisions rendered by, or failure to act 1217
by, the public utilities commission; 1218

(d) May conduct long range studies concerning various 1219
topics relevant to the rates charged to residential consumers, 1220
provided that any studies be made available to the public in a 1221
timely manner; 1222

(e) May apply for and accept federal grants, which may be 1223
used to pay or reimburse the counsel for expenses incurred in 1224
the performance of the counsel's official duties. 1225

~~(C) The~~ (D) With regard to any and all authority vested in 1226
the consumers' counsel, the counsel shall follow adhere to the 1227
policies of the state as set forth in Chapter Chapters 4927., 1228

~~4928., and 4929. of the Revised Code that involve supporting~~ 1229
~~retail natural gas competition.~~ 1230

Sec. 4911.15. The consumers' counsel, at the request of 1231
one or more residential consumers residing in, or municipal 1232
corporations located in, an area served by a public utility ~~or~~ 1233
~~whenever in his opinion the public interest is served,~~ may 1234
represent those consumers or corporations whenever an 1235
application affecting residential consumers is made to the 1236
public utilities commission by any public utility desiring to 1237
establish, modify, amend, change, increase, or reduce any rate, 1238
joint rate, toll, fare, classification, charge, or rental. 1239

The consumers' counsel may appear before the public 1240
utilities commission as a representative of the residential 1241
consumers of any public utility when a complaint has been filed 1242
with the commission that a rate, joint rate, fare, toll, charge, 1243
classification, or rental for commodities or services rendered, 1244
charged, demanded, exacted, or proposed to be rendered, charged, 1245
demanded, or exacted by the utility in a manner that affects 1246
residential consumers is in any respect unjust, unreasonable, 1247
unjustly discriminatory, unjustly preferential, or in violation 1248
of the law. 1249

Nothing in Chapter 4911. of the Revised Code shall be 1250
construed to restrict or limit in any manner the right of a 1251
municipal corporation to represent the residential consumers of 1252
such municipal corporation in all proceedings before the public 1253
utilities commission, and in both state and federal courts and 1254
administrative agencies on behalf of such residential consumers 1255
concerning review of decisions rendered by, or failure to act 1256
by, the public utilities commission. To the extent that a 1257
municipal corporation, the consumers' counsel, and any other 1258

party or intervenor seek to participate in the same proceeding, 1259
and do so on behalf of residential consumers, their 1260
participation may be subject to any reasonable conditions that 1261
the commission deems necessary to avoid duplication, repetition, 1262
and delay. 1263

Sec. 4911.17. There is hereby created a nine-member 1264
consumers' counsel governing board consisting of three 1265
representatives of organized groups representing each of the 1266
following areas: labor; residential consumers; and family 1267
farmers. No more than five members of this board may be members 1268
of the same political party. 1269

~~The members of the board shall be appointed by the~~ 1270
~~attorney general with the advice and consent of the senate.~~ 1271

No later than January 1, 1977, the attorney general shall 1272
make initial appointments to the board. Of the initial 1273
appointments made to the board, three shall be for a term ending 1274
one year after September 1, 1976, three shall be for a term 1275
ending two years after that date, and three shall be for a term 1276
ending three years after that date. Thereafter, terms of office 1277
shall be for three years, each term ending on the same day of 1278
the same month of the year as did the term that it succeeds. 1279

After the effective date of H.B. 246 of the 133rd general 1280
assembly, three members of the board shall be appointed by the 1281
attorney general, three members shall be appointed by the 1282
speaker of the house of representatives, and three members shall 1283
be appointed by the president of the senate. The attorney 1284
general, speaker, and president shall appoint one person from 1285
each of the organized groups representing labor, residential 1286
consumers, and family farmers. 1287

For the first three terms ending after the effective date 1288
of H.B. 246 of the 133rd general assembly, the attorney general 1289
shall appoint a member from an organized group representing 1290
family farmers; the speaker shall appoint a member from an 1291
organized group representing labor; and the president shall 1292
appoint a member from an organized group representing 1293
residential consumers. For the next three terms ending after the 1294
act's effective date, appointment from the organized groups 1295
shall be as follows: the speaker shall appoint from family 1296
farmers; the president, from labor; and the attorney general, 1297
from residential consumers. For the last three terms ending 1298
after the act's effective date, the speaker, president, and 1299
attorney general shall appoint from the organized groups for 1300
which they have not appointed members. Thereafter, appointment 1301
of a successor member for a new term, or a member to fill a 1302
vacancy, shall be made by the appointing authority that made the 1303
appointment for that vacant or expired term, in the manner 1304
provided by this section. 1305

Any vacancy occurring after the effective date of H.B. 246 1306
of the 133rd general assembly, but prior to expiration of that 1307
term, shall be filled by the appointing authority that would 1308
have appointed a member to fill the term when the term expired. 1309

Each member shall hold office from the date of the 1310
member's appointment until the end of the term for which the 1311
member was appointed. Any member appointed to fill a vacancy 1312
occurring prior to the expiration of the term for which the 1313
member's predecessor was appointed shall hold office for the 1314
remainder of that term. Any member shall continue in office 1315
subsequent to the expiration date of the member's term until the 1316
member's successor takes office. 1317

The governing board shall meet at least every third month 1318
of the year. Meetings may be held more often at the request of a 1319
majority of the members or upon call of the chairperson. At the 1320
first meeting of each year, the board shall select a chairperson 1321
and vice-chairperson. With the approval of the board, the 1322
chairperson may designate the vice-chairperson to perform the 1323
duties of the chairperson, including those provided in section 1324
4901.021 of the Revised Code. 1325

A majority of the members constitutes a quorum. No action 1326
shall be taken without the concurrence of a majority of the full 1327
membership of the board. The consumers' counsel shall at all 1328
times remain responsible to the governing board. Members of the 1329
board shall be compensated at the rate of one hundred fifty 1330
dollars per board meeting attended in person, not to exceed one 1331
thousand two hundred dollars per year. All members shall be 1332
reimbursed for actual and necessary expenses incurred in the 1333
performance of their official duties. 1334

The board shall submit to the general assembly no later 1335
than the first day of April, annually, a report outlining the 1336
expenditures of the office of consumers' counsel, a full record 1337
of participation in any and all proceedings, and an outline of 1338
other relevant activities of the office. 1339

Sec. 4911.18. (A) For the sole purpose of maintaining and 1340
administering the office of the consumers' counsel and 1341
exercising the powers of the consumers' counsel under this 1342
chapter, an amount equal to the appropriation to the office of 1343
the consumers' counsel in each fiscal year shall be apportioned 1344
among and assessed against each public utility within this 1345
state, as defined in section 4911.01 of the Revised Code, by 1346
first computing an assessment as though it were to be made in 1347

proportion to the intrastate gross earnings or receipts of the 1348
public utility for the calendar year ~~next~~immediately preceding 1349
that in which the assessment is made, excluding earnings or 1350
receipts from sales to other public utilities for resale. The 1351
office may include in that first computation any amount of a 1352
public utility's intrastate gross earnings or receipts 1353
underreported in a prior year. In addition to whatever penalties 1354
apply under the Revised Code to such underreporting, the office 1355
shall assess the public utility interest at the rate stated in 1356
division (A) of section 1343.01 of the Revised Code. The office 1357
shall deposit any interest so collected into the consumers' 1358
counsel operating fund. The office may exclude from that first 1359
computation any such amounts that were over-reported in a prior 1360
year. 1361

The final computation of the assessment shall consist of 1362
imposing upon each public utility whose assessment under the 1363
first computation would have been one hundred dollars or less an 1364
assessment of one hundred dollars and recomputing the assessment 1365
of the remaining companies by apportioning an amount equal to 1366
the appropriation to the office of consumers' counsel in each 1367
fiscal year less the total amount to be recovered from those 1368
paying the minimum assessment, in proportion to the intrastate 1369
gross earnings or receipts of the remaining companies for the 1370
calendar year ~~next~~immediately preceding that in which the 1371
assessments are made, excluding earnings or receipts from sales 1372
to other public utilities for resale. 1373

In the case of an assessment based on intrastate gross 1374
receipts under this section against a public utility that is an 1375
electric utility as defined in section 4928.01 of the Revised 1376
Code, or an electric services company, electric cooperative, or 1377
governmental aggregator subject to certification under section 1378

4928.08 of the Revised Code, such receipts shall be those 1379
specified in the utility's, company's, cooperative's, or 1380
aggregator's most recent report of intrastate gross receipts and 1381
sales of kilowatt hours of electricity, filed with the public 1382
utilities commission pursuant to division (F) of section 4928.06 1383
of the Revised Code, and verified by the commission. 1384

In the case of an assessment based on intrastate gross 1385
receipts under this section against a retail natural gas 1386
supplier or governmental aggregator subject to certification 1387
under section 4929.20 of the Revised Code, such receipts shall 1388
be those specified in the supplier's or aggregator's most recent 1389
report of intrastate gross receipts and sales of hundred cubic 1390
feet of natural gas, filed with the commission pursuant to 1391
division (B) of section 4929.23 of the Revised Code, and 1392
verified by the commission. However, no such retail natural gas 1393
supplier or such governmental aggregator serving or proposing to 1394
serve customers of a particular natural gas company, as defined 1395
in section 4929.01 of the Revised Code, shall be assessed under 1396
this section until after the commission, pursuant to section 1397
4905.26 or 4909.18 of the Revised Code, has removed from the 1398
base rates of the natural gas company the amount of assessment 1399
under this section that is attributable to the value of 1400
commodity sales service, as defined in section 4929.01 of the 1401
Revised Code, in the base rates paid by those customers of the 1402
company that do not purchase that service from the natural gas 1403
company. 1404

(B) Through calendar year 2005, on or before the first day 1405
of October in each year, the office of consumers' counsel shall 1406
notify each public utility of the sum assessed against it, 1407
whereupon payment shall be made to the counsel, who shall 1408
deposit it into the state treasury to the credit of the 1409

consumers' counsel operating fund, which is hereby created. 1410
Beginning in calendar year 2006, on or before the fifteenth day 1411
of May in each year, the consumers' counsel shall notify each 1412
public utility that had a sum assessed against it for the 1413
current fiscal year of more than one thousand dollars that fifty 1414
per cent of that amount shall be paid to the consumers' counsel 1415
by the twentieth day of June of that year as an initial payment 1416
of the assessment against the company for the next fiscal year. 1417
On or before the first day of October in each year, the 1418
consumers' counsel shall make a final determination of the sum 1419
of the assessment against each public utility and shall notify 1420
each public utility of the sum assessed against it. The 1421
consumers' counsel shall deduct from the assessment for each 1422
public utility any initial payment received. Payment of the 1423
assessment shall be made to the consumers' counsel by the first 1424
day of November of that year. The consumers' counsel shall 1425
deposit the payments received into the state treasury to the 1426
credit of the consumers' counsel operating fund. Any such 1427
amounts paid into the fund but not expended by the office shall 1428
be credited ratably by the office to the public utilities that 1429
pay more than the minimum assessment, according to the 1430
respective portions of such sum assessable against them for the 1431
ensuing fiscal year, after first deducting any deficits 1432
accumulated from prior years. The assessments for such fiscal 1433
year shall be reduced correspondingly. 1434

(C) Within five days after the beginning of each fiscal 1435
year through fiscal year 2006, the director of budget and 1436
management shall transfer from the general revenue fund to the 1437
consumers' counsel operating fund an amount sufficient for 1438
maintaining and administering the office of the consumers' 1439
counsel and exercising the powers of the consumers' counsel 1440

under this chapter during the first four months of the fiscal 1441
year. Not later than the thirty-first day of December of the 1442
fiscal year, the same amount shall be transferred back to the 1443
general revenue fund from the consumers' counsel operating fund. 1444

(D) (1) As used in this section, "public utility" includes: 1445

~~(1)~~ (a) In addition to an electric utility as defined in 1446
section 4928.01 of the Revised Code, an electric services 1447
company, an electric cooperative, or a governmental aggregator 1448
subject to certification under section 4928.08 of the Revised 1449
Code, to the extent of the company's, cooperative's, or 1450
aggregator's engagement in the business of supplying or 1451
arranging for the supply in this state of any retail electric 1452
service for which it must be so certified; 1453

~~(2)~~ (b) In addition to a natural gas company as defined in 1454
section 4929.01 of the Revised Code, a retail natural gas 1455
supplier or governmental aggregator subject to certification 1456
under section 4929.20 of the Revised Code, to the extent of the 1457
supplier's or aggregator's engagement in the business of 1458
supplying or arranging for the supply in this state of any 1459
competitive retail natural gas service for which it must be 1460
certified. 1461

(2) As used in this section, "public utility" does not 1462
include a wireless service provider or reseller as defined in 1463
section 128.01 of the Revised Code. 1464

Sec. 4923.01. As used in this chapter: 1465

(A) "Ambulance," "interstate commerce," "intrastate 1466
commerce," "motor vehicle," "public highway," "ridesharing 1467
arrangement," and "school bus" have the same meanings as in 1468
section 4921.01 of the Revised Code. 1469

(B) "For-hire motor carrier" means a person engaged in the 1470
business of transporting persons or property by motor vehicle 1471
for compensation, except when engaged in any of the following in 1472
intrastate commerce: 1473

(1) The transportation of persons in taxicabs in the usual 1474
taxicab service; 1475

(2) The transportation of pupils in school ~~busses~~ buses 1476
operating to or from school sessions or school events; 1477

(3) The transportation of farm supplies to the farm or 1478
farm products from farm to market or to food fabricating plants; 1479

(4) The distribution of newspapers; 1480

(5) The transportation of crude petroleum incidental to 1481
gathering from wells and delivery to destination by pipe line; 1482

(6) The transportation of injured, ill, or deceased 1483
persons by hearse or ambulance; 1484

(7) The transportation of compost (a combination of manure 1485
and sand or shredded bark mulch) or shredded bark mulch; 1486

(8) The transportation of persons in a ridesharing 1487
arrangement when any fee charged each person so transported is 1488
in such amount as to recover only the person's share of the 1489
costs of operating the motor vehicle for such purpose; 1490

(9) The operation of motor vehicles for contractors on 1491
public road work. 1492

"For-hire motor carrier" includes the carrier's agents, 1493
officers, and representatives, as well as employees responsible 1494
for hiring, supervising, training, assigning, or dispatching 1495
drivers and employees concerned with the installation, 1496

inspection, and maintenance of motor-vehicle equipment and 1497
accessories. 1498

Divisions (B) (1) to (9) of this section shall not be 1499
construed to relieve a person from compliance with rules adopted 1500
under division (A) (2) of section 4923.04 of the Revised Code, 1501
division (E) of section 4923.06 of the Revised Code, division 1502
(B) of section 4923.07 of the Revised Code, and section 4923.11 1503
of the Revised Code, or from compliance with rules regarding 1504
commercial driver's licenses adopted under division (A) (1) of 1505
section 4923.04 of the Revised Code. 1506

(C) "Motor carrier" means both a for-hire motor carrier 1507
and a private motor carrier. 1508

(D) "Private motor carrier" means a person who is not a 1509
for-hire motor carrier but is engaged in the business of 1510
transporting persons or property by motor vehicle, except as 1511
provided in section 4923.02 of the Revised Code. "Private motor 1512
carrier" includes the carrier's agents, officers, and 1513
representatives, as well as employees responsible for hiring, 1514
supervising, training, assigning, or dispatching drivers and 1515
employees concerned with the installation, inspection, and 1516
maintenance of motor-vehicle equipment and accessories. 1517

(E) "Cargo tank" has the same meaning as in 49 C.F.R. 1518
171.8. 1519

(F) "Cargo tank facility" means a person that performs 1520
qualification and maintenance of cargo tanks to ensure 1521
compliance with the requirements stated in 49 C.F.R. 180. 1522

Sec. 4923.07. (A) The public utilities commission may, 1523
through the commission's inspectors or other authorized 1524
employees, ~~enter~~ do both of the following: 1525

(1) Enter in or upon the premises and motor vehicles of 1526
any motor carrier, or any person engaging in the transportation 1527
of hazardous material or hazardous waste, to examine any 1528
records, documents, or property for the purpose of assessing the 1529
safety, performance, and management controls associated with the 1530
carrier or person; 1531

(2) Enter in or upon the premises of any cargo tank 1532
facility to examine any records, documents, or property for the 1533
purpose of assessing compliance with the requirements stated in 1534
49 C.F.R. 180. 1535

(B) The commission may adopt rules to carry out this 1536
section that are not incompatible with the requirements of the 1537
United States department of transportation. 1538

Sec. 4927.03. (A) Except as provided in divisions (A) and 1539
(B) of section 4927.04 of the Revised Code and except to the 1540
extent required to exercise authority under federal law, the 1541
public utilities commission has no authority over any 1542
interconnected voice over internet protocol-enabled service or 1543
any telecommunications service that is not commercially 1544
available on September 13, 2010, and that employs technology 1545
that became available for commercial use only after September 1546
13, 2010, unless the commission, upon a finding that the 1547
exercise of the commission's authority is necessary for the 1548
protection, welfare, and safety of the public, adopts rules 1549
specifying the necessary regulation. A consumer purchase of a 1550
service that is not commercially available on September 13, 1551
2010, and that employs technology that became available for 1552
commercial use only after September 13, 2010, shall constitute a 1553
consumer transaction for purposes of sections 1345.01 to 1345.13 1554
of the Revised Code, notwithstanding any provision of those 1555

sections to the contrary, unless the commission exercises 1556
jurisdiction over the service in accordance with this division. 1557
Notwithstanding any contrary provision of Chapter 4911. of the 1558
Revised Code, to the extent that the commission adopts rules 1559
under division (A) of this section regarding any interconnected 1560
voice over internet protocol enabled service provided to 1561
residential customers or regarding any telecommunications 1562
service that is provided to residential customers, that is not 1563
commercially available on September 13, 2010, and that employs 1564
technology that became available for commercial use only after 1565
September 13, 2010, the office of the consumers' counsel shall 1566
have authority to assist and represent residential customers in 1567
the implementation and enforcement of those rules. 1568

(B) (1) The commission has no authority over wireless 1569
service, resellers of wireless service, or wireless service 1570
providers, except as follows: 1571

(a) As provided under section 4905.84 of the Revised Code; 1572

(b) With respect to division (C) of section 4927.15 of the 1573
Revised Code; 1574

(c) As provided in divisions (B) (2), (3), and (4) of this 1575
section. 1576

(2) The commission has authority over wireless service and 1577
wireless service providers as follows, but only to the extent 1578
authorized by federal law, including federal regulations: 1579

(a) To the extent that the commission carries out the acts 1580
described in divisions (A), (B), (C), (D), and (F) of section 1581
4927.04 of the Revised Code; 1582

(b) As provided in sections 4927.05, 4927.20, and 4927.21 1583
of the Revised Code. 1584

(3) The requirements of sections 4905.10~~7~~and 4905.14~~7~~and 4911.18 of the Revised Code shall apply to a wireless service provider. 1585
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(4) The commission has such authority as is necessary to enforce division (B) of this section. 1588
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(C) For purposes of sections 4927.01 to 4927.21 of the Revised Code, sections 4903.02, 4903.03, 4903.24, 4903.25, 4905.04, 4905.05, 4905.06, 4905.13, 4905.15, 4905.16, 4905.17, 4905.22, 4905.26, 4905.27, 4905.28, 4905.29, 4905.31, 4905.32, 4905.33, 4905.35, 4905.37, 4905.38, 4905.39, 4905.48, 4905.54, 4905.55, 4905.56, and 4905.60 of the Revised Code do not apply to a telephone company or, as applicable, to an officer, employee, or agent of such company or provider, except to the extent necessary for the commission to carry out sections 4927.01 to 4927.21 of the Revised Code. 1590
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(D) Except as specifically authorized in sections 4927.01 to 4927.21 of the Revised Code, the commission has no authority over the quality of service and the service rates, terms, and conditions of telecommunications service provided to end users by a telephone company. 1600
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(E) The commission shall initially adopt the rules required by this chapter not later than one hundred twenty days after September 13, 2010. Subject to the authority granted to the commission under this chapter, the commission may adopt other rules, including rules regarding the removal from tariffs of services that were required to be filed in tariffs prior to September 13, 2010, as it finds necessary to carry out this chapter. 1605
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Sec. 4928.06. (A) Beginning on the starting date of 1613

competitive retail electric service, the public utilities 1614
commission shall ensure that the policy specified in section 1615
4928.02 of the Revised Code is effectuated. To the extent 1616
necessary, the commission shall adopt rules to carry out this 1617
chapter. Initial rules necessary for the commencement of the 1618
competitive retail electric service under this chapter shall be 1619
adopted within one hundred eighty days after the effective date 1620
of this section. Except as otherwise provided in this chapter, 1621
the proceedings and orders of the commission under the chapter 1622
shall be subject to and governed by Chapter 4903. of the Revised 1623
Code. 1624

(B) If the commission determines, on or after the starting 1625
date of competitive retail electric service, that there is a 1626
decline or loss of effective competition with respect to a 1627
competitive retail electric service of an electric utility, 1628
which service was declared competitive by commission order 1629
issued pursuant to division (A) of section 4928.04 of the 1630
Revised Code, the commission shall ensure that that service is 1631
provided at compensatory, fair, and nondiscriminatory prices and 1632
terms and conditions. 1633

(C) In addition to its authority under section 4928.04 of 1634
the Revised Code and divisions (A) and (B) of this section, the 1635
commission, on an ongoing basis, shall monitor and evaluate the 1636
provision of retail electric service in this state for the 1637
purpose of discerning any noncompetitive retail electric service 1638
that should be available on a competitive basis on or after the 1639
starting date of competitive retail electric service pursuant to 1640
a declaration in the Revised Code, and for the purpose of 1641
discerning any competitive retail electric service that is no 1642
longer subject to effective competition on or after that date. 1643
~~Upon such evaluation, the commission periodically shall report~~ 1644

~~its findings and any recommendations for legislation to the~~ 1645
~~standing committees of both houses of the general assembly that~~ 1646
~~have primary jurisdiction regarding public utility legislation.~~ 1647
~~Until 2008, the commission and the consumer's counsel also shall~~ 1648
~~provide biennial reports to those standing committees, regarding~~ 1649
~~the effectiveness of competition in the supply of competitive~~ 1650
~~retail electric services in this state. In addition, until the~~ 1651
~~end of all market development periods as determined by the~~ 1652
~~commission under section 4928.40 of the Revised Code, those~~ 1653
~~standing committees shall meet at least biennially to consider~~ 1654
~~the effect on this state of electric service restructuring and~~ 1655
~~to receive reports from the commission, consumers' counsel, and~~ 1656
~~director of development.~~ 1657

(D) In determining, for purposes of division (B) or (C) of 1658
this section, whether there is effective competition in the 1659
provision of a retail electric service or reasonably available 1660
alternatives for that service, the commission shall consider 1661
factors including, but not limited to, all of the following: 1662

(1) The number and size of alternative providers of that 1663
service; 1664

(2) The extent to which the service is available from 1665
alternative suppliers in the relevant market; 1666

(3) The ability of alternative suppliers to make 1667
functionally equivalent or substitute services readily available 1668
at competitive prices, terms, and conditions; 1669

(4) Other indicators of market power, which may include 1670
market share, growth in market share, ease of entry, and the 1671
affiliation of suppliers of services. 1672

The burden of proof shall be on any entity requesting, 1673

under division (B) or (C) of this section, a determination by 1674
the commission of the existence of or a lack of effective 1675
competition or reasonably available alternatives. 1676

(E) (1) Beginning on the starting date of competitive 1677
retail electric service, the commission has authority under 1678
Chapters 4901. to 4909. of the Revised Code, and shall exercise 1679
that authority, to resolve abuses of market power by any 1680
electric utility that interfere with effective competition in 1681
the provision of retail electric service. 1682

(2) In addition to the commission's authority under 1683
division (E) (1) of this section, the commission, beginning the 1684
first year after the market development period of a particular 1685
electric utility and after reasonable notice and opportunity for 1686
hearing, may take such measures within a transmission 1687
constrained area in the utility's certified territory as are 1688
necessary to ensure that retail electric generation service is 1689
provided at reasonable rates within that area. The commission 1690
may exercise this authority only upon findings that an electric 1691
utility is or has engaged in the abuse of market power and that 1692
that abuse is not adequately mitigated by rules and practices of 1693
any independent transmission entity controlling the transmission 1694
facilities. Any such measure shall be taken only to the extent 1695
necessary to protect customers in the area from the particular 1696
abuse of market power and to the extent the commission's 1697
authority is not preempted by federal law. The measure shall 1698
remain in effect until the commission, after reasonable notice 1699
and opportunity for hearing, determines that the particular 1700
abuse of market power has been mitigated. 1701

(F) An electric utility, electric services company, 1702
electric cooperative, or governmental aggregator subject to 1703

certification under section 4928.08 of the Revised Code shall 1704
provide the commission with such information, regarding a 1705
competitive retail electric service for which it is subject to 1706
certification, as the commission considers necessary to carry 1707
out this chapter. An electric utility shall provide the 1708
commission with such information as the commission considers 1709
necessary to carry out divisions (B) to (E) of this section. The 1710
commission shall take such measures as it considers necessary to 1711
protect the confidentiality of any such information. 1712

The commission shall require each electric utility to file 1713
with the commission on and after the starting date of 1714
competitive retail electric service an annual report of its 1715
intrastate gross receipts and sales of kilowatt hours of 1716
electricity, and shall require each electric services company, 1717
electric cooperative, and governmental aggregator subject to 1718
certification to file an annual report on and after that 1719
starting date of such receipts and sales from the provision of 1720
those retail electric services for which it is subject to 1721
certification. For the purpose of the reports, sales of kilowatt 1722
hours of electricity are deemed to occur at the meter of the 1723
retail customer. 1724

Sec. 4928.08. (A) This section applies to an electric 1725
cooperative, or to a governmental aggregator that is a municipal 1726
electric utility, only to the extent of a competitive retail 1727
electric service it provides to a customer to whom it does not 1728
provide a noncompetitive retail electric service through 1729
transmission or distribution facilities it singly or jointly 1730
owns or operates. 1731

(B) No electric utility, electric services company, 1732
electric cooperative, or governmental aggregator shall provide a 1733

competitive retail electric service to a consumer in this state 1734
on and after the starting date of competitive retail electric 1735
service without first being certified by the public utilities 1736
commission regarding its managerial, technical, and financial 1737
capability to provide that service and providing a financial 1738
guarantee sufficient to protect customers and electric 1739
distribution utilities from default. Certification shall be 1740
granted pursuant to procedures and standards the commission 1741
shall prescribe in accordance with division (C) of this section, 1742
except that certification or certification renewal shall be 1743
deemed approved thirty days after the filing of an application 1744
with the commission unless the commission suspends that approval 1745
for good cause shown. Failure to pay the minimum assessment due 1746
at the time the application for certification or certification 1747
renewal is filed, pursuant to division (F) of section 4905.10 of 1748
the Revised Code, shall constitute good cause to suspend the 1749
deemed approval thirty days after filing or to deny the 1750
application. In the case of ~~such~~ a suspension, the commission 1751
shall act to approve or deny certification or certification 1752
renewal to the applicant not later than ninety days after the 1753
date of the suspension. 1754

(C) Capability standards adopted in rules under division 1755
(B) of this section shall be sufficient to ensure compliance 1756
with the minimum service requirements established under section 1757
4928.10 of the Revised Code and with section 4928.09 of the 1758
Revised Code. The standards shall allow flexibility for 1759
voluntary aggregation, to encourage market creativity in 1760
responding to consumer needs and demands, and shall allow 1761
flexibility for electric services companies that exclusively 1762
provide installation of small electric generation facilities, to 1763
provide ease of market access. The rules shall include 1764

procedures for biennially renewing certification. 1765

(D) The commission may suspend, rescind, or conditionally 1766
rescind the certification of any electric utility, electric 1767
services company, electric cooperative, or governmental 1768
aggregator issued under this section if the commission 1769
determines, after reasonable notice and opportunity for hearing, 1770
that the utility, company, cooperative, or aggregator has failed 1771
to comply with any applicable certification standards or has 1772
engaged in anticompetitive or unfair, deceptive, or 1773
unconscionable acts or practices in this state. 1774

(E) No electric distribution utility on and after the 1775
starting date of competitive retail electric service shall 1776
knowingly distribute electricity, to a retail consumer in this 1777
state, for any supplier of electricity that has not been 1778
certified by the commission pursuant to this section. 1779

Sec. 4928.1410. (A) An electric distribution utility may 1780
request approval of an alternative distribution rate plan by 1781
filing an application under section 4909.18 of the Revised Code, 1782
regardless of whether the application is for an increase in 1783
distribution rates. After investigation, which may include a 1784
hearing at the discretion of the public utilities commission, 1785
the commission shall authorize the applicant to implement an 1786
alternative distribution rate plan if the electric distribution 1787
utility has made a showing and the commission finds that all of 1788
the following conditions are met: 1789

(1) The utility is in compliance with section 4905.35 of 1790
the Revised Code and is in substantial compliance with the 1791
policy of this state specified in section 4928.02 of the Revised 1792
Code. 1793

(2) The utility is expected to continue to be in 1794
substantial compliance with the policy of this state specified 1795
in section 4928.02 of the Revised Code after implementation of 1796
the alternative distribution rate plan. 1797

(3) The alternative distribution rate plan is just and 1798
reasonable. 1799

(B) The applicant shall have the burden of proof under 1800
this section. 1801

Sec. 4929.20. (A) No governmental aggregator as defined in 1802
division (K)(1) of section 4929.01 of the Revised Code or no 1803
retail natural gas supplier shall provide a competitive retail 1804
natural gas service on or after thirteen months following ~~the~~ 1805
~~effective date of this section~~ June 26, 2001, to a consumer in 1806
this state without first being certified by the public utilities 1807
commission regarding its managerial, technical, and financial 1808
capability to provide that service and providing reasonable 1809
financial assurances sufficient to protect customers and natural 1810
gas companies from default. In addition, a retail natural gas 1811
supplier may be required to provide a performance bond 1812
sufficient to protect customers and natural gas companies from 1813
default. Certification shall be granted pursuant to procedures 1814
and standards the commission shall prescribe in accordance with 1815
rules adopted under section 4929.10 of the Revised Code. 1816
However, certification or certification renewal shall be deemed 1817
approved thirty days after the filing of an application with the 1818
commission unless the commission suspends that approval for good 1819
cause shown. Failure to pay the minimum assessment due at the 1820
time the application for certification or certification renewal 1821
is filed, pursuant to division (F) of section 4905.10 of the 1822
Revised Code, shall constitute good cause to suspend the deemed 1823

approval thirty days after filing or to deny the application. In 1824
the case of ~~such~~ a suspension, the commission shall act to 1825
approve or deny certification or certification renewal to the 1826
applicant not later than ninety days after the date of the 1827
suspension. 1828

(B) Capability standards adopted in rules pursuant to 1829
division (A) of this section shall be sufficient to ensure 1830
compliance with section 4929.22 of the Revised Code and with the 1831
minimum service requirements established under section 4929.23 1832
of the Revised Code. The standards shall allow flexibility for 1833
voluntary aggregation, to encourage market creativity in 1834
responding to consumer needs and demands. The rules shall 1835
include procedures for biennially renewing certification. 1836

(C) (1) The commission may suspend, rescind, or 1837
conditionally rescind the certification of any retail natural 1838
gas supplier or governmental aggregator issued under this 1839
section if the commission determines, after reasonable notice 1840
and opportunity for hearing, that the retail natural gas 1841
supplier or governmental aggregator has failed to comply with 1842
any applicable certification standards prescribed in rules 1843
adopted pursuant to this section or section 4929.22 of the 1844
Revised Code. 1845

(2) An affected natural gas company may file an 1846
application with the commission for approval of authority to 1847
recover in accordance with division (C) (2) of this section 1848
incremental costs reasonably and prudently incurred by the 1849
company in connection with the commission's continuation, 1850
suspension, rescission, or conditional rescission of a 1851
particular retail natural gas supplier's certification under 1852
division (C) (1) of this section. Upon the filing of such an 1853

application, the commission shall conduct an audit of such 1854
incremental costs as are specified in the application. Cost 1855
recovery shall be through a rider on the base rates of customers 1856
of the company for which there is a choice of supplier of 1857
commodity sales service as a result of revised schedules 1858
approved under division (C) of section 4929.29 of the Revised 1859
Code, a rule or order adopted or issued by the commission under 1860
Chapter 4905. of the Revised Code, or an exemption granted by 1861
the commission under sections 4929.04 to 4929.08 of the Revised 1862
Code. The rider shall take effect ninety days after the date of 1863
the application's filing unless the commission, based on the 1864
audit results and for good cause shown, sets the matter for 1865
hearing. After the hearing, the commission shall approve the 1866
application, and authorize such cost recovery rider effective on 1867
the date specified in the order, only for such incremental costs 1868
as the commission determines were reasonably and prudently 1869
incurred by the company in connection with the continuation, 1870
suspension, rescission, or conditional rescission of a retail 1871
natural gas supplier's certification under division (C) (1) of 1872
this section. Any proceeding under division (C) (2) of this 1873
section shall be governed by Chapter 4903. of the Revised Code. 1874

(D) No natural gas company, on and after thirteen months 1875
following ~~the effective date of this section~~ June 26, 2001, 1876
shall knowingly distribute natural gas, to a retail consumer in 1877
this state, for any governmental aggregator, as defined in 1878
division (K) (1) of section 4929.01 of the Revised Code, or 1879
retail natural gas supplier, that has not been certified by the 1880
commission pursuant to this section. 1881

Sec. 4933.11. All gas companies supplying the public with 1882
artificial or natural gas shall provide for their use a meter- 1883
prover, the holder of which must contain not less than five 1884

feet. Such meter-prover shall be tested in the place where it is 1885
to be used, stamped, and sealed by ~~the public utilities-~~ 1886
~~commission~~ a qualified meter-proving company, contractor, or 1887
manufacturer in accordance with manufacturer recommendations. 1888
~~Such~~ The gas companies shall maintain records of tests and shall 1889
make those records available to the staff of the public 1890
utilities commission on request. The records shall also be open 1891
to the public. All gas companies supplying artificial or natural 1892
gas for illuminating purposes shall, on the order of the 1893
commission provide for their own use a photometer of a type 1894
approved by such commission. Any person, firm, or corporation 1895
supplying the public with artificial or natural gas which fails 1896
to comply with this section shall forfeit to the state not less 1897
than twenty-five nor more than one hundred dollars to be 1898
recovered upon the complaint of any consumer, in the name of the 1899
state, before any court of competent jurisdiction. 1900

Sec. 4933.30. (A) As used in this section, "heating or 1901
cooling company," "sewage disposal system company," and "water- 1902
works company" means those companies as defined in section 1903
4905.03 of the Revised Code, that are public utilities as 1904
defined in section 4905.02 of the Revised Code. 1905

(B) A heating or cooling company, sewage disposal system 1906
company, and water-works company may request approval of an 1907
alternative rate plan by filing an application under section 1908
4909.18 of the Revised Code, regardless of whether the 1909
application is for an increase in rates. After investigation, 1910
which may include a hearing at the discretion of the public 1911
utilities commission, the commission shall authorize the 1912
applicant to implement an alternative rate plan if the utility 1913
has made a showing and the commission finds that both of the 1914
following conditions are met: 1915

(1) The utility is in compliance with section 4905.35 of 1916
the Revised Code. 1917

(2) The alternative rate plan is just and reasonable. 1918

(C) The applicant shall have the burden of proof under 1919
this section. 1920

Sec. 4933.35. As used in sections 4933.35 to 4933.3515 of 1921
the Revised Code: 1922

(A) "Cross" or "crossing" means the placement and use of 1923
public utility facilities over, under, across, or parallel to a 1924
right-of-way. 1925

(B) "Public utility" means any person or entity defined in 1926
divisions (C) to (G) or (M) of section 4905.03 of the Revised 1927
Code. 1928

Sec. 4933.351. A public utility may cross a railroad 1929
right-of-way, unless the crossing exceeds one mile in length. 1930

Sec. 4933.354. A public utility that intends to cross a 1931
railroad right-of-way as described in section 4933.351 of the 1932
Revised Code shall send notice, by certified mail, return 1933
receipt requested, to the railroad owning the right-of-way of 1934
the utility's intent to cross. 1935

Sec. 4933.355. The notice sent under section 4933.354 of 1936
the Revised Code shall include an engineering design showing the 1937
location of the proposed crossing and the railroad's property, 1938
tracks, and wires that the public utility will cross. Except as 1939
provided in section 4933.356 of the Revised Code, the notice 1940
shall be accompanied by a one-time crossing fee to the railroad 1941
in the amount of one thousand two hundred fifty dollars. The fee 1942
shall compensate the railroad for the acquisition of crossing 1943

rights, construction of the crossing, and all other expenses 1944
incurred by the railroad as a result of the crossing. 1945

Sec. 4933.356. A public utility shall not be required to 1946
pay any crossing fee if the crossing is on a public right-of- 1947
way. 1948

Sec. 4933.357. A public utility shall not be subject to 1949
any railroad-imposed fee or charge regarding a crossing or 1950
construction of a crossing, except as provided in section 1951
4933.355 of the Revised Code. 1952

Sec. 4933.3510. A public utility may commence construction 1953
of a crossing in the railroad right-of-way sixty days after the 1954
date the notice under section 4933.354 of the Revised Code is 1955
received by the railroad, unless the railroad files an appeal 1956
with the public utilities commission under section 4933.3514 of 1957
the Revised Code before the sixty-day period expires. 1958

Sec. 4933.3511. On completion of construction of a 1959
crossing as described in sections 4933.35 to 4933.3515 of the 1960
Revised Code, the public utility may record a perpetual easement 1961
consistent with the crossing. 1962

Sec. 4933.3514. (A) If a timely appeal is filed under this 1963
section regarding a notice under section 4933.354 of the Revised 1964
Code, the public utilities commission shall determine whether 1965
the proposed crossing or its construction would be a serious 1966
threat to the safe operation of the railroad or the current use 1967
of the right-of-way. The commission shall consider no other 1968
issues in making its determination. The commission shall issue 1969
an order not later than one hundred twenty days after the date 1970
the appeal is filed. 1971

(B) The commission has exclusive jurisdiction over an 1972

appeal under this section. The commission's determination shall 1973
be final, and no appeal may be taken from it. 1974

Sec. 4933.3515. (A) Nothing in sections 4933.35 to 1975
4933.3515 of the Revised Code prohibits a railroad and public 1976
utility from continuing under an existing agreement, negotiating 1977
the terms and conditions applicable to a crossing, or privately 1978
resolving any disputes related to a crossing. 1979

(B) Nothing in sections 4933.35 to 4933.3515 of the 1980
Revised Code impairs a public utility's authority to secure 1981
crossing rights by exercising its power of eminent domain. 1982

Sec. 4963.60. As used in sections 4963.60 to 4963.6067 of 1983
the Revised Code: 1984

(A) "Cross" or "crossing" means the placement and use of 1985
any provider facility over, under, or across a railroad right- 1986
of-way from a public right-of-way. 1987

(B) "Crossing notice" means a notice described in, and 1988
submitted to a railroad under, section 4963.603 of the Revised 1989
Code. 1990

(C) "Facility" means any cable, conduit, wire, supporting 1991
poles and guys, manhole, or other material or equipment, used by 1992
a provider to furnish service it is authorized to provide. 1993

(D) "Political subdivision" has the same meaning as in 1994
section 9.23 of the Revised Code. 1995

(E) "Provider" means either of the following: 1996

(1) A telephone company as defined in division (A) of 1997
section 4905.03 of the Revised Code; 1998

(2) A video service provider as defined in section 1332.21 1999

of the Revised Code. 2000

(F) "Public right-of-way" means the surface of, and the 2001
space within, through, on, across, above, or below, any public 2002
street, public road, public highway, public freeway, public 2003
lane, public path, public alley, public court, public sidewalk, 2004
public boulevard, public parkway, public drive, and any other 2005
land dedicated or otherwise designated or assumed in any formal 2006
or prescriptive manner for a compatible purpose use, which is 2007
owned or controlled by the state or any political subdivision of 2008
the state, or that is land otherwise dedicated to public use as 2009
described in the valuation records created under interstate 2010
commerce commission valuation order number 7. 2011

(G) "Railroad" has the same meaning as in section 4907.02 2012
of the Revised Code. 2013

(H) "Railroad right-of-way" means land granted or reserved 2014
for track for rail transportation by a railroad that is either 2015
of the following: 2016

(1) In active use; 2017

(2) Out of service, but the railroad retains the right to 2018
reactivate it. 2019

Sec. 4963.601. A provider may construct a crossing in 2020
accordance with sections 4963.60 to 4963.6067 of the Revised 2021
Code. 2022

Sec. 4963.603. A provider seeking to construct a crossing 2023
shall submit a written notice to the railroad whose railroad 2024
right-of-way is to be subject to the crossing that includes the 2025
following: 2026

(A) The name, address, telephone number, and electronic 2027

mail address of the provider and the provider's agent or 2028
representative authorized to act on behalf of the provider; 2029

(B) A completed engineering drawing showing the crossing 2030
location and the proposed location of the provider facilities; 2031

(C) The railroad right-of-way, property, tracks, and wires 2032
the provider proposes to cross. 2033

Sec. 4963.604. A crossing notice may be submitted by 2034
certified mail, return receipt requested; an internet-based 2035
interface; or electronic mail. 2036

Sec. 4963.605. A provider shall pay a one-time fee of 2037
seven hundred fifty dollars for each crossing notice to the 2038
railroad whose railroad right-of-way is to be subject to the 2039
crossing. The provider shall pay the fee at the same time it 2040
submits the crossing notice. 2041

Sec. 4963.606. The fee required under section 4963.605 of 2042
the Revised Code shall completely compensate the railroad for 2043
the crossing described in a crossing notice. Except for costs 2044
described in section 4963.6038 of the Revised Code, no cost, 2045
charge, or fee, other than the fee required under section 2046
4963.605 of the Revised Code may be imposed on a provider for a 2047
crossing. 2048

Sec. 4963.607. A provider is not required to submit a 2049
crossing notice for conducting facility maintenance, repair, or 2050
replacement activity in its crossing if the activity does not 2051
involve excavation or continuous work within twenty-five feet of 2052
railroad track located in the right-of-way containing the 2053
crossing. 2054

Sec. 4963.608. A railroad whose railroad right-of-way is 2055
subject to a crossing shall not require any license, permit, or 2056

authorization for the construction of the crossing other than a 2057
crossing notice or a notice required under section 4963.6032 or 2058
4963.6049 of the Revised Code. 2059

Sec. 4963.6011. A crossing notice submitted in compliance 2060
with sections 4963.603, 4963.604, and 4963.605 of the Revised 2061
Code shall be considered complete. 2062

Sec. 4963.6012. If a railroad that receives a crossing 2063
notice determines that the crossing notice does not comply with 2064
the requirements of sections 4963.603, 4963.604, and 4963.605 of 2065
the Revised Code, the railroad shall notify the provider in 2066
writing that the crossing notice is incomplete and shall specify 2067
the reasons the notice is incomplete and what action must be 2068
taken to make the crossing notice complete. The railroad shall 2069
notify the provider by certified mail, return receipt requested, 2070
that the notice is incomplete not later than fifteen days after 2071
the date the crossing notice was submitted. 2072

Sec. 4963.6013. If a railroad makes a timely notification 2073
under section 4963.6012 of the Revised Code that a crossing 2074
notice is incomplete, the sixty-day period under section 2075
4963.6030 of the Revised Code shall be tolled regarding 2076
construction of the crossing under the crossing notice until the 2077
railroad determines the notice is complete. 2078

Sec. 4963.6014. A provider whose crossing notice has been 2079
determined incomplete under section 4963.6012 of the Revised 2080
Code may petition the public utilities commission for a 2081
determination of whether the crossing notice is complete after 2082
the provider has taken action to complete the crossing notice 2083
and the railroad still determines the crossing notice is 2084
incomplete. 2085

Sec. 4963.6015. If a railroad fails to make a timely objection under section 4963.6012 of the Revised Code to a crossing notice, it shall be deemed complete. 2086
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Sec. 4963.6018. If a railroad has an objection to the construction of a crossing described in a crossing notice, which objection is based on failure of the provider to comply with a written railroad crossing standard, the railroad shall notify the provider in writing, by certified mail, return receipt requested, of the objection and shall specify the reason for the objection and what action must be taken to address the objection. The railroad shall notify the provider of the objection not later than fifteen days after the date the crossing notice was submitted. 2089
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Sec. 4963.6019. If a railroad notifies a provider of an objection under section 4963.6018 of the Revised Code, the railroad and provider shall make a good faith effort to resolve the objection to the satisfaction of the railroad and provider. 2099
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Sec. 4963.6020. If a railroad and provider are unable to resolve an objection under sections 4963.6018 and 4963.6019 of the Revised Code within fifteen days of the date the objection notification is sent, the railroad or provider may petition the public utilities commission for resolution of the objection. 2103
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Sec. 4963.6023. Prior to the resolution of a petition filed under section 4963.6014 or 4963.6020 of the Revised Code regarding a crossing notice, prior to the expiration of the period in section 4963.6030 of the Revised Code regarding a crossing notice that is not subject to a petition, or while a crossing notice is subject to tolling under section 4963.6013 of the Revised Code, the provider may proceed with the construction of the crossing under the following conditions: 2108
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(A) The provider notifies the railroad of the intent to do 2116
both of the following: 2117

(1) Proceed with construction of the crossing prior to the 2118
resolution of the petition or expiration of the time period; 2119

(2) Obtain a bond or letter of credit in the sum of 2120
twenty-five thousand dollars payable to the railroad for any 2121
damages resulting from the construction of the crossing. 2122

(B) The provider obtains the bond or letter of credit 2123
described in division (A) (2) of this section. 2124

(C) The public utilities commission has not made a 2125
determination under section 4963.6025 of the Revised Code or 2126
division (B) of section 4963.6026 of the Revised Code. 2127

Sec. 4963.6024. A railroad that receives notice under 2128
division (A) of section 4963.6023 of the Revised Code may 2129
request the public utilities commission to issue an order 2130
prohibiting a provider from proceeding with the construction of 2131
a crossing under section 4963.6023 of the Revised Code because 2132
there is a reasonable likelihood that one of the following 2133
situations applies: 2134

(A) The crossing involves a significant and imminent 2135
likelihood of danger to the public health or safety. 2136

(B) The crossing is a serious threat to the safe operation 2137
of the railroad or the current use of the railroad right-of-way 2138
or public right-of-way. 2139

Sec. 4963.6025. If the public utilities commission 2140
determines that there is a reasonable likelihood that one or 2141
both of the situations described in division (A) or (B) of 2142
section 4963.6024 of the Revised Code applies regarding the 2143

construction of a crossing under section 4963.6023 of the 2144
Revised Code, the commission shall do both of the following: 2145

(A) Issue an order temporarily enjoining construction of 2146
the crossing; 2147

(B) Conduct further proceedings to determine if one or 2148
both of the situations apply. 2149

Sec. 4963.6026. If the public utilities commission 2150
determines after conducting a proceeding under section 4963.6025 2151
of the Revised Code that one or both of the situations described 2152
in division (A) or (B) of section 4963.6024 of the Revised Code 2153
apply with respect to the construction of a crossing, the 2154
commission shall do one of the following: 2155

(A) Issue an order that does the following: 2156

(1) Requires the provider, railroad, or both to take such 2157
action the commission determines necessary to remedy the 2158
situation regarding the crossing; 2159

(2) Resends the order enjoining construction of the 2160
crossing. 2161

(B) Issue an order enjoining construction of the crossing 2162
permanently, if no action is possible to remedy the situation 2163
regarding the crossing. 2164

Sec. 4963.6030. (A) Except as provided in division (B) of 2165
this section, a provider may begin construction of a crossing 2166
under a crossing notice after sixty days have expired since the 2167
date the crossing notice was submitted. 2168

(B) The provider may not begin construction of the 2169
crossing if the underlying crossing notice is the subject of any 2170
of the following: 2171

<u>(1) A petition pending under section 4963.6014 or</u>	2172
<u>4963.6020 of the Revised Code;</u>	2173
<u>(2) A proceeding pending under sections 4963.6024 and</u>	2174
<u>4963.6025 of the Revised Code;</u>	2175
<u>(3) Tolling under section 4963.6013 of the Revised Code;</u>	2176
<u>(4) A determination under division (B) of section</u>	2177
<u>4963.6026 of the Revised Code.</u>	2178
<u>Sec. 4963.6031.</u> <u>(A) Except as provided in division (B) of</u>	2179
<u>this section, a provider shall begin construction of a crossing</u>	2180
<u>under a crossing notice not later than one hundred eighty days</u>	2181
<u>after submitting the crossing notice.</u>	2182
<u>(B) A provider shall have such additional time as is</u>	2183
<u>reasonably necessary to begin construction on the crossing</u>	2184
<u>beyond the one-hundred-eighty-day time period, if the provider</u>	2185
<u>is or was subject to any of the following:</u>	2186
<u>(1) A petition or proceeding described under division (B)</u>	2187
<u>(1) or (2) of section 4963.6030 of the Revised Code;</u>	2188
<u>(2) Tolling under section 4963.6013 of the Revised Code;</u>	2189
<u>(3) Force majeure or actions of a third party.</u>	2190
<u>Sec. 4963.6032.</u> <u>A crossing notice shall expire and the fee</u>	2191
<u>accompanying the crossing notice as provided under section</u>	2192
<u>4963.605 of the Revised Code may be retained by the railroad if</u>	2193
<u>the provider fails to begin construction of the crossing in the</u>	2194
<u>time required under section 4963.6031 of the Revised Code. A</u>	2195
<u>provider that fails to begin construction of a crossing as</u>	2196
<u>described in this section may seek to construct the crossing by</u>	2197
<u>submitting a new crossing notice under section 4963.603 of the</u>	2198
<u>Revised Code.</u>	2199

Sec. 4963.6034. (A) Each railroad shall establish and 2200
maintain standards for crossings in this state, which shall 2201
include technical requirements for crossings that do not exceed 2202
the requirements of the national electrical safety code 2203
established by the institute of electrical and electronics 2204
engineers. 2205

(B) Each railroad shall provide the following: 2206

(1) A mailing address, internet-based interface access 2207
information, and electronic mail address for submission of 2208
crossing notices under section 4963.604 of the Revised Code; 2209

(2) A telephone number for notices under section 4963.6049 2210
of the Revised Code. 2211

(C) Each railroad shall provide the information described 2212
in divisions (A) and (B) of this section on request of a 2213
provider. 2214

(D) Each railroad shall comply with the requirements of 2215
this section not later than ninety days after the effective date 2216
of this section. 2217

Sec. 4963.6035. (A) Except as provided in division (B) of 2218
this section, a railroad shall not establish or impose crossing 2219
standards in addition to the standards established under 2220
division (A) of section 4963.6034 of the Revised Code. 2221

(B) A railroad may establish or impose additional crossing 2222
standards for a particular railroad right-of-way for which a 2223
crossing notice is submitted that has unique characteristics and 2224
the additional standards are reasonably necessary to protect the 2225
public health and safety or the safe operation and current use 2226
of the railroad right-of-way. The additional standards shall not 2227
exceed the requirements of the national electrical safety code 2228

established by the institute of electrical and electronics 2229
engineers. 2230

Sec. 4963.6038. If a railroad provides flagging for the 2231
the construction of a crossing, the provider constructing the 2232
crossing shall reimburse the railroad for the actual, 2233
reasonable, and documented costs associated with the flagging. 2234
The reimbursement shall only be required for flagging provided 2235
during the actual time construction activity for the crossing is 2236
occurring. 2237

Sec. 4963.6041. A railroad may require safety personnel to 2238
be present during the time construction activity for a crossing 2239
is occurring. 2240

Sec. 4963.6042. If a railroad requires the presence of 2241
safety personnel during the time construction activity for a 2242
crossing is occurring, the railroad shall do one of the 2243
following: 2244

(A) Provide the personnel and make sure they are present 2245
during the construction activity; 2246

(B) Permit the provider to hire third-party contractors to 2247
serve as safety personnel and to be present during the 2248
construction activity. 2249

Sec. 4963.6043. If a railroad permits a provider to hire 2250
safety personnel under section 4963.6042 of the Revised Code, 2251
the railroad shall provide a list of third-party contractors 2252
approved by the railroad to serve as such safety personnel. 2253

Sec. 4963.6044. If a provider hires safety personnel under 2254
section 4963.6042 of the Revised Code, the provider shall be 2255
solely responsible for the cost of employing that personnel. 2256

Sec. 4963.6045. Safety personnel shall not be required to 2257
be present in either of the following situations: 2258

(A) For construction activity for a crossing if the 2259
construction activity is not in the railroad right-of-way; 2260

(B) For facility maintenance, repair, or replacement 2261
activity in a crossing if the activity does not involve 2262
excavation or continuous work within twenty-five feet of 2263
railroad track located in the railroad right-of-way containing 2264
the crossing. 2265

Sec. 4963.6048. Each railroad and provider shall be 2266
responsible for the maintenance and repair of their own property 2267
located in the railroad right-of-way containing the crossing. 2268

Sec. 4963.6049. A railroad shall give immediate notice to 2269
a provider, and a provider shall give immediate notice to a 2270
railroad, if the railroad or provider needs to perform either of 2271
the following regarding a crossing to which they are both 2272
subject, and that performance may affect the other's operations: 2273

(A) Emergency maintenance or repair within the railroad 2274
right-of-way containing the crossing; 2275

(B) Maintenance or repair involving excavation or 2276
continuous work within twenty-five feet of railroad track 2277
located in the railroad right-of-way containing the crossing. 2278

Sec. 4963.6052. A railroad may require a provider to 2279
relocate provider facilities in a crossing, at the railroad's 2280
expense, if the relocation is necessary to accommodate railroad 2281
operations. 2282

Sec. 4963.6053. A railroad shall provide a statement or 2283
other supporting documentation to a provider specifying the 2284

operational reasons for a relocation requirement under section 2285
4963.6052 of the Revised Code not later than fifteen days after 2286
the provider requests the statement or documentation. 2287

Sec. 4963.6054. A provider shall not be subject to any fee 2288
or charge for relocating provider facilities pursuant to a 2289
relocation requirement from a railroad under section 4963.6052 2290
of the Revised Code. 2291

Sec. 4963.6057. Except as provided in section 4963.6058 of 2292
the Revised Code, a provider shall not transfer or assign any of 2293
its rights in a crossing without the prior written permission of 2294
the railroad whose railroad right-of-way is subject to the 2295
crossing, which permission that railroad shall not unreasonably 2296
withhold. 2297

Sec. 4963.6058. A provider may assign or otherwise 2298
transfer any of its rights in a crossing, without the permission 2299
of the railroad whose railroad right-of-way is subject to the 2300
crossing, to any entity controlled by, controlling, or under the 2301
common control of, the provider, or to any entity into, or with 2302
which, the provider is merged or consolidated or which acquires 2303
ownership or control of all or substantially all of the 2304
provider's facilities. 2305

Sec. 4963.6059. A provider shall give notice of an 2306
assignment or transfer of a crossing under section 4963.6058 of 2307
the Revised Code to the railroad whose railroad right-of-way is 2308
subject to the crossing not later than sixty days after the date 2309
the transfer or assignment is executed. 2310

Sec. 4963.6062. Except as provided in section 4963.6063 of 2311
the Revised Code, each railroad and provider subject to a 2312
crossing shall be liable for any damage or injury to any person 2313

or property caused by their own acts or omissions. 2314

Sec. 4963.6063. Notwithstanding any law or regulation, a 2315
railroad and provider subject to a crossing shall not be liable 2316
to each other for consequential, incidental, punitive, 2317
exemplary, indirect, or business interruption damages suffered 2318
by either, including lost profits, whether established in 2319
statutes, tort, or contract, regardless of the theory of 2320
liability on which the liability claim rests. 2321

Sec. 4963.6065. A railroad or provider subject to a 2322
crossing for which construction has been completed may file a 2323
petition with the public utilities commission requesting the 2324
commission to resolve any dispute between the railroad and 2325
provider regarding the crossing. The commission shall hold a 2326
hearing and make any determination necessary to resolve the 2327
dispute. 2328

Sec. 4963.6067. The public utilities commission shall 2329
adopt rules necessary to effectuate the purposes and 2330
requirements of sections 4963.60 to 4963.6065 of the Revised 2331
Code, including rules governing crossing notices, notifications, 2332
petitions, and proceedings under those sections. 2333

Sec. 5301.075. As used sections 5301.076 and 5301.077 of 2334
the Revised Code, "solar collector system" means a solar 2335
collector or other solar energy device, the primary purpose of 2336
which is to provide for the collection, storage, and 2337
distribution of solar energy for electricity generation, space 2338
heating, space cooling, or water heating. 2339

Sec. 5301.076. No covenant, condition, or restriction set 2340
forth in a deed, and no rule, regulation, bylaw, or other 2341
governing document or agreement of a homeowners, neighborhood, 2342

civic, or other association, shall impose or be construed to 2343
impose any unreasonable limitation on the installation of a 2344
solar collector system on the roof or exterior walls of 2345
improvements, provided the property owner owns or has the right 2346
to exclusive use of the roof or exterior walls. For purposes of 2347
this section, "unreasonable limitation" includes a limitation 2348
that significantly increases the cost, or significantly 2349
decreases the efficiency, of the solar collector system. 2350

Sec. 5301.077. If a property owner installs or intends to 2351
install a solar collector system, the property owner may 2352
negotiate to obtain a solar access easement described in section 2353
5301.63 of the Revised Code. 2354

Sec. 5311.195. As used in sections 5311.196 and 5311.197 2355
of the Revised Code, "solar collector system" means a solar 2356
collector or other solar energy device, the primary purpose of 2357
which is to provide for the collection, storage, and 2358
distribution of solar energy for electricity generation, space 2359
heating, space cooling, or water heating. 2360

Sec. 5311.196. No declaration, bylaw, rule, regulation, or 2361
agreement of a condominium property, or construction of any of 2362
these items by the board of managers of its unit owners 2363
association, shall impose or be construed to impose any 2364
unreasonable limitation on the installation of a solar collector 2365
system on the roof or exterior walls of improvements, provided 2366
there is no competing use of the roof or exterior walls. For 2367
purposes of this section, "unreasonable limitation" includes a 2368
limitation that significantly increases the cost, or 2369
significantly decreases the efficiency, of the solar collector 2370
system. 2371

Sec. 5311.197. If a unit owner installs or intends to 2372

install a solar collector system, the unit owner may negotiate 2373
to obtain a solar access easement described in section 5301.63 2374
of the Revised Code. 2375

Section 2. That existing sections 121.95, 1509.02, 2376
4901.10, 4905.10, 4905.402, 4905.92, 4905.95, 4906.01, 4906.02, 2377
4906.03, 4906.20, 4906.201, 4907.44, 4911.02, 4911.15, 4911.17, 2378
4911.18, 4923.01, 4923.07, 4927.03, 4928.06, 4928.08, 4929.20, 2379
and 4933.11 of the Revised Code are hereby repealed. 2380

Section 3. That section 4928.71 of the Revised Code is 2381
hereby repealed. 2382