

As Introduced

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H. B. No. 15

Representative Cera

Cosponsors: Representatives Rogers, O'Brien, Antonio, Fedor, Sheehy

A BILL

To amend sections 1513.37, 1561.24, and 5727.81 of 1
the Revised Code to credit a portion of the 2
revenue derived from the kilowatt-hour tax to 3
the Abandoned Mine Reclamation Fund, the Acid 4
Mine Drainage Abatement and Treatment Fund, and 5
the Mine Safety Fund and to make other changes 6
to the use of money in those funds. 7

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

Section 1. That sections 1513.37, 1561.24, and 5727.81 of 8
the Revised Code be amended to read as follows: 9

Sec. 1513.37. (A) There is hereby created in the state 10
treasury the abandoned mine reclamation fund, which shall be 11
administered by the chief of the division of mineral resources 12
management. The fund shall consist of kilowatt-hour excise tax 13
revenue credited to the fund under section 5727.81 of the 14
Revised Code, money transferred from the acid mine drainage 15
abatement and treatment fund, and grants from the secretary of 16
the interior from the federal abandoned mine reclamation fund 17
established by Title IV of the "Surface Mining Control and 18

Reclamation Act of 1977," 91 Stat. 445, 30 U.S.C.A. 1201, 19
regulations adopted under it, and amendments to the act and 20
regulations. Expenditures from the abandoned mine reclamation 21
fund shall be made by the chief for the following purposes: 22

(1) Reclamation and restoration of land and water 23
resources adversely affected by past coal mining, including, but 24
not limited to, reclamation and restoration of abandoned strip 25
mine areas, abandoned coal processing areas, and abandoned coal 26
refuse disposal areas; sealing and filling of abandoned deep 27
mine entries and voids; planting of land adversely affected by 28
past coal mining; prevention of erosion and sedimentation; 29
prevention, abatement, treatment, and control of water pollution 30
created by coal mine drainage, including restoration of 31
streambeds and construction and operation of water treatment 32
plants; prevention, abatement, and control of burning coal 33
refuse disposal areas and burning coal in situ; and prevention, 34
abatement, and control of coal mine subsidence; 35

(2) Acquisition and filling of voids and sealing of 36
tunnels, shafts, and entryways of noncoal lands; 37

(3) Acquisition of land as provided for in this section; 38

(4) Administrative expenses incurred in accomplishing the 39
purposes of this section; 40

(5) All other necessary expenses to accomplish the 41
purposes of this section. 42

The chief may transfer money from the abandoned mine 43
reclamation fund to the acid mine drainage abatement and 44
treatment fund. The total amount transferred in a fiscal year 45
shall not exceed the amount credited in that year to the 46
abandoned mine reclamation fund from kilowatt-hour excise tax 47

<u>revenue under section 5727.81 of the Revised Code.</u>	48
(B) Expenditures of moneys from the fund on land and water eligible pursuant to division (C) of this section shall reflect the following priorities in the order stated:	49 50 51
(1) The protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices;	52 53 54
(2) The protection of public health, safety, and general welfare from adverse effects of coal mining practices;	55 56
(3) The restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices, including measures for the conservation and development of soil and water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity;	57 58 59 60 61 62
(4) Research and demonstration projects relating to the development of coal mining reclamation and water quality control program methods and techniques;	63 64 65
(5) The protection, repair, replacement, construction, or enhancement of public facilities such as utilities, roads, recreation facilities, and conservation facilities adversely affected by coal mining practices;	66 67 68 69
(6) The development of publicly owned land adversely affected by coal mining practices, including land acquired as provided in this section for recreation and historic purposes, conservation and reclamation purposes, and open space benefits.	70 71 72 73
(C) (1) Lands and water eligible for reclamation or drainage abatement expenditures under this section are those	74 75

that were mined for coal or were affected by such mining, 76
wastebanks, coal processing, or other coal mining processes and 77
that meet one of the following criteria: 78

(a) Are lands that were abandoned or left in an inadequate 79
reclamation status prior to August 3, 1977, and for which there 80
is no continuing reclamation responsibility under state or 81
federal laws; 82

(b) Are lands for which the chief finds that surface coal 83
mining operations occurred at any time between August 4, 1977, 84
and August 16, 1982, and that any moneys for reclamation or 85
abatement that are available pursuant to a bond, performance 86
security, or other form of financial guarantee or from any other 87
source are not sufficient to provide for adequate reclamation or 88
abatement at the site; 89

(c) Are lands for which the chief finds that surface coal 90
mining operations occurred at any time between August 4, 1977, 91
and November 5, 1990, that the surety of the mining operator 92
became insolvent during that time, and that, as of November 5, 93
1990, any moneys immediately available from proceedings relating 94
to that insolvency or from any financial guarantee or other 95
source are not sufficient to provide for adequate reclamation or 96
abatement at the site. 97

(2) In determining which sites to reclaim pursuant to 98
divisions (C) (1) (b) and (c) of this section, the chief shall 99
follow the priorities stated in divisions (B) (1) and (2) of this 100
section and shall ensure that priority is given to those sites 101
that are in the immediate vicinity of a residential area or that 102
have an adverse economic impact on a local community. 103

(3) Surface coal mining operations on lands eligible for 104

remining shall not affect the eligibility of those lands for 105
reclamation and restoration under this section after the release 106
of the bond, performance security, or other form of financial 107
guarantee for any such operation as provided under division (F) 108
of section 1513.16 of the Revised Code. If the bond, performance 109
security, or other form of financial guarantee for a surface 110
coal mining operation on lands eligible for remining is 111
forfeited, moneys available under this section may be used if 112
the amount of the bond, performance security, or other form of 113
financial guarantee is not sufficient to provide for adequate 114
reclamation or abatement, except that if conditions warrant, the 115
chief immediately shall exercise the authority granted under 116
division (L) of this section. 117

(D) The chief may submit to the secretary of the interior 118
a state reclamation plan and annual projects to carry out the 119
purposes of this section. 120

(1) The reclamation plan generally shall identify the 121
areas to be reclaimed, the purposes for which the reclamation is 122
proposed, the relationship of the lands to be reclaimed and the 123
proposed reclamation to surrounding areas, the specific criteria 124
for ranking and identifying projects to be funded, and the legal 125
authority and programmatic capability to perform the work in 126
accordance with this section. 127

(2) On an annual basis, the chief may submit to the 128
secretary an application for support of the abandoned mine 129
reclamation fund and implementation of specific reclamation 130
projects. The annual requests shall include such information as 131
may be requested by the secretary. 132

(3) The costs for each proposed project under this section 133
shall include actual construction costs, actual operation and 134

maintenance costs of permanent facilities, planning and 135
engineering costs, construction inspection costs, and other 136
necessary administrative expenses. 137

(4) The chief may submit annual and other reports required 138
by the secretary when funds are provided by the secretary under 139
Title IV of the "Surface Mining Control and Reclamation Act of 140
1977," 91 Stat. 445, 30 U.S.C.A. 1201, regulations adopted under 141
it, and amendments to the act and regulations. 142

(E) (1) There is hereby created in the state treasury the 143
acid mine drainage abatement and treatment fund, which shall be 144
administered by the chief. The fund shall consist of kilowatt- 145
hour excise tax revenue credited to the fund under section 146
5727.81 of the Revised Code, money transferred from the 147
abandoned mine reclamation fund, and grants from the secretary 148
of the interior from the federal abandoned mine reclamation fund 149
pursuant to section 402(g) (6) of Title IV of the "Surface Mining 150
Control and Reclamation Act of 1977," 91 Stat. 445, 30 U.S.C.A. 151
1201. All investment earnings of the acid mine drainage 152
abatement and treatment fund shall be credited to the fund. 153

(2) The chief shall make expenditures from the fund, in 154
consultation with the United States department of agriculture, 155
soil conservation service, to implement acid mine drainage 156
abatement and treatment plans approved by the secretary. The 157
plans shall provide for the comprehensive abatement of the 158
causes and treatment of the effects of acid mine drainage within 159
qualified hydrologic units affected by coal mining practices and 160
shall include at least all of the following: 161

(a) An identification of the qualified hydrologic unit. As 162
used in division (E) of this section, "qualified hydrologic 163
unit" means a hydrologic unit that meets all of the following 164

criteria:	165
(i) The water quality in the unit has been significantly affected by acid mine drainage from coal mining practices in a manner that has an adverse impact on biological resources.	166 167 168
(ii) The unit contains lands and waters that meet the eligibility requirements established under division (C) of this section and any of the priorities established in divisions (B) (1) to (3) of this section.	169 170 171 172
(iii) The unit contains lands and waters that are proposed to be the subject of expenditures from the reclamation forfeiture fund created in section 1513.18 of the Revised Code or the unreclaimed lands fund created in section 1513.30 of the Revised Code.	173 174 175 176 177
(b) The extent to which acid mine drainage is affecting the water quality and biological resources within the hydrologic unit;	178 179 180
(c) An identification of the sources of acid mine drainage within the hydrologic unit;	181 182
(d) An identification of individual projects and the measures proposed to be undertaken to abate and treat the causes or effects of acid mine drainage within the hydrologic unit;	183 184 185
(e) The cost of undertaking the proposed abatement and treatment measures;	186 187
(f) An identification of existing and proposed sources of funding for those measures;	188 189
(g) An analysis of the cost-effectiveness and environmental benefits of abatement and treatment measures.	190 191

(3) The chief may make grants of moneys from the acid mine drainage abatement and treatment fund to watershed groups for conducting projects to accomplish the purposes of this section. A grant may be made in an amount equal to not more than fifty per cent of each of the following:

(a) Reasonable and necessary expenses for the collection and analysis of data sufficient to do either or both of the following:

(i) Identify a watershed as a qualified hydrologic unit;

(ii) Monitor the quality of water in a qualified hydrologic unit before, during, and at any time after completion of the project by the watershed group.

(b) Engineering design costs and construction costs involved in the project, provided that the project is conducted in a qualified hydrologic unit and the chief considers the project to be a priority.

A watershed group that wishes to obtain a grant under division (E) (3) of this section shall submit an application to the chief on forms provided by the division of mineral resources management, together with detailed estimates and timetables for accomplishing the stated goals of the project and any other information that the chief requires. Before awarding a grant from the fund, the chief first shall submit to the council on unreclaimed strip mined lands the project proposal and any other pertinent information regarding the project requested by the council for review and approval of the specific project by the council.

For the purposes of establishing priorities for awarding grants under division (E) (3) of this section, the chief shall

consider each project's feasibility, cost-effectiveness, and 221
environmental benefit, together with the availability of 222
matching funding, including in-kind services, for the project. 223

~~The~~ After the project is reviewed and approved by the 224
council, the chief shall enter into a contract for funding with 225
each applicant awarded a grant to ensure that the moneys granted 226
are used for the purposes of this section and that the work that 227
the project involves is done properly. The contract is not 228
subject to division (B) of section 127.16 of the Revised Code. 229
The final payment of grant moneys shall not be made until the 230
chief inspects and approves the completed project. 231

The chief shall require each applicant awarded a grant 232
under this section who conducts a project involving construction 233
work to pay workers at the greater of their regular rate of pay, 234
as established by contract, agreement, or prior custom or 235
practice, or the average wage rate paid in this state for the 236
same or similar work performed in the same or a similar locality 237
by private companies doing similar work on similar projects. 238

As used in division (E) (3) of this section, "watershed 239
group" means a charitable organization as defined in section 240
1716.01 of the Revised Code that has been established for the 241
purpose of conducting reclamation of land and waters adversely 242
affected by coal mining practices and specifically for 243
conducting acid mine drainage abatement. 244

(4) The chief may transfer money from the acid mine 245
drainage abatement and treatment fund to the abandoned mine 246
reclamation fund. The total amount transferred in a fiscal year 247
shall not exceed the amount credited in that year to the acid 248
mine drainage abatement and treatment fund from kilowatt-hour 249
excise tax revenue under section 5727.81 of the Revised Code. 250

(F) (1) If the chief makes a finding of fact that land or 251
water resources have been adversely affected by past coal mining 252
practices; the adverse effects are at a stage where, in the 253
public interest, action to restore, reclaim, abate, control, or 254
prevent the adverse effects should be taken; the owners of the 255
land or water resources where entry must be made to restore, 256
reclaim, abate, control, or prevent the adverse effects of past 257
coal mining practices are not known or are not readily 258
available; or the owners will not give permission for the state, 259
political subdivisions, or their agents, employees, or 260
contractors to enter upon the property to restore, reclaim, 261
abate, control, or prevent the adverse effects of past coal 262
mining practices; then, upon giving notice by mail to the 263
owners, if known, or, if not known, by posting notice upon the 264
premises and advertising once in a newspaper of general 265
circulation in the municipal corporation or county in which the 266
land lies, the chief or the chief's agents, employees, or 267
contractors may enter upon the property adversely affected by 268
past coal mining practices and any other property to have access 269
to the property to do all things necessary or expedient to 270
restore, reclaim, abate, control, or prevent the adverse 271
effects. The entry shall be construed as an exercise of the 272
police power for the protection of the public health, safety, 273
and general welfare and shall not be construed as an act of 274
condemnation of property nor of trespass on it. The moneys 275
expended for the work and the benefits accruing to any such 276
premises so entered upon shall be chargeable against the land 277
and shall mitigate or offset any claim in or any action brought 278
by any owner of any interest in the premises for any alleged 279
damages by virtue of the entry, but this provision is not 280
intended to create new rights of action or eliminate existing 281
immunities. 282

(2) The chief or the chief's authorized representatives	283
may enter upon any property for the purpose of conducting	284
studies or exploratory work to determine the existence of	285
adverse effects of past coal mining practices and to determine	286
the feasibility of restoration, reclamation, abatement, control,	287
or prevention of such adverse effects. The entry shall be	288
construed as an exercise of the police power for the protection	289
of the public health, safety, and general welfare and shall not	290
be construed as an act of condemnation of property nor trespass	291
on it.	292
(3) The chief may acquire any land by purchase, donation,	293
or condemnation that is adversely affected by past coal mining	294
practices if the chief determines that acquisition of the land	295
is necessary to successful reclamation and that all of the	296
following apply:	297
(a) The acquired land, after restoration, reclamation,	298
abatement, control, or prevention of the adverse effects of past	299
coal mining practices, will serve recreation and historic	300
purposes, serve conservation and reclamation purposes, or	301
provide open space benefits.	302
(b) Permanent facilities such as a treatment plant or a	303
relocated stream channel will be constructed on the land for the	304
restoration, reclamation, abatement, control, or prevention of	305
the adverse effects of past coal mining practices.	306
(c) Acquisition of coal refuse disposal sites and all coal	307
refuse thereon will serve the purposes of this section or public	308
ownership is desirable to meet emergency situations and prevent	309
recurrences of the adverse effects of past coal mining	310
practices.	311

(4) (a) Title to all lands acquired pursuant to this 312
section shall be in the name of the state. The price paid for 313
land acquired under this section shall reflect the market value 314
of the land as adversely affected by past coal mining practices. 315

(b) The chief may receive grants on a matching basis from 316
the secretary of the interior for the purpose of carrying out 317
this section. 318

(5) (a) Where land acquired pursuant to this section is 319
considered to be suitable for industrial, commercial, 320
residential, or recreational development, the chief may sell the 321
land by public sale under a system of competitive bidding at not 322
less than fair market value and under other requirements imposed 323
by rule to ensure that the lands are put to proper use 324
consistent with local and state land use plans, if any, as 325
determined by the chief. 326

(b) The chief, when requested, and after appropriate 327
public notice, shall hold a public meeting in the county, 328
counties, or other appropriate political subdivisions of the 329
state in which lands acquired pursuant to this section are 330
located. The meetings shall be held at a time that shall afford 331
local citizens and governments the maximum opportunity to 332
participate in the decision concerning the use or disposition of 333
the lands after restoration, reclamation, abatement, control, or 334
prevention of the adverse effects of past coal mining practices. 335

(6) In addition to the authority to acquire land under 336
division (F) (3) of this section, the chief may use money in the 337
fund to acquire land by purchase, donation, or condemnation, and 338
to reclaim and transfer acquired land to a political 339
subdivision, or to any person, if the chief determines that it 340
is an integral and necessary element of an economically feasible 341

plan for the construction or rehabilitation of housing for 342
persons disabled as the result of employment in the mines or 343
work incidental to that employment, persons displaced by 344
acquisition of land pursuant to this section, persons dislocated 345
as the result of adverse effects of coal mining practices that 346
constitute an emergency as provided in the "Surface Mining 347
Control and Reclamation Act of 1977," 91 Stat. 466, 30 U.S.C.A. 348
1240, or amendments to it, or persons dislocated as the result 349
of natural disasters or catastrophic failures from any cause. 350
Such activities shall be accomplished under such terms and 351
conditions as the chief requires, which may include transfers of 352
land with or without monetary consideration, except that to the 353
extent that the consideration is below the fair market value of 354
the land transferred, no portion of the difference between the 355
fair market value and the consideration shall accrue as a profit 356
to those persons. No part of the funds provided under this 357
section may be used to pay the actual construction costs of 358
housing. The chief may carry out the purposes of division (F) (6) 359
of this section directly or by making grants and commitments for 360
grants and may advance money under such terms and conditions as 361
the chief may require to any agency or instrumentality of the 362
state or any public body or nonprofit organization designated by 363
the chief. 364

(G) (1) Within six months after the completion of projects 365
to restore, reclaim, abate, control, or prevent adverse effects 366
of past coal mining practices on privately owned land, the chief 367
shall itemize the moneys so expended and may file a statement of 368
the expenditures in the office of the county recorder of the 369
county in which the land lies, together with a notarized 370
appraisal by an independent appraiser of the value of the land 371
before the restoration, reclamation, abatement, control, or 372

prevention of adverse effects of past coal mining practices if 373
the moneys so expended result in a significant increase in 374
property value. The statement shall constitute a lien upon the 375
land as of the date of the expenditures of the moneys and shall 376
have priority as a lien second only to the lien of real property 377
taxes imposed upon the land. The lien shall not exceed the 378
amount determined by the appraisal to be the increase in the 379
fair market value of the land as a result of the restoration, 380
reclamation, abatement, control, or prevention of the adverse 381
effects of past coal mining practices. No lien shall be filed 382
under division (G) of this section against the property of any 383
person who owned the surface prior to May 2, 1977, and did not 384
consent to, participate in, or exercise control over the mining 385
operation that necessitated the reclamation performed. 386

(2) The landowner may petition, within sixty days after 387
the filing of the lien, to determine the increase in the fair 388
market value of the land as a result of the restoration, 389
reclamation, abatement, control, or prevention of the adverse 390
effects of past coal mining practices. The amount reported to be 391
the increase in value of the premises shall constitute the 392
amount of the lien and shall be recorded with the statement 393
provided in this section. Any party aggrieved by the decision 394
may appeal as provided by state law. 395

(3) The lien provided in division (G) of this section 396
shall be recorded and indexed, under the name of the state and 397
the landowner, in the official records in the office of the 398
county recorder of the county in which the land lies. The county 399
recorder shall impose no charge for the recording or indexing of 400
the lien. If the land is registered, the county recorder shall 401
make a notation and enter a memorial of the lien upon the page 402
of the register in which the last certificate of title to the 403

land is registered, stating the name of the claimant, amount 404
claimed, volume and page of the record where recorded, and exact 405
time the memorial was entered. 406

(4) The lien shall continue in force so long as any 407
portion of the amount of the lien remains unpaid. If the lien 408
remains unpaid at the time of conveyance of the land on which 409
the lien was placed, the conveyance may be set aside. Upon 410
repayment in full of the moneys expended under this section, the 411
chief promptly shall issue a certificate of release of the lien. 412
Upon presentation of the certificate of release, the county 413
recorder of the county in which the lien is recorded shall 414
record the lien as having been discharged. 415

(5) A lien imposed under this section shall be foreclosed 416
upon the substantial failure of a landowner to pay any portion 417
of the amount of the lien. Before foreclosing any lien under 418
this section, the chief shall make a written demand upon the 419
landowner for payment. If the landowner does not pay the amount 420
due within sixty days, the chief shall refer the matter to the 421
attorney general, who shall institute a civil action to 422
foreclose the lien. 423

(H) (1) The chief may fill voids, seal abandoned tunnels, 424
shafts, and entryways, and reclaim surface impacts of 425
underground or strip mines that the chief determines could 426
endanger life and property, constitute a hazard to the public 427
health and safety, or degrade the environment. 428

(2) In those instances where mine waste piles are being 429
reworked for conservation purposes, the incremental costs of 430
disposing of the wastes from those operations by filling voids 431
and sealing tunnels may be eligible for funding, provided that 432
the disposal of these wastes meets the purposes of this section. 433

(3) The chief may acquire by purchase, donation, easement, 434
or otherwise such interest in land as the chief determines 435
necessary to carry out division (H) of this section. 436

(I) The chief shall report annually to the secretary of 437
the interior on operations under the fund and include 438
recommendations as to its future uses. 439

(J) (1) The chief may engage in any work and do all things 440
necessary or expedient, including the adoption of rules, to 441
implement and administer this section. 442

(2) The chief may engage in cooperative projects under 443
this section with any agency of the United States, any other 444
state, or their governmental agencies or with any state 445
university or college as defined in section 3345.27 of the 446
Revised Code. The cooperative projects are not subject to 447
division (B) of section 127.16 of the Revised Code. 448

(3) The chief may request the attorney general to initiate 449
in any court of competent jurisdiction an action in equity for 450
an injunction to restrain any interference with the exercise of 451
the right to enter or to conduct any work provided in this 452
section, which remedy is in addition to any other remedy 453
available under this section. 454

(4) The chief may construct or operate a plant or plants 455
for the control and treatment of water pollution resulting from 456
mine drainage. The extent of this control and treatment may be 457
dependent upon the ultimate use of the water. Division (J) (4) of 458
this section does not repeal or supersede any portion of the 459
"Federal Water Pollution Control Act," 70 Stat. 498 (1965), 33 460
U.S.C.A. 1151, as amended, and no control or treatment under 461
division (J) (4) of this section, in any way, shall be less than 462

that required by that act. The construction of a plant or plants 463
may include major interceptors and other facilities appurtenant 464
to the plant. 465

(5) The chief may transfer money from the abandoned mine 466
reclamation fund and the acid mine drainage abatement and 467
treatment fund to other appropriate state agencies or to state 468
universities or colleges in order to carry out the reclamation 469
activities authorized by this section. 470

(K) The chief may contract for any part of work to be 471
performed under this section, with or without advertising for 472
bids, if the chief determines that a condition exists that could 473
reasonably be expected to cause substantial physical harm to 474
persons, property, or the environment and to which persons or 475
improvements on real property are currently exposed. 476

The chief shall require every contractor performing 477
reclamation work under this section to pay its workers at the 478
greater of their regular rate of pay, as established by 479
contract, agreement, or prior custom or practice, or the average 480
wage rate paid in this state for the same or similar work as 481
determined by the chief under section 1513.02 of the Revised 482
Code. 483

(L) (1) The chief may contract for the emergency 484
restoration, reclamation, abatement, control, or prevention of 485
adverse effects of mining practices on eligible lands if the 486
chief determines that an emergency exists constituting a danger 487
to the public health, safety, or welfare and that no other 488
person or agency will act expeditiously to restore, reclaim, 489
abate, control, or prevent those adverse effects. The chief may 490
enter into a contract for emergency work under division (L) of 491
this section without advertising for bids. Any such contract or 492

any purchase of materials for emergency work under division (L) 493
of this section is not subject to division (B) of section 127.16 494
of the Revised Code. 495

(2) The chief or the chief's agents, employees, or 496
contractors may enter on any land where such an emergency 497
exists, and on other land in order to have access to that land, 498
in order to restore, reclaim, abate, control, or prevent the 499
adverse effects of mining practices and to do all things 500
necessary or expedient to protect the public health, safety, or 501
welfare. Such an entry shall be construed as an exercise of the 502
police power and shall not be construed as an act of 503
condemnation of property or of trespass. The moneys expended for 504
the work and the benefits accruing to any premises so entered 505
upon shall be chargeable against the land and shall mitigate or 506
offset any claim in or any action brought by any owner of any 507
interest in the premises for any alleged damages by virtue of 508
the entry. This provision is not intended to create new rights 509
of action or eliminate existing immunities. 510

(M) (1) The chief shall adopt policies and procedures that 511
establish incentives for contractors to employ coal miners who 512
qualify as dislocated workers for the purposes of projects 513
conducted under division (D) or (E) of this section. 514

(2) For the purposes of this section, a "dislocated 515
worker" has the same definition as in 29 U.S.C. 3102. 516

Sec. 1561.24. For purposes of this chapter, Chapters 517
1563., 1565., and 1567., and sections 1514.40 to 1514.50 of the 518
Revised Code, there is hereby created in the state treasury the 519
mine safety fund. The fund shall consist of kilowatt-hour excise 520
tax revenue credited to the fund under section 5727.81 of the 521
Revised Code and money transferred to it by the administrator of 522

workers' compensation from the coal-workers pneumoconiosis fund 523
established in section 4131.03 of the Revised Code. All 524
investment earnings of the mine safety fund shall be credited to 525
the fund. The chief of the division of mineral resources 526
management shall use money in the fund for all of the following 527
purposes: 528

(A) Mine safety and health inspections and audits; 529

(B) The purchase and maintenance of mine rescue and 530
inspection equipment; 531

(C) The purchase or lease of facilities for use as mine 532
rescue stations and for mine rescue and safety training; 533

(D) Mine rescue and safety and health training of miners; 534

(E) Certification and recertification of mine officials; 535

(F) Infrastructure, programming, and personnel costs 536
relating to mine safety training. 537

Sec. 5727.81. (A) For the purpose of raising revenue to 538
fund the needs of this state and its local governments and for 539
the purposes of mine reclamation, mine drainage abatement, and 540
mine safety, an excise tax is hereby levied and imposed on an 541
electric distribution company for all electricity distributed by 542
such company at the following rates per kilowatt hour of 543
electricity distributed in a thirty-day period by the company 544
through a meter of an end user in this state: 545

KILOWATT HOURS DISTRIBUTED	RATE PER	546
TO AN END USER	KILOWATT HOUR	547
For the first 2,000	\$.00465	548
For the next 2,001 to 15,000	\$.00419	549

For 15,001 and above \$.00363 550

If no meter is used to measure the kilowatt hours of electricity distributed by the company, the rates shall apply to the estimated kilowatt hours of electricity distributed to an unmetered location in this state. 551
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The electric distribution company shall base the monthly tax on the kilowatt hours of electricity distributed to an end user through the meter of the end user that is not measured for a thirty-day period by dividing the days in the measurement period into the total kilowatt hours measured during the measurement period to obtain a daily average usage. The tax shall be determined by obtaining the sum of divisions (A) (1), (2), and (3) of this section and multiplying that amount by the number of days in the measurement period: 555
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(1) Multiplying \$0.00465 per kilowatt hour for the first sixty-seven kilowatt hours distributed using a daily average; 564
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(2) Multiplying \$0.00419 for the next sixty-eight to five hundred kilowatt hours distributed using a daily average; 566
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(3) Multiplying \$0.00363 for the remaining kilowatt hours distributed using a daily average. 568
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Except as provided in division (C) of this section, the electric distribution company shall pay the tax to the tax commissioner in accordance with section 5727.82 of the Revised Code, unless required to remit each tax payment by electronic funds transfer to the treasurer of state in accordance with section 5727.83 of the Revised Code. 570
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Only the distribution of electricity through a meter of an end user in this state shall be used by the electric distribution company to compute the amount or estimated amount 576
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of tax due. In the event a meter is not actually read for a 579
measurement period, the estimated kilowatt hours distributed by 580
an electric distribution company to bill for its distribution 581
charges shall be used. 582

(B) Except as provided in division (C) of this section, 583
each electric distribution company shall pay the tax imposed by 584
this section in all of the following circumstances: 585

(1) The electricity is distributed by the company through 586
a meter of an end user in this state; 587

(2) The company is distributing electricity through a 588
meter located in another state, but the electricity is consumed 589
in this state in the manner prescribed by the tax commissioner; 590

(3) The company is distributing electricity in this state 591
without the use of a meter, but the electricity is consumed in 592
this state as estimated and in the manner prescribed by the tax 593
commissioner. 594

(C) (1) As used in division (C) of this section: 595

(a) "Total price of electricity" means the aggregate value 596
in money of anything paid or transferred, or promised to be paid 597
or transferred, to obtain electricity or electric service, 598
including but not limited to the value paid or promised to be 599
paid for the transmission or distribution of electricity and for 600
transition costs as described in Chapter 4928. of the Revised 601
Code. 602

(b) "Package" means the provision or the acquisition, at a 603
combined price, of electricity with other services or products, 604
or any combination thereof, such as natural gas or other fuels; 605
energy management products, software, and services; machinery 606
and equipment acquisition; and financing agreements. 607

(c) "Single location" means a facility located on 608
contiguous property separated only by a roadway, railway, or 609
waterway. 610

(2) Division (C) of this section applies to any commercial 611
or industrial purchaser's receipt of electricity through a meter 612
of an end user in this state or through more than one meter at a 613
single location in this state in a quantity that exceeds forty- 614
five million kilowatt hours of electricity over the course of 615
the preceding calendar year, or any commercial or industrial 616
purchaser that will consume more than forty-five million 617
kilowatt hours of electricity over the course of the succeeding 618
twelve months as estimated by the tax commissioner. The tax 619
commissioner shall make such an estimate upon the written 620
request by an applicant for registration as a self-assessing 621
purchaser under this division. For the meter reading period 622
including July 1, 2008, through the meter reading period 623
including December 31, 2010, such a purchaser may elect to self- 624
assess the excise tax imposed by this section at the rate of 625
\$.00075 per kilowatt hour on the first five hundred four million 626
kilowatt hours distributed to that meter or location during the 627
registration year, and a percentage of the total price of all 628
electricity distributed to that meter or location equal to three 629
and one-half per cent. For the meter reading period including 630
January 1, 2011, and thereafter, such a purchaser may elect to 631
self-assess the excise tax imposed by this section at the rate 632
of \$.00257 per kilowatt hour for the first five hundred million 633
kilowatt hours, and \$.001832 per kilowatt hour for each kilowatt 634
hour in excess of five hundred million kilowatt hours, 635
distributed to that meter or location during the registration 636
year. 637

A qualified end user that receives electricity through a 638

meter of an end user in this state or through more than one 639
meter at a single location in this state and that consumes, over 640
the course of the previous calendar year, more than forty-five 641
million kilowatt hours in other than its qualifying 642
manufacturing process, may elect to self-assess the tax as 643
allowed by this division with respect to the electricity used in 644
other than its qualifying manufacturing process. 645

Payment of the tax shall be made directly to the tax 646
commissioner in accordance with divisions (A) (4) and (5) of 647
section 5727.82 of the Revised Code, or the treasurer of state 648
in accordance with section 5727.83 of the Revised Code. If the 649
electric distribution company serving the self-assessing 650
purchaser is a municipal electric utility and the purchaser is 651
within the municipal corporation's corporate limits, payment 652
shall be made to such municipal corporation's general fund and 653
reports shall be filed in accordance with divisions (A) (4) and 654
(5) of section 5727.82 of the Revised Code, except that 655
"municipal corporation" shall be substituted for "treasurer of 656
state" and "tax commissioner." A self-assessing purchaser that 657
pays the excise tax as provided in this division shall not be 658
required to pay the tax to the electric distribution company 659
from which its electricity is distributed. If a self-assessing 660
purchaser's receipt of electricity is not subject to the tax as 661
measured under this division, the tax on the receipt of such 662
electricity shall be measured and paid as provided in division 663
(A) of this section. 664

(3) In the case of the acquisition of a package, unless 665
the elements of the package are separately stated isolating the 666
total price of electricity from the price of the remaining 667
elements of the package, the tax imposed under this section 668
applies to the entire price of the package. If the elements of 669

the package are separately stated, the tax imposed under this 670
section applies to the total price of the electricity. 671

(4) Any electric supplier that sells electricity as part 672
of a package shall separately state to the purchaser the total 673
price of the electricity and, upon request by the tax 674
commissioner, the total price of each of the other elements of 675
the package. 676

(5) The tax commissioner may adopt rules relating to the 677
computation of the total price of electricity with respect to 678
self-assessing purchasers, which may include rules to establish 679
the total price of electricity purchased as part of a package. 680

(6) An annual application for registration as a self- 681
assessing purchaser shall be made for each qualifying meter or 682
location on a form prescribed by the tax commissioner. The 683
registration year begins on the first day of May and ends on the 684
following thirtieth day of April. Persons may apply after the 685
first day of May for the remainder of the registration year. In 686
the case of an applicant applying on the basis of an estimated 687
consumption of forty-five million kilowatt hours over the course 688
of the succeeding twelve months, the applicant shall provide 689
such information as the tax commissioner considers to be 690
necessary to estimate such consumption. At the time of making 691
the application and by the first day of May of each year, a 692
self-assessing purchaser shall pay a fee of five hundred dollars 693
to the tax commissioner, or to the treasurer of state as 694
provided in section 5727.83 of the Revised Code, for each 695
qualifying meter or location. The tax commissioner shall 696
immediately pay to the treasurer of state all amounts that the 697
tax commissioner receives under this section. The treasurer of 698
state shall deposit such amounts into the kilowatt hour excise 699

tax administration fund, which is hereby created in the state 700
treasury. Money in the fund shall be used to defray the tax 701
commissioner's cost in administering the tax owed under section 702
5727.81 of the Revised Code by self-assessing purchasers. After 703
the application is approved by the tax commissioner, the 704
registration shall remain in effect for the current registration 705
year, or until canceled by the registrant upon written 706
notification to the commissioner of the election to pay the tax 707
in accordance with division (A) of this section, or until 708
canceled by the tax commissioner for not paying the tax or fee 709
under division (C) of this section or for not meeting the 710
qualifications in division (C) (2) of this section. The tax 711
commissioner shall give written notice to the electric 712
distribution company from which electricity is delivered to a 713
self-assessing purchaser of the purchaser's self-assessing 714
status, and the electric distribution company is relieved of the 715
obligation to pay the tax imposed by division (A) of this 716
section for electricity distributed to that self-assessing 717
purchaser until it is notified by the tax commissioner that the 718
self-assessing purchaser's registration is canceled. Within 719
fifteen days of notification of the canceled registration, the 720
electric distribution company shall be responsible for payment 721
of the tax imposed by division (A) of this section on 722
electricity distributed to a purchaser that is no longer 723
registered as a self-assessing purchaser. A self-assessing 724
purchaser with a canceled registration must file a report and 725
remit the tax imposed by division (A) of this section on all 726
electricity it receives for any measurement period prior to the 727
tax being reported and paid by the electric distribution 728
company. A self-assessing purchaser whose registration is 729
canceled by the tax commissioner is not eligible to register as 730
a self-assessing purchaser for two years after the registration 731

is canceled. 732

(7) If the tax commissioner cancels the self-assessing 733
registration of a purchaser registered on the basis of its 734
estimated consumption because the purchaser does not consume at 735
least forty-five million kilowatt hours of electricity over the 736
course of the twelve-month period for which the estimate was 737
made, the tax commissioner shall assess and collect from the 738
purchaser the difference between (a) the amount of tax that 739
would have been payable under division (A) of this section on 740
the electricity distributed to the purchaser during that period 741
and (b) the amount of tax paid by the purchaser on such 742
electricity pursuant to division (C) (2) of this section. The 743
assessment shall be paid within sixty days after the tax 744
commissioner issues it, regardless of whether the purchaser 745
files a petition for reassessment under section 5727.89 of the 746
Revised Code covering that period. If the purchaser does not pay 747
the assessment within the time prescribed, the amount assessed 748
is subject to the additional charge and the interest prescribed 749
by divisions (B) and (C) of section 5727.82 of the Revised Code, 750
and is subject to assessment under section 5727.89 of the 751
Revised Code. If the purchaser is a qualified end user, division 752
(C) (7) of this section applies only to electricity it consumes 753
in other than its qualifying manufacturing process. 754

(D) The tax imposed by this section does not apply to the 755
distribution of any kilowatt hours of electricity to the federal 756
government, to an end user located at a federal facility that 757
uses electricity for the enrichment of uranium, to a qualified 758
regeneration meter, or to an end user for any day the end user 759
is a qualified end user. The exemption under this division for a 760
qualified end user only applies to the manufacturing location 761
where the qualified end user uses more than three million 762

kilowatt hours per day in a qualifying manufacturing process. 763

~~(E) All revenue arising from the tax imposed by this~~ 764
~~section shall be credited to the general revenue fund except (1)~~ 765
Except as provided by division (C) of this section and section 766
5727.82 of the Revised Code, revenue arising from the tax 767
imposed by this section shall be credited to the following funds 768
in the prescribed percentages: 769

<u>General revenue fund</u>	<u>96.25%</u>	770
<u>Abandoned mine reclamation fund</u>	<u>1.50%</u>	771
<u>Acid mine drainage abatement and treatment fund</u>	<u>1.50%</u>	772
<u>Mine safety fund</u>	<u>0.75%</u>	773

(2) As used in this division: 774

(a) "Abandoned mine reclamation fund" means the fund 775
bearing that name created by section 1513.37 of the Revised 776
Code. 777

(b) "Acid mine drainage abatement fund" means the fund 778
bearing that name created by section 1513.37 of the Revised 779
Code. 780

(c) "Mine safety fund" means the fund bearing that name 781
created by section 1561.24 of the Revised Code. 782

Section 2. That existing sections 1513.37, 1561.24, and 783
5727.81 of the Revised Code are hereby repealed. 784