Interim Report of the Senate Ways and Means Committee

123rd General Assembly
Regular Session **Sub. S. B. No. 3**
1999-2000

A BILL

To amend sections 113.061, 133.04, 715.013, 718.01, 1551.33, 1551.35, 3317.028, 4905.01, 4905.03, 4905.10, 4905.34, 4905.402, 4905.42, 4905.70, 4906.10, 4909.01, 4909.05, 4909.15, 4909.161, 4911.18, 4933.33, 4933.81, 4935.04, 5117.01, 5117.02, 5117.03, 5117.04, 5117.05, 5117.07, 5117.08, 5117.09, 5117.10, 5117.12, 5701.03, 5703.052, 5703.053, 5703.14, 5705.34, 5727.01, 5727.05, 5727.06, 5727.11, 5727.111, 5727.15, 5727.30, 5727.31, 5727.311, 5727.32, 5727.33, 5727.38, 5727.42, 5727.45, 5727.47, 5727.53, 5727.60, 5727.61, 5727.72, 5727.99, 5733.04, 5733.05, 5733.06, 5733.09, 5733.98, 5739.011, and 5739.02; to enact sections 4928.01 to 4928.20, 4928.31 to 4928.44, 4928.51 to 4928.57, 4928.61 to 4928.64, 5727.03, 5727.80 to 5727.95, and 5733.39; and to repeal sections 4905.301, 4905.66, 4905.67, 4905.68, 4905.69, 4909.157, 4909.158, 4909.159, 4909.191, 4909.192, 4909.193, 4913.01, 4913.02, 4913.03, 4913.04, 4913.05, 4913.06, 4913.07, 4933.27, 4933.34, 5727.231, 5727.391, and 5727.73 of the Revised Code to provide for competition in retail electric service, including provisions regarding market structure, consumer protection, competitive auctioning, and transition revenues; to levy a kilowatt-hour excise tax on electric distribution companies; to revise taxes for electric companies and rural electric companies; and to reduce tax assessment rates on certain electric company and rural electric company tangible personal property.

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

Section 1. That sections 113.061, 133.04, 715.013, 718.01, 1551.33, 1551.35, 3317.028, 4905.01, 4905.03, 4905.10, 4905.34, 4905.402, 4905.42, 4905.70, 4906.10, 4909.01, 4909.05, 4909.15, 4909.161, 4911.18, 4933.33, 4933.81, 4935.04, 5117.01, 5117.02, 5117.03, 5117.04, 5117.05, 5117.07, 5117.08, 5117.09, 5117.10, 5117.12, 5701.03, 5703.052, 5703.053, 5703.14, 5705.34, 5727.01, 5727.05, 5727.06, 5727.11, 5727.111, 5727.15, 5727.30, 5727.31, 5727.311, 5727.32, 5727.33, 5727.38, 5727.42, 5727.45, 5727.47, 5727.53, 5727.60, 5727.61, 5727.72, 5727.99, 5733.04, 5733.05, 5733.06, 5733.09, 5733.98, 5739.011, and 5739.02 be amended and sections 4928.01, 4928.02, 4928.03, 4928.04, 4928.05, 4928.06, 4928.07, 4928.08, 4928.09, 4928.10, 4928.11, 4928.12, 4928.13, 4928.14, 4928.15, 4928.16, 4928.17, 4928.18, 4928.19, 4928.20, 4928.31, 4928.32, 4928.33, 4928.34, 4928.35, 4928.36, 4928.37, 4928.38, 4928.39, 4928.40, 4928.41, 4928.42, 4928.43, 4928.44, 4928.51, 4928.52, 4928.53, 4928.54, 4928.55, 4928.56, 4928.57, 4928.58, 4928.61, 4928.62, 4928.63, 4928.64, 5727.03, 5727.80, 5727.81, 5727.82, 5727.83, 5727.84, 5727.85, 5727.86, 5727.87, 5727.88, 5727.89, 5727.90, 5727.91, 5727.92, 5727.93, 5727.94, 5727.95, and 5733.39 of the Revised Code be enacted to read as follows:

Sec. 113.061. The treasurer of state shall adopt rules in accordance with Chapter 119. of the Revised Code governing the remittance of taxes by electronic funds transfer as required under sections 5727.311, 5727.83, 5733.022, 5735.062, 5739.032, 5739.122, 5741.121, and 5747.072 of the Revised Code and any other section of the Revised Code under which a person is required to remit taxes by electronic funds transfer. The rules shall govern the modes of electronic funds transfer acceptable to the treasurer of state and under what circumstances each mode is acceptable, the content and format of electronic funds transfers, the coordination of payment by electronic funds transfer and filing of associated tax reports and returns, the remittance of taxes by means other than electronic funds transfer by persons otherwise required to do so but relieved of the requirement by the treasurer of state, and any other matter that in the opinion of the treasurer of state facilitates payment by electronic funds transfer in a manner consistent with those sections.

Upon failure by a person, if so required, to remit taxes by electronic funds transfer in the manner prescribed under section 5727.311, 5727.83, 5733.022, 5735.062, 5739.032, 5739.122, 5741.121, or 5747.072 of the Revised Code and rules adopted under this section, the treasurer of state shall notify the tax commissioner of such failure if the treasurer of state determines that such failure was not due to reasonable cause or was due to willful neglect, and shall provide the tax commissioner with any information used in making that determination. The tax commissioner may assess an additional charge as specified in the respective section of the Revised Code governing the requirement to remit taxes by electronic funds transfer.

The treasurer of state may implement means of acknowledging, upon the request of a taxpayer, receipt of tax remittances made by electronic funds transfer, and may adopt rules governing acknowledgments. The cost of acknowledging receipt of electronic remittances shall be paid by the person requesting acknowledgment.

The treasurer of state, not the tax commissioner, is responsible for resolving any problems involving electronic funds transfer transmissions.

Sec. 133.04. (A) As used in this chapter, "net indebtedness" means, as determined pursuant to this section, the principal amount of the outstanding securities of a subdivision less the amount held in a bond retirement fund to the extent such amount is not taken into account in determining the principal amount outstanding under division (AA) of section 133.01 of the Revised Code. For purposes of this definition, the principal amount of outstanding securities includes the principal amount of outstanding securities of another subdivision apportioned to the subdivision as a result of acquisition of territory, and excludes the principal amount of outstanding securities of the subdivision apportioned to another subdivision as a result of loss of territory and the payment or reimbursement obligations of the subdivision under credit enhancement facilities relating to outstanding securities.

(B) In calculating the net indebtedness of a subdivision, none of the following securities, including anticipatory securities issued in anticipation of their issuance, shall be considered:

(1) Securities issued in anticipation of the levy or collection of special assessments, either in original or refunded form;

(2) Securities issued in anticipation of the collection of current revenues for the fiscal year or other period not to exceed twelve consecutive months, or securities issued in anticipation of the collection of the proceeds from a specifically identified voter-approved tax levy;

(3) Securities issued for purposes described in section 133.12 of the Revised Code;

(4) Securities issued under Chapter 122., 140., 165., 725., or 761.~~,~~ or section 131.23 of the Revised Code;

(5) Securities issued to pay final judgments or court-approved settlements under authorizing laws and securities issued under section 2744.081 of the Revised Code;

(6) Securities issued to pay costs of permanent improvements to the extent they are issued in anticipation of the receipt of, and are payable as to principal from, federal or state grants or distributions for, or legally available for, that principal or for the costs of those permanent improvements;

(7) Securities issued to evidence loans from the state capital improvements fund pursuant to Chapter 164. of the Revised Code or from the state infrastructure bank pursuant to section 5531.09 of the Revised Code;

(8) Securities issued in an amount equal to the property tax replacement payments received under section 5727.85 or 5727.86 of the Revised Code;

(9) Other securities, including self-supporting securities, excepted by law from the calculation of net indebtedness or from the application of this chapter;

~~(9)~~(10) Any other securities outstanding on October 30, 1989, and then excepted from the calculation of net indebtedness or from the application of this chapter, and securities issued at any time to fund or refund those securities.

Sec. 715.013. Except as otherwise expressly authorized by the Revised Code, no municipal corporation shall levy a tax that is the same as or similar to a tax levied under Chapter 322., 3734., 3769., 4123., 4141., 4301., 4303., 4305., 4307., 4309., 5707., 5725., 5727., 5728., 5729., 5731., 5735., 5737., 5739., 5741., 5743., or 5749. of the Revised Code.

This section does not prohibit a municipal corporation from levying a tax on amounts received for admission to any place <u>or, on and after January 1, 2001, on the income of an electric company, as defined in section 5727.01 of the Revised Code</u>.

Sec. 718.01. (A) As used in this chapter:

(1) "Internal Revenue Code" means the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended.

(2) "Schedule C" means internal revenue service schedule C filed by a taxpayer pursuant to the Internal Revenue Code.

(3) "Form 2106" means internal revenue service form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.

(4) "Intangible income" means income of any of the following types: income yield, interest, dividends, or other income arising from the ownership, sale, exchange, or other disposition of intangible property including, but not limited to, investments, deposits, money, or credits as those terms are defined in Chapter 5701. of the Revised Code.

(B) No municipal corporation with respect to that income ~~which~~ <u>that</u> it may tax shall tax such income at other than a uniform rate.

(C) No municipal corporation shall levy a tax on income at a rate in excess of one per cent without having obtained the approval of the excess by a majority of the electors of the municipality voting on the question at a general, primary, or special election. The legislative authority of the municipal corporation shall file with the board of elections at least seventy-five days before the day of the election a copy of the ordinance together with a resolution specifying the date the election is to be held and directing the board of elections to conduct the election. The ballot shall be in the following form: "Shall the Ordinance providing for a... per cent levy on income for (Brief description of the purpose of the proposed levy) be passed?

FOR THE INCOME TAX

AGAINST THE INCOME TAX"

In the event of an affirmative vote, the proceeds of the levy may be used only for the specified purpose.

(D)(1) Except as otherwise provided in division (D)(2) of this section, no municipal corporation shall exempt from a tax on income, compensation for personal services of individuals over eighteen years of age or the net profit from a business or profession.

(2) The legislative authority of a municipal corporation may, by ordinance or resolution, exempt from a tax on income any compensation arising from the grant, sale, exchange, or other disposition of a stock option; the exercise of a stock option; or the sale, exchange, or other disposition of stock purchased under a stock option.

(E) Nothing in this section shall prevent a municipal corporation from permitting lawful deductions as prescribed by ordinance. If a taxpayer's taxable income includes income against which the taxpayer has taken a deduction for federal income tax purposes as reportable on the taxpayer's form 2106, and against which a like deduction has not been allowed by the municipal corporation, the municipal corporation shall deduct from the taxpayer's taxable income an amount equal to the deduction shown on such form allowable against such income, to the extent not otherwise so allowed as a deduction by the municipal corporation.

In the case of a taxpayer who has a net profit from a business or profession that is operated as a sole proprietorship, no municipal corporation may tax or use as the base for determining the amount of the net profit that shall be considered as having a taxable situs in the municipal corporation, a greater amount than the net profit reported by the taxpayer on schedule C filed in reference to the year in question as taxable income from such sole proprietorship, except as otherwise specifically provided by ordinance or regulation.

(F) No municipal corporation shall tax any of the following:

(1) The military pay or allowances of members of the armed forces of the United States and of members of their reserve components, including the Ohio national guard;

(2) The income of religious, fraternal, charitable, scientific, literary, or educational institutions to the extent that such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property, or tax-exempt activities;

(3) Except as otherwise provided in division (G) of this section, intangible income;

(4) Compensation paid under section 3501.28 or 3501.36 of the Revised Code to a person serving as a precinct election official, to the extent that such compensation does not exceed one thousand dollars annually. Such compensation in excess of one thousand dollars may be subjected to taxation by a municipal corporation. A municipal corporation shall not require the payer of such compensation to withhold any tax from that compensation.

(5) Compensation paid to an employee of a transit authority, regional transit authority, or regional transit commission created under Chapter 306. of the Revised Code for operating a transit bus or other motor vehicle for the authority or commission in or

through the municipal corporation, unless the bus or vehicle is operated on a regularly scheduled route, the operator is subject to such a tax by reason of residence or domicile in the municipal corporation, or the headquarters of the authority or commission is located within the municipal corporation.

(6) The income of a public utility ~~when~~ to the extent that the public ~~utility is~~ utility's gross receipts are subject to the tax levied under section 5727.30 of the Revised Code.

(G) Any municipal corporation that taxes any type of intangible income on March 29, 1988, pursuant to Section 3 of Amended Substitute Senate Bill No. 238 of the 116th general assembly, may continue to tax that type of income after 1988 if a majority of the electors of the municipal corporation voting on the question of whether to permit the taxation of that type of intangible income after 1988 vote in favor thereof at an election held on November 8, 1988.

(H) Nothing in this section or section 718.02 of the Revised Code~~,~~ shall authorize the levy of any tax on income ~~which~~ that a municipal corporation is not authorized to levy under existing laws or shall require a municipal corporation to allow a deduction from taxable income for losses incurred from a sole proprietorship or partnership.

Sec. 1551.33. (A) The director of development shall appoint and fix the compensation of the director of the Ohio coal development office established under section 1551.32 of the Revised Code. The director of the office shall serve at the pleasure of the director of development.

(B) The director of the office shall do all of the following:

(1) Biennially prepare and maintain the Ohio coal development

agenda required under section 1551.34 of the Revised Code;

(2) Propose and support policies for the office consistent with the Ohio coal development agenda and develop means to implement the agenda;

(3) Apportion for the office's administrative costs no more than ten per cent of the moneys credited to the Ohio coal development fund created under section 1551.36 of the Revised Code;

(4) Initiate, undertake, and support projects to carry out the office's purposes and ensure that the projects are consistent with and meet the selection criteria established by the Ohio coal development agenda;

(5) Actively encourage joint participation in and, when feasible, joint funding of the office's projects with governmental agencies, electric utilities, universities and colleges, other public or private interests, or any other person;

(6) Establish a table of organization for and employ such employees and agents as are necessary for the administration and operation of the office;

(7) Appoint specified members of and convene the technical advisory committee established under section 1551.35 of the Revised Code;

(8) Review, with the assistance of the technical advisory committee, proposed coal research and development projects as defined in section 1555.01 of the Revised Code, and coal development projects, submitted to the office by public utilities for the ~~purposes~~ purpose of ~~sections 4905.301,~~ section 4905.304~~,~~ ~~and 4909.191~~ of the Revised Code. If the director and the advisory committee determine that any such facility or project has as its purpose the enhanced use of Ohio coal in an environmentally

acceptable, cost effective manner, promotes energy conservation, is cost effective, and is environmentally sound, the director shall submit to the public utilities commission a report recommending that the commission allow the recovery of costs associated with the facility or project under section ~~4905.301,~~ 4905.304~~, or 4909.191~~ of the Revised Code and including the reasons for the recommendation;

(9) Establish such policies, procedures, and guidelines as are necessary to achieve the office's purposes.

(C) With the approval of the director of development, the director of the office may exercise any of the powers and duties of the director of development as the directors consider appropriate or desirable to achieve the office's purposes, including, but not limited to, the powers and duties enumerated in sections 1551.11, 1551.12, 1551.13, and 1551.15 of the Revised Code.

Additionally, the director of the office may make loans to governmental agencies or persons for projects to carry out the office's purposes. Fees, charges, rates of interest, times of payment of interest and principal, and other terms, conditions, and provisions of the loans shall be such as the director of the office determines to be appropriate and in furtherance of the purposes for which the loans are made. The mortgage lien securing any moneys lent by the director of the office may be subordinate to the mortgage lien securing any moneys lent or invested by a financial institution, but shall be superior to that securing any moneys lent or expended by any other person. The moneys used in making the loans shall be disbursed upon order of the director of the office.

Sec. 1551.35. (A) There is hereby established a technical advisory committee to assist the director of the Ohio coal development office established under section 1551.32 of the Revised Code in achieving the office's purposes. The director shall appoint to the committee one member of the public utilities commission ~~of Ohio~~ and one representative each of coal production companies, the united mine workers of America, electric utilities, manufacturers that use Ohio coal, and environmental organizations, as well as two people with a background in coal research and development technology, one of whom is employed at the time of the member's appointment by a state university, as defined in section 3345.011 of the Revised Code. In addition, the committee shall include four legislative members. The speaker and minority leader of the house of representatives each shall appoint one member of the house of representatives, and the president and minority leader of the senate each shall appoint one member of the senate, to the committee. The director of environmental protection, representing the environmental protection agency, the Ohio air quality development authority, and the Ohio water development authority, shall serve on the committee as members ex officio. Any member of the committee may designate in writing a substitute to serve in the member's absence on the committee. The director of environmental protection may designate in writing the chief of the air pollution control division of the agency to represent the agency. Members shall serve on the committee at the pleasure of their appointing authority. Members of the committee appointed by the director of the office and, notwithstanding section 101.26 of the Revised Code, legislative members of the committee, when engaged in their official duties as members of the committee, shall be compensated on a per diem basis in accordance with division (J) of section 124.15 of the Revised Code, except that the member of the public utilities commission ~~of Ohio~~ and, while employed by a state university, the member with a background in coal research, shall not be so compensated. Members shall receive their actual and necessary expenses incurred in the performance of their duties.

(B) The technical advisory committee shall review and make recommendations concerning the Ohio coal development agenda required under section 1551.34 of the Revised Code, project proposals, research and development projects submitted to the office by public utilities for the ~~purposes~~ purpose of ~~sections 4905.301,~~ section 4905.304~~, and 4909.191~~ of the Revised Code, proposals for grants, loans, and loan guarantees for purposes of sections 1555.01 to 1555.06 of the Revised Code, and such other topics as the director of the office considers appropriate.

(C) The technical advisory committee may hold an executive session at any regular or special meeting for the purpose of considering research and development project proposals or applications for assistance submitted to the Ohio coal development office under section 1551.33, or sections 1555.01 to 1555.06, of the Revised Code, to the extent that such proposals or applications consist of trade secrets or other proprietary information.

Any materials or data submitted to, made available to, or received by the director of development or the director of the Ohio coal development office in connection with agreements for assistance entered into under this chapter or Chapter 1555. of the Revised Code, or any information taken from such materials or data for any purpose, to the extent that the materials or data consist of trade secrets or other proprietary information, are not public records for the purposes of section 149.43 of the Revised Code.

As used in this division, "trade secrets" has the same meaning as in section 1333.61 of the Revised Code.

Sec. 3317.028. (A) On or before the fifteenth day of May in each calendar year, the tax commissioner shall determine for each school district whether the taxable value of all tangible personal property, including utility tangible personal property, subject to taxation by the district in the preceding tax year was less or greater than the taxable value of such property during the second preceding tax year. If any such decrease exceeds five per cent of the district's tangible personal property taxable value included in the total taxable value used in the district's state aid computation for the fiscal year that ends in the current calendar year, or if any such increase exceeds five per cent of the district's total taxable value used in the district's state aid computation for the fiscal year that ends in the current calendar year, the tax commissioner shall certify both of the following to the department of education:

~~(A)~~(1) The taxable value of the tangible personal property increase or decrease, including utility tangible personal property increase or decrease, which shall be considered a change in valuation; ~~and~~

~~(B)~~(2) The decrease or increase in taxes charged and payable on such change in taxable value calculated in the same manner as in division (A)(3) of section 3317.021 of the Revised Code.

(B) Notwithstanding division (A) of this section, when determining under that division in calendar year 2002 whether the taxable value of tangible personal property subject to taxation by each school district in the preceding tax year was less or greater than the taxable value of such property during the second preceding tax year, the Tax Commissioner shall exclude from the taxable value for both years the changes in the taxable value of electric company and rural electric company tangible personal property arising from changes from the assessment rate under section 5727.111 and from changes in the apportionment of such property under section 5727.15 of the Revised Code, both as amended by ____ Bill No. ____ of the 123rd general assembly.

(C) Upon receipt of such certification, the department of education shall reduce or increase by the respective amounts certified, the taxable value and the taxes charged and payable that were used in the district's state aid computation under section 3317.022 of the Revised Code for the fiscal year that ends in the current calendar year and shall recompute the state aid for such fiscal year. During the last six months of the fiscal year, the department shall pay the district a sum equal to one-half of the recomputed payments in lieu of the payments otherwise required under such sections.

Sec. 4905.01. As used in this chapter:

(A) "Railroad" has the meaning set forth in section 4907.02 of the Revised Code.

(B) "Motor transportation company" has the meaning set forth in sections 4905.03 and 4921.02 of the Revised Code.

(C) "Trailer," "public highway," "fixed termini," "regular route," and "irregular route" have the meanings set forth in section 4921.02 of the Revised Code.

(D) "Private motor carrier," "contract carrier by motor vehicle," "motor vehicle," and "charter party trip" have the meanings set forth in section 4923.02 of the Revised Code.

(E) ~~"Delivery cost" means the cost of delivery of fuel, to be used for the generation of electricity, from the site of production directly to the site of an electric generating facility.~~

~~(F) "Acquisition cost" means the cost to an electric light company of acquiring fuel for generation of electricity. In the case of a fuel supply owned by the company, such term shall also~~

~~include the cost of legally extracting the fuel and its handling prior to its shipment to the company. In the case of a coal supply owned or controlled in whole or in part by the company, such term shall not exceed a price that is, in the judgment of the public utilities commission, reasonable when compared to the average cost per million British thermal units of similar quality coal purchased from all independent like mining operations under similar term contracts during the same period. In determining a reasonable price for coal from a coal supply owned or controlled in whole or in part by the company, the public utilities commission shall consider the use of:~~

~~(1) Capital by the developer of the mining operation in a manner that did not:~~

~~(a) Take into account intermediate or long-term trends in the coal mining industry; or~~

~~(b) Incorporate a design consistent with long-term dependability; and~~

~~(c) Take into account the intermediate or long-term cost and reliable energy supply interests of the company's customers; or~~

~~(2) Ineffective operating techniques. Such term does not embrace any associated cost, including, but not limited to, delivery cost, the cost of handling the fuel after its delivery to such facility, the cost of such processing, readying, or refinement of the fuel as may be necessary in order to use the fuel to generate electricity, or the cost of disposing of any residue of such fuel after it has been so used. To the extent the washing of coal is required, by law or rule, to remove or reduce sulfur compounds or any other impurity, "acquisition cost" includes the cost of such washing.~~

~~(G) "Fuel component" means acquisition and delivery costs of fuel for the generation of electricity, including the allowable~~

~~costs of purchased power as defined in section 4909.159 of the Revised Code, divided by the corresponding number of net kilowatt hours generated and purchased.~~

~~(H) "Base period" means the most recent six-month period for which the public utilities commission has determined either the amount of the fuel component or the fuel cost per kilowatt hour included in the base rates of an electric light company, whichever is last determined.~~

~~(I) "Current period" means the six-month period immediately succeeding the base period for which the public utilities commission has determined the amount of the fuel component in the base rate of an electric light company.~~

~~(J)~~ "Ohio coal research and development costs" means all reasonable costs associated with a facility or project undertaken by a public utility for which a recommendation to allow the recovery of costs associated therewith has been made under division (B)(8) of section 1551.33 of the Revised Code, including, but not limited to, capital costs, such as costs of debt and equity; construction and operation costs; termination and retirement costs; costs of feasibility and marketing studies associated with the project; and the acquisition and delivery costs of Ohio coal used in the project, less any expenditures of grant moneys.

~~(K) "Compliance facility" means property that is designed, constructed, or installed, and used, at a coal-fired electric generating facility for the primary purpose of complying with Phase I acid rain control requirements under Title IV of the "Clean Air Act Amendments of 1990," 104 Stat. 2584, 42 U.S.C.A. 7651, and that controls or limits emissions of sulfur or nitrogen compounds resulting from the combustion of coal through the removal or reduction of those compounds before, during, or after~~

~~the combustion of the coal, but before the combustion products are emitted into the atmosphere. "Compliance facility" also includes any of the following:~~

~~(1) A facility that removes sulfur compounds from coal before the combustion of the coal and that is located off the premises of the electric generating facility where the coal processed by the compliance facility is burned;~~

~~(2) Modifications to the electric generating facility where the compliance facility is constructed or installed that are necessary to accommodate the construction or installation, and operation, of the compliance facility;~~

~~(3) A byproduct disposal facility, as defined in section 3734.051 of the Revised Code, that exclusively disposes of wastes produced by the compliance facility and other coal combustion byproducts produced by the generating unit in or to which the compliance facility is incorporated or connected regardless of whether the byproduct disposal facility is located on the same premises as the compliance facility or generating unit that produces the wastes disposed of at the facility;~~

~~(4) Facilities or equipment that is acquired, constructed, or installed, and used, at a coal-fired electric generating facility exclusively for the purpose of handling the byproducts produced by the compliance facility or other coal combustion byproducts produced by the generating unit in or to which the compliance facility is incorporated or connected.~~

Sec. 4905.03. As used in this chapter:

(A) Any person, firm, copartnership, voluntary association, joint-stock association, company, or corporation, wherever organized or incorporated, is:

(1) A telegraph company, when engaged in the business of

transmitting telegraphic messages to, from, through, or in this state;

(2) A telephone company, when engaged in the business of transmitting telephonic messages to, from, through, or in this state and as such is a common carrier;

(3) A motor transportation company, when engaged in the business of carrying and transporting persons or property or the business of providing or furnishing such transportation service, for hire, in or by motor-propelled vehicles of any kind, including trailers, for the public in general, over any public street, road, or highway in this state, except as provided in section 4921.02 of the Revised Code;

(4) An electric light company, when engaged in the business of supplying electricity for light, heat, or power purposes to consumers within this state;

(5) A gas company, when engaged in the business of supplying artificial gas for lighting, power, or heating purposes to consumers within this state or when engaged in the business of supplying artificial gas to gas companies or to natural gas companies within this state, but a producer engaged in supplying to one or more gas or natural gas companies, only such ~~artifical~~ ARTIFICIAL gas as is manufactured by such producer as a by-product of some other process in which such producer is primarily engaged within this state is not thereby a gas company. All rates, rentals, tolls, schedules, charges of any kind, or agreements between any gas company and any other gas company or any natural gas company providing for the supplying of artificial gas and for compensation for the same, are subject to the jurisdiction of the public utilities commission.

(6) A natural gas company, when engaged in the business of supplying natural gas for lighting, power, or heating purposes to

consumers within this state, or when engaged in the business of supplying natural gas to gas companies or to natural gas companies within this state, but where a producer supplies to one or more gas or natural gas companies only such gas as is produced by such producer from wells drilled on land owned in fee by such producer or where the principal use of such land by said producer is other than the production of gas, within this state, such producer is not thereby a natural gas company. All rates, rentals, tolls, schedules, charges of any kind, or agreements between a natural gas company and other natural gas companies or gas companies providing for the supply of natural gas and for compensation for the same, are subject to the jurisdiction of the public utilities commission. The commission ~~may~~, upon application made to it, may relieve any producer of natural gas, defined in this section as a gas company or a natural gas company, of compliance with the obligations imposed by Chapters 4901., 4903., 4905., 4907., 4909., 4921., and 4923. of the Revised Code, so long as such producer is not affiliated with or under the control of a gas company or a natural gas company engaged in the transportation or distribution of natural gas, or so long as such producer does not engage in the distribution of natural gas to consumers.

(7) A pipe-line company, when engaged in the business of transporting natural gas, oil, or coal or its derivatives through pipes or tubing, either wholly or partly within this state;

(8) A water-works company, when engaged in the business of supplying water through pipes or tubing, or in a similar manner, to consumers within this state;

(9) A heating or cooling company, when engaged in the business of supplying water, steam, or air through pipes or tubing to consumers within this state for heating or cooling purposes;

(10) A messenger company, when engaged in the business of

supplying messengers for any purpose;

(11) A street railway company, when engaged in the business of operating as a common carrier, a railway, wholly or partly within this state, with one or more tracks upon, along, above or below any public road, street, alleyway, or ground, within any municipal corporation, operated by any motive power other than steam and not a part of an interurban railroad, whether such railway is termed a street, inclined-plane, elevated, or underground railway;

(12) A suburban railroad company, when engaged in the business of operating as a common carrier, whether wholly or partially within this state, a part of a street railway constructed or extended beyond the limits of a municipal corporation, and not a part of an interurban railroad;

(13) An interurban railroad company, when engaged in the business of operating a railroad, wholly or partially within this state, with one or more tracks from one municipal corporation or point in this state to another municipal corporation or point in this state, whether constructed upon the public highways or upon private rights-of-way, outside of municipal corporations, using electricity or other motive power than steam power for the transportation of passengers, packages, express matter, United States mail, baggage, and freight. Such interurban railroad company is included in the term "railroad" as used in section 4907.02 of the Revised Code~~;~~.

(14) A sewage disposal system company, when engaged in the business of sewage disposal services through pipes or tubing, and treatment works, or in a similar manner, within this state.

(B) "Motor-propelled vehicle" means any automobile, automobile truck, motor bus, or any other self-propelled vehicle not operated or driven upon fixed rails or tracks.

~~Nothing in this section shall be construed to mean that an electric light company operated not for profit, owned and operated exclusively by and solely for its customers, or owned or operated by a municipal corporation, is subject to sections 4905.66, 4905.67, 4905.68, and 4905.69 of the Revised Code.~~

Sec. 4905.10. (A) For the sole purpose of maintaining and administering the public utilities commission and exercising its supervision and jurisdiction over the railroads and public utilities of the state, an amount equivalent to the appropriation from the public utilities fund created under division (B) of this section to the public utilities commission for railroad and public utilities regulation in each fiscal year shall be apportioned among and assessed against ~~the railroads~~ each railroad and public ~~utilities~~ utility within the state by the commission by first computing an assessment as though it were to be made in proportion to the intrastate gross earnings or receipts, excluding earnings or receipts from sales to other public utilities for resale, of the ~~railroads and~~ railroad or public ~~utilities~~ utility for the calendar year next preceding that in which the ~~assessments are~~ assessment is made. The commission may include in that first computation any amount of a railroad's or public utility's intrastate gross earnings or receipts that were underreported in a prior year. in addition to whatever penalties apply under the Revised Code to such underreporting, the commission shall assess the railroad or public utility interest at the rate stated in section 1343.03 of the Revised Code. the commission shall deposit any interest so collected into the public utilities fund.

The final computation of the assessment shall consist of imposing upon each railroad and public utility whose assessment under the first computation would have been fifty dollars or less an assessment of fifty dollars and recomputing the ~~assessment~~

assessments of the remaining railroads and public utilities by apportioning an amount equal to the appropriation to the public utilities commission for administration of the utilities division in each fiscal year less the total amount to be recovered from those paying the minimum assessment, in proportion to the intrastate gross earnings or receipts of the remaining railroads and public utilities for the calendar year next preceding that in which the assessments are made.

In the case of an assessment based on intrastate gross receipts under this section against a public utility that is an electric utility, electric services company, electric cooperative, or governmental aggregator 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 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.

(B) On or before the first day of October in each year, the commission shall notify each such railroad and public utility of the sum assessed against it, whereupon payment shall be made to the commission, which shall deposit it into the state treasury to the credit of the public utilities fund, which is hereby created. Any such amounts paid into the fund but not expended by the commission shall be credited ratably, after first deducting any deficits accumulated from prior years, by the commission to railroads and public utilities that pay more than the minimum assessment, according to the respective portions of such sum assessable against them for the ensuing calendar year. The assessments for such calendar year shall be reduced correspondingly.

(C) Within five days after the beginning of each fiscal year, the director of budget and management shall transfer from the general revenue fund to the public utilities fund an amount sufficient for maintaining and administering the public utilities commission and exercising its supervision and jurisdiction over the railroads and public utilities of the state during the first four months of the fiscal year. The director shall transfer the same amount back to the general revenue fund from the public utilities fund at such time as the director determines that the balance of the public utilities fund is sufficient to support the appropriations from the fund for the fiscal year. The director may transfer less than that amount if the director determines that the revenues of the public utilities fund during the fiscal year will be insufficient to support the appropriations from the fund for the fiscal year, in which case the amount not paid back to the general revenue fund shall be payable to the general revenue fund in future fiscal years.

~~(C)~~(D) For the purpose of this section only, "public utility" includes, in addition to an electric utility, an electric services company, an electric cooperative, or a governmental aggregator subject to certification under section 4928.08 of the Revised Code, to the extent of its engagement in the business of supplying or arranging for the supply in this state of any retail electric service for which it must be so certified.

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

Sec. 4905.34. Except as provided in sections 4905.33 and 4905.35 and Chapter 4928. of the Revised Code, Chapters 4901., 4903., 4905., 4907., 4909., 4921., and 4923. of the Revised Code do not prevent any public utility or railroad from granting any of its property for any public purpose, or granting reduced rates or free service of any kind to the United States, to the state or any political subdivision of the state, for charitable purposes, for fairs or expositions, to a law enforcement officer residing in free housing provided pursuant to section 3735.43 of the Revised Code, or to any officer or employee of such public utility or railroad or the officer's or employee's family. All contracts and agreements made or entered into by such public utility or railroad for such use, reduced rates, or free service are valid and enforcible at law. As used in this section, "employee" includes furloughed, pensioned, and superannuated employees.

Sec. 4905.402. (A) As used in this section:

(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 ~~telephone~~ 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 ~~which~~ that constitute, twenty per cent or more of the total voting power of the domestic ~~telephone~~ company or utility or the holding company.

(2) "Electric utility" has the same meaning as in section 4928.07 of the Revised Code.

(3) "Holding company" excludes any securities broker performing the usual and customary broker's function.

~~(3)~~(4) "Telephone company" means any company described in division (A)(2) 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.

(B) No person shall acquire control, directly or indirectly, of a domestic telephone company or a holding company controlling a domestic telephone company or of a domestic electric utility or a holding company controlling a domestic electric utility unless that person obtains the prior approval of the public utilities commission under this section. To obtain approval the person shall file an application with the commission demonstrating that the acquisition will promote public convenience and result in the provision of adequate service for a reasonable rate, rental, toll, or charge. The application shall contain such information as the commission may require. If the commission considers a hearing necessary, it may fix a time and place for hearing. If, after review of the application and after any necessary hearing, the commission is satisfied that approval of the application will promote public convenience and result in the provision of adequate service for a reasonable rate, rental, toll, or charge, the commission shall approve the application and make such order as it considers proper. If the commission fails to issue an order within thirty days of the filing of the application, or within twenty days of the conclusion of a hearing, if one is held, the application shall be deemed approved by operation of law.

(C) The ~~public utilities~~ commission shall adopt such rules as it finds necessary to carry out this section.

(D) If it appears to the ~~public utilities~~ commission or to any person ~~who~~ that may be adversely affected that any person is engaged in or about to engage in any acts or practices that would violate this section, the attorney general, when directed to do so by the commission, or the person claiming to be adversely affected may bring an action in any court of common pleas that has jurisdiction and venue to enjoin such acts or practices and enforce compliance with this section. Upon a proper showing, the court shall grant, without bond, a restraining order or temporary or permanent injunction.

(E) The courts of this state have jurisdiction over every person not a resident of or domiciled or authorized to do business in this state ~~who~~ that files, or is prohibited from acting without first filing, an application under division (B) of this section, and over all actions involving such person arising out of violations of this section. The secretary of state shall be the agent for service of process for any such person in any action, suit, or proceeding arising out of violations of this section. Copies of all such lawful process shall be served upon the secretary of state and transmitted by certified mail, with return receipt requested, by the secretary of state to such person at ~~his~~ the person's last known address.

Sec. 4905.42. To determine whether it should issue the order referred to in section 4905.40 of the Revised Code, the public utilities commission shall hold such hearings, make such inquiries or investigations, and examine such witnesses, books, papers, documents, and contracts as it deems proper. ~~Within forty-five days after an electric light company submits an application under that section pertaining to the issuance of stocks, bonds, notes, or other evidence of indebtedness to acquire, construct, or install a compliance facility, the commission shall complete its review and shall render a decision on the application.~~

An order issued under this section shall fix the amount, character, and terms of any issue of stocks, bonds, notes, or other evidence of indebtedness, and the purposes to which the issue or any proceeds of it shall be applied, shall recite that the money, property, consideration, or labor procured or to be procured or paid for by such issue was or is reasonably required for the purposes specified in the order, and shall recite the value of any property, consideration, or service, as found by the commission, for which in whole or in part such issue is proposed to be made.

No public utility or railroad shall, without the consent of the commission, apply any such issue or its proceeds to any purpose not specified in the order. Such public utilities or railroads may issue notes for proper corporate purposes, payable at periods of not more than twelve months, without the consent of the commission, but no such notes shall, in whole or in part, directly or indirectly, be refunded by any issue of stocks or bonds, or by any evidence of indebtedness, running for more than twelve months, without the consent of the commission.

All stocks, bonds, notes, or other evidence of indebtedness issued by any public utility or railroad without the permission of the commission are void. No interstate railroad or public utility shall be required to apply to the commission for authority to issue stocks, bonds, notes, or other evidence of indebtedness for the acquisition of property, the construction, completion, extension, or improvement of its facilities, or the improvement or maintenance of its service outside this state, or for authority for the discharge or refunding of obligations issued or incurred for such purposes or the reimbursement of moneys actually expended for such purposes outside this state.

No pipe-line company--when engaged in the business of transporting oil through pipes or tubing, either wholly or partly--within this state, shall be required to apply to the commission for authority to issue stocks, bonds, notes, or other evidence of indebtedness for the purpose of acquiring or paying for stocks, bonds, notes, or other evidence of indebtedness of any other corporation organized under the laws of this state, any other state, the District of Columbia, the United States, any territory of the United States, any foreign country, or otherwise.

No company that is both a pipe-line company engaged as such in the business of transporting natural gas through pipes or tubing in interstate commerce, wholly or partly within this state, and a natural gas company engaged as such in this state solely in the business of supplying natural gas to gas companies or to natural gas companies shall be required to apply to the commission for authority to issue stocks, bonds, notes, or other evidence of indebtedness.

Sec. 4905.70. The public utilities commission shall initiate programs that will promote and encourage conservation of energy and a reduction in the growth rate of energy consumption, promote economic efficiencies, and take into account long-run incremental costs. Notwithstanding sections 4905.31, 4905.33, 4905.35, and 4909.151 of the Revised Code, the ~~public utilities~~ commission shall examine and issue written findings on the declining block rate structure, lifeline rates, long-run incremental pricing, peak load and off-peak pricing, time of day and seasonal pricing, interruptible load pricing, and single rate pricing where rates do not vary because of classification of customers or amount of usage. ~~The public utilities commission shall establish criteria for the investigation, identification, and remedy of the existence of any excess capacity, exclusive of capacity used primarily for Ohio coal research and development, as defined in section 1555.01 of the Revised Code, the costs of which have been allowed for recovery under section 4905.301 or 4909.15 of the Revised Code, in the generating systems of electric light companies.~~ The ~~public utilities~~ commission, by a rule adopted no later than October 1, 1977, and effective and applicable no later than November 1, 1977, shall require each electric light company to offer to such of their residential customers whose residences are primarily heated by electricity the option of their usage being metered by a demand or load meter. ~~A~~ under the rule, a customer who selects such option may~~, under the rule,~~ be required by the company, where no such meter is already installed, to pay for such meter and its installation. The rule shall require each company to bill such of its customers who select such option for those kilowatt hours in excess of a prescribed number of kilowatt hours per kilowatt of billing demand, at a rate per kilowatt hour that reflects the lower cost of providing service during off-peak periods.

Sec. 4906.10. (A) The power siting board shall render a decision upon the record either granting or denying the application as filed, or granting it upon such terms, conditions, or modifications of the construction, operation, or maintenance of the major utility facility as the board considers appropriate. The certificate shall be conditioned upon the facility being in compliance with standards and rules adopted under sections 1501.33, 1501.34, and 4561.32 and Chapters 3704., 3734., and 6111. of the Revised Code. The period of initial operation, under a certificate, shall expire two years after the date on which electric power is first generated by the facility. During the period of initial operation, the facility shall be subject to the enforcement and monitoring powers of the director of environmental protection under Chapters 3704., 3734., and 6111. of the Revised Code and to the emergency provisions ~~thereunder~~ under those chapters. If a major utility facility constructed in accordance with the terms and conditions of its certificate is unable to operate in compliance with all applicable requirements of state laws, rules, and standards pertaining to air pollution, the facility may apply to the director of environmental protection for a conditional operating permit under division (G) of section 3704.03 of the Revised Code and the rules adopted thereunder. The operation of a major utility facility in compliance with such a conditional operating permit is not in violation of its certificate. After the expiration of the period of initial operation of a major utility facility, the facility shall be under the jurisdiction of the environmental protection agency and shall comply with all laws, rules, and standards pertaining to air pollution, water pollution, and solid and hazardous waste disposal.

The board shall not grant a certificate for the construction, operation, and maintenance of a major utility facility, either as proposed or as modified by the board, unless it finds and determines all of the following:

(1) The basis of the need for the facility~~;~~. In the case of a major utility facility described in division (B)(1) of section 4906.01 of the Revised Code to be constructed on or after January 1, 2000, the board shall presume the need for the facility as that need is stated in an application pursuant to division (A)(3) of section 4906.06 of the Revised Code.

(2) The nature of the probable environmental impact;

(3) That the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations;

(4) In the case of an electric transmission line, that the facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and that the facility will serve the interests of electric system economy and reliability;

(5) That the facility will comply with Chapters 3704., 3734., and 6111. of the Revised Code and all rules and standards adopted

under those chapters and under sections 1501.33, 1501.34, and 4561.32 of the Revised Code. In determining whether the facility will comply with all rules and standards adopted under section 4561.32 of the Revised Code, the board shall consult with the office of aviation of the division of transportation assistance of the department of transportation under section 4561.341 of the Revised Code.

(6) That the facility will serve the public interest, convenience, and necessity;

(7) In addition to the provisions contained in divisions (A)(1) to (6) of this section, and rules adopted thereunder, what its impact will be on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929. of the Revised Code that is located within the site and alternative site of the proposed major utility facility. Rules adopted to evaluate impact under division (A)(7) of this section shall not require the compilation, creation, submission, or production of any information, document, or other data pertaining to land not located within the site and alternative site.

(8) That the facility incorporates maximum feasible water conservation practices as determined by the board, considering available technology and the nature and economics of the various alternatives.

(B) If the board determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon that modification, provided that the municipal corporations and counties, and persons residing therein, affected by the modification shall have been given reasonable notice thereof.

(C) A copy of the decision and any opinion issued therewith shall be served upon each party.

Sec. 4909.01. As used in this chapter:

(A) "Public utility" has the meaning set forth in section 4905.02 of the Revised Code.

(B) "Telegraph company," "telephone company," "electric light company," "gas company," "natural gas company," "pipeline company," "water-works company," "sewage disposal system company," "heating or cooling company," "messenger company," "street railway company," "suburban railroad company," "interurban railroad company," and "motor-propelled vehicle" have the meanings set forth in section 4905.03 of the Revised Code.

(C) "Railroad" has the meaning set forth in section 4907.02 of the Revised Code.

(D) "Motor transportation company" has the meaning set forth in sections 4905.03 and 4921.02 of the Revised Code.

(E) "Trailers," "public highway," "fixed termini," "regular route," and "irregular route" have the meanings set forth in section 4921.02 of the Revised Code.

(F) "Private motor carrier," "contract carrier by motor vehicle," "motor vehicle," and "charter party trip" have the meanings set forth in section 4923.02 of the Revised Code.

~~(G) "Delivery cost" and "acquisition cost" have the meanings set forth in section 4905.01 of the Revised Code.~~

~~(H) "Compliance facility" has the meaning set forth in section 4905.01 of the Revised Code.~~

~~Nothing in this section shall be construed to mean that an electric light company operated not for profit or one that is owned or operated by a municipal corporation is subject to section 4909.191 of the Revised Code.~~

Sec. 4909.05. As used in this section:

(A) A "lease purchase agreement" is an agreement pursuant to which a public utility leasing property is required to make rental payments for the term of the agreement and either the utility is granted the right to purchase the property upon the completion of the term of the agreement and upon the payment of an additional fixed sum of money or title to the property vests in the utility upon the making of the final rental payment.

(B) A "leaseback" is the sale or transfer of property by a public utility to another person contemporaneously followed by the leasing of the property to the public utility on a long-term basis.

The public utilities commission shall prescribe the form and details of the valuation report of the property of each public utility or railroad in the state. Such report shall include all the kinds and classes of property, with the value of each, owned or held by each public utility or railroad used and useful for the service and convenience of the public. Such report shall contain the following facts in detail:

(C) The original cost of each parcel of land owned in fee and in use at the date certain determined by the commission; and also a statement of the conditions of acquisition, whether by direct purchase, by donation, by exercise of the power of eminent domain, or otherwise;

(D) The actual acquisition cost, not including periodic rental fees, of rights-of-way, trailways, or other land rights held by virtue of easements, leases, or other forms of grants of rights as to usage;

(E) The original cost of all other kinds and classes of property used and useful in the rendition of service to the public. Such original costs of property, other than land owned in fee, shall be the cost, as determined to be reasonable by the commission, to the person that first dedicated the property to the public use and shall be set forth in property accounts and subaccounts as prescribed by the commission. To the extent that the costs of property comprising a coal research and development facility, as defined in section 1555.01 of the Revised Code, or a coal development project, as defined in section 1551.30 of the Revised Code, have been allowed for recovery as Ohio coal research and development costs under section ~~4905.301,~~ 4905.304~~, or 4909.191~~ of the Revised Code, none of those costs shall be included as a cost of property under this division.

(F) The cost of property constituting all or part of a project leased to or used by the utility under Chapter 165., 3706., 6121., or 6123. of the Revised Code and not included under division (E) of this section exclusive of any interest directly or indirectly paid by the utility with respect thereto whether or not capitalized;

(G) In the discretion of the commission, the cost to a utility, in an amount determined to be reasonable by the commission, of property constituting all or part of a project leased to the utility under a lease purchase agreement or a leaseback and not included under division (E) of this section exclusive of any interest directly or indirectly paid by the utility with respect thereto whether or not capitalized;

(H) The proper and adequate reserve for depreciation, as determined to be reasonable by the commission;

(I) Any sums of money or property that the company may have received as total or partial defrayal of the cost of its property;

(J) The valuation of the property of the company, which shall be the sum of the amounts contained in the report pursuant to divisions (C), (D), (E), (F), and (G) of this section, less the sum of the amounts contained in the report pursuant to divisions (H) and (I) of this section.

The report shall show separately the property used and useful to such public utility or railroad in the furnishing of the service to the public, and the property held by such public utility or railroad for other purposes, and such other items as the commission considers proper. The commission may require an additional report showing the extent to which the property is used and useful. Such reports shall be filed in the office of the commission for the information of the governor and the general assembly.

Sec. 4909.15. (A) The public utilities commission, when fixing and determining just and reasonable rates, fares, tolls, rentals, and charges, shall determine:

(1) The valuation as of the date certain of the property of the public utility used and useful in rendering the public utility service for which rates are to be fixed and determined. The valuation so determined shall be the total value as set forth in division (J) of section 4909.05 of the Revised Code, and a reasonable allowance for materials and supplies and cash working capital, as determined by the ~~public utilities~~ commission.

The commission ~~may~~, in its discretion, may include in the valuation a reasonable allowance for construction work in progress but, in no event, may such an allowance be made by the commission until it has determined that the particular construction project is at least seventy-five per cent complete.

~~In the case of a construction project involving the installation, renovation, or maintenance of pollution control equipment, the commission may include the project in the valuation~~

~~as construction work in progress as of the date that the particular construction project is at least seventy-five per cent complete.~~

~~As used in this division, "pollution control equipment" means any construction project undertaken, in whole or in part, to reduce sulfur or nitrous oxide emissions to levels established by federal, state, or local statute, law, ordinance, regulation, or order. The commission shall determine by rule what projects qualify as pollution control equipment.~~

In determining the percentage completion of a particular construction project, the commission shall consider, among other relevant criteria, the per cent of time elapsed in construction; the per cent of construction funds, excluding allowance for funds used during construction, expended, or obligated to such construction funds budgeted where all such funds are adjusted to reflect current purchasing power; and any physical inspection performed by or on behalf of any party, including the commission's staff.

A reasonable allowance for construction work in progress ~~other than for construction projects involving the installation, renovation, or maintenance of pollution control equipment~~ shall not exceed ten per cent of the total valuation as stated in this division, not including such allowance for construction work in progress.

~~The allowance for construction work in progress for construction projects involving the installation, renovation, or maintenance of pollution control equipment shall be the dollar value of the project and shall not exceed, together with any other allowance for construction work in progress granted under this division, twenty per cent of the total valuation as stated in this division, not including such allowance for construction work in~~

~~progress.~~

Where the commission permits an allowance for construction work in progress, the dollar value of the project or portion thereof included in the valuation as construction work in progress shall not be included in the valuation as plant in service until such time as the total revenue effect of the construction work in progress allowance is offset by the total revenue effect of the plant in service exclusion. Carrying charges calculated in a manner similar to allowance for funds used during construction shall accrue on that portion of the project in service but not reflected in rates as plant in service, and such accrued carrying charges shall be included in the valuation of the property at the conclusion of the offset period for purposes of division (J) of section 4909.05 of the Revised Code.

From and after April 10, 1985, no allowance for construction work in progress as it relates to a particular construction project shall be reflected in rates for a period exceeding forty-eight consecutive months commencing on the date the initial rates reflecting such allowance become effective, except as otherwise provided in this division.

~~In the case of a nuclear generating facility that has not been granted a full construction permit by the nuclear regulatory commission on or before April 10, 1985, the utility, within six months after the granting of such permit, shall submit to the public utilities commission a projected in service date for such facility. Thereafter, no allowance for construction work in progress as it relates to such nuclear generating facility shall be reflected in rates for a period exceeding forty-eight consecutive months commencing on the date the initial rates reflecting such allowance become effective, or for a period commencing on the date the initial rates reflecting such allowance become effective and ending on the projected in service date~~

~~previously submitted to the commission, whichever period expires first.~~

The applicable maximum period in rates for an allowance for construction work in progress as it relates to a particular construction project shall be tolled if, and to the extent, a delay in the in-service date of the project is caused by the action or inaction of any federal, state, county, or municipal agency having jurisdiction, where such action or inaction relates to a change in a rule, standard, or approval of such agency, and where such action or inaction is not the result of the failure of the utility to reasonably endeavor to comply with any rule, standard, or approval prior to such change.

In the event that such period expires before the project goes ~~in~~ into service, the commission shall exclude, from the date of expiration, ~~exclude~~ the allowance for the project as construction work in progress from rates, except that the commission may extend the expiration date up to twelve months for good cause shown.

In the event that a utility has permanently canceled, abandoned, or terminated construction of a project for which it was previously permitted a construction work in progress allowance, the commission ~~shall~~ immediately shall exclude the allowance for the project from the valuation.

In the event that a construction work in progress project previously included in the valuation is removed from the valuation pursuant to this division, any revenues collected by the utility from its customers after April 10, 1985, ~~which~~ that resulted from such prior inclusion shall be offset against future revenues over the same period of time as the project was included in the valuation as construction work in progress. The total revenue effect of such offset shall not exceed the total revenues previously collected.

In no event shall the total revenue effect of any offset or offsets provided ~~herein~~ under division (A)(1) of this section exceed the total revenue effect of any construction work in progress allowance.

(2) A fair and reasonable rate of return to the utility on the valuation as determined in division (A)(1) of this section;

(3) The dollar annual return to which the utility is entitled by applying the fair and reasonable rate of return as determined under division (A)(2) of this section to the valuation of the utility determined under division (A)(1) of this section;

(4) The cost to the utility of rendering the public utility service for the test period less the total of any interest on cash or credit refunds paid, pursuant to section 4909.42 of the Revised Code, by the utility during the test period.

(a) ~~Any depreciation expense of a compliance facility shall be calculated under division (A)(4) of this section on the basis of the useful service life of the compliance facility or the remaining useful life of the electric generating unit in connection with which the compliance facility was acquired, constructed, or installed, whichever is the shorter time. Division (A)(4)(a) of this section applies only to depreciation expense of a compliance facility contained in the environmental compliance plan of the electric light company approved under Chapter 4913. of the Revised Code or in its compliance strategy examined under section 4909.158 of the Revised Code.~~

~~(b)~~ Federal, state, and local taxes imposed on or measured by net income may, in the discretion of the commission, be computed by the normalization method of accounting, provided the utility maintains accounting reserves that reflect differences between taxes actually payable and taxes on a normalized basis, provided that no determination as to the treatment in the rate-making process of such taxes shall be made that will result in loss of any tax depreciation or other tax benefit to which the utility would otherwise be entitled, and further provided that such tax benefit as redounds to the utility as a result of such a computation may not be retained by the company, used to fund any dividend or distribution, or utilized for any purpose other than the defrayal of the operating expenses of the utility and the defrayal of the expenses of the utility in connection with construction work.

~~(c)~~(b) The amount of any tax credits granted to an electric light company under section ~~5727.391~~ 5733.39 of the Revised Code shall not be retained by the company, used to fund any dividend or distribution, or utilized for any purposes other than the defrayal of the allowable operating expenses of the company and the defrayal of the allowable expenses of the company in connection with the installation, acquisition, construction, or use of a compliance facility. The amount of the tax credits granted to an electric light company under that section shall be returned to its customers within three years after initially claiming the credit through an offset to the company's rates or fuel component, as determined by the commission, as set forth in schedules filed by the company under section 4905.30 of the Revised Code. As used in division (A)(4)(c) of this section, "compliance facility" has the same meaning as in section ~~5727.391~~ 5733.39 of the Revised Code.

(B) The ~~public utilities~~ commission shall compute the gross annual revenues to which the utility is entitled by adding the dollar amount of return under division (A)(3) of this section to the cost of rendering the public utility service for the test period under division (A)(4) of this section.

(C) The test period, unless otherwise ordered by the ~~public utilities~~ commission, shall be the twelve-month period beginning six months prior to the date the application is filed and ending six months subsequent to that date. In no event shall the test period end more than nine months subsequent to the date the application is filed. The revenues and expenses of the utility shall be determined during the test period. The date certain shall be not later than the date of filing.

(D) When the ~~public utilities~~ commission is of the opinion, after hearing and after making the determinations under divisions (A) and (B) of this section, that any rate, fare, charge, toll, rental, schedule, classification, or service, or any joint rate, fare, charge, toll, rental, schedule, classification, or service rendered, charged, demanded, exacted, or proposed to be rendered, charged, demanded, or exacted, is, or will be, unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law, that the service is, or will be, inadequate, or that the maximum rates, charges, tolls, or rentals chargeable by any such public utility are insufficient to yield reasonable compensation for the service rendered, and are unjust and unreasonable, the commission shall:

(1) With due regard among other things to the value of all property of the public utility actually used and useful for the convenience of the public as determined under division (A)(1) of this section, excluding from such value the value of any franchise or right to own, operate, or enjoy the same in excess of the amount, exclusive of any tax or annual charge, actually paid to any political subdivision of the state or county, as the consideration for the grant of such franchise or right, and excluding any value added to such property by reason of a monopoly or merger, with due regard in determining the dollar annual return under division (A)(3) of this section to the necessity of making reservation out of the income for surplus, depreciation, and contingencies, and;

(2) With due regard to all such other matters as are proper,

according to the facts in each case,

(a) Including a fair and reasonable rate of return determined by the commission with reference to a cost of debt equal to the actual embedded cost of debt of such public utility,

(b) But not including the portion of any periodic rental or use payments representing that cost of property ~~which~~ that is included in the valuation report under divisions (F) and (G) of section 4909.05 of the Revised Code, fix and determine the just and reasonable rate, fare, charge, toll, rental, or service to be rendered, charged, demanded, exacted, or collected for the performance or rendition of the service that will provide the public utility the allowable gross annual revenues under division (B) of this section, and order such just and reasonable rate, fare, charge, toll, rental, or service to be substituted for the existing one. After such determination and order no change in the rate, fare, toll, charge, rental, schedule, classification, or service shall be made, rendered, charged, demanded, exacted, or changed by such public utility without the order of the commission, and any other rate, fare, toll, charge, rental, classification, or service is prohibited.

(E) Upon application of any person or any public utility, and after notice to the parties in interest and opportunity to be heard as provided in Chapters 4901., 4903., 4905., 4907., 4909., 4921., and 4923. of the Revised Code for other hearings, has been given, the commission may rescind, alter, or amend an order fixing any rate, fare, toll, charge, rental, classification, or service, or any other order made by the commission. Certified copies of such orders shall be served and take effect as provided for original orders.

Sec. 4909.161. (A) Notwithstanding the provisions of Chapters 4905. and 4909. of the Revised Code, the payment of any type of increased excise tax levy shall be considered to be a normal expense incurred by a public utility in the course of rendering service to the public, and may be recovered as such in accordance with an order of the public utilities commission. Any public utility required to pay any such increased excise tax levy may file with the public utilities commission revised rate schedules ~~which~~ that will permit full recovery on an interim or permanent basis in its rates, of the amount of any resultant increased tax payments and the commission shall promptly act to approve such schedules.

(B) Notwithstanding Chapters 4905. and 4909. of the Revised Code, the payment of the kilowatt-hour tax imposed by section 5727.81 of the Revised Code shall be considered a normal expense incurred by an electric distribution company, as defined in section 5727.80 of the Revised Code, in the course of rendering service to the public, and may be recovered as such in accordance with an order of the commission. An electric distribution company required to pay the kilowatt-hour tax may file with the commission revised rate schedules that will permit full recovery on a permanent basis in its rates, of the amount of any resultant tax payments, and the commission shall act promptly to approve those schedules. in approving the schedules, the commission shall provide that the rate effect of the kilowatt-hour tax does not vary by customer and is equal for each customer based solely on kilowatt hours of electricity distributed. As used in this division, "kilowatt hour" means one thousand watt-hours of electricity.

Sec. 4911.18. (A) For the sole purpose of maintaining and administering the office of the consumers' counsel and exercising the powers of the consumers' counsel under this chapter, an amount equal to the appropriation to the office of the consumers' counsel in each fiscal year shall be apportioned among and assessed against ~~the~~ each public ~~utilities~~ utility within the state, as defined in section 4911.01 of the Revised Code, by first computing an assessment as though it were to be made in proportion to the intrastate gross earnings or receipts of the public ~~utilities companies~~ utility for the calendar year next preceding that in which the ~~assessments are~~ assessment is made, excluding earnings or receipts from sales to other public utilities for resale. The office may include in that first computation any amount of a railroad's or public utility's intrastate gross earnings or receipts underreported in a prior year. in addition to whatever penalties apply under the Revised Code to such underreporting, the office shall assess the railroad or public utility interest at the rate stated in section 1343.03 of the Revised Code. the office shall deposit any interest so collected into the consumers' counsel operating fund.

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

In the case of an assessment based on intrastate gross receipts under this section against a public utility that is an electric utility, electric services company, electric cooperative, or governmental aggregator 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 most recent report of intrastate gross receipts and sales of kilowatt hours of electricity, filed with the public utilities commission pursuant to division (F) of section 4928.06 of the Revised Code, AND VERIFIED BY THE COMMISSION.

(B) On or before the first day of October in each year, the office of consumers' counsel shall notify each public utility ~~company~~ of the sum assessed against it, whereupon payment shall be made to the counsel, who shall deposit it into the state treasury to the credit of the consumers' counsel operating fund, which is hereby created. Any such amounts paid into the fund but not expended by the ~~counsel~~ office shall be credited ratably by the ~~counsel~~ office to the public ~~utility companies which~~ utilities that pay more than the minimum assessment, according to the respective portions of such sum assessable against them for the ensuing calendar year, after first deducting any deficits accumulated from prior years. The assessments for such calendar year shall be reduced correspondingly.

(C) Within five days after the beginning of each fiscal year, the director of budget and management shall transfer from the general revenue fund to the consumers' counsel operating fund an amount sufficient for maintaining and administering the office of the consumers' counsel and exercising the powers of the consumers' counsel under this chapter during the first four months of the fiscal year. Not later than the thirty-first day of December of the fiscal year, the same amount shall be transferred back to the general revenue fund from the consumers' counsel operating fund.

(D) As used in this section, "public utility" includes, in addition to an electric utility, an electric services company, an electric cooperative, or a governmental aggregator subject to certification under section 4928.08 of the Revised Code, to the extent of its engagement in the business of supplying or arranging for the supply in this state of any retail electric service for which it must be so certified.

Sec. 4928.01. (A) As used in this chapter:

(1) "Ancillary service" means any function necessary to the provision of electric transmission or distribution service to a retail customer and includes, but is not limited to, scheduling, system control, and dispatch services; reactive supply from generation resources and voltage control service; reactive supply from transmission resources service; regulation service; frequency response service; energy imbalance service; operating reserve-spinning reserve service; operating reserve-supplemental reserve service; load following; back-up supply service; real-power loss replacement service; dynamic scheduling; system black start capability; and network stability service.

(2) "Auction customer" means a customer that, at any time during the market development period, has not made an affirmative choice to be supplied retail electric generation service by its electric distribution utility or has not contracted with an another generation supplier, or a customer that elects to opt into the competitive auction process provided by section 4928.44 of the revised Code.

(3) "Billing and collection agent" means a fully independent agent, not affiliated with or otherwise controlled by an electric utility, to the extent that the agent is under contract with the utility solely to provide billing and collection for retail electric service on behalf of the utility.

(4) "Certified territory" means the certified territory established for an electric supplier under sections 4933.81 to 4933.90 of the Revised Code as amended by   .B. No.   of the

123rd general assembly.

(5) "Competitive auction period" for a particular electric utility means the period of time beginning the day after the expiration date of the market development period for that utility and ending upon such date as is determined by the public utilities COMMISSION pursuant to section 4928.44 of the Revised Code.

(6) "Competitive retail electric service" means a component of retail electric service that is competitive as provided under division (B) of this section.

(7) "Electric cooperative" means a not-for-profit electric light company that both is or has been financed in whole or in part under the "Rural Electrification Act of 1936," 49 Stat. 1363, 7 U.S.C. 901 and owns or operates facilities IN THIS STATE to generate, transmit, or DISTRIBUTE electricity.

(8) "ELECTRIC DISTRIBUTION UTILITY" MEANS AN ELECTRIC UTILITY THAT SUPPLIES AT LEAST retail ELECTRIC DISTRIBUTION SERVICE.

(9) "Electric light company" has the same meaning as in section 4905.03 of the Revised Code and includes an electric services company.

(10) "Electric load center" has the same meaning as in section 4933.81 of the Revised Code.

(11) "Electric services company" means an electric light company that is engaged on a for-profit or not-for-profit basis in the business of supplying or arranging for the supply of only a competitive retail electric service in this state. "Electric services company" includes a power marketer, power broker, aggregator, or independent power producer but excludes an electric cooperative, municipal electric utility, governmental AGGREGATOR, or billing and collection agent.

(12) "Electric supplier" has the same meaning as in section 4933.81 of the Revised Code.

(13) "Electric utility" means an electric light company that is engaged on a for-profit basis in the business of supplying a noncompetitive retail electric service in this state or in the businesses of supplying both a noncompetitive and a competitive retail electric service in this state. "Electric utility" excludes municipal electric utility or a billing and collection agent.

(14) "governmental aggregator" means a legislative AUTHORITY of a municipal corporation, a board of township trustees, or a board of county commissioners acting as an aggregator for the provision of a competitive retail electric service under AUTHORITY conferred under section 4928.20 of the Revised Code.

(15) A PERSON ACTS "KNOWINGLY," REGARDLESS OF THE PERSON'S PURPOSE, WHEN THE PERSON IS AWARE THAT THE PERSON'S CONDUCT WILL PROBABLY CAUSE A CERTAIN RESULT OR WILL PROBABLY BE OF A CERTAIN NATURE. A PERSON HAS KNOWLEDGE OF CIRCUMSTANCES WHEN THE PERSON IS AWARE THAT SUCH CIRCUMSTANCES PROBABLY EXIST.

(16) "Low-income customer assistance programs" means the percentage of income payment plan program as PRESCRIBED IN RULEs 4901:1-18-02(B) TO (G) and 4901:1-18-04(B) OF THE OHIO ADMINISTRATIVE CODE IN EFFECT on the effective date of this section or, if modified pursuant to AUTHORITY under section 4928.52 of the Revised Code, THE PROGRAM AS MODIFIED; the home energy assistance program AS PRESCRIBED IN section 5117.21 of the Revised Code and IN EXECUTIVE ORDER 97-1023-V or, if modified pursuant to AUTHORITY under section 4928.52 of the Revised Code, THE PROGRAM AS MODIFIED; the home weatherization assistance program AS PRESCRIBED in division (A)(6) of section 122.011 and in section 122.02 of the Revised Code or, if modified pursuant to

AUTHORITY under section 4928.52 of the Revised Code, THE PROGRAM AS MODIFIED; THE OHIO ENERGY CREDIT PROGRAM AS PRESCRIBED IN sections 5117.01 to 5117.05, 5117.07 to 5117.12, and 5117.99 OF THE REVISED CODE or, if modified pursuant to AUTHORITY under section 4928.52 of the Revised Code, THE PROGRAM AS MODIFIED; and the TARGETED energy EFFICIENCY and WEATHERIZATION PROGRAM established under section 4928.55 of the Revised Code.

(17) "Market development period" for an electric utility means the period of time beginning on the starting date of competitive retail electric service and ending on the applicable date for that utility as specified in section 4928.39 or 4928.40 of the Revised Code, irrespective of whether the utility applies to receive transition revenues under this chapter.

(18) "Market power" means the ability to impose on customers a sustained price for a product or service ABOVE the price that would prevail in a COMPETITIVE market.

(19) "Municipal electric utility" means a municipal corporation that owns or operates facilities to generate, transmit, or distribute electricity.

(20) "Noncompetitive retail electric service" means a component of retail electric service that is noncompetitive as provided under division (B) of this section.

(21) "Person" has the same meaning as in section 1.59 of the Revised Code.

(22) "Project" means any real or personal property connected with all or part of an industrial, distribution, commercial, or research facility, not-for-profit facility, or residence that is to be acquired, constructed, RECONSTRUCTED, enlarged, improved, furnished, or equipped, or any combination of those activities, with aid furnished pursuant to sections 4928.61 to 4928.64 of the Revised Code for the purposes of not-for-profit, industrial,

commercial, distribution, residential, and research development in this state. "Project" includes, but is not limited to, any small-scale renewables project.

(23) "Retail electric service" means any service involved in supplying or arranging for the supply of electricity to ultimate consumers in this state, from the point of generation tO the point of consumption. for the purposes of this chapter, retail electric service includes one or more of the following "service components": generation service, aggregation service, power marketing service, power brokerage service, transmission service, distribution service, ancillary service, metering service, and billing and collection service.

(24) "starting date of competitive retail electric service" means january 1, 2001, except as provided in division (C) of this section.

(B) For the purposes of this chapter, a retail electric service component shall be deemed a competitive retail electric service if the service component is competitive pursuant to a declaration by a provision of the Revised Code or pursuant to an order of the public utilities commission authorized under division (A) of section 4928.04 of the Revised Code. Otherwise, the service component shall be deemed a noncompetitive retail electric service.

(C) Prior to January 1, 2001, the public utilities commission may issue an order delaying the january 1, 2001, starting date of competitive retail electric service by a specified number of days not to exceed six months, but only for extreme technical conditions precluding the start of competitive retail electric service on january 1, 2001. if the commission issues such an order, the expiration date of the market development period for an electric utility under section 4928.39 or 4928.40 of the Revised Code is hereby shortened by the number of days of that delay.

Sec. 4928.02. It is the policy of this state to do the following throughout this state beginning on the starting date of competitive retail electric service:

(A) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service;

(B) Ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs;

(C) Ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers;

(D) Encourage innovation and market access for cost-effective supply- and demand-side retail electric service;

(E) Encourage cost-effective and efficient access to information regarding the operation of the transmission and distribution systems of electric utilities in order to promote effective customer choice of retail electric service;

(F) Recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment;

(G) Ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa;

(H) Ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power;

(I) Facilitate the state's effectiveness in the global economy.

Sec. 4928.03. Beginning on The starting date of competitive retail electric service, retail electric generation, aggregation, power marketing, and power brokerage services supplied to consumers within the certified territory of an electric utility are competitive retail electric services that the consumers may obtain subject to this chapter from any supplier or suppliers. In accordance with a filing under division (F) of section 4933.81 of the Revised Code, retail electric generation, aggregation, power marketing, or power brokerage services supplied to consumers within the certified territory of an electric cooperative are competitive retail electric services that the consumers may obtain subject to this chapter from any supplier or suppliers.

Beginning on The starting date of competitive retail electric service and Notwithstanding any other provision of law, each consumer in this state and the suppliers to a consumer shall have comparable and nondiscriminatory access to noncompetitive retail electric services of an electric utility in this state for the purpose of satisfying the consumer's electricity requirements in keeping with the policy specified in section 4928.02 of the Revised Code.

Sec. 4928.04. (A) The public utilities commission by order may declare that retail ancillary, metering, or billing and collection service supplied to consumers within the certified territory of an electric utility on or after the starting date of competitive retail electric service is a competitive retail electric service that the consumers may obtain from any supplier. the commission may issue such order, after investigation and public hearing, only if it first determines either of the following:

(1) There will be effective competition with respect to the service.

(2) The customers of the service have reasonably available alternatives.

The commission shall initiate a proceeding on or before march 31, 2003, on the question of the desirability, feasibility, and timing of any such competition.

(B) In carrying out division (A) of this section, the commission may prescribe different classifications, procedures, terms, or conditions for different electric utilities and for the retail electric services they provide that are declared competitive pursuant to that division, provided the classifications, procedures, terms, or conditions are reasonable and do not confer any undue economic, competitive, or market advantage or preference upon any electric utility.

Sec. 4928.05. (A)(1) On and after the starting date of competitive retail electric service, a competitive retail electric service supplied by an electric utility shall not be subject to supervision and regulation by the public utilities commission under Chapters 4901. to 4909., 4933., 4935., or 4963. of the Revised Code, except sections 4905.10, 4905.33, 4905.35, and 4933.81 to 4933.90; except sections 4905.06, 4935.03, 4963.40, and 4963.41 of the Revised Code regarding service reliability and public safety; and except as otherwise provided in this chapter. The commission's AUTHORITY to enforce those excepted provisions with respect to a COMPETITIVE retail electric service shall be such AUTHORITY as is provided for their enforcement under Chapters 4901. to 4909., 4933., 4935., and 4963. of the Revised Code and this chapter.

On and after the starting date of competitive retail electric service, a competitive retail electric service supplied by an electric cooperative shall not be subject to supervision and regulation by the commission under Chapters 4901. to 4909., 4933., 4935., or 4963. of the Revised Code, except as otherwise expressly provided in sections 4928.01 to 4928.10 and 4928.16 of the Revised Code.

(2) On and after the starting date of competitive retail electric service, a noncompetitive retail electric service supplied by an electric utility shall be subject to supervision and regulation by the commission under Chapters 4901. to 4909., 4933., 4935., and 4963. of the Revised Code and this chapter, to the extent that AUTHORITY is not preempted by federal law. The commission's AUTHORITY to enforce those provisions with respect to a noncompetitive retail electric service shall be the AUTHORITY provided under those chapters and this chapter, to the extent the AUTHORITY is not preempted by federal law.

The commission shall exercise its jurisdiction with respect to the delivery of electricity by an electric utility in this state on or after The starting date of competitive retail electric service so as to ensure that no aspect of the delivery of electricity to ultimate consumers in this state that consists of a noncompetitive retail electric service is unregulated.

On and after that starting date, a noncompetitive retail electric service supplied by an electric cooperative shall not be subject to supervision and regulation by the commission under Chapters 4901. to 4909., 4933., 4935., and 4963. of the Revised Code, except sections 4933.81 to 4933.90 and 4935.03 of the Revised Code. The commission's authority to enforce those excepted sections with respect to a noncompetitive retail electric service of an electric cooperative shall be such authority as is provided for their enforcement under Chapters 4933. and 4935. of the Revised Code.

(B) Nothing in this chapter affects the authority of the commission under Title XLIX of the Revised Code to regulate an electric light company in this state or an electric service supplied in this state prior to the starting date of COMPETITIVE retail electric SERVICE.

Sec. 4928.06. (A) Beginning on the starting date of competitive retail electric service, the public utilities commission shall ensure that the policy specified in section 4928.02 of the Revised Code is effectuated. To the extent necessary, the commission shall adopt rules to carry out this chapter. Initial rules necessary for the commencement of the competitive retail electric service under this chapter shall be adopted within one hundred eighty days after the effective date of this section. Except as otherwise provided in this chapter, the proceedings and orders of the commission under the chapter shall be subject to and governed by Chapter 4903. of the Revised Code.

(B) If the commission determines, on or after The starting date of competitive retail electric service, that there is a decline or loss of effective competition with respect to a competitive retail electric service declared competitive by commission order issued pursuant to division (A) of section 4928.04 of the Revised Code, the commission shall ensure that that service is provided at compensatory, fair, and nondiscriminatory prices and terms and conditions.

(C) In addition to its authority under section 4928.04 of the Revised Code and divisions (A) and (B) of this section, the commission, on an ongoing basis, shall monitor and evaluate the provision of retail electric service in this state for the purpose of discerning any noncompetitive retail electric service that should be available on a competitive basis on or after The starting date of competitive retail electric service pursuant to a declaration in the revised code, and for the purpose of discerning any competitive retail electric service that is no longer subject to effective competition on or after that date. Upon such evaluation, the commission periodically shall report its findings and any recommendations for legislation to the standing committees of both houses of the general assembly that have primary jurisdiction regarding public utility legislation. but, Until 2008, the commission and the consumer's counsel also shall provide BIENNIAL reports to those standing committees, regarding the effectiveness of competition in the supply of competitive retail electric SERVICES in this state.

(D) In determining, for purposes of division (B) or (C) of this section or division (b) of section 4928.44 of the Revised Code, whether there is effective competition in the provision of a retail electric service by an electric utility or reasonably available alternatives for that service, the commission shall consider factors including, but not limited to, all of the following:

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

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

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

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

the burden of proof shall be on Any entity requesting, under division (b) or (c) of this section, a determination by the commission of the existence of or a lack of effective competition or reasonably available alternatives.

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

(2) In addition to the commission's AUTHORITY under division (E)(1) of this section, THE COMMISSION, BEGINNING THE FIRST YEAR AFTER THE MARKET DEVELOPMENT PERIOD OF A PARTICULAR ELECTRIC UTILITY AND AFTER REASONABLE NOTICE AND OPPORTUNITY FOR HEARING, MAY TAKE SUCH MEASURES WITHIN A TRANSMISSION CONSTRAINED AREA IN THE UTILITY'S CERTIFIED TERRITORY as are necessary TO ENSURE THAT RETAIL ELECTRIC GENERATION SERVICE IS PROVIDED AT REASONABLE RATES within that area. THE COMMISSION MAY EXERCISE THIS AUTHORITY ONLY UPON FINDINGS THAT an electric UTILITY is or has engaged in the abuse of MARKET POWER AND THat that abuse IS NOT ADEQUATELY MITIGATED BY RULES AND PRACTICES OF ANY INDEPENDENT TRANSMISSION ENTITY CONTROLLING THE TRANSMISSION FACILITIES. ANY SUCH MEASURE SHALL BE TAKEN ONLY TO THE EXTENT NECESSARY TO PROTECT CUSTOMERS IN THE AREA FROM THE particular abuse of MARKET POWER AND TO THE EXTENT the COMMISSION'S AUTHORITY IS NOT PREEMPTED BY FEDERAL LAW. THE measure SHALL REMAIN in effect UNTIL THE COMMISSION, AFTER reasonable NOTICE AND OPPORTUNITY FOR HEARING, DETERMINES THAT THE particular abuse of MARKET POWER HAS BEEN MITIGATED.

(F) An electric utility, electric services company, electric cooperative, or governmental aggregator subject to certification under section 4928.08 of the Revised code shall provide the commission with such information as the commission considers necessary to carry out this chapter. An electric light company shall provide the commission with such information as the commission considers necessary to carry out divisions (B) to (E) of this section. The commission shall take such measures as it considers necessary to protect the confidentiality of any such information.

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

Sec. 4928.07. To the maximum extent practicable on or after The starting date of competitive retail electric service, an electric utility, electric services company, electric cooperative, or governmental aggregator subject to certification under section 4928.08 of the Revised Code shall separately price competitive retail electric serviceS, and the PRICES SHALL BE ITEMIZED on the bill of a customer or otherwise disclosed to the customer. Although a competitive retail electric service shall be supplied to any consumer on such a basis, such an electric utility, electric services company, electric cooperative, or governmental AGGREGATOR may repackage the service on or after The starting date and offer it on a bundled basis with other retail electric services to meet consumer preferences. Such repackaging by an electric utility shall be subject to sections 4905.33 to 4905.35

of the Revised Code. repackaging by such an electric services company, electric cooperative, or governmental aggregator shall be subject to the limitation that no such entity shall furnish free service or service for less than actual cost for the purpose of destroying competition.

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

(B) No electric utility, electric services company, electric cooperative, or governmental aggregator shall provide a competitive retail electric service to a consumer in this state on and after the starting date of competitive retail electric service without first being certified by the public utilities commission regarding its managerial, technical, and financial capability to provide that service. Certification shall be granted pursuant to procedures and standards the commission shall prescribe in accordance with division (C) of this section, except that certification or certification renewal shall be deemed approved thirty days after the filing of an application with the commission unless the commission suspends that approval for good cause shown. In the case of such a suspension, the commission shall act to approve or deny certification or certification renewal to the applicant not later than ninety days after the date of the suspension

(C) Capability standards adopted in rules under division (B) of this section shall be sufficient to ensure compliance with the minimum service requirements established under section 4928.10 of the Revised Code and with section 4928.09 of the Revised Code. The standards shall allow flexibility for voluntary aggregation, to encourage market creativity in responding to consumer needs and demands. The rules shall include procedures for biennially renewing certification.

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

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

Sec. 4928.09. (A)(1) No person shall operate in this state as an electric utility, an electric services company, or a billing and collection agent on and after the starting date of competitive retail electric service unless that person first does both of the following:

(a) Consents irrevocably to the jurisdiction of the courts of this state and service of process in this state, including, without limitation, service of summonses and subpoenas, for any civil or criminal proceeding arising out of or relating to such operation, by providing that irrevocable consent in ACCORDANCE with division (A)(4) of this section;

(b) Designates an agent authorized to receive that service of process in this state, by filing with the commission a document designating that agent.

(2) No person shall continue to operate as such an electric utility, electric services company, or billing and collection agent unless that person continues to consent to such jurisdiction and service of process in this state and continues to designate an agent as provided under this division, by refiling in accordance with division (A)(4) of this section the appropriate documents filed under division (A)(1) of this section or, as applicable, the appropriate amended documents filed under division (A)(3) of this section. Such refiling shall occur during the month of December of every fourth year after the initial filing of a document under division (A)(1) of this section.

(3) If the address of the person filing a document under division (A)(1) or (2) of this section changes, or if a person's agent or the address of the agent changes, from that listed on the most recently filed of such documents, the person shall file an amended document containing the new information.

(4) The consent and designation required by divisions (A)(1) to (3) of this section shall be in writing, on forms prescribed by the public utilities commission. The original of each such document or amended document shall be legible and shall be filed with the commission, with a copy filed with the office of the consumers' counsel and with the attorney general's office.

(B) A person who enters this state pursuant to a summons, subpoena, or other form of process authorized by this section is not subject to arrest or service of process, whether civil or criminal, in connection with other matters that arose before the person's entrance into this state pursuant to such summons, subpoena, or other form of process.

(C) Divisions (A) and (B) of this section do not apply to any of the following:

(1) A corporation incorporated under the laws of this state that has appointed a statutory agent pursuant to section 1701.07 or 1702.06 of the Revised Code;

(2) A foreign corporation licensed to transact business in this state that has appointed a designated agent pursuant to section 1703.041 of the Revised Code;

(3) Any OTHER person that is a resident of this state or that files consent to service of process and designates a statutory agent pursuant to other laws of this state.

Sec. 4928.10. For the protection of consumers in this state, the public utilities commission shall adopt rules under division (A) of section 4928.06 of the Revised Code specifying the necessary minimum service requirements, on or after The starting date of competitive retail electric service, of an electric utility, electric services company, electric cooperative, or governmental aggregator subject to certification under section 4928.08 of the Revised Code regarding the provision of such a service directly or through its billing and collection agent. Rules adopted under this section shall include a prohibition against unfair, deceptive, and unconscionable acts and practices in the marketing, solicitation, and sale of a competitive retail electric service and in the administration of any contract for such a service, and also shall include additional consumer protections concerning all of the following:

(A) Contract disclosure. The rules shall include requirements that an electric utility, electric services company, electric cooperative, or governmental aggregator subject to certification under section 4928.08 of the Revised Code do both of the following:

(1) Provide consumers with adequate, accurate, and understandable pricing and terms and conditions of service, including any switching fees, and with a document containing the terms and conditions of pricing and service before the consumer enters into the contract for service;

(2) Disclose the conditions under which a customer may rescind a contract without penalty.

(B) Service termination. The rules shall include disclosure of the terms identifying how customers may switch or terminate service, including any required notice and any penalties.

(C) Minimum content of customer bills. The rules shall include all of the following requirements:

(1) uniform price disclosure and Disclosures of total billing units for the billing period and historical annual usage;

(2) To the maximum extent practicable, separate listing of each service component to enable a customer to recalculate its bill for accuracy;

(3) Identification of the supplier of each service;

(4) Statement of where and how payment may be made and provision of a toll-free or local customer assistance and complaint number for the electric utility, electric services company, electric cooperative, or governmental aggregator, as well as a consumer assistance telephone number or numbers for state agencies, such as the commission, the office of the consumers' counsel, and the attorney general's office, with the available hours noted.

(D) Disconnection and service termination, including requirements with respect to master-metered buildings. The rules shall include policies and procedures that are consistent with sections 4933.121 and 4933.122 of the Revised Code and the commission's rules adopted under those sections, and that provide for all of the following:

(1) Coordination between suppliers for the purpose of maintaining service;

(2) The allocation of partial payments between suppliers when service components are jointly billed;

(3) A prohibition against blocking, or authorizing the blocking of, customer access to a noncompetitive retail electric service when a customer is delinquent in payments to the electric utility or electric services company for a competitive retail electric service;

(4) A prohibition against switching, or authorizing the switching of, a customer's supplier of competitive retail electric service without the prior consent of the customer in accordance with appropriate confirmation practices, which may include independent, third-party verification procedures.

(5) A requirement of disclosure of the conditions under which a customer may rescind a decision to switch its supplier without penalty;

(6) Specification of any required notice and any penalty for early termination of contract.

(E) Minimum service quality, safety, and reliability. However, service quality, SAFETY, and reliability requirements for electric generation service shall be determined primarily through market expectations and contractual relationships.

(f) Generation resource mix and environmental characteristics of power supplies. the rules shall include requirements for determination of the approximate generation resource mix and environmental characteristics of the power supplies and disclosure to the customer prior to the customer entering into a contract to purchase and four times per year under the contract. The rules also shall require that the electric utility, electric services company, electric cooperative, or governmental AGGREGATOR provide, or cause its billing and collection agent to provide, a customer with information comparing the projected, with the actual and verifiable, resource mix and environmental characteristics. This disclosure shall occur not less than annually or not less than once during the contract period if the contract period is less than one year, and prior to any renewal of a contract.

(g) Customer information. The rules shall include requirements that the electric utility, electric services company, electric cooperative, or governmental aggregator make generic customer load pattern information available to other electric light companies on a comparable and nondiscriminatory basis, and make customer-specific information available to other electric light companies on a comparable and nondiscriminatory basis unless, as to customer-specific information, the customer objects. the rules shall ensure that customers are informed clearly and frequently of the right to OBJECT and of applicable procedures.

Sec. 4928.11. For the protection of consumers in this state, the public utilities commission shall adopt rules under division (A) of section 4928.06 of the Revised Code that specify minimum service quality, safety, and reliability requirements for NONCOMPETITIVE retail electric services supplied by an electric utility in this state, to the extent such AUTHORITY is not preempted by federal law. the rules shall include prescriptive standards for inspection, maintenance, repair, and replacement of the transmission and distribution systems of electric utilities; shall apply to each substantial type of transmission or distribution equipment or facility; shall provide for high quality, safe, and reliable electric service; and shall include standards for operation, reliability, and SAFETY during periods of emergency and disaster. the rules also shall include nondiscriminatory metering standards.

The commission shall require each electric utility to report annually to the commission on and after the starting date of competitive retail electric service, regarding its compliance with the rules. the commission shall make the filed reports available to the public. Periodically as determined by commission rule under division (A) of section 4928.06 of the Revised Code and in a proceeding initiated under division (B) of section 4928.16 of the Revised Code, the commission shall review a utility's report to determine the utility's compliance and may act pursuant to DIVISION (B) of section 4928.16 of the Revised Code to enforce compliance.

Sec. 4928.12. (A) Except as otherwise provided in sections 4928.31 to 4928.40 of the Revised Code, no entity shall own or control transmission facilities located in this state on or after the starting date of competitive retail electric service unless that entity is a member of, and transfers control of those facilities to, one or more qualifying transmission entities, as described in division (B) of this section, that are operational.

(B) An entity that owns or controls TRANSMISSION FACILITIES LOCATED IN THIS STATE complies with division (A) of this section if each transmission entity of which it is a member meets all of the following specifications:

(1) The transmission entity is APPROVED BY THE FEDERAL ENERGY REGULATORY COMMISSION.

(2) the transmission entity effects SEPARATE CONTROL OF TRANSMISSION FACILITIES FROM CONTROL OF GENERATION FACILITIES.

(3) The transmission entity prohibits or otherwise precludes

PANCAKED TRANSMISSION RATES.

(4) The transmission entity IMPROVEs SERVICE RELIABILITYyWITHIN THIS STATE.

(5) the transmission entity achieves the objectives of an open and competitive electric generation marketplace, elimination of barriers to market entry, and preclusion of control of bottleneck electric transmission facilities in the provision of retail electric service.

(6) The TRANSMISSION entity is of sufficient scope or otherwise operates to substantially increase economical supply options for consumers.

(7) the governance structure or control of the transmission entity is independent of the owners and users of the TRANSMISSION facilities, and no member of its board of directors has an affiliation, with such an owner or user or with an affiliate of an owner or user during the member's tenure on the board, such as to unduly affect the transmission entity's performance.

(8) The transmission entity operates under policies that promote positive performance designed to satisfy the electricity requirements of customers.

(9) The transmission entity is capable of maintaining real-time reliability of the electric transmission system, ensuring comparable and nondiscriminatory transmission access and necessary services, minimizing system congestion, and further addressing real or potential transmission constraints.

(C) to the extent that a transmission entity under division (A) of this section is authorized to build transmission facilities, that TRANSMISSION entity has the powers provided in and is subject to sections 1723.01 to 1723.08 of the Revised Code.

(D) For the purpose of forming or participating in a regional regulatory oversight body or mechanism developed for any transmission entity under division (A) of this section that is of regional scope and operates within this state:

(1) The commission may make joint investigations, hold joint hearings, within or outside this state, and issue joint or concurrent orders in conjunction or concurrence with any official or agency of any state or of the United States, whether in the holding of those investigations or hearings, or in the making of those orders, the commission is functioning under agreements or compacts between states, under the concurrent power of states to regulate interstate commerce, as an agency of the United States, or otherwise.

(2) The commission may negotiate and enter into agreements or compacts with agencies of other states for cooperative regulatory efforts and for the enforcement of the respective state laws regarding the transmission entity.

(E) If a qualifying transmission entity is not operational as contemplated in division (A)(2) of this section and division (A) of section 4928.34 of the Revised Code, the commission by rule or order shall take such measures or impose such requirements on all for-profit entities that own or control electric transmission FACILITIES located in this state as the commission determines necessary and proper to achieve independent, nondiscriminatory operation of, and separate ownership and control of, such electric transmission facilities on or after the starting date of competitive retail electric service.

Sec. 4928.13. through a periodic filing with the public utilities commission in such form as the commission shall prescribe by rule under division (A) of section 4928.06 of the Revised Code, each electric utility that owns nuclear generation facilities located in this state shall demonstrate compliance with

DECOMMISSIONING requirements of the nuclear regulatory commission and public utilities commission and shall demonstrate adequate financing mechanisms to fund facility DECOMMISSIONING.

Sec. 4928.14. (A) After its competitive auction period, an ELECTRIC DISTRIBUTION utility in this state shall provide consumers, on a comparable and nondiscriminatory basis within its certified territory, a standard service offer of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service. such offer shall be filed with the public utilities commission under section 4905.30 of the Revised Code.

(B) After that competitive auction period, the failure of a supplier to provide retail electric generation service to customers within the certified territory of the electric distribution utility shall result in the supplier's customers, after reasonable notice, defaulting to the utility's standard service offer filed under division (A) of this section until the customer chooses an alternative supplier. A supplier is deemed under this section to have failed to provide such service if the commission finds, after reasonable notice and opportunity for hearing, that any of the following conditions are MET:

(1) the supplier has defaulted on its contracts with customers, is in receivership, or has filed for bankruptcy;

(2) the supplier is no longer capable of providing the service;

(3) the supplier is unable to provide delivery to transmission or distribution facilities for such period of time as may be reasonably specified by commission rule adopted under division (A) of section 4928.06 of the Revised Code;

(4) The supplier's certification has been suspended,

conditionally rescinded, or rescinded under division (D) of section 4928.08 of the Revised Code.

Sec. 4928.15. (A) Except as otherwise provided in sections 4928.31 to 4928.40 of the Revised Code, no electric utility shall supply noncompetitive retail electric DISTRIBUTION service in this state on or after The starting date of competitive retail electric service except pursuant to a schedule for that service that is consistent with the state policy specified in section 4928.02 of the Revised Code and filed with the public utilities COMMISSION under section 4905.30 of the Revised Code. the schedule shall provide that electric distribution service under the schedule is available to all consumers within the utility's certified territory and to any supplier to those consumers on a nondiscriminatory and comparable basis. distribution service rates and charges under the schedule shall be established in accordance with Chapters 4905. and 4909. of the Revised Code or may be determined in accordance with performance-based ratemaking as authorized under division (c) of this section. The schedule shall include an obligation to build distribution facilities when necessary to provide adequate distribution service, provided that a customer requesting that service may be required to pay all or part of the reasonable incremental cost of the new facilities, in accordance with rules, policy, precedents, or orders of the commission.

(B) Except as otherwise provided in sections 4928.31 to 4928.40 of the Revised Code and except as preempted by federal law, no electric utility shall supply the transmission service or ancillary service component of noncompetitive retail electric service in this state on or after The starting date of competitive retail electric service except pursuant to a schedule for that service component that is consistent with the state policy specified in section 4928.02 of the Revised Code and filed with the COMMISSION under section 4905.30 of the Revised Code. The schedule shall provide that transmission or ancillary service under the schedule is available to all consumers and to any supplier to those consumers on a nondiscriminatory and comparable basis. Service rates and charges under the schedule shall be established in accordance with Chapters 4905. and 4909. of the Revised Code or may be determined in accordance with performance-based ratemaking as authorized under division (c) of this section.

(C) On or after the expiration date of an electric utility's market development period, the commission by order may use performance-based ratemaking to establish rates and charges for a noncompetitive retail electric service supplied in this state by the utility, subject to the assurance of the safety and reliability of the electric transmission and distribution systems in this state and upon determining that such ratemaking is consistent with the policy specified in section 4928.02 of the Revised Code; is in the public interest; and will be superior to the ratemaking under section 4909.15 of the Revised Code in providing incentives to the utility to achieve efficiency in the provision of noncompetitive retail electric services, to invest in distribution system assets, and to provide lower rates and superior services for customers. Under such performance-based ratemaking, the commission may authorize that rates be capped or otherwise limited, may provide for limited review of costs once the rates are set, and may require that any operating efficiencies be reflected in adjustments built into the rate-making approach.

Sec. 4928.16. (A)(1) The public utilities commission has jurisdiction under section 4905.26 of the Revised Code, upon complaint of any person or upon complaint or initiative of the commission on or after the starting date of competitive retail electric service, regarding the provision of such a service by an electric utility, electric services company, electric cooperative, or governmental aggregator subject to certification under section 4928.08 of the Revised Code or by a winning bidder under section 4928.44 of the Revised Code.

(2) The commission also has jurisdiction under section 4905.26 of the Revised Code, upon complaint of any person or upon complaint or initiative of the commission on or after the starting date of competitive retail electric service, to determine whether an electric utility has violated or failed to comply with any provision of sections 4928.01 to 4928.15, any provision of divisions (A) to (D) of section 4928.35, or division (G) of section 4928.44 of the Revised Code, or with any rule or order adopted or issued under those sections; whether an electric services company, electric cooperative, or governmental aggregator subject to certification under section 4928.08 of the Revised Code has violated or failed to comply with any provision of sections 4928.01 to 4928.10 of the Revised Code or any rule or order adopted or issued under those sections; or whether a winning bidder under section 4928.44 of the Revised Code has violated or failed to comply with any provision of that section or any rule or order adopted under the section.

(B) In addition to its authority under division (C) of section 4928.08 of the Revised Code and to any other remedies provided by law, the commission, after reasonable notice and opportunity for hearing in accordance with section 4905.26 of the Revised Code, may do any of the following:

(1) Order rescission of a contract or restitution to customers in any complaint brought pursuant to division (A)(1) or (2) of this section;

(2) Order any remedy or forfeiture provided under sections 4905.54 to 4905.60 and 4905.64 of the Revised Code upon a finding

under division (A)(2) of this section that the electric utility has violated or failed to comply with any provision of sections 4928.01 to 4928.15, or any provision of divisions (A) to (D) of section 4928.35, division (G) of section 4928.44 of the Revised Code, or with any rule or order adopted or issued under those sections. in addition, the commission may order any remedy provided under section 4905.22, 4905.37, or 4905.38 of the Revised Code if the violation or failure to comply by an electric utility related to the provision of a noncompetitive retail electric service.

(3) Order any remedy or forfeiture provided under sections 4905.54 to 4905.60 and 4905.64 of the Revised Code upon a finding under division (A)(2) of this section that the electric services company, electric cooperative, or governmental aggregator subject to certification under section 4928.08 of the Revised Code has violated or failed to comply with any provision of sections 4928.01 to 4928.10 of the Revised Code or any rule or order adopted or issued under those sections; or upon a finding that the winning bidder under section 4928.44 of the Revised Code has violated or failed to comply with any provision of that section or any rule or order adopted under the section.

(C)(1) In addition to the authority conferred under section 4911.15 of the Revised Code, the consumers' counsel may file a complaint under division (A)(1) or (2) of this section on behalf of residential consumers in this state or appear before the commission as a representative of those consumers pursuant to any complaint filed under division (A)(1) or (2) of this section.

(2) In addition to the authority conferred under section 4911.19 of the Revised Code, the consumers' counsel, upon reasonable grounds on and after the starting date of competitive retail electric service, may file with the commission under section 4905.26 of the Revised Code a complaint for discovery if

the recipient of an inquiry under section 4911.19 of the Revised Code fails to provide a response within the time specified in that section.

(D) Section 4905.61 of the Revised Code applies to a violation by an electric utility of, or to a failure of an electric utility to comply with, any provision of sections 4928.01 to 4928.15, any provision of divisions (A) to (D) of section 4928.35, or division (G) of section 4928.44 of the Revised Code, or with any rule or order adopted or issued under those sections.

Sec. 4928.17. (A) except as otherwise provided in sections 4928.31 to 4928.40 of the Revised Code and beginning on The starting date of competitive retail electric service, no electric utility shall engage in this state, either directly or through an affiliate, in the businesses of supplying a noncompetitive retail electric service and supplying a competitive retail electric service, or in the businesses of supplying a noncompetitive retail electric service and supplying a product or service other than retail electric service, unless the utility implements and operates under a corporate separation plan that is approved by the public utilities commission under this section, is consistent with the policy specified in section 4928.02 of the Revised Code, and achieves all of the following:

(1) The plan provides, at minimum, for the provision of the competitive retail electric service or the nonelectric product or service through a fully separated affiliate of the utility, and the plan includes separate accounting requirements, a code of conduct, and such other measures as are necessary to effectuate the policy specified in section 4928.02 of the Revised Code.

(2) The plan satisfies the public interest in preventing unfair competitive advantage and preventing the abuse of market power.

(3) The plan is sufficient to ensure that the utility will not extend any undue preference or advantage to any affiliate, division, or part of its own business engaged in the business of supplying the competitive retail electric service or NONELECTRIC product or service, and to ensure that any such affiliate, division, or part will not receive undue preference or advantage from any affiliate, division, or part of the business engaged in business of supplying the noncompetitive retail electric service. No such utility, affiliate, division, or part shall extend such undue preference.

(B) The commission may approve, modify and approve, or disapprove a corporate separation plan filed with the commission under division (A) of this section. the commission shall adopt rules pursuant to division (A) of section 4928.06 of the Revised Code regarding corporate separation AND procedures for plan filing and approval. The rules shall include limitations on affiliate practices solely for the purpose of maintaining a separation of the affiliate's business from the business of its utility affiliate to prevent unfair competitive advantage by VIRTUE of that relationship. The rules also shall include an opportunity for any person having a real and substantial interest in the corporate separation plan to file specific objections to the plan and propose specific responses to issues raised in the objections, which objections and responses the commission shall address in its final order. Prior to commission approval of the plan, the commission shall afford a hearing upon those aspects of the plan that the commission determines reasonably require a hearing. the commission may reject and require refiling of a substantially inadequate plan under this section.

(C) The commission shall issue an order approving or modifying and approving a corporate separation plan under this section, to be effective on the date specified in the order, only upon findings that the plan reasonably complies with the requirements of division (A) of this section and will provide for ongoing compliance with the policy specified in section 4928.02 of the Revised Code.

(D) Any party may seek an amendment to a CORPORATE separation plan approved under this section, and the commission, pursuant to a request from any party or on its own initiative, may order as it considers necessary the filing of an amended CORPORATE separation plan to reflect changed circumstances.

(E) Notwithstanding section 4905.20, 4905.21, 4905.46, or 4905.48 of the Revised Code, an electric utility may divest itself of any generating asset at any time without commission approval, subject to the provisions of Title XLIX of the Revised Code relating to the transfer of transmission, distribution, or ancillary service provided by such generating asset.

Sec. 4928.18. (A) Notwithstanding division (D)(2)(a) of section 4909.15 of the Revised Code, nothing in this chapter prevents the public utilities commission from exercising its AUTHORITY under Title XLIX of the Revised Code to protect customers of retail electric service supplied by an electric utility FROM any adverse effect of the utility's provision of a product or service other than retail electric service.

(B) The commission has jurisdiction under section 4905.26 of the Revised Code, upon complaint of any person or upon complaint or initiative of the commission on or after the starting date of competitive retail electric service, to determine whether an electric utility or its affiliate has violated any provision of section 4928.17 of the Revised Code or an order issued or rule adopted under that section. for this purpose, the commission may examine such books, accounts, or other records kept by an electric utility or its affiliate as may relate to the businesses for which corporate separation is required under section 4928.17 of the Revised Code, and may investigate such utility or affiliate operations as may relate to those businesses and investigate the interrelationship of those operations. any such examination or investigation by the commission shall be governed by chapter 4903. OF the revised code.

(C) In addition to any remedies otherwise provided by law, the commission, regarding a determination of a violation pursuant to division (B) of this section, may do any of the following:

(1) Issue an order directing the utility or affiliate to comply;

(2) Modify an order as the commission finds reasonable and appropriate and order the utility or affiliate to comply with the modified order;

(3) Suspend or abrogate an order, in whole or in part;

(4) Issue an order that the utility or affiliate pay restitution to any person injured by the violation or failure to comply;

(5) impose a forfeiture on the utility or affiliate of up to twenty-five thousand dollars per day per violation. The recovery and deposit of any such forfeiture shall be subject to sections 4905.57 and 4905.59 of the Revised Code.

(D) In addition to any other remedies AUTHORIZED by law, the commission, regarding a violation by an electric utility relating to a corporate separation plan involving competitive retail electric service, may do any of the following:

(1) Suspend or abrogate an order, to the extent it is in effect, authorizing an opportunity for the utility to receive transition revenues under a transition plan approved by the commission under section 4928.33 of the Revised Code;

(2) Notwithstanding any provision of sections 4933.81 to 4933.83 of the Revised Code to the contrary, issue an order authorizing another electric light company to furnish noncompetitive retail electric service to all electric load centers within the certified territory of the electric utility without a finding of physically inadequate service under section 4933.83 of the Revised Code;

(3) Abrogate an order issued under division (c) of section 4928.16 of the Revised Code.

(E) Section 4905.61 of the Revised Code applies in the CASE OF any violation of section 4928.17 of the Revised Code.

Sec. 4928.19. As part of their ongoing consumer education efforts, the public utilities commission and the office of the consumers' counsel shall ENGAGE in cooperative agency efforts to educate consumers in this state regarding electric industry restructuring under this chapter.

Sec. 4928.20. (A) the legislative AUTHORITY of a municipal corporation through the adoption of an ORDINANCE, or the board of township trustees of a township or the board of county commissioners of a county through the adoption of a resolution, may provide through aggregation for the supply, on or after the starting date of competitive retail electric service, of any competitive retail electric service to electric load centers located respectively, within the municipal corporation, township, or unincorporated area of the county, except to the extent such aggregation is otherwise prohibited by sections 4933.81 to 4933.90 of the Revised Code or other law of this state. but no such aggregation shall occur unless the person owning, occupying, controlling, or using the electric load centers provides prior written consent.

(B) a governmental aggregator under division (A) of this section is not a public utility engaging in the WHOLESALE purchase and resale of electricity, and provision of the AGGREGATED service is not a wholesale utility transaction. a governmental aggregator shall be subject to supervision and regulation by the public utilities commission only to the extent of any competitive retail electric service it provides and commission authority under this chapter.

(C) This section does not apply in the case of a municipal corporation that supplies such aggregated service to electric load centers to which its municipal electric utility also supplies a noncompetitive retail electric service through transmission or distribution facilities the utility singly or jointly owns or operates.

Sec. 4928.31. (A) Not later than ninety days after the effective date of this section, an electric utility supplying retail electric service in this state on that date shall file with the public utilities commission a plan for the utility's provision of retail electric service in this state during the market development period. this transition plan shall be in such form as the commission shall prescribe by rule adopted under division (A) of section 4928.06 of the Revised Code, and shall include all of the following:

(1) A RATE UNBUNDLING PLAN that specifies, consistent with divisions (A)(1) to (7) of section 4928.34 of the Revised Code and any rules adopted by the commission under division (A) of section 4928.06 of the Revised Code, THE UNBUNDLED COMPONENTS FOR ELECTRIC GENERATION, TRANSMISSION, AND DISTRIBUTION SERVICE AND SUCH OTHER UNBUNDLED service COMPONENTS AS THE COMMISSION requires, to BE CHARGED BY THE UTILITY beginning on THE STARTING DATE OF COMPETITIVE RETAIL ELECTRIC SERVICE; and that includes information

the commission requires to fix and determine those components;

(2) A corporate separation plan consistent with section 4928.17 of the Revised Code and any rules adopted by the commission under division (A) of section 4928.06 of the Revised Code;

(3) A plan for the independent operation of THE UTILITY'S transmission facilities consistent with section 4928.13 and division (A)(9) of section 4928.34 of the Revised Code and any rules adopted by the commission under division (A) of section 4928.06 of the Revised Code;

(4) such plan or plans as the commission requires to address operational support systems and any other technical implementation issues pertaining to COMPETITIVE retail electric service consistent with any rules adopted by the commission under division (A) of section 4928.06 of the Revised Code;

(5) A consumer education plan consistent with section 4928.42 of the Revised Code and any rules adopted by the commission under division (A) of section 4928.06 of the Revised Code.

Additionally, a transition plan under this SECTION MAY include An application for the opportunity to receive transition revenues as authorized under sections 4928.31 to 4928.40 of the Revised Code, which application shall be consistent with those sections and any rules adopted by the commission under division (A) of section 4928.06 of the Revised Code.

the commission may reject and require refiling, in whole or in part, of any substantially inadequate transition plan.

(B) The electric utility shall provide public notice of its filing under division (A) of this section, in a form and manner that the commission shall prescribe by rule adopted under division (A) of section 4928.06 of the Revised Code. however, the adoption of rules regarding the public notice under this division, regarding the form of the transition plan under division (A) of this section, and regarding procedures for expedited discovery under division (A) of section 4928.32 of the Revised Code are not subject to section 111.15 of the Revised Code.

Sec. 4928.32. (A) the public utilities commission shall establish reasonable procedures for expedited discovery in any proceeding initiated to consider a transition plan filed under section 4928.31 of the Revised Code.

(B) Not later than forty-five days after the date on which an electric utility files a transition plan under section 4928.31 of the Revised Code, any person having a real and substantial interest in the transition plan may file with the commission preliminary objections to the transition plan, which shall identify with specificity issues pertaining to any aspect of the transition plan, and any such person may propose specific responses to those issues. The commission shall address THOSE OBJECTIONS and REsPONSES in its final order.

in addition, after the plan's filing, the commission staff shall file with the commission a report of its recommendations with respect to the plan. Prior to commission approval of the plan, the commission shall afford a hearing upon those aspects of the plan that the commission determines reasonably require a hearing.

(C) The commission shall maintain a complete record of all proceedings relative to a transition plan filed under section 4928.31 of the Revised Code and shall issue and file with the record of the case findings of fact and written opinions setting forth the reasons for any modification to or its approval of a transition plan.

Sec. 4928.33. (A) Not later than two hundred seventy-five days after the date an electric utility files a transition plan under section 4928.31 of the Revised Code, but, in any event, not later THAN october 31, 2000, the public utilities commission shall issue a final order approving the transition plan as filed under section 4928.31 of the Revised Code or an order modifying and approving that plan. The order is subject to section 4903.15 of the Revised Code and is subject to review and appeal under chapter 4903. of the Revised Code.

(B) If the COMMISSION fails to issue, by october 31, 2000, a final order approving a transition plan, or such a final order has been enjoined in whole or in part pending appeal to a court, the commission shall issue an interim order prescribing a transition plan, to have effect on an interim basis only, and containing the plan components required by division (A) of section 4928.31 of the Revised Code and providing for the opportunity for transition revenue receipt if such an application were included in the plan filed by the utility under that section. the interim order is subject to section 4903.15 of the Revised Code, but is not subject to review and appeal under Chapter 4903. of the Revised Code.

An interim plan prescribed under the interim order shall be effective for the electric utility beginning on the starting date of competitive retail electric service and shall continue in effect until such time as any other replacement transition plan takes effect pursuant to a final commission order or resolution of an appeal. any interim plan so prescribed shall comply with THE aPPLICABLE provisions of section 4928.34 of the revised Code. A final commission order shall provide for a reconciliation of those amounts determined in the final order relative to division (A) of section 4928.31 of the Revised Code as compared to the interim amounts as determined under this division.

(C) No electric utility required to file a transition plan under section 4928.31 of the Revised Code shall fail to implement a transition plan approved or prescribed for the utility by a commission order issued under division (a) or (b) of this section. No electric utility shall provide retail electric service in this state during the market development period except pursuant to such an approved or prescribed transition plan.

Sec. 4928.34. (A) The public utilities commission shall not approve or prescribe a transition plan under division (A) or (B) of section 4928.33 of the Revised Code unless the commission first makes all of the following determinations:

(1) The unbundled components for the electric transmission component of retail electric service, as specified in the utility's rate unbundling plan required by division (A)(1) of section 4928.31 of the Revised Code, equal the tariff rates determined by the federal energy regulatory commission that are in effect on the date of the approval of the transition plan under sections 4928.31 to 4928.40 of the Revised Code, as each such rate is determined applicable to each particular customer class by the commission.

(2) the unbundled components for retail electric distribution service in the rate unbundling plan equal the sum of the costs ATTRIBUTABLE to the utility's transmission and distribution rates and charges under its schedule of rates and charges in effect on the effective date of this section less the tariff rates for electric transmission service determined by the federal energy regulatory commission as described in division (A)(1) of this section.

(3) all other unbundled components required by the commission in the rate unbundling plan equal the costs attributable to the particular service as reflected in the utility's schedule of rates

and charges in effect on the effective date of this section.

(4) the unbundled components for retail electric generation service in the rate unbundling plan equal the residual amount remaining after the determination of the transmission, distribution, and other unbundled components.

(5) all unbundled components in the rate unbundling plan have been adjusted to reflect any rate reductions under rate settlements in effect on the effective date of this section. however, all earnings obligations, RESTRICTIONS, or caps imposed on an electric utility in a commission order prior to the effective date of this section are void.

(6) Subject to division (A)(5) of this section, the total of all unbundled components in the rate UNBUNDLING plan are capped and do not exceed the total of all rates and charges in effect under the applicable bundled schedule of the electric utility PURSUANT TO SECTION 4905.30 OF THE REVISED cODE in effect on the day before the effective date of this section, including the transition charge determined under section 4928.39 or 4928.40 of the Revised Code, any changes in the taxation of electric UTILITIES and retail electric service under __.B. No. ___ of the 123rd General Assembly, the universal service rider AUTHORIZED by section 4928.51 of the Revised Code, and the temporary surcharge AUTHORIZED by section 4928.61 of the Revised Code. for the purpose of this division, the rate cap applicable to a customer receiving electric service pursuant to an arrangement approved by the commission under section 4905.31 of the revised code is the total of all rates and charges in effect under such bundled schedule that otherwise would apply to the customer absent THE CONTRACT.

(7) The rate unbundling plan complies with any rules adopted by the commission under division (A) of section 4928.06 of the

Revised Code.

(8) The corporate separation plan required by division (a)(2) of section 4928.31 of the Revised Code complies with section 4928.17 of the Revised Code and any rules adopted by the commission under division (A) of section 4928.06 of the Revised Code.

(9) The independent transmission plan required by division (A)(3) of section 4928.31 of the Revised Code reasonably complies with section 4928.12 of the Revised Code and any rules adopted by the commission under division (A) of section 4928.06 of the Revised Code, and reasonably complies with the following requirements:

(a) the electric utility, on or before the starting date of competitive retail electric service, is a member of, and transfers control of transmission facilities it owns or controls in this state to, one or more qualifying transmission entities as described in division (B) of section 4928.12 of the Revised Code.

(b) the electric utility, on or before june 30, 2001, is a member of, and transfers control of transmission facilities it owns or controls in this state to, one or more such qualifying transmission entities that are operational.

(10) any plan or plans the commission requires to address operational support systems and any other technical implementation issues pertaining to COMPETITIVE retail electric service COMPLy WITH any rules adopted by the commission under division (A) of section 4928.06 of the Revised Code.

(11) The consumer education plan required under division (A)(5) of section 4928.31 of the Revised Code complies with section 4928.42 of the Revised Code and any rules adopted by the commission under division (A) of section 4928.06 of the Revised Code.

(12) the transition charges for the customer classes of the utility are the charges determined pursuant to section 4928.39 or section 4928.40 of the Revised Code as applicable.

(13) The utility is in compliance with sections 4928.01 to 4928.11 of the Revised Code and any rules or orders of the commission adopted or issued under those sections.

In addition, a transition plan approved by the commission under section 4928.33 of the Revised Code shall contain the express conditions that the utility will comply with the requirements of divisions (A)(9)(a) and (b) of this section.

(b) Subject to division (E) of section 4928.17 of the Revised Code, if the commission finds that any part of the transition plan would constitute an abandonment under sections 4905.20 and 4905.21 of the Revised Code, the commission shall not approve that part of the transition plan unless it makes the finding required for approval of an abandonment application under section 4905.21 of the Revised Code. sections 4905.20 and 4905.21 of the Revised Code otherwise shall not apply to a transition plan under sections 4928.31 to 4928.40 of the Revised Code.

Sec. 4928.35. (A) Upon approval of its transition plan under sections 4928.31 to 4928.40 of the Revised Code, an electric utility shall file in accordance with section 4905.30 of the Revised Code schedules containing the unbundled rate components set in the approved plan in accordance with section 4928.34 of the Revised Code. the schedules shall be in effect for the duration of the utility's market development period, shall be subject to the cap specified in division (A)(6) of section 4928.34 of the Revised Code, and shall not be adjusted during that period by the public UTILITIES commission except as otherwise AUTHORIZED by division (B) of this section or as otherwise AUTHORIZED by federal law.

(B) Efforts shall be made to reach agreements with electric UTILITIES in matters of LITIGATION regarding property valuation issues. Irrespective of those efforts, the unbundled components for an electric utility's retail electric generation service and distribution service, as provided in division (A) of this section, are not subject to adjustment for the utility's market development period, except that the commission shall order an equitable reduction in those components for all customer classes to reflect any refund a utility receives as a result of the resolution of utility personal property tax valuation litigation that is resolved on or after the effective date of this section and prior to the end of the market development period. immediately upon the issuance of that order, the electric utility shall file revised rate schedules under section 4905.30 of the Revised Code to effect the order.

(C) The schedule under division (A) of this section containing the unbundled distribution components shall provide that electric distribution service under the schedule will be available to all retail electric service customers in the electric utility's certified territory and their suppliers on a nondiscriminatory and comparable basis on and after the starting date of competitive retail electric service. The schedule also shall include an obligation to build distribution facilities when necessary to provide adequate distribution service, provided that a customer requesting that service may be required to pay all or part of the reasonable incremental cost of the new facilities, in accordance with rules, policy, precedents, or orders of the commission.

(D) during the market development period, an electric distribution utility shall provide consumers on a comparable and nondiscriminatory basis within its certified territory a standard service offer of all competitive retail electric services necessary to maintain essential electric service to CONSUMERS, including a firm supply of electric generation service priced in accordance with the schedule containing the utility's UNBUNDLED generation service component. IMMEDIATELY upon approval of its transition plan, the utility shall file the standard service offer with the commission under section 4905.30 of the Revised Code. during the market development period, the failure of a supplier to deliver retail electric generation service shall result in the supplier's customers, after reasonable notice, defaulting to the utility's standard service offer filed under this division until the customer chooses an alternative supplier. a supplier is deemed under this section to have failed to deliver such service if any of the conditions specified in divisions (b)(1) to (4) of section 4928.14 of the Revised Code is met.

(E) An amendment of a corporate separation plan contained in a transition plan approved by the commission under section 4928.33 of the Revised Code shall be filed and approved as a corporate separation plan pursuant to section 4928.17 of the Revised Code.

(F) Any change to an electric utility's opportunity to receive transition revenues under a transition plan approved in accordance with section 4928.33 of the Revised Code shall be authorized only as provided in sections 4928.31 to 4928.40 of the Revised Code.

Sec. 4928.36. The public utilities commission has jurisdiction under section 4905.26 of the Revised Code, upon complaint by any person or upon complaint or initiative of the commission on or after the starting date of competitive retail electric service, to determine whether an electric utility has failed to implement, in conformance with an order under section 4928.33 of the Revised Code or in ongoing compliance with applicable provisions of the policy specified in section 4928.02

of the Revised Code, a transition plan approved under section 4928.33 of the Revised Code. If, after reasonable notice and opportunity for hearing as provided in section 4905.26 of the Revised Code, the commission determines that the utility has failed to so comply, the commission, in addition to any other remedies provided by law, may use the remedies specified in divisions (C)(1) to (3) and (D)(1) and (2) of section 4928.18 of the Revised Code to enforce compliance.

Sec. 4928.37. (A)(1) Sections 4928.31 to 4928.40 of the Revised Code provide an electric utility the opportunity to receive transition revenues that may assist it in making the transition to a fully competitive retail electric generation market, and provide consumers shopping incentives during the transition to spur the development of effective competition in the supply of retail electric generation service. The level of allowable utility revenues that is likely to RESULT under sections 4928.31 to 4928.40 of the Revised Code reflects an assessment of the disparate competitive positions of the electric utilities in this state on the effective date of this section and an assessment of the level of consumer savings practicable and necessary to spur effective competition. the market development periods for the utilities consider the economic DEVELOPMENT needs of this state to move to a competitive market in a timely manner given regional developments and reflect a desire to assert state authority to determine retail electric service restructuring for this state.

The approaches to determining the transition charge under sections 4928.39 and 4928.40 of the Revised Code are reasonable and fair to all stakeholders, rationally represent an appropriate sharing of the risks and REWARDS of regulated electric utilities moving to a competitive market, and advance the ultimate consumer protection of encouraging effective competition by providing shopping incentives and competitive margin. Overall, under sections 4928.31 to 4928.40 of the Revised Code, in areas of this state where it is needed more, competition should be established quickly and consumers will have the protection of effective markets; in areas where there is less margin for competition, consumers will have the protections of price caps during the market development period.

An electric Utility for which transition revenues are approved pursuant to sections 4928.31 to 4928.40 of the Revised Code shall receive those revenues through both of the following mechanisms beginning on the starting date of competitive retail electric service and ending on the expiration date of its transition charge as determined under section 4928.39 or 4928.40 of the Revised Code:

(a) payment of unbundled rates for retail electric services by each customer that takes retail electric generation service during the market development period from the customer's electric distribution utility, which rates shall be specified in schedules filed under section 4928.35 of the Revised Code.

(b) Payment of a nonbypassable and competitively neutral transition charge by each customer that takes retail electric generation service during the market development period from a supplier other than the customer's electric distribution utility, as such transition charge is determined under section 4928.39 or 4928.40 of the Revised Code. the transition charge shall be payable by each such retail electric distribution service customer in the certified territory of the electric utility for which the transition revenues are approved, and shall be billed on each kilowatt-hour of electricity consumed as registered on the customer's meter, as kilowatt-hour is defined in section 4909.161 of the Revised Code. the transition charge shall vary by customer class and, as reflected in section 4928.39 or 4928.40 of the

Revised Code, shall be determined based on a benchmark or be otherwise structured to provide shopping incentives to customers sufficient to spur the development of effective competition in the supply of retail electric generation service.

(2) Notwithstanding division (B)(1)(b) of this section, the transition charge shall not be payable on electricity supplied by a municipal electric utility to a retail electric distribution service customer in the certified territory of the electric utility for which the transition revenues are approved, if the municipal electric utility provides electric transmission or distribution service, or both services, through transmission or distribution facilities singly or jointly owned or operated by the municipal electric utility.

(3) the transition charge shall not be discounted by any party unless there is a determination by the Department of Development that such a discount is part of an approved economic development package involving state or local funding and is necessary for economic development to occur within this state instead of another state.

(4) Nothing prevents payment of all or part of the transition charge by another party on a customer's behalf if that payment does not contravene sections 4905.33 to 4905.35 of the Revised Code or this chapter.

(B) The electric utility shall separately itemize and disclose, or cause its billing and collection agent to separately itemize and disclose, the transition charge on the customer's bill in accordance with reasonable SPECIFICATIONS the commission shall prescribe by rule under division (A) of section 4928.06 of the Revised Code.

Sec. 4928.38. (A) The application for the opportunity to receive transition revenues that an electric utility files as part of its transition plan under section 4928.31 of the Revised Code shall specify whether the applicant is selecting the determination of a transition charge pursuant to section 4928.39 or 4928.40 of the Revised Code. This selection shall be binding and shall not be subject to change for any reason on or after the date of the application's filing.

(B) Pursuant to a transition plan approved under section 4928.33 of the Revised Code, An electric utility in this state may receive transition revenues under sections 4928.31 to 4928.40 of the Revised Code, beginning on The starting date of competitive retail electric service. Except as provided in sections 4905.33 to 4905.35 of the Revised Code and this Chapter, an electric utility that receives such transition revenues shall be wholly responsible for how to use those revenues and wholly responsible for whether it is in a competitive position after the market development period. The utility's receipt of transition revenues shall terminate at the end of the market development period. With the termination of that approved revenue source, the utility shall be fully on its own in the competitive market. The commission shall not authorize the receipt of transition revenues or any equivalent revenues by an electric utility except as expressly authorized in sections 4928.31 to 4928.40 of the Revised Code.

Sec. 4928.39. (A) in the case of an application under section 4928.31 of the Revised Code requesting the OPPORTUNITY to receive transition revenues under this section, the transition charge for each customer class of each utility, except as otherwise provided in division (B) of this section, shall be determined by the public utilities commission subtracting from that class's average rate per kilowatt-hour the sum of the applicable unbundled transmission and distribution rates for each class PLUS a benchmark for each customer class for the purpose of so determining the transition charge:

(1) A class's average rate per kilowatt-hour shall be set as an amount equal to the revenues for the class as reported in the utility's 1997 FEderal energy regulatory commission Form 1 divided by the kilowatt-hour sales reported for the class in that document.

(2) The applicable unbundled transmission and distribution rates shall be the unbundled transmission and DISTRIBUTION components specified in the rate unbundling plan of the utility's transition plan as set by the commission for approval under section 4928.33 of the Revised Code.

(3)(a) Except as otherwise provided under division (B) of this section, the benchmark for each customer class shall be as follows:

	Residential Customers	Commercial Customers	Industrial Customers	Other Customers
Cleveland Electric Illuminating	5.375	5.081	3.281	4.458
Cincinnati Gas & Electric	4.404	4.092	2.441	3.769
Columbus Southern Power	4.526	4.083	2.517	2.651
Dayton Power & Light	4.270	3.764	2.185	3.376
Ohio Edison	4.630	4.383	2.585	3.201
Ohio Power	4.032	3.627	2.073	5.086
Toledo Edison	5.196	5.160	3.094	4.650
Monongahela	4.639	4.376	2.720	7.528

Power

(b) Each benchmark in division (A)(3)(a) of this section is determined by adding variable cost as determined under division (A)(4) of this section and a class adder as determined under division (A)(7) of this section.

(4) Variable cost is determined by adding, to account costs in division (a)(5) of this section, ten per cent of the class average rate per kilowatt-hour.

(5) Account costs for calculating variable cost under division (a)(4) of this section are derived by dividing by the total kilowatt-hour sales reported in the utility's 1997 Federal energy regulatory commission Form 1 the sum of all expenses reported in that document for Accounts 500 through 509, excluding 507, 512 through 514, 517 through 524, 530 through 532, 546 through 549, and 555 through 557.

(6) The class adder for the industrial class is set at zero. The class adder for each other class is determined by applying a class allocator to a total amount equal to 1.5 cents per kilowatt-hour multiplied by the total kilowatt-hour sales for 1997 for the residential, commercial, and other classes of the utility's customers, as reported in the utility's 1997 Federal energy regulatory commission Form 1.

(7) The class allocator is determined based upon each class's contribution to total revenues. Each such contribution is determined by multiplying the applicable class average rate per kilowatt-hour in 1997 by that class's sales as reported in the utility's 1997 Federal energy regulatory commission Form 1. Each class contribution is divided by the sum of the contributions for the residential, commercial, and other classes to derive the class allocator.

(B) only if the benchmark plus the applicable unbundle~~d~~

transmission and distribution rate for a customer class exceeds the class AVERAGE rate per kilowatt-hour, the TRANSITION charge for the class shall be set at zero, and the commission shall set the benchmark equal to the CLASS's aVERAGE rate per kilowatt-hour less THe APPLICABLE unbundled transmission and distribution rate.

(C) The transition charge under divisions (A) and (B) of this section shall be adjusted to reflect the effect of any change in the taxation of electric utilities or electric services as prescribed in . B. No. of the 123rd general assembly.

(D) The expiration date of a transition charge determined under DIVIsiONS (A) to (C) of this section for each electric utility and the expiration date of the utility's market development period shall be as follows: Cleveland Electric ILLUMINATING, March 31, 2005; Cincinnati Gas & Electric, March 31, 2004; Columbus Southern Power, June 30, 2004; Dayton Power & Light, September 30, 2003; ohio edison, March 31, 2005; Ohio Power, March 31, 2005; TOLEDO Edison, March 31, 2005; and Monongahela power, March 31, 2002.

(E) The transition charge determined pursuant to divisions (A) to (D) of this section shall not be adjusted by the commission during the utility's market development period for any reason, except that, three months prior to the midpoint of a utility's market development period, the commission shall initiate a proceeding and conclude it prior to the end of the three months to determine whether only the transition charge for residential and commercial consumers should be adjusted and so fixed for the remainder of the period specified in division (d) of this section. the approach under this section assumes a composite market price for electricity of three cents per kilowatt-hour and assumes an average of TWENTY per cent of the customers of an electric utility changing to an alternative generation supplier during the market development period. the commission may adjust the transition charge under this division by adjusting only the benchmark if, after reasonable notice and opportunity for hearing, the commission finds that either of those assumptions have changed significantly during the time in which the charge has been in effect. the commission shall not adjust the charge for any other reasons, including to recognize any gain or loss from the sale of a utility asset during the market development period.

Sec. 4928.40. (A) In the case of an application under section 4928.31 of the Revised Code requesting the opportunity to receive transition revenues under this section, the public utilities commission shall determine a transition charge sufficient in each year of the utility's market development period to provide the utility the opportunity to receive total allowable transition revenues based solely on a consideration of the utility's financial need as demonstrated by the electric utility's financial books and records as of the date of filing. In establishing the allowable amount of transition revenues for an electric utility under this section, the commission shall provide strictly for the maintenance of the utility's basic financial integrity and for all of the following:

(1) The amount awarded is a direct result of imminent financial injury to the financial integrity of the utility as a whole, is limited to the extent that the imminent financial injury was proximately caused by electric industry restructuring, and is not otherwise offset by the utility's opportunity to earn a fair and reasonable rate of return on its electric transmission or distribution businesses or its opportunity to earn revenues in state, national, and international markets.

(2) Under the standard set forth in division (A)(1) of this section and during the utility's market development period, the utility is able, based on a cash flow analysis of the utility, to

meet its then-existing legal debt obligations not otherwise mitigatable and to provide a modest dividend to shareholders. For the purpose of calculating the amount of allowable transition revenues under this section, the commission shall assume payment of a modest dividend determined by the commission solely for the purpose of this section.

(3) The amount awarded is the minimum amount required to prevent or mitigate such financial injury.

(4) The transition charge approved under section 4928.33 of the Revised Code allows for the maximum amount of competition to develop during the utility's market development period, consistent with the standards stated in divisions (A)(1) to (3) of this section. Accordingly, to the extent the commission determines feasible, the transition charge shall decline during each year of the period.

As a further condition of having the opportunity to receive transition revenues under this section, the electric utility shall provide the commission during the utility's market development period with full access to its books and records and the books and records of its affiliates solely for the purpose of determining the electric utility's financial integrity under this section. Parties to the application approval proceeding may propose, and the commission may adopt, such true-up procedures as are necessary to ensure that the standards set forth in divisions (A)(1) to (4) of this section are met.

(B) the expiration date of a transition charge specified under division (A) of this section and of the utility's market development period shall be March 31, 2005. however, three months prior to the midpoint of the utility's market development period, the commission shall initiate a proceeding and conclude it prior to the end of the three months to determine whether circumstances have changed significantly since the beginning of the market development period such that an extension of the expiration date is warranted. if, after reasonable notice and opportunity for hearing, the commission makes such a determination, it shall report its findings and any recommendations to the general assembly, and shall extend the expiration date only in accordance with such further legislation as is enacted by the general assembly.

Sec. 4928.41. The transition revenue authority provided under sections 4928.31 to 4928.40 of the Revised Code for electric utilities does not affect the authority of an electric cooperative in this state to receive transition revenues.

Sec. 4928.42. PRIOR TO THE STARTING DATE OF COMPETITIVE RETAIL ELECTRIC SERVICE, THE public utilities COMMISSION, IN CONSULTATION WITH THE CONSUMERS' COUNSEL AND WITH OTHER STATE AGENCIES AS CONSIDERED NECESSARY, SHALL PRESCRIBE AND ADOPT BY ORDER A GENERAL PLAN BY WHICH EACH ELECTRIC UTILITY shaLL PROVIDE DURING ITS MARKET DEVELOPMENT PERIOD CONSUMER EDUCATION ON ELECTRIC RESTRUCTURING UNDER this chapter. THE GENERAL PLAN SHALL REQUIRE the UTILITIES TO SPEND ON SUCH CONSUMER EDUCATION WITHIN their respective CERTIFIED DISTRIBUTION SERVICE TERRITORies IN THE AGGREGATE UP TO SIXTEEN MILLION DOLLARS IN THE FIRST YEAR OF THAT PERIOD AND AN ADDITIONAL SEVENTEEN MILLION DOLLARS IN THE AGGREGATE IN DECREASING AMOUNTS OVER THE REMAINING YEARS OF each utility's MARKET DEVELOPMENT PERIOD, WITH THE AGGREGATE AMOUNTS DIVIDED AMONG THE UTILITIES BASED ON THEIR RESPECTIVE NUMBER OF CUSTOMERS AS OF DECEMBER 31, 1997. THE GENERAL PLAN SHALL PROHIBIT SUCH CONSUMER EDUCATION FROM OCCURRING IN COMBINATION WITH MARKETING FOR THE UTILITY'S OR ITS AFFILIATE'S RETAIL ELECTRIC SERVICES. transition revenues provided under sections 4928.31 to 4928.40 of the Revised Code include the costs of the consumer education required under this section.

Sec. 4928.43. (A) At the same time it files a transition plan under section 4928.31 of the Revised Code, an electric utility shall file with the public utilities commission solely for information purposes a plan for providing severance, retraining, early retirement, retention, outplacement, and other assistance for the utility's employees whose employment in electric generation-related activities and other related areas is affected by electric industry restructuring under this chapter. this employee assistance plan shall not be deemed a part of the transition plan for purposes of sections 4928.31 to 4928.40 of the Revised Code, but shall be included in the public notice of the utility's filing under division (B) of section 4928.31 of the Revised Code and shall be included in the record required under division (c) of section 4928.32 of the Revised Code. Transition revenues provided under sections 4928.31 to 4928.40 of the Revised Code include the costs of such assistance.

(B) Each state agency that provides employment assistance and job training programs, including the bureau of employment services and the department of development, shall provide concentrated attention through those programs to assisting employees whose employment in electric generation-related activities and other related areas is affected by electric industry restructuring under this chapter.

Sec. 4928.44. (A) This section does not apply to an electric utility if neither it nor any of its affiliates owns or controls any electric generation facilities in this state.

(B) a competitive auction of retail electric generation service shall be held for the auction customers of an electric utility for the twelve-month period beginning on the first day of the competitive auction period. thereafter, such yearly competitive auctioning of the utility's auction customers shall continue until the public utilities commission by order declares the auctioning terminated, upon a commission finding that neither the utility nor any of its affiliates owns or controls any generating facilities in this state or that there is effective competition in the utility's certified territory. the burden of proof in either instance shall lie with the utility. upon issuance of a termination order under this division, competitive auctioning of such retail electric service is terminated and shall not be renewed by the commission.

(C) At the end of competitive auctioning for a particular electric utility, auction customers, after reasonable notice, shall default to the utility's standard service offer under DIVISION (A) of section 4928.15 of the Revised Code until the customer chooses an alternative supplier.

(D) an auction under this section shall be ACCOMPLISHED through an open, real-time auction conducted by an independent party selected by the commission. bid documents shall address such minimum standards of managerial, financial, and technical capability of the supplier to deliver power under the bid as the commission shall prescribe by rule under division (A) of section 4928.06 of the Revised Code. The auction customers of the electric utility shall be auctioned in ten blocks, each representing ten per cent of the aggregated load of those customers.

(E) The commission shall select the winning bidders based on the bids submitted by qualified bidders in the auction process conducted by the independent party. The sole selection criterion shall be lowest price. The price charged an auction customer shall be the average price that results from the ten winning bids. the price received by the winning bidder shall be the bidder's bid price, and the commission shall develop a procedure providing for prompt and fair disbursement of revenues to winning bidders based on such bid prices.

(F) an auction customer's bill shall disclose the price to be paid by the customer and state that the price for the generation service was derived through competitive auction. The bill also shall disclose fuel mix and environmental characteristics of the fuel supply as required under division (F) of section 4928.10 of the Revised Code.

(G) Until the commission determines an acceptable bid in the case of a technical flaw in any part of an auction proposal for the ten blocks of load, the electric distribution utility shall supply generation for the auction customers whose service is affected by the technical flaw. the price for that generation SERVICE shall be the UNBUNdLED generation service component specified in the utility's schedule filed under section 4928.34 of the Revised Code, and such schedule shall be in effect for that temporary service. such price shall be included in the calculation of the average price under DIVISION (E) of this section until such time as a bid is accepted and the average price RECALCULATED accordingly. If the electric distribution utility incurs a loss due to providing the temporary service at the price specified in the schedule, the commission shall authorize the electric distribution utility, through the filing of revised DISTRIBUTION service schedules under section 4905.30 of the Revised Code, to recover up to such amount of the loss as the commission considers reasonable upon a determination that the utility supplied the service at the least cost given market conditions at the time.

(H) the commission shall adopt rules under division (A) of section 4928.06 of the Revised Code ensuring fairness in the auction process and the performance of a winning bidder, and providing for default service if a winning bidder fails to perform under the terms and conditions applicable to its provision of service.

(I) an auction customer may opt out of an auction pool under this section at any time upon payment of any APPLICABLE SWITCHING fee, which fee shall be a nominal amount based on the winning bidder's administrative costs. the switching fee shall be DISCLOSED in any bid submitted under this section.

(J) Competitive auctioning under this section is within the authority of this state under section 722(g) of the "energy policy act of 1992," 106 Stat. 2776, 16 U.S.C. 824k(g).

Sec. 4928.51. (A) There is hereby established in the state treasury a universal service fund, into which shall be deposited all universal service revenues remitted to the director of development under this section, for the exclusive purposes of providing funding for the low-income customer assistance programs and for the consumer education program authorized under section 4928.56 of the Revised Code, and paying the administrative costs of the low-income customer assistance programs and the consumer education program. Interest on the fund shall be credited to the fund. disbursements from the fund shall be made to any supplier that provides a competitive retail electric service to a customer who is approved to receive assistance under a specified low-income customer assistance program and to any authorized provider of weatherization or energy efficiency service to a customer approved to receive such assistance under a specified low-income customer ASSISTANCE program.

(B) universal service revenues shall include all of the following:

(1) Revenues remitted to the director after collection by an electric distribution utility beginning on the starting date of

competitive retail electric service, attributable to the collection from customers of the universal service rider prescribed under section 4928.52 of the Revised Code;

(2) Revenues remitted to the director that have been collected by an electric distribution utility beginning on the starting date of competitive retail electric service as customer payments under the percentage of income payment plan program, including revenues remitted under division (c) of this section;

(3) adequate revenues remitted to the director after collection by a MUNICIPAL electric utility or electric cooperative in this state not earlier than the starting date of competitive retail ELECTRIC service upon the utility's or cooperative's decision to participate in the low-income customer assistance programs. such REMITTANCES shall entitle the customers of the utility or cooperative to receive benefits from the low-INCOME customer assistance programs funded through the universal service fund for the time the utility or cooperative is such a PARTICIPANT.

(C) beginning on the starting date of competitive retail electric service, an electric distribution utility shall transfer to the director the right to collect all arrearage payments of a customer for percentage of income payment plan program debt owed to the utility on the day before that date or retain the right to collect that debt but remit to the director all program revenues received by the utility for that customer.

Sec. 4928.52. (A) Beginning on the starting date of competitive retail electric service, the universal service rider shall replace the percentage of income payment plan rider in existence on the effective date of this section and shall be a rider on retail electric distribution service rates as such rates are determined by the public utilities commission pursuant to this chapter. the universal service rider for the first five years after the starting date of competitive retail electric service shall be the sum of all of the following:

(1) the level of the percentage of income payment plan program rider in existence on the effective date of this section;

(2) an amount equal to the level of funding for low-income customer energy efficiency programs provided through electric utility rates in effect on the effective date of this section;

(3) any additional amount necessary and SUFFICIENT to fund through the universal service rider the ADMINISTRATIVE costs of the low-income customer AssISTANCE programs and the consumer education program created in section 4928.57 of the Revised Code.

(B) If, during or after the five-year period specified in division (a) of this section, the director of development, after CONSULTATION with the universal service advisory board, determines that revenues in the universal service fund and revenues from federal or other sources of funding for those programs, including general revenue fund appropriations for the ohio energy credit program, will be insufficient to cover the administrative costs of the low-income customer AssISTANCE programs and the consumer education program and provide adequate funding for THOSE PROGRAMS, the director shall file a petition with the commission for an increase in the universal service rider. the commission, after reasonable notice and OPPORTUNITY for hearing, may adjust the universal service rider by the minimum amount necessary to provide the additional revenues. the commission shall not decrease the universal service rider without the approval of the director, after consultation by the director with the advisory board.

(c) the universal service rider established under DIVISION (A) or (B) of this section shall be set in such a manner so as not to shift among the customer classes of electric distribution utilities the costs of funding low-income customer ASSISTANCE programs.

Sec. 4928.53. (A) Beginning on the starting date of competitive retail electric service, the director of development is hereby authorized to administer the low-income customer assistance programs. for that purpose, the tax commissioner and the public utilities commission shall cooperate with and provide such assistance as the director REQUIRES FOR ADMINISTRATION of the low-income customer assistance programs. the department shall consolidate the administration of and coordinate the operations of those programs within the department to provide, to the maximum extent possible, for efficient program administration and a one-stop application and ELIGIBILITY determination process at the local level for consumers.

(B)(1) not later than june 30, 2000, the director, in accordance with chapter 119. of the Revised Code, shall adopt rules to carry out sections 4928.51 to 4928.58 of the Revised Code and ensure the effective and EFFICIENT ADMINISTRATION and operation of the low-income customer assistance programs. the rules shall take effect on the starting date of competitive ReTAIL electric service.

(2) the director's authority to adopt rules under this division for the Ohio energy credit program shall be subject to such rule-making AUTHORITY as is conferred on the director by sections 5117.01 to 5117.12 of the Revised Code.

(3) the director's AUTHORITY to adopt rules under this division for the percentage of income payment plan program shall include authority to adopt rules prescribing criteria for customer eligibility and policies REGARDING payment arrangements and responsibilities, procedures for verifying customer eligibility, procedures for disbursing public funds to suppliers and otherwise

administering funds under the director's jurisdiction, and requirements as to timely remittances of revenues described in division (B) of section 4928.51 of the Revised Code the director's authority in division (B)(3) of this section excludes authority to prescribe service disconnection and customer billing policies and procedures and to address complaints against suppliers under the percentage of payment plan program, which excluded authority shall be exercised by the public utilities commission, in coordination with the director. Rules initially adopted by the director for the percentage of income payment plan program shall incorporate the eligibility criteria and payment arrangement and responsibility policies set forth in rule 4901:1-18-04(B) of the Ohio Administrative Code in effect on the effective date of this section.

Sec. 4928.54. Beginning on the starting date of competitive retail electric service, the director of development may aggregate percentage of income payment plan program customers for the purpose of competitively auctioning the supply of competitive retail electric generation service to bidders certified under section 4928.08 of the Revised Code and further qualified under ELIGIBILITY criteria the director prescribes by rule under division (b) of section 4928.53 of the Revised Code after consultation with the commission and electric light companies regarding any such rule. the objectives of the auction shall be to provide reliable retail electric generation service at the lowest cost to the customers, and the sole selection criterion for a winning bid shall be lowest bid price. the rules adopted by the director under division (b) of section 4928.53 of the Revised Code shall ensure a fair and unbiased auction process and the performance of any winning bidder.

Sec. 4928.55. (A) there is hereby created the universal service ADVISORY board, consisting of fifteen members as follows: the director of development, the CHAIRPERSON of the public utilities commission, and the consumers' counsel, each serving ex-officio and represented by a designee at the official's discretion; two members of the house of representatives appointed by the speaker of the house of representatives, NEITHER of the SAME POLITICAL party, and two members of the senate appointed by the president of the senate, neither of the same political party; and eight members appointed by the governor with the advice and consent of the senate, consisting of one representative of suppliers of competitive retail electric service, one representative of the residential class of electric utility customers, one representative of the industrial class of electric utility customers, and one representative of the commercial class of electric utility customers, one customer RECEIVING assistance under one or more of the low-income customer assistance programs, to represent customers eligible for any such assistance, one representative of the general public, one representative of local in-take agencies, and one representative of a community-based organization serving low-income customers. initial appointments shall be made not later than June 30, 2000.

(B) Initial terms of three of the appointed members shall end on June 30, 2003, and initial terms of the remaining three appointed MEMBERS shall end on june 30, 2004. thereafter, terms of appointed members shall be for three years, with each term ending on the same day of the same month as the term it succeeds. each member shall hold office from the date of the member's appointment until the end of the term for which the member was appointed. members may be reappointed.

Vacancies shall be filled in the manner provided for original appointments. Any member APPOINTED to fill a vacancy occurring prior to the expiration date of the term for which the member's predecessor was appointed shall hold office as a member for the REMAINDER of that term. a member shall continue in office after the expiration date of the member's term until the member's successor takes office or until a period of sixty days has elapsed, whichever occurs first.

(C) Board members shall be reimbursed for their actual and necessary expenses incurred in the performance of board duties. such REIMBURSEMENTS constitute administrative costs of the low-income customer assistance programs for the purpose of division (A) of section 4928.51 of the Revised Code.

(d) the advisory board shall select a chairperson from among its members. only board members appointed by the governor with THE advice and consent of the senate shall be voting members of the board; each shall have one vote in all deliberations of the board. a majority of the voting members constitute a quorum.

(e) the duties of the advisory board shall be to advise the director in the administration of the UNIVERSAL service fund and the low-income customer assistance programs and advise the director on the director's recommendation to the commission regarding the appropriate level of the universal service rider.

(f) the advisory board is not an agency, as defined in section 101.82 of the Revised Code, for purposes of divisions (A) and (B) of section 101.84 of the Revised Code.

Sec. 4928.56. The director of development shall establish an energy efficiency and weatherization program targeted to high-cost, high-volume use structures occupied by customers eligible for the percentage of income PAYMENT plan program, with the goal to reducing the energy bills of the occupants. Acceptance of energy efficiency and WEaTHERIZATION services provided by the program shall be a condition for the eligibility of any such customer to participate in the percentage of income payment plan program. Any difference between universal service fund revenues under section 4928.51 of the Revised Code and any savings in percentage of income payment plan program costs as a result of competitive auctioning under section 4928.54 of the Revised Code shall be reinvested in the targeted energy EFFICIENCY and WEatHERIZATION program. if there are no savings, each electric utility that collects revenues from its customers to fund energy efficiency programs shall remit those revenues to the director pursuant to rules adopted under division (B) of section 4928.53 of the Revised Code.

Sec. 4928.57. The director of development may adopt rules in accordance with Chapter 119. of the Revised Code establishing an education program for consumers eligible to participate in the low-income customer assistance programs. the education program shall provide information to consumers regarding energy efficiency and energy conservation.

Sec. 4928.58. On and after the starting date of competitive retail electric service, the director of development shall provide a report every two years until 2008 to the standing committees of the general assembly that deal with public utility matters, regarding the effectiveness of the low-income customer assistance programs and the consumer education program, and the effectiveness of the energy EFFICIENCY revolving loan program created under sections 4928.61 to 4928.64 of the Revised Code.

Sec. 4928.61. (A) There is hereby established in the state treasury an energy efficiency revolving loan fund, into which shall be deposited all energy EFFICIENCY revenues remitted to the director of development under division (B) of this section, for the exclusive purposes of funding the energy efficiency revolving loan program created under section 4928.62 of the Revised Code and paying the program's administrative costs. Interest on the fund shall be credited to the fund.

(B) energy efficiency revenues shall include all of the following:

(1) revenues remitted to the director after collection by each electric DISTRIBUTION utility in this state of a surcharge on retail electric distribution service rates as such rates are determined by the public utilities commission pursuant to this chapter. the amount of the surcharge shall vary by certified territory, shall be an amount per kilowatt-hour as defined in section 4909.161 of the Revised Code, and shall equal the amount in the utility's rates in effect on the effective date of this section that is attributable to the utility's energy EFFICIENCY OR demand-side management programs. The surcharge shall be imposed beginning on the starting date of competitive retail electric service and shall terminate at the end of five years following that starting date or until the energy efficiency revolving loan fund reaches one hundred million dollars, whichever is first.

(2) Revenues from energy efficiency revolving loan program loan repayments and payments from energy efficiency revolving loan program loan collections pursuant to section 4928.62 of the Revised Code;

(3) Adequate revenues remitted to the director after collection by a MUNICIPAL electric utility or electric cooperative in this state not earlier than the starting date of competitive retail electric service upon the utility's or cooperative's decision to participate in the energy efficiency revolving loan PROGRAM. Such remittances entitle the customers of the utility or cooperative to receive benefits from the energy efficiency revolving loan program for the time the utility or cooperative is

such a participant.

(C) each electric distribution utility in this state shall remit to the director on a quarterly basis the revenues described in divisions (B)(1) and (2) of this section. Such remittances shall begin with the first quarter following the starting date of competitive RETAIL ELECTRIC service as defined in SECTION 4928.01 of the Revised Code and continue only until the end of five years following that starting date or until the energy efficiency revolving loan fund reaches one hundred million dollars, whichever is first.

Sec. 4928.62. (A) Beginning on the starting date of competitive retail electric service, there is hereby created the energy EFFICIENCY revolving loan program, which shall be administered by the director of development. Under the program, the director may AUTHORIZE the use of moneys in the energy efficiency revolving loan fund for financial assistance for projects in this state. the assistance shall be distributed among the certified territories of electric distribution utilities in amounts proportionate to the remittances of the utilities under division (B)(1) of section 4928.61 of the Revised Code. the assistance shall be in the form of loans at below market rates, loan GUARANTEES for such loans, and linked deposits for such loans through approved lending institutions. the director shall not AUTHORIZE financial assistance under the program unless the director first DETERMINES all of the following:

(1) the project will include an investment in products, technologies, or services for residential, small commercial and small industrial business, local government, educational institution, nonprofit ENTITY, or agricultural customers of an electric distribution utility in this state or a participating MUNICIPAL electric utility or electric cooperative in this state.

(2) the project will IMPROVE energy efficiency in a cost efficient manner by using both the most appropriate national, federal, or other standards for products as determined by the director, and the best practices for use of technology, products, or services in the context of the total facility or building.

(3) the project will benefit the economic and environmental welfare of the citizens of this state.

(4) the receipt of financial assistance is a major factor in the applicant's decision to proceed with or invest in the project.

(B) In carrying out sections 4928.61 to 4928.65 of the Revised Code, the director may do all of the following for THE PURPOSE of the energy efficiency revolving loan program:

(1) acquire in the name of the director any property of any kind or character in accordance with this section, by purchase, purchase at foreclosure, or EXCHANGE, on such terms and in such manner as the director considers proper;

(2) make and enter into all contracts and agreements necessary or incidental to the performance of the director's duties and the exercise of the director's powers under those sections;

(3) employ or enter into contracts with financial consultants, marketing consultants, consulting engineers, architects, managers, construction experts, attorneys, technical MONITORS, energy evaluators, OR OTHER EMPLOYEES or agents as the director considers necessary, and shall fix their compensation;

(4) adopt rules prescribing the application procedures for financial assistance under the program; the terms and conditions of any loans, loan guarantees, linked deposits, and contracts; criteria pertaining to the eligibility of participating lenders; and any OTHER MATTERS necessary for the implementation of the

program;

(5) do all things necessary and appropriate for the operation of the program.

(C) financial statements, financial data, and trade secrets submitted to or received by the director from an applicant or recipient of financial assistance under sections 4928.61 to 4928.65 of the Revised Code, or any INFORMATION taken from those statements, data, or trade secrets for any purpose, are not public records for the purpose of section 149.43 of the Revised Code.

Sec. 4928.63. (A) there is hereby created the energy efficiency revolving loan program advISORY board, consisting of sixteen members as follows: the director of development, the CHAIRPERSON of the public utilities commission, the consumers' counsel, and the director of the air quality development authority, each serving ex-officio and represented by a designee at the official's discretion; two members of the house of representatives appointed by the speaker of the house of representatives, NEITHER of the SAME POLITICAL party, and two members of the senate appointed by the president of the senate, neither of the same political party; and eight representatives appointed by the governor with the advice and consent of the senate, consisting of one representative of environmental protection interests, one representative of the residential class of electric utility customers, one representative of the industrial class of electric utility customers, and one representative of the commercial class of electric utility customers, one REPRESENTATIVE of AGRICULTURAL or rural customers of an electric utility, one representative of lending institutions in this state, one representative of the general public, and one person CONSIDERED an expert in energy efficiency or renewables technology. initial appointments shall be made not later than June

30, 2000.

(b) initial terms of three of the appointed members shall end on june 30, 2003, and initial terms of the remaining three APPOINTED MEMBERS shall end on june 30, 2004. thereafter, terms of appointed members shall be for three years, with each term ending on the same day of the same month as the term it succeeds. each member shall hold office from the date of the member's appointment until the end of the term for which the member was appointed. members may be reappointed.

vacancies shall be filled in the manner provided for original appointments. any member APPOINTED to fill a vacancy occurring prior to the expiration date of the term for which the member's predecessor was appointed shall hold office as a member for the REMAINDER of that term. a member shall continue in office after the expiration date of the member's term until the member's successor takes office or until a period of sixty days has elapsed, whichever occurs first.

(C) board members shall be reimbursed for their actual and necessary expenses incurred in the performance of board duties. such reimbursements constitute administrative costs of the energy efficiency revolving loan program for the purpose of DIVISION (A) of section 4928.61 of the Revised Code.

(D) The advisory board shall select a chairperson from among its members. only appointed members shall be voting members of the board and shall have one vote in all deliberations of the board. a majority of the voting members constitute a quorum.

(e) the duties of the advisory board shall be to advise the director of development on the administration of the energy efficiency revolving loan program and the energy EFFICIENCY revolving loan program fund under sections 4928.61 to 4928.64 of the Revised Code.

(f) the advisory board is not an agency, as defined in section 101.82 of the Revised Code, for purposes of divisions (A) and (B) of section 101.84 of the Revised Code.

Sec. 4928.64. the director of development and the energy efficiency revolving loan fund advisory board have the powers and duties provided in sections 4928.61 to 4928.63 of the Revised Code, in order to promote the welfare of the people of this state, to stabilize the economy, to ASSIST in the improvement and development within this state of not-for-profit entity, industrial, commercial, DISTRIBUTION, residential, and research buildings and activities required for the people of this state, to improve the ECONOMIC welfare of the people of this state, and also to ASSIST in the improvement of air, water, or thermal POLLUTION control facilities and SOlid waste disposal facilities. it is hereby determined that the accomplishment of those purposes is essential so that the people of this state may maintain their present high standards in comparison with the people of other states and so that opportunities for improving the economic welfare of the people of this state, for improving the housing of residents of this state, and for favorable markets for the products of this state's natural resources, agriculture, and manufacturing shall be improved; and that it is necessary for this state to establish the program authorized pursuant to sections 4928.61 to 4928.63 of the Revised Code, to establish the energy efficiency revolving loan program and program fund and the energy efficiency REVOLVING loan program advisory board, and to vest the director and the board with the powers and duties PROVIDED in sections 4928.61 to 4928.63 of the Revised Code.

Sec. 4933.33. Annually, each electric light company shall cause to appear on each customer bill, or shall distribute to each of its customers, the following statement:

"Under state law, the amount you are being billed includes:

(1) ~~Gross receipts~~ Kilowatt-hour taxes that have been in effect since ~~1969~~ 2001 and are currently at $........~~%~~ (The current ~~total percentage~~ dollar figure of the ~~total gross receipts~~ kilowatt-hour taxes levied ~~in Chapter 5727.~~ by section 5727.81 of the Revised Code ~~and any other section of law~~ shall be placed in the blank); and

(2) Assessments to assist in the support of the operations of the PUCO and the office of the consumers' counsel that have been in effect since 1912 and 1977, respectively."

Nothing in this section shall be construed to mean ~~either~~ that an electric light company operated not for profit ~~or one that is owned or operated by a municipal corporation~~ is subject to this section, or that an electric light company subject to this section may not cause such appearance or distribute such statement on a more frequent basis.

Sec. 4933.81. As used in sections 4933.81 to 4933.90 of the Revised Code:

(A) "Electric supplier" means any electric light company as defined in section 4905.03 of the Revised Code, including electric light companies organized as nonprofit corporations, but not including ~~a~~ municipal ~~corporation~~ corporations or other ~~unit~~ units of local government that ~~provides~~ provide electric service.

(B) "Adequate facilities" means distribution lines or facilities having sufficient capacity to meet the maximum estimated electric service requirements of its existing customers and of any new customer occurring during the year following the commencement of permanent electric service, and to assure all such customers of reasonable continuity and quality of service. Distribution facilities and lines of an electric supplier shall be considered "adequate facilities" if such supplier offers to undertake to make its distribution facilities and lines meet such service requirements and ~~can~~, in the determination of the public utilities commission, can do so within a reasonable time.

(C) "Distribution line" means any electric line ~~having a design voltage below thirty-five thousand volts phase to phase which~~ that is being or has been used primarily to provide electric service directly to electric load centers by the owner of such line.

(D) "Existing distribution line" means any distribution line of an electric supplier which was in existence on January 1, 1977, or under ~~constructon~~ CONSTRUCTION on ~~such~~ that date.

(E) "Electric load center" means all the electric-consuming facilities of any type or character owned, occupied, controlled, or used by a person at a single location, which facilities have been, are, or will be connected to and served at a metered point of delivery and to which electric service has been, is, or will be rendered.

(F) "Electric service" means retail electric service furnished to an electric load center for ultimate consumption ~~and does not include~~, but excludes furnishing electric power or energy at wholesale for resale. In the case of a for-profit electric supplier and beginning on the starting date of competitive retail electric service as defined in section 4928.01 of the Revised Code, "electric service" also excludes a competitive retail electric service. In the case of a not-for-profit electric supplier and beginning on that starting date, "electric service" also excludes any service component of a competitive retail electric service that is specified in an irrevocable filing the electric supplier makes with the public utilities commission for informational purposes only to eliminate permanently its certified territory under sections 4933.81 to 4933.90 of the Revised Code as to that service component. the filing shall specify the date on which such territory is so eliminated. notwithstanding division (B) of section 4928.01 of the Revised Code, such a service component may include retail ancillary, metering, or billing and collection service irrespective of whether that service component has or has not been declared competitive under section 4928.04 of the Revised Code. upon receipt of the filing by the commission, the not-for-profit electric supplier's certified territory shall be eliminated permanently as to the service component specified in the filing as of the date specified in the filing. nothing in this division AUTHORIZES commission supervision or REGULATION of the provision of retail electric service by a not-for-profit electric supplier. as used in this division, "competitive retail electric service" and "retail electric service" have the same meanings as in section 4928.01 of the Revised Code.

(G) "Certified territory" means a geographical area the boundaries of which have been established pursuant to sections 4933.81 to 4933.90 of the Revised Code within which an electric supplier is authorized and required to provide electric service.

(H) "Other unit of local government" means any governmental unit or body that may come into existence after the effective date of this section with powers and authority similar to those of a municipal corporation, or ~~which~~ that is created to replace or exercise the relevant powers of any one or more municipal corporations.

Sec. 4935.04. (A) As used in this chapter:

(1) "Major utility facility" means~~:~~

(a) ~~An electric generating plant and associated facilities designed for, or capable of, operation at a capacity of fifty megawatts or more;~~

~~(b)~~ An electric transmission line and associated facilities of a design capacity of one hundred twenty-five kilovolts or more;

~~(c)~~(b) A gas or natural gas transmission line and associated facilities designed for, or capable of, transporting gas or natural gas at pressures in excess of one hundred twenty-five pounds per square inch.

"Major utility facility" does not include electric, gas, or natural gas distributing lines and gas or natural gas gathering lines and associated facilities as defined by the public utilities commission; facilities owned or operated by industrial firms, persons, or institutions that produce or transmit gas~~,~~ or natural gas, or electricity primarily for their own use or as a byproduct of their operations; gas or natural gas transmission lines and associated facilities over which an agency of the United States has certificate jurisdiction; facilities owned or operated by a person furnishing gas or natural gas directly to fifteen thousand or fewer customers within this state.

(2) "Person" has the meaning set forth in section 4906.01 of the Revised Code.

(B) Each person owning or operating a gas or natural gas transmission line and associated facilities within this state over which an agency of the United States has certificate jurisdiction shall furnish to the commission a copy of the energy information filed by the person with that agency of the United States.

(C) Each person owning or operating a major utility facility within this state, or furnishing gas, natural gas, or electricity directly to more than fifteen thousand customers within this state annually shall furnish a report to the commission for its review. The report shall be termed the long-term forecast report and shall contain:

(1) A year-by-year, ten-year forecast of annual energy

demand, peak load, reserves, and a general description of the resource plan to meet demand;

(2) A range of projected loads during the period;

(3) A description of major utility facilities planned to be added or taken out of service in the next ten years, including ~~prospective sites for generating plants and~~, to the extent the information is available, prospective sites for transmission line locations;

(4) For gas and natural gas, a projection of anticipated supply, supply prices, and sources of supply over the forecast period;

(5) ~~For electricity, a range of projected loads and a projection of annual energy demand, anticipated generating capacity, and system seasonal peak demand for a twenty-year period;~~

~~(6)~~ A description of proposed changes in the transmission system planned for the next five years;

~~(7)~~(6) A month-by-month forecast of both energy demand and peak load for electric utilities, and gas sendout for gas and natural gas utilities, for the next two years. The report shall describe the major utility facilities that, in the judgment of such person, will be required to supply system demands during the forecast period. The report from a gas or natural gas utility shall cover the ten- and five-year periods next succeeding the date of the report, and the report from an electric utility shall cover the twenty-, ten-, and five-year periods next succeeding the date of the report. Each report shall be made available to the public and furnished upon request to municipal corporations and governmental agencies charged with the duty of protecting the environment or of planning land use. The report shall be in such form and shall contain such information as may be prescribed by the commission.

Each person not owning or operating a major utility facility within this state and serving fifteen thousand or fewer gas~~,~~ or natural gas, or electric customers within this state shall furnish such information as the commission ~~may require~~ requires.

(D) The commission shall:

(1) Review and comment on the reports filed under division (C) of this section, and make the information contained ~~therein~~ in the reports readily available to the public and other interested government agencies;

(2) Compile and publish each year the ~~general locations of the proposed power plant sites and~~ general locations of proposed and existing transmission line routes within its jurisdiction as identified in the reports filed under division (C) of this section, identifying the general location of such sites and routes and the approximate year when construction is expected to commence, and to make such information readily available to the public, to each newspaper of daily or weekly circulation within the area affected by the proposed site and route, and to interested federal, state, and local agencies;

(3) Hold a public hearing:

(a) On the first long-term forecast report filed after January 11, 1983;

(b) At least once in every five years, on the latest report furnished by any person subject to this section;

(c) On the latest report furnished by any person subject to this section if the report contains a substantial change from the preceding report furnished by that person. "Substantial change" includes, but is not limited to:

(i) ~~The addition or cancellation of a generating facility of~~

~~fifty megawatts or more in the report furnished pursuant to division (C) of this section;~~

~~(ii)~~ A change in forecasted peak loads or energy consumption over the forecast period of greater than an average of one-half of one per cent per year;

~~(iii)~~(ii) Demonstration of good cause to the commission by an interested party.

The commission shall fix a time for the hearing, which shall be not later than ninety days after the report is filed, and publish notice of the date, time of day, and location of the hearing in a newspaper of general circulation in each county in which the person furnishing the report has or intends to locate a major utility facility and will provide service during the period covered by the report. The notice shall be published not less than fifteen nor more than thirty days before the hearing and shall state the matters to be considered.

Absent a showing of good cause, the commission shall not hold hearings under division (D)(3) of this section with respect to persons who, as the primary purpose of their business, furnish gas~~,~~ or natural gas, or electricity directly to fifteen thousand or fewer customers within this state solely for direct consumption by those customers.

(4) Require such information from persons subject to its jurisdiction as necessary to assist in the conduct of hearings and any investigation or studies it may undertake;

(5) Conduct any studies or investigations that are necessary or appropriate to carry out its responsibilities under this section.

(E)(1) The scope of the hearing held under division (D)(3) of this section shall be limited to issues relating to forecasting. The power siting board, the office of consumers' counsel, and all other persons having an interest in the proceedings shall be afforded the opportunity to be heard and to be represented by counsel. The commission may adjourn the hearing from time to time.

(2) The hearing shall include, but not be limited to, a review of:

(a) The projected loads and energy requirements for each year of the period;

(b) The estimated installed capacity and supplies to meet the projected load requirements.

(F) Based upon the report furnished pursuant to division (C) of this section and the hearing record, the commission, within ninety days from the close of the record in the hearing, shall determine if:

(1) All information relating to current activities, facilities agreements, and published energy policies of the state has been completely and accurately represented;

(2) The load requirements are based on substantially accurate historical information and adequate methodology;

(3) The forecasting methods consider the relationships between price and energy consumption;

(4) The report identifies and projects reductions in energy demands due to energy conservation measures in the industrial, commercial, residential, transportation, and energy production sectors in the service area;

(5) Utility company forecasts of loads and resources are reasonable in relation to population growth estimates made by state and federal agencies, transportation, and economic development plans and forecasts, and make recommendations where possible for necessary and reasonable alternatives to meet

forecasted electric power demand;

(6) The report considers plans for expansion of the regional power grid and the planned facilities of other utilities in the state;

(7) All assumptions made in the forecast are reasonable and adequately documented.

(G) The commission shall adopt rules under section 111.15 of the Revised Code to establish criteria for evaluating the long-term forecasts of needs for gas and electric ~~power~~ transmission service, to conduct hearings held under this section, to establish reasonable fees to defray the direct cost of the hearings and the review process, and such other rules as are necessary and convenient to implement this section.

(H) The hearing record produced under this section and the determinations of the commission shall be introduced into evidence and shall be considered in determining the basis of need for power siting board deliberations under division (A)(1) of section 4906.10 of the Revised Code. The hearing record produced under this section shall be introduced into evidence and shall be considered by the public utilities commission in its initiation of programs, examinations, and findings~~, investigations, and remedies~~ under section 4905.70 of the Revised Code, and shall be considered in ~~their~~ the commission's determinations with respect to the establishment of just and reasonable rates under section 4909.15 of the Revised Code and financing utility facilities and authorizing issuance of all securities under sections 4905.40, 4905.401, 4905.41, and 4905.42 of the Revised Code. The forecast findings also shall serve as the basis for all other energy planning and development activities of the state government where ~~electric and~~ gas data are required.

(I)(1) No court other than the supreme court shall have power to review, suspend, or delay any determination made by the commission under this section, or enjoin, restrain, or interfere with the commission in the performance of official duties. A writ of mandamus shall not be issued against the commission by any court other than the supreme court.

(2) A final determination made by the commission shall be reversed, vacated, or modified by the supreme court on appeal, if, upon consideration of the record, such court is of the opinion that such determination was unreasonable or unlawful.

The proceeding to obtain such reversal, vacation, or modification shall be by notice of appeal, filed with the commission by any party to the proceeding before it, against the commission, setting forth the determination appealed from and errors complained of. The notice of appeal shall be served, unless waived, upon the commission by leaving a copy at the office of the ~~chairman~~ chairperson of the commission at Columbus. The court may permit an interested party to intervene by cross-appeal.

(3) No proceeding to reverse, vacate, or modify a determination of the commission is commenced unless the notice of appeal is filed within sixty days after the date of the determination.

Sec. 5117.01. ~~(A)~~ As used in ~~this chapter~~ sections 5117.01 to 5117.12 of the Revised Code:

~~(1)~~(A) "Credit" means the credit on utility heating bills granted under division (A) of section 5117.09 of the Revised Code.

~~(2)~~(B) "Current monthly bill" means the amount charged for energy consumed in the most recent monthly billing period and does not include any past due balance.

~~(3)~~(C) "Current total income" means the adjusted gross income of the head of household and the person's spouse for the six-month period beginning the first day of January and ending the thirtieth day of June of the year in which an application is made, as determined under the "Internal Revenue Code of 1954," 68A Stat. 3, 26 U.S.C. 1, as amended, minus the amount of disability benefits included in adjusted gross income but not to exceed twenty-six hundred dollars, plus old age and survivors benefits received pursuant to the "Social Security Act," retirement, pension, annuity, or other retirement payments or benefits not included in federal adjusted gross income; payments received pursuant to the "Railroad Retirement Act," 50 Stat. 307, 45 U.S.C. 228, and interest on federal, state, and local government obligations. Disability benefits paid by the veterans administration or a branch of the armed forces of the United States on account of an injury or disability are not included in current total income.

~~(4)~~(D) "Energy company" means every retail propane dealer that distributes propane by pipeline, and every electric light, rural electric, gas, or natural gas company.

~~(5)~~(E) "Energy dealer" means every retail dealer of fuel oil, propane, coal, wood, and kerosene.

~~(6)~~(F) "Head of household" means a person who occupies a household as the person's homestead and who is financially responsible for its other occupants, if any, or the spouse of such a person if both occupy the same household. No person is a head of household if the person occupies a household for the taxable year prior to the year in which an application is filed and was claimed as a dependent on the federal income tax return of another occupant of the same household and was not the taxpayer's spouse or if the person could have been claimed if such a return had been filed for such year and was not the other occupant's spouse.

~~(7)~~(G) "Household" means any dwelling unit, including a unit in a multiple unit dwelling, a manufactured home, or a mobile home, to which utility heating services or energy commodities are provided.

~~(8)~~(H) "Payment" means the one hundred twenty-five-dollar payment provided under division (A) of section 5117.10 of the Revised Code.

~~(9)~~(I) "Permanently and totally disabled" refers to a person who has, on the first day of July of the year an application is made, some impairment in body or mind that makes the person unfit to work at any substantially remunerative employment that the person would otherwise be reasonably able to perform and that will, with reasonable probability, continue for an indefinite period of at least twelve months without any present indication of recovery therefrom, or who has been certified as permanently and totally disabled by a state or federal agency having the function of so classifying persons.

~~(10)~~(J) "Sixty-five years of age or older" refers to a person who has attained age sixty-four prior to the first day of January of the year of application for reduction in utility charges.

~~(11)~~(K) "Total income" means the adjusted gross income of the head of household and the person's spouse for the year preceding the year in which an application is made, as determined under the "Internal Revenue Code of 1954," 68A Stat. 3, 26 U.S.C. 1, as amended, minus the amount of disability benefits included in adjusted gross income but not to exceed fifty-two hundred dollars, plus old age and survivors benefits received pursuant to the "Social Security Act," retirement, pension, annuity, or other retirement payments or benefits not included in federal adjusted gross income; payments received pursuant to the "Railroad Retirement Act," 50 Stat. 307, 45 U.S.C. 228; and interest on federal, state, and local government obligations. Disability benefits paid by the veteran's administration or a branch of the armed forces of the United States on account of an injury or disability shall not be included in total income.

~~(B) As used in sections 5117.01 to 5117.12 of the Revised Code:~~

~~(1) "Applicant" means any person who has submitted an application under division (C) of section 5117.03 of the Revised Code.~~

~~(2) "Application" means the application in section 5117.03 of the Revised Code.~~

~~(3) "Program" means the Ohio energy credit program established under sections 5117.01 to 5117.12 of the Revised Code.~~

~~(4)~~(L) "Purchased power costs" means charges for the costs of power purchased by an electric light company under Chapters 4905. and 4909. of the Revised Code and includes charges resulting from the exchange of electric power.

Sec. 5117.02. (A) The director of development, to the extent necessary in consultation with the tax commissioner, shall adopt rules, or amendments and rescissions of rules, pursuant to section 4928.52 of the Revised Code, for the administration of the Ohio energy credit program under sections 5117.01 to 5117.12 of the Revised Code.

(B) As a means of efficiently administering the program ~~established by sections 5117.01 to 5117.12 of the Revised Code~~, the ~~tax commissioner~~ director may extend, by as much as a total of thirty days, any date specified in such sections for the performance of a particular action by an individual or an officer.

(C)(1) Except as provided in division (C)(2) of this section, the director, to the extent necessary in consultation with the tax commissioner, shall adopt, in accordance with divisions (A), (B), (C), (D), (E), and (H) of section 119.03 and section 119.04 of the

Revised Code, ~~adopt~~ whatever rules, or amendments or rescissions of rules are required by or are otherwise necessary to implement sections 5117.01 to 5117.12 of the Revised Code. A rule, amendment, or rescission adopted under this division is not exempt from the hearing requirements of section 119.03 of the Revised Code pursuant to division (G) of that section, or subject to section 111.15 or 5703.14 of the Revised Code.

(2) If an emergency necessitates the immediate adoption of a rule, or the immediate adoption of an amendment or rescission of a rule that is required by or otherwise necessary to implement sections 5117.01 to 5117.12 of the Revised Code, the director, to the extent necessary in consultation with the tax commissioner ~~may~~, immediately may adopt the emergency rule, amendment, or rescission without complying with division (A), (B), (C), (D), (E), or (H) of section 119.03 of the Revised Code so long as ~~he~~ the director states the reasons for the necessity in the emergency rule, amendment, or rescission. The emergency rule, amendment, or rescission is effective on the day copies of the emergency rule, amendment, or rescission, in final form and in compliance with division (A)(2) of section 119.04 of the Revised Code, are filed as follows: two certified copies of the emergency rule, amendment, or rescission shall be filed with both the secretary of state and the director of the legislative service commission, and one certified copy of the emergency rule, amendment, or rescission shall be filed with the joint committee on agency rule review. If all copies are not filed on the same day, the emergency rule, amendment, or rescission is effective on the day on which the latest filing is made. An emergency rule, amendment, or rescission adopted under this division is not subject to section 111.15, division (F) of section 119.03, or section 5703.14 of the Revised Code. An emergency rule, amendment, or rescission adopted under this division continues in effect until amended or rescinded by

the director, to the extent necessary in consultation with the tax commissioner, in accordance with division (C)(1) or (2) of this section, except that the rescission of an emergency rescission does not revive the rule rescinded.

(D) Except where otherwise provided, each form, application, notice, and the like used in fulfilling the requirements of sections 5117.01 to 5117.12 of the Revised Code shall be approved by the director, to the extent necessary in consultation with the tax commissioner.

Sec. 5117.03. (A)(1) The director of development, to the extent necessary in consultation with the tax commissioner, shall prescribe the form of the application for assistance under the Ohio energy credit program. The application shall be in the form of a signed statement, shall require no more information than is necessary to establish an applicant's eligibility under section 5117.07 of the Revised Code, and shall be clear and concise in its format, requirements, and instructions. The form shall request the following information:

(a) The name and address of the applicant;

(b) The type of energy or commodity that is the source of the heat produced by the primary heating system in the residence of the applicant;

(c) The name of the energy company or energy dealer that supplies the energy or commodity that is the source of the heat produced by the primary heating system in the residence of the applicant and, if the applicant receives ~~his~~ the applicant's energy from a company, the applicant's account number;

(d) The applicant's total income or current total income;

(e) In the case of an application based upon physical disability, a certification signed by a physician, in the case of an application based upon mental disability, a certification signed by a physician or psychologist, or in the case of either such disability, a certification from a state or federal agency having the function of so classifying persons;

(f) The age of the applicant;

(g) Any other information required to make eligibility determinations under section 5117.07 of the Revised Code.

Each form shall contain a statement that signing such application constitutes a delegation of authority by the applicant to the commissioner to examine any financial records that relate to income earned by the applicant as stated on the application for the purpose of determining eligibility under section 5117.07 of the Revised Code and possible violation of division (B) of section 5117.11 of the Revised Code.

(2) The tax commissioner shall mail or otherwise provide an application form to each person requesting such form.

(B)(1) The director, to the extent necessary in consultation with the tax commissioner, shall devise and prescribe an application renewal form on which the head of household may indicate by check mark that ~~he~~ the head of household received a credit or payment for the preceding heating season. Application renewal forms shall seek from persons applying on such basis a certification by the applicant attesting to ~~his~~ the applicant's permanent and total disability and the name of a physician, psychologist, or government agency willing to provide an additional certification if so requested under division (D) of section 5117.07 of the Revised Code. Such forms shall also include such other information as the director, to the extent necessary in consultation with the tax commissioner, requires and shall be clear and concise in format, requirements, and instructions.

(2) On or before the fifteenth day of June, the ~~tax commissioner~~ director shall mail or otherwise provide an application renewal form to each head of household who received a credit or payment during the preceding heating season.

(3) Application renewal forms shall be reviewed and disposed of in the same manner provided for application forms in section 5117.07 of the Revised Code.

(C) Applications and application renewal forms shall be returned to the ~~tax commissioner~~ director no later than the first day of September. If an applicant is determined eligible for a credit under division (A)(1) of section 5117.07 of the Revised Code and the applicant's account number is not provided on the application form pursuant to division (A)(1)(c) of this section, the ~~tax commissioner~~ director shall make a good faith effort to acquire such number before certifying the applicant's eligibility to an energy company under section 5117.08 of the Revised Code. The ~~tax commissioner~~ director may request an energy company to assist in efforts to acquire an applicant's account number and, if so requested, a company shall cooperate in such efforts.

Sec. 5117.04. (A) Every energy company and energy dealer ~~shall~~, at least once during June, and once during August, shall begin to distribute to each of its residential heating customers a plain and clear notice, printed in ten-point type on a sheet or card on which no other words appear on either the front or back, that states the right of qualified residential customers to receive a credit or payment under the Ohio energy credit program and that explains in detail, in a fashion reasonably calculated to inform, the relevant mechanisms established under sections 5117.01 to 5117.12 of the Revised Code to effectuate that right. The notice shall also contain, in ten-point boldface type, the following statement: "The right of eligible customers to receive a credit against utility bills or a payment for energy bills is provided in legislation (House Bill 657) passed by the General Assembly and signed by the Governor."

(B) The ~~tax commissioner~~ director of development shall cause to be printed notices of the type specified in division (A) of this section and application forms in sufficient quantity for distribution. The ~~tax commissioner~~ director shall maintain a system for distributing application forms to appropriate public locations. The distribution system shall be designed to make application forms available to as many qualified persons as possible.

(C) The ~~tax commissioner~~ director shall arrange for the establishment of a toll-free telephone number to enable all persons in this state to make inquiries and obtain information concerning the credits or payments.

Sec. 5117.05. The ~~tax commissioner~~ director of development, in consultation with the commission on Hispanic-Latino affairs, shall develop an outreach program, including Spanish-speaking communication formats, designed to make all Spanish-speaking persons who meet the eligibility requirements for participation in the Ohio energy credit program aware of the nature and extent of available benefits and methods for acquiring and making applications. The program shall include assistance to such persons in making applications. The ~~commissioner~~ director shall implement the program in cooperation with the commission ~~on Hispanic-Latino affairs~~.

Sec. 5117.07. (A) On or before the first day of October, the ~~tax commissioner~~ director of development shall review all applications submitted under division (C) of section 5117.03 of the Revised Code and shall determine the eligibility of each applicant to receive a credit or payment.

(1) An applicant is eligible for a credit of thirty per cent if the applicant is a head of household, has a total income of five thousand dollars or less or a current total income of two thousand five hundred dollars or less, owns and occupies or rents and occupies a household receiving the source of energy for its primary heating system from an energy company and such energy is separately metered, and is either of the following:

(a) Sixty-five years of age or older;

(b) Permanently and totally disabled.

(2) An applicant is eligible for a credit of twenty-five per cent if the applicant is a head of household, has a total income of more than five thousand dollars but not more than nine thousand dollars or a current total income of more than two thousand five hundred dollars but not more than four thousand five hundred dollars, is sixty-five years of age or older or permanently and totally disabled, and owns and occupies or rents and occupies a household receiving the source of energy for its primary heating system from an energy company and such energy is separately metered.

(3) An applicant is eligible for a payment if either of the following applies to the applicant:

(a) ~~He~~ The applicant would be eligible for the credit under division (A)(1) or (2) of this section but for the fact that the source of energy for the primary heating system of the applicant's household is not separately metered;

(b) ~~He~~ The applicant is a head of household, has a total income of no more than nine thousand dollars or a current total income of no more than four thousand five hundred dollars, is sixty-five years of age or older or permanently and totally disabled, and owns and occupies or rents and occupies a household receiving the source of energy for its primary heating system from an energy dealer.

(4) In the case of a multiple unit dwelling for which separate metering for the source of energy for its primary heating system is not provided, more than one applicant occupying such dwelling may be determined eligible for a payment under division (A)(3)(a) of this section.

(B) Notwithstanding division (A) of this section:

(1) No head of household who resides in public housing or receives a rent subsidy from a government agency is eligible for a credit or payment unless the person's rent subsidy does not reflect the costs of ~~his~~ that person's household receiving the source of energy for its primary heating system;

(2) A resident of a nursing home, hospital, or other extended health care facility is not eligible for a credit or payment for the costs of providing the source of energy for the primary heating system of the facility.

(C) The director, in consultation with the tax commissioner, shall establish a procedure whereby ~~he~~ the commissioner can verify total income and current total income for the calendar year in which an applicant is determined eligible for a payment or credit. If a person receives a credit or payment that ~~he~~ the person is ineligible to receive under division (A) of this section as determined by the commissioner, that person shall refund to the ~~tax commissioner~~ director the credit or payment, or excess portion of a credit or payment, ~~he~~ that person received. The sum refunded shall be deposited in the state treasury to the credit of the ~~general revenue fund~~ universal service fund created in section 4928.51 of the Revised Code.

(D) The ~~tax commissioner~~ director may request an additional certification of permanent and total disability for any applicant claiming such status on an application renewal form submitted under section 5117.03 of the Revised Code. Such certification shall be requested from the person or agency named on the form pursuant to division (B)(1) of section 5117.03 of the Revised Code. If such additional certification is refused due to a conclusion by the person or agency that the applicant is not permanently and totally disabled, the ~~commissioner~~ director shall determine the applicant ineligible for any credit or payment. If such additional certification is unavailable or refused for any other reason, the ~~tax commissioner~~ director may determine the applicant to be eligible for a credit or payment provided ~~he~~ the director has good cause to believe the applicant is permanently and totally disabled.

(E) On or before the first day of October, the ~~tax commissioner~~ director shall notify each applicant of the disposition of ~~his~~ the applicant's application under divisions (A) and (B) of this section. At the same time, ~~he~~ the director shall notify the applicant, regardless of whether ~~his~~ the applicant's application is approved or disapproved, that the applicant may be eligible to participate in a state or federal weatherization program and should contact ~~his~~ the applicant's community action agency for further information. If an application is disapproved, the applicant may appeal to the ~~tax commissioner~~ director for a hearing on the matter. A notice of disapproval shall include a detailed explanation of the applicant's right of appeal under this chapter. Any such appeal shall be on an appeal form prescribed by the ~~tax commissioner~~ director and shall be filed with the ~~tax commissioner~~ director within twenty days of the receipt of the notice of disapproval.

Sec. 5117.08. (A)(1) On or before the tenth day of October, the ~~tax commissioner~~ director of development shall begin to prepare and certify to each energy company that provides energy for home heating a list containing the name and account number of each head of household determined eligible for a credit under divisions (A) and (B) of section 5117.07 of the Revised Code and served by that company, the address of the household, and the source of the heat produced by the primary heating system in the residence of the applicant. The ~~tax commissioner may~~ director, for good cause, may certify addenda to such lists, containing the names of any heads of household whose names were not included in the earlier lists but who, except for failure to meet the deadline requirements of sections 5117.01 to 5117.12 of the Revised Code, would have been certified in the original lists. Within thirty days of receipt of such list and in any month for which a credit is required under sections 5117.01 to 5117.12 of the Revised Code, the company may verify that each head of household on the ~~commissioner's~~ director's list receives energy for home heating at the household address appearing on such list or that the source of heat produced by the primary heating system in the household is energy supplied by the company. If the company determines that a person listed does not receive energy for home heating at such address or that the source of the heat produced by the primary heating system in the residence of such person is not supplied by the company, it shall notify the ~~commissioner~~ director of such fact and may refuse to grant the credit provided under division (A) of section 5117.07 of the Revised Code. Upon receipt of such notice, the ~~commissioner~~ director shall determine the accuracy of the determination of the company and, should ~~he~~ the director not concur with the company, shall order the company to provide the credit.

(2) The good faith exercise by any company of any power of refusal granted under division (A)(1) of this section does not subject such company to any penalty or liability provided under

division (A) of section 5117.11 of the Revised Code.

(B)(1) Nothing in sections 5117.01 to 5117.12 of the Revised Code shall be construed to abridge the right of an otherwise eligible applicant to receive a credit or payment because ~~he~~ the applicant has either changed the location of ~~his~~ the applicant's residence or the nature of the occupancy of ~~his~~ the applicant's residence, as between a tenant or an owner, at a time that could, as a result of the operation of sections 5117.01 to 5117.12 of the Revised Code, cause ~~him~~ the applicant to be disqualified from receiving, or continuing to receive, the credit or payment.

(2) Where a person who submits a form or information required under sections 5117.01 to 5117.10 of the Revised Code does so in a timely fashion but, because of the occurrence of an error or omission with respect to such form or information, either on ~~his~~ the person's own part or on the part of those persons required by sections 5117.01 to 5117.12 of the Revised Code to take administrative, executive, or ministerial action regarding such form or information, the certification of eligibility by the ~~tax commissioner~~ director to an energy company takes place after the expiration of a deadline imposed under sections 5117.01 to 5117.12 of the Revised Code, the company shall grant the credit within thirty days and, whenever appropriate, grant the credit on a retroactive basis.

(3) The ~~tax commissioner~~ director shall adopt a rule ensuring that the requirements of divisions (B)(1) and (2) of this section are effectuated.

Sec. 5117.09. (A) With respect to each of its residential customers, every energy company shall, after receipt of a certification list provided under division (A) of section 5117.08 of the Revised Code, cause the granting of a credit in accordance with this section against the monthly billing of each household appearing on the list except as provided in division (A) of section 5117.08 of the Revised Code. In the case of an applicant who has a total income of five thousand dollars or less or a current total income of two thousand five hundred dollars or less, the credit shall amount to thirty per cent of the current monthly bill rendered to such household by the company for the billing months of December, January, February, March, and April following the receipt of a list on which the household appears. In the case of an applicant who has a total income of more than five thousand dollars but not more than nine thousand dollars or a current total income of more than two thousand five hundred dollars but not more than four thousand five hundred dollars, the credit shall amount to twenty-five per cent of the current monthly bill rendered to such household by the company for the billing months of December, January, February, March, and April following the receipt of a list on which the household appears. If purchased power costs are incurred by an energy company during the billing month for which a credit is provided under this division, the credit shall also be applied to such costs, whether or not the costs are charged to a current ~~montly~~ MONTHLY bill for such months.

(B) Every energy company shall read the meter of each of its qualified residential customers who may receive a credit under division (A) of this section at least one time for the service period of November and at least one time in the service period for the current monthly bill rendered for the billing month of April. In the event a company is unable to read a meter because of failure to gain access after a good faith effort or because a certification list was supplied to the utility fewer than thirty days prior to the normal date of meter reading, the company may render a calculated bill. In such instances, the company shall make an adjustment to the amount of the credit granted to the customer based upon the next actual reading of the meter if the reading shows the previous calculation to have been in error and set forth the amount of such adjustments in the report required to be filed with the ~~tax commissioner~~ director of development under division (D) of this section.

(C) On each billing that is subject to a credit under division (A) of this section, there shall appear in ten-point type both the amount of the credit and to the left of such amount "Ohio Energy Credit."

(D) On or before the fifteenth day of each month following one in which credits were provided under division (A) of this section, each energy company shall, on a form prescribed by the ~~tax commissioner~~ director and requesting information that ~~he~~ the director determines is necessary for the purpose of verifying the propriety of the payment of credits, certify to the ~~commissioner~~ director the total amount of all credits it granted pursuant to division (A) of this section during the preceding month. Not later than thirty days after ~~his~~ receipt of such certification, the ~~commissioner~~ director shall pay the company the amount certified. If the ~~commissioner~~ director determines that a company previously received amounts greater than the amounts of credits properly granted, such company, upon notice from the ~~commissioner~~ director, shall reimburse the ~~commissioner~~ director in the amount of the overpayments. Such reimbursements shall be deposited in the general revenue fund.

(E)(l) Any energy company that purposely fails to grant the credit provided under division (A) of this section is liable to each person entitled to the credit and certified to the company by the ~~tax commissioner~~ director pursuant to division (A) of section 5117.08 of the Revised Code in treble the amount of the total credit not granted. The consumers' counsel ~~may~~, on behalf of any person or persons not granted the credit, may bring an action to recover such treble damages in the court of common pleas of the county in which is located the office of the company nearest the household of any such person or persons. The consumers' counsel ~~may~~ also, on behalf of any persons not granted the credit, may bring a class action to recover such treble damages in the court of common pleas of any county in which is located an office of the company and, if feasible, in which is located a significant number of members of the class. Any treble damage recovery under this division does not, in any manner, diminish any other liability provided under sections 5117.01 to 5117.12 of the Revised Code. Clerical errors shall not be considered an offense or incur liability under this division.

(2) An action shall be brought by the consumers' counsel under division (E)(1) of this section only after ~~he~~ the consumers' counsel has made a good faith attempt to dispose of the claim by settlement, including a good faith request for only such information in the possession of an energy company as is needed to determine the existence or extent of such a right of action.

(3) Nothing in division (E)(1) of this section shall be construed to prevent persons acting without the assistance of the consumers' counsel from bringing an action or class action under such division.

Sec. 5117.10. (A) On or before the fifteenth day of January, the ~~tax commissioner~~ director of development shall pay each applicant determined eligible for a payment under divisions (A) and (B) of section 5117.07 of the Revised Code one hundred twenty-five dollars.

(B) The ~~tax commissioner~~ director may withhold from any payment to which a person would otherwise be entitled under division (A) of this section any amount that the ~~tax commissioner~~ director determines was erroneously received by such person in a preceding year under this or the program established under Am.

Sub. H.B. 230, as amended by Am. H.B. 937, Am. Sub. H.B. 1073, Am. Sub. S.B. 493, and Am. Sub. S.B. 523 of the 112th general assembly, provided the ~~tax commissioner~~ director has employed all other legal methods reasonably available to obtain reimbursement for the erroneous payment or credit prior to the commencement of the current program year.

(C) Payments made under this section and credits granted under section 5117.09 of the Revised Code shall not be considered income for the purpose of determining eligibility or the level of benefits or assistance under section 329.042 or Chapters 5107., 5111., and 5115. of the Revised Code; supplemental security income payments under Title XVI of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as amended; or any other program under which eligibility or the level of benefits or assistance is based upon need measured by income.

Sec. 5117.12. (A) On or before the thirty-first day of August of each year, each energy company shall file a written report with the ~~tax commissioner~~ director of development regarding the impact, if any, of the requirements of division (E) of section 5117.11 of the Revised Code on the number of uncollectible and past due residential accounts for the twelve-month period ending on the preceding thirty-first day of July. The report shall include such information as is prescribed by the ~~tax commissioner~~ director. The information shall be based on actual reviews of residential customer accounts and shall be presented in verifiable form. The ~~tax commissioner~~ director may consult with the public utilities commission and the consumers' counsel in prescribing the contents of such reports and complying with the requirements of division (C)(4) of this section.

(B) Before the thirty-first day of January of each year, the ~~tax commissioner~~ director shall prepare a written report including a final review of the Ohio energy credit program for which applications were required to be mailed or provided by the fifteenth day of June of the second preceding calendar year pursuant to section 5117.03 of the Revised Code and an interim review of the program for which applications were required to be mailed or provided by the fifteenth day of June of the preceding calendar year under such section. On or before the thirty-first day of January of each year, the ~~commissioner~~ director shall provide written copies of such report to the speaker of the house of representatives, president of the senate, minority leaders of the house of representatives and senate, chairpersons of the house finance and appropriations committee and senate finance committee, chairpersons of the committees of the house of representatives and senate customarily entrusted with matters concerning public utilities, clerk of the house of representatives, and clerk of the senate.

(C) Each report prepared under division (B) of this section shall include a review of:

(1) Program costs;

(2) The number of persons receiving credits or payments under the program;

(3) Progress in the implementation of any changes in the program made by the general assembly within the period covered by the report;

(4) The impact, if any, of the requirements of division (E) of section 5117.11 of the Revised Code on the number of uncollectible and past due residential accounts of energy companies for the twelve-month period ending on the preceding thirty-first day of July;

(5) The impact of any federal energy assistance programs available to the same groups of people as are eligible for the

energy credit program under sections 5117.01 to 5117.12 of the Revised Code, together with any recommendations on modifications that may, because of the federal programs, be needed in the energy credit program;

(6) Any suggestions for improving the program;

(7) Any other matters considered appropriate by the commissioner.

(D) The ~~tax commissioner~~ director shall consult with the auditor of state, energy companies, energy dealers, department of aging, and commission on Hispanic-Latino affairs in the preparation of any report under this section. The ~~commissioner~~ director may require information from such agencies for the purpose of preparing such report.

Sec. 5701.03. As used in Title LVII of the Revised Code:

(A) "Personal property" includes every tangible thing that is the subject of ownership, whether animate or inanimate, including a business fixture, and that does not constitute real property as defined in section 5701.02 of the Revised Code. "Personal property" also includes every share, portion, right, or interest, either legal or equitable, in and to every ship, vessel, or boat, used or designed to be used in business either exclusively or partially in navigating any of the waters within or bordering on this state, whether such ship, vessel, or boat is within the jurisdiction of this state or elsewhere. "Personal property" does not include money as defined in section 5701.04 of the Revised Code, motor vehicles registered by the owner thereof, electricity, or, for purposes of any tax levied on personal property, patterns, jigs, dies, or drawings that are held for use and not for sale in the ordinary course of business, except to the extent that the value of the patterns, jigs, dies, or drawings is included in the valuation of inventory produced for sale.

(B) "Business fixture" means an item of tangible personal property that has become permanently attached or affixed to the land or to a building, structure, or improvement, and that primarily benefits the business conducted by the occupant on the premises and not the realty. "Business fixture" includes, but is not limited to, machinery, equipment, signs, storage bins and tanks, whether above or below ground, and broadcasting, transportation, transmission, and distribution systems, whether above or below ground. "Business fixture" also means those portions of buildings, structures, and improvements that are specially designed, constructed, and used for the business conducted in the building, structure, or improvement, including, but not limited to, foundations and supports for machinery and equipment. "Business fixture" does not include fixtures that are common to buildings, including, but not limited to, heating, ventilation, and air conditioning systems primarily used to control the environment for people or animals, tanks, towers, and lines for potable water or water for fire control, electrical and communication lines, and other fixtures that primarily benefit the realty and not the business conducted by the occupant on the premises.

Sec. 5703.052. There is hereby created in the state treasury the tax refund fund, from which refunds shall be paid for taxes illegally or erroneously assessed or collected, or for any other reason overpaid, that are levied by Chapter 4301., 4305., 5728., 5729., 5733., 5735., 5739., 5741., 5743., 5747., 5748., 5749., or 5753., ~~and~~ sections 3737.71, 3905.35, 3905.36, 4303.33, 5707.03, 5725.18, 5727.38, and 5727.81, and former sections 5727.27 and 5727.40 of the Revised Code. Refunds for fees illegally or erroneously assessed or collected, or for any other reason overpaid, that are levied by sections 3734.90 to 3734.9014 of the

Revised Code also shall be paid from the fund. However, refunds for taxes levied under section 5739.101 of the Revised Code shall not be paid from the tax refund fund, but shall be paid as provided in section 5739.104 of the Revised Code.

Upon certification by the tax commissioner to the treasurer of state of a tax refund, fee refund, or tax credit due, or by the superintendent of insurance of a domestic or foreign insurance tax refund, the treasurer of state may place the amount certified to the credit of the fund. The certified amount transferred shall be derived from current receipts of the same tax or the fee for which the refund arose or, in the case of a tax credit refund, from the current receipts of the taxes levied by sections 5739.02 and 5741.02 of the Revised Code.

If the tax refund arises from a tax payable to the general revenue fund, and current receipts from that source are inadequate to make the transfer of the amount so certified, the treasurer of state may transfer such certified amount from current receipts of the sales tax levied by section 5739.02 of the Revised Code.

Sec. 5703.053. As used in this section, "postal service" means the United States postal service.

An application to the tax commissioner for a tax refund under sections 4307.05, 4307.07, 5727.91, 5728.061, 5735.122, 5735.13, 5735.14, 5735.141, 5735.142, 5739.07, 5741.10, 5743.05, 5743.53, 5749.08, and 5753.06 of the Revised Code or division (B) of section 5703.05 of the Revised Code, or a fee refunded under section 3734.905 of the Revised Code, that is received after the last day for filing under such section shall be considered to have been filed in a timely manner if:

(A) The application is delivered by the postal service and the earliest postal service postmark on the cover in which the application is enclosed is not later than the last day for filing the application;

(B) The application is delivered by the postal service, the only postmark on the cover in which the application is enclosed was affixed by a private postal meter, the date of that postmark is not later than the last day for filing the application, and the application is received within seven days of such last day; or

(C) The application is delivered by the postal service, no postmark date was affixed to the cover in which the application is enclosed or the date of the postmark so affixed is not legible, and the application is received within seven days of the last day for making the application.

Sec. 5703.14. (A) Any rule adopted by the board of tax appeals and any rule of the department of taxation adopted by the tax commissioner shall be effective on the tenth day after the day on which the rule in final form and in compliance with division (B) of this section is filed by the board or the commissioner as follows:

(1) Two certified copies of the rule shall be filed with both the secretary of state and the director of the legislative service commission;

(2) Two certified copies of the rule shall be filed with the joint committee on agency rule review. Division (A)(2) of this section does not apply to any rule to which division (H) of section 119.03 of the Revised Code does not apply.

If all copies are not filed on the same day, the rule shall be effective on the tenth day after the day on which the latest filing is made. If the board or the commissioner in adopting a rule designates an effective date that is later than the effective date provided for by this division, the rule if filed as required by this division shall become effective on the later date designated by the board or commissioner.

(B) The board and commissioner shall file the rule in compliance with the following standards and procedures:

(1) The rule shall be numbered in accordance with the numbering system devised by the director for the Ohio administrative code.

(2) The rule shall be prepared and submitted in compliance with the rules of the legislative service commission.

(3) The rule shall clearly state the date on which it is to be effective and the date on which it will expire, if known.

(4) Each rule that amends or rescinds another rule shall clearly refer to the rule that is amended or rescinded. Each amendment shall fully restate the rule as amended.

If the director of the legislative service commission or ~~his~~ the director's designee gives the board or commissioner written notice pursuant to section 103.05 of the Revised Code that a rule filed by the board or commissioner is not in compliance with the rules of the legislative service commission, the board or commissioner shall within thirty days after receipt of the notice conform the rule to the rules of the legislative service commission as directed in the notice.

All rules of the department and board filed pursuant to division (A)(1) of this section shall be recorded by the secretary of state and the director under the name of the department or board and shall be numbered in accordance with the numbering system devised by the director. The secretary of state and the director shall preserve the rules in an accessible manner. Each such rule shall be a public record open to public inspection and may be lent to any law publishing company that wishes to reproduce it. Each such rule shall also be made available to interested parties upon request directed to the department.

(C) Applications for review of any rule adopted and promulgated by the commissioner may be filed with the board by any person who has been or may be injured by the operation of the rule. The appeal may be taken at any time after the rule is filed with the secretary of the state, the director of the legislative service commission, and, if applicable, the joint committee on agency rule review. Failure to file an appeal does not preclude any person from seeking any other remedy against the application of the rule to ~~him~~ the person. The applications shall set forth, or have attached thereto and incorporated by reference, a true copy of the rule, and shall allege that the rule complained of is unreasonable and shall state the grounds upon which the allegation is based. Upon the filing of the application, the board shall notify the commissioner of the filing of the application, fix a time for hearing the application, notify the commissioner and the applicant of the time for the hearing, and afford both an opportunity to be heard. The appellant, the tax commissioner, and any other interested persons that the board permits, may introduce evidence. The burden of proof to show that the rule is unreasonable shall be upon the appellant. After the hearing, the board shall determine whether the rule complained of is reasonable or unreasonable. A determination that the rule complained of is unreasonable shall require a majority vote of the three members of the board, and the reasons for the determination shall be entered on the journal of the board.

Upon determining that the rule complained of is unreasonable, the board shall file copies of its determination as follows:

(1) Two certified copies of the determination shall be filed with both the secretary of state and the director of the legislative service commission, who shall note the date of their

receipt of the certified copies conspicuously in their files of the rules of the department;

(2) Two certified copies of the determination shall be filed with the joint committee on agency rule review. Division (C)(2) of this section does not apply to any rule to which division (H) of section 119.03 of the Revised Code does not apply.

On the tenth day after the copies of the determination have been received by the secretary of state, the director, and, if applicable, the joint committee, the rule referred to in the determination shall cease to be in effect. If all copies of the determination are not filed on the same day, the rule shall remain in effect until the tenth day after the day on which the latest filing is made. This section does not apply to licenses issued under sections 5735.02, 5739.17, and 5743.15 of the Revised Code, which shall be governed by sections 119.01 to 119.13 of the Revised Code.

The board is not required to hear an application for the review of any rule where the grounds of the allegation that the rule is unreasonable have been previously contained in an application for review and have been previously heard and passed upon by the board.

(D) This section does not apply to the adoption of any rule, or to the amendment or rescission of any rule by the director of development in consultation with the tax commissioner under division (C)(1) or (2) of section 5117.02 of the Revised Code.

(E) As used in this section, "substantive revision" has the same meaning as in division (J) of section 119.01 of the Revised Code.

Sec. 5705.34. When the budget commission has completed its work with respect to a tax budget, it shall certify its action to the taxing authority, together with an estimate by the county auditor of the rate of each tax necessary to be levied by the taxing authority within its subdivision or taxing unit, and what part thereof is in excess of, and what part within, the ten-mill tax limitation. The certification shall also indicate the date on which each tax levied by the taxing authority will expire.

~~Each~~ If a taxing authority levies a tax for a fixed sum of money or to pay debt charges for the tax year for which the tax budget is prepared, and the tax was levied in tax year 1998, the county auditor, when estimating the rate at which the tax shall be levied in the current year, shall estimate the rate necessary to raise the required sum less the estimated amount of any payments made for the tax year to a taxing unit under sections 5727.85 and 5727.86 of the Revised Code. The estimated rate shall be the rate of the levy that the budget commission certifies with its action under this section.

Each taxing authority, by ordinance or resolution, shall authorize the necessary tax levies and certify them to the county auditor before the first day of October in each year, or at such later date as is approved by the tax commissioner, except that the certification by a board of education shall be made by the first day of April or at such later date as is approved by the commissioner, and except that a township board of park commissioners that is appointed by the board of township trustees and oversees a township park district that contains only unincorporated territory shall authorize only those taxes approved by, and only at the rate approved by, the board of township trustees as required by division (C) of section 511.27 of the Revised Code. If the levying of a tax to be placed on the duplicate of the current year is approved by the electors of the subdivision under sections 5705.01 to 5705.47 of the Revised Code; if the rate of a school district tax is increased due to the repeal of a school district income tax and property tax rate reduction at an election held pursuant to section 5748.04 of the Revised Code; or if refunding bonds to refund all or a part of the principal of bonds payable from a tax levy for the ensuing fiscal year are issued or sold and in the process of delivery, the budget commission shall reconsider and revise its action on the budget of the subdivision or school library district for whose benefit the tax is to be levied after the returns of such election are fully canvassed, or after the issuance or sale of such refunding bonds is certified to it.

Sec. 5727.01. As used in this chapter:

(A) "Public utility" means each person referred to as a telephone company, telegraph company, electric company, natural gas company, pipe-line company, water-works company, water transportation company, heating company, rural electric company, or railroad company.

(B) "Gross receipts" means the entire receipts for business done by any person from operation as a public utility, or incidental thereto, or in connection therewith. The gross receipts for business done by an incorporated company engaged in operation as a public utility includes the entire receipts for business done by such company under the exercise of its corporate powers, whether from the operation as a public utility or from any other business.

(C) "Rural electric company" means any nonprofit corporation, organization, association, or cooperative engaged in the business of supplying electricity to its members or persons owning an interest therein in an area the major portion of which is rural.

(D) Any person:

(1) Is a telegraph company when engaged in the business of transmitting telegraphic messages to, from, through, or in this state;

(2) Is a telephone company when primarily engaged in the business of providing local exchange telephone service, excluding cellular radio service, in this state;

(3) Is an electric company when engaged in the business of generating, transmitting, or distributing electricity within this state for use by others;

(4) Is a natural gas company when engaged in the business of supplying natural gas for lighting, power, or heating purposes to consumers within this state;

(5) Is a pipe-line company when engaged in the business of transporting natural gas, oil, or coal or its derivatives through pipes or tubing, either wholly or partially within this state;

(6) Is a water-works company when engaged in the business of supplying water through pipes or tubing, or in a similar manner, to consumers within this state;

(7) Is a water transportation company when engaged in the transportation of passengers or property, by boat or other watercraft, over any waterway, whether natural or artificial, from one point within this state to another point within this state, or between points within this state and points without this state;

(8) Is a heating company when engaged in the business of supplying water, steam, or air through pipes or tubing to consumers within this state for heating purposes;

(9) Is a railroad company when engaged in the business of owning or operating a railroad either wholly or partially within this state on rights-of-way acquired and held exclusively by such company, or otherwise, and includes a passenger, street, suburban,

or interurban railroad company.

As used in division (D)(2) of this section, "local exchange telephone service" means making available or furnishing access and a dial tone to all persons within a local calling area for use in originating and receiving voice grade communications over a switched network operated by the provider of the service within the area and for gaining access to other telecommunication services.

(E) "Taxable property" means the property required by section 5727.06 of the Revised Code to be assessed by the tax commissioner, but does not include either of the following:

(1) An item of tangible personal property that for the period subsequent to the effective date of an air, water, or noise pollution control certificate and continuing so long as the certificate is in force, has been certified as part of the pollution control facility with respect to which the certificate has been issued;

(2) An item of tangible personal property that during the construction of a plant or facility and until the item is first capable of operation, whether actually used in operation or not, is incorporated in or being held exclusively for incorporation in that plant or facility.

(F) ~~"Taxing~~ Except as provided in section 5727.84 of the Revised Code, "taxing district" means a municipal corporation or township, or part thereof, in which the aggregate rate of taxation is uniform.

(G) "Telecommunications service" has the same meaning as in division (AA) of section 5739.01 of the Revised Code.

(H) "Interexchange telecommunications company" means a person that is engaged in the business of transmitting telephonic messages to, from, through, or in this state, but that is not a telephone company.

(I) "Sale and leaseback transaction" means a transaction in which a public utility or interexchange telecommunications company sells any tangible personal property to a person other than a public utility or interexchange telecommunications company and ~~within the same calendar year~~ leases that property back from the buyer.

(J) "Production equipment" means all taxable steam, nuclear, hydraulic, and other production plant equipment used to generate electricity. "Production equipment" does not include taxable station equipment that is located at a production plant.

Sec. 5727.03. (A) A person engaged in the activity of an electric company, a rural electric company, a heating company, or a natural gas company, or any combination thereof, shall file a separate report under section 5727.08 of the Revised Code and a separate statement under section 5727.31 of the Revised Code for service provided as an electric company, a rural electric company, a heating company, or a natural gas company. The tax commissioner shall separately calculate and assess taxable property and taxable gross receipts. Division (B) of this section shall be used to calculate the taxable property that cannot be directly attributed to providing service as an electric company, a rural electric company, a heating company, or a natural gas company, and division (C) of this section shall be used to calculate the taxable gross receipts that cannot be directly attributed to providing service as an electric company, a rural electric company, a heating company, or a natural gas company.

(B) The taxable property that cannot be directly attributed to providing service as an electric company, a rural electric company, a heating company, or a natural gas company shall be reported and taxed as property used to provide service:

(1) As an electric company, by multiplying the taxable cost of the property that cannot be directly attributed to providing service as an electric company, a rural electric company, a heating company, or a natural gas company by a fraction, the numerator of which is the taxable cost of property that can be directly attributed to providing service as an electric company, and the denominator of which is the sum of the taxable costs of property that can be directly attributed to providing service as an electric company, a rural electric company, a heating company, or a natural gas company;

(2) As a rural electric company, by multiplying the taxable cost of the property that cannot be directly attributed to providing service as an electric company, a rural electric company, a heating company, or a natural gas company by a fraction, the numerator of which is the taxable cost of property that can be directly attributed to providing service as a rural electric company, and the denominator of which is the sum of the taxable costs of property that can be directly attributed to providing service as an electric company, a rural electric company, a heating company, or a natural gas company;

(3) As a heating company, by multiplying the taxable cost of the property that cannot be directly attributed to providing service as an electric company, a rural electric company, a heating company, or a natural gas company by a fraction, the numerator of which is the taxable cost of property that can be directly attributed to providing service as a heating company, and the denominator of which is the sum of the taxable costs of property that can be directly attributed to providing service as an electric company, a rural electric company, a heating company, or a natural gas company;

(4) As a natural gas company, by multiplying the taxable cost of the property that cannot be directly attributed to providing

service as an electric company, a rural electric company, a heating company, or a natural gas company by a fraction, the numerator of which is the taxable cost of property that can be directly attributed to providing service as a natural gas company, and the denominator of which is the sum of the taxable costs of property that can be directly attributed to providing service as an electric company, a rural electric company, a heating company, or a natural gas company.

(C) Taxable gross receipts that cannot be directly attributed to providing service as an electric company, a rural electric company, a heating company, or a natural gas company shall be reported and taxed as gross receipts of a person engaged in business:

(1) As an electric company, by multiplying the taxable gross receipts that cannot be directly attributed to providing service as an electric company, a rural electric company, a heating company, or a natural gas company by a fraction, the numerator of which is the taxable gross receipts that can be directly attributed to providing service as an electric company, and the denominator of which is the sum of the gross receipts that can be directly attributed to providing service as an electric company, a rural electric company, a heating company, or a natural gas company;

(2) As a rural electric company, by multiplying the taxable gross receipts that cannot be directly attributed to providing service as an electric company, a rural electric company, a heating company, or a natural gas company by a fraction, the numerator of which is the taxable gross receipts that can be directly attributed to providing service as a rural electric company, and the denominator of which is the sum of the gross receipts that can be directly attributed to providing service as an electric company, a rural electric company, a heating company,

or a natural gas company;

(3) As a heating company, by multiplying the taxable gross receipts that cannot be directly attributed to providing service as an electric company, a rural electric company, a heating company, or a natural gas company by a fraction, the numerator of which is the taxable gross receipts that can be directly attributed to providing service as a heating company, and the denominator of which is the sum of the gross receipts that can be directly attributed to providing service as an electric company, a rural electric company, a heating company, or a natural gas company;

(4) As a natural gas company, by multiplying the taxable gross receipts that cannot be directly attributed to providing service as an electric company, a rural electric company, a heating company, or a natural gas company by a fraction, the numerator of which is the taxable gross receipts that can be directly attributed to providing service as a natural gas company, and the denominator of which is the sum of the gross receipts that can be directly attributed to providing service as an electric company, a rural heating company, a heating company, or a natural gas company.

Sec. 5727.05. ~~This chapter does~~ Sections 5727.01 to 5727.61 of the Revised Code do not apply to either of the following:

(A) Nonprofit corporations as defined in division (C) of section 1702.01 of the Revised Code that are engaged exclusively in the treatment, distribution, and sale of water to consumers;

(B) Municipal corporations within this state.

Sec. 5727.06. (A) Except as otherwise provided by law, the following constitutes the taxable property of a public utility or interexchange telecommunications company that shall be assessed by the tax commissioner:

(1) In the case of a railroad company, all real property and tangible personal property owned or operated by the railroad company in this state on the thirty-first day of December of the preceding year;

(2) In the case of a water transportation company, all tangible personal property, except watercraft, owned or operated by the water transportation company in this state on the thirty-first day of December of the preceding year and all watercraft owned or operated by the water transportation company in this state during the preceding calendar year;

(3) In the case of all other public utilities and interexchange telecommunications companies, all tangible personal property that on the thirty-first day of December of the preceding year was both located in this state and:

(a) Owned by the public utility or interexchange telecommunications company; or

(b) Leased by the public utility or interexchange telecommunications company under a sale and leaseback transaction.

(B) In the case of an interexchange telecommunications company, all taxable property shall be subject to the provisions of this chapter and shall be valued by the commissioner in accordance with division ~~(B)~~(A) of section 5727.11 of the Revised Code and assessed by the commissioner in accordance with division ~~(G)~~(F) of section 5727.111 of the Revised Code. A person described by this division shall file the report required by section 5727.08 of the Revised Code. Persons described in this division shall not be considered taxpayers, as defined in division (B) of section 5711.01 of the Revised Code, and shall not be required to file a return and list their taxable property under any provision of

Chapter 5711. of the Revised Code.

(C) The lien of the state for taxes levied each year on the real and personal property of public utilities and interexchange telecommunications companies shall attach thereto on the thirty-first day of December of the preceding year.

(D) Property that is required by division (A)(3)(b) of this section to be assessed by the tax commissioner under this chapter shall not be listed by the owner of the property under Chapter 5711. of the Revised Code.

(E) The tax commissioner may adopt rules governing the listing of the taxable property of public utilities and interexchange telecommunications companies and the determination of true value.

Sec. 5727.11. (A) ~~As used in this section, section 5727.111, and division (C) of section 5727.15 of the Revised Code, "production equipment" means all taxable steam, nuclear, hydraulic, and other production plant equipment, and all taxable station equipment that is located at a production plant.~~

~~(B)~~ Except as provided in divisions (B), (C), (D), ~~(E),~~ and ~~(G)~~(F) of this section, the true value of all taxable property required by division (A)(2) or (3) of section 5727.06 of the Revised Code to be assessed by the tax commissioner shall be determined by a method of valuation using cost as capitalized on the public utility's books and records less composite annual allowances as prescribed by the commissioner. If the commissioner finds that application of this method will not result in the determination of true value of the public utility's taxable property, ~~he~~ the commissioner may use another method of valuation. ~~The cost of property subject to a sale and leaseback transaction is the cost of the property as capitalized on the books and records of the public utility owning the property immediately~~

~~prior to the sale and leaseback transaction.~~

~~(C)~~(B) The true value of current gas stored underground is the cost of that gas shown on the books and records of the public utility on the thirty-first day of December of the preceding year.

~~(D)~~(C) The true value of noncurrent gas stored underground is thirty-five per cent of the cost of that gas shown on the books and records of the public utility on the thirty-first day of December of the preceding year.

~~(E) The~~ (D)(1) Except as provided in division (D)(2) of this section, the true value of the production equipment of an electric company and the true value of all taxable property of a rural electric company is the equipment's or property's cost as capitalized on the company's books and records less fifty per cent of that cost as an allowance for depreciation and obsolescence. ~~The cost of equipment or property subject to a sale and leaseback transaction is the cost of the property as capitalized on the books and records of the public utility owning the equipment or property immediately prior to the sale and leaseback transaction.~~

(2) The true value of the production plant equipment of an electric company or rural electric company purchased or placed into service after the effective date of this amendment is the purchase price of the equipment as capitalized on the company's books and records less composite annual allowances as prescribed by the tax commissioner.

~~(F)~~(E) The true value of taxable property described in division (A)(2) or (3) of section 5727.06 of the Revised Code shall not include the allowance for funds used during construction or interest during construction ~~which~~ that has been capitalized on the public utility's books and records as part of the total cost of the taxable property. This division shall not apply to a production plant put into service on or after January 1, 2001, or to the production equipment of an electric company or a rural electric company purchased by an electric company or a rural electric company.

~~(G)~~(F) The true value of watercraft owned or operated by a water transportation company shall be determined by multiplying the true value of the watercraft as determined under division ~~(B)~~(A) of this section by a fraction, the numerator of which is the number of revenue-earning miles traveled by the watercraft in the waters of this state and the denominator of which is the number of revenue-earning miles traveled by the watercraft in all waters.

(G) The cost of property subject to a sale and leaseback transaction is the cost of the property as capitalized on the books and records of the public utility owning the property immediately prior to the sale and leaseback transaction.

Sec. 5727.111. The taxable property of each public utility, except a railroad company, and of each interexchange telecommunications company shall be assessed at the following percentages of true value:

(A) Fifty per cent in the case of the taxable transmission and distribution property of a rural electric company, and twenty-five per cent for all its other taxable property;

(B) In the case of a telephone or telegraph company, ~~the percentage provided under division (E) of section 5711.22 of the Revised Code~~ twenty-five per cent for taxable property first subject to taxation in this state for tax year 1995 or thereafter, and eighty-eight per cent for all other taxable property;

(C) Eighty-eight per cent in the case of a natural gas or pipe-line company;

(D) Eighty-eight per cent in the case of a water-works or heating company;

(E) ~~One hundred per cent in the case of the taxable production equipment of an electric company;~~

~~(F) Eighty-eight~~ (1) Except as provided in division (E)(2) of this section, eighty-eight per cent in the case of ~~all taxable personal~~ the taxable transmission and distribution property of an electric company, ~~other than its production equipment~~ and twenty-five per cent for all its other taxable property;

(2) Property listed and assessed under divisions (B)(1) and (2) of section 5711.22 of the Revised Code shall continue to be assessed at one hundred per cent for production equipment and eighty-eight per cent for all other taxable property until January 1, 2002.

~~(G) The percentage provided under division (E) of section 5711.22 of the Revised Code~~ (F) Twenty-five per cent in the case of an interexchange telecommunications company;

~~(H)~~(G) Twenty-five per cent in the case of a water transportation company.

Sec. 5727.15. When all the taxable property of a public utility is located in one taxing district, the tax commissioner shall apportion the total taxable value thereof to that taxing district.

When taxable property of a public utility is located in more than one taxing district, the commissioner shall apportion the total taxable value thereof among the taxing districts as follows:

(A)(1) In the case of a telegraph, interexchange telecommunications, or telephone company that owns miles of wire in this state, the value apportioned to each taxing district shall be the same percentage of the total value apportioned to all taxing districts as the miles of wire owned by the company within the taxing district are to the total miles of wire owned by the company within this state;

(2) In the case of a telegraph, interexchange telecommunications, or telephone company that does not own miles of wire in this state, the value apportioned to each taxing district shall be the same percentage of the total value apportioned to all taxing districts as the cost of the taxable property physically located in the taxing district is of the total cost of all taxable property physically located in this state.

(B) In the case of a railroad company:

(1) The taxable value of real and personal property not used in railroad operations shall be apportioned according to its situs;

(2) The taxable value of personal property used in railroad operations shall be apportioned to each taxing district in proportion to the miles of track and trackage rights, weighted to reflect the relative use of such personal property in each taxing district;

(3) The taxable value of real property used in railroad operations shall be apportioned to each taxing district in proportion to its relative value in each taxing district.

(C) In the case of an electric company:

(1) ~~Seventy per cent of the~~ The taxable value of all production equipment ~~and of all station equipment that is not production equipment~~ shall be apportioned to the taxing district in which such property is physically located; and

(2) The ~~remaining value of such property, together with the~~ value of all other taxable personal property~~,~~ shall be apportioned to each taxing district in the ~~per cent~~ proportion that the cost of ~~all transmission and distribution~~ the taxable personal property

physically located in ~~the~~ each taxing district is of the total cost of all ~~transmission and distribution~~ taxable personal property physically located in this state.

~~(3) If an electric company's taxable value for the current year includes the value of any production equipment at a plant at which the initial cost of the plant's production equipment exceeded one billion dollars, then prior to making the apportionments required for that company by divisions (C)(1) and (2) of this section, the tax commissioner shall do the following:~~

~~(a) Subtract four hundred twenty million dollars from the total taxable value of the production equipment at that plant for the current tax year.~~

~~(b) Multiply the difference thus obtained by a fraction, the numerator of which is the portion of the taxable value of that plant's production equipment included in the company's total value for the current tax year, and the denominator of which is the total taxable value of such equipment included in the total taxable value of all electric companies for such year.~~

~~(c) Apportion the product thus obtained to taxing districts in the manner prescribed in division (C)(2) of this section.~~

~~(d) Deduct the amounts so apportioned from the taxable value of the company's production equipment at the plant, prior to making the apportionments required by divisions (C)(1) and (2) of this section.~~

~~For purposes of division (C) of this section, "initial cost" applies only to production equipment of plants placed in commercial operation on or after January 1, 1987, and means the cost of all production equipment at a plant for the first year the plant's equipment was subject to taxation.~~

(D) In the case of all other public utilities, the value of the property to be apportioned shall be apportioned to each taxing district in proportion to the entire value of such property within this state.

Sec. 5727.30. Each public utility, except electric companies, rural electric companies, and railroad companies, shall be subject to an annual excise tax, as provided by sections 5727.31 to 5727.62 of the Revised Code, for the privilege of owning property in this state or doing business in this state during the twelve-month period next succeeding the period upon which the tax is based. The tax shall be imposed against each such public utility ~~which~~ that, on the first day of such twelve-month period, owns property in this state or is doing business in this state, and the lien for the tax, including any penalties and interest accruing thereon, shall attach on such day to the property of the public utility in this state.

Sec. 5727.31. (A) Each public utility~~, except railroad companies, doing business or owning property in this state shall~~ subject to the tax imposed under section 5727.30 of the Revised Code, annually, on or before the first day of August, shall file with the tax commissioner a statement in such form as the commissioner prescribes.

(B)(1) Annually, on or before the fifteenth day of October of the current year, each public utility ~~subject to the excise taxes levied by this chapter~~ whose estimated excise taxes for the current year as based upon the statement required to be filed in that year by division (A) of this section are, in the case of a public utility other than a natural gas company, one thousand dollars or more, or are, in the case of a natural gas company, three hundred twenty-five thousand dollars or more, shall file with the treasurer of state a report, in such form as the tax commissioner prescribes, showing the amount of excise tax estimated to be charged or levied pursuant to law for the current year upon the basis of such annual statement, and shall remit a portion of the estimated excise taxes shown to be due by the report. The portion of the estimated excise taxes due at the time the report is filed shall be one-third of its total excise taxes estimated to be charged or levied for the current year based upon the annual statement filed under division (A) of this section.

(2) Annually, on or before the first day of March and June, each public utility ~~subject to the excise taxes levied by this chapter~~ whose excise taxes as based upon its last preceding annual statement filed under division (A) of this section prior to the first day of January were, in the case of a public utility other than a natural gas company, one thousand dollars or more, or were, in the case of a natural gas company, three hundred twenty-five thousand dollars or more, shall file with the treasurer of state a report, in such form as the tax commissioner prescribes, showing the amount of excise tax charged or levied pursuant to law upon the basis of such annual statement, and shall remit a portion of the excise taxes shown to be due by each such report. The portion of the excise taxes due at the time each such report is filed shall be one-third of its total excise taxes so charged or levied based upon such annual statement.

(C) Any public utility subject to the excise taxes imposed by ~~this chapter~~ section 5727.30 of the Revised Code whose tax as certified under section 5727.38 of the Revised Code in a year equals or exceeds the amount specified for that year in section 5727.311 of the Revised Code shall make the payments required under this section in the second ensuing and each succeeding year in the manner prescribed by section 5727.311 of the Revised Code, except as otherwise prescribed by that section.

(D)(1) For purposes of this section, a report required to be filed under division (B) of this section is considered filed when it is received by the treasurer of state.

(2) For purposes of this section and sections 5727.311 and 5727.42 of the Revised Code, remittance of an excise tax required to be made under this section is considered to be made when the remittance is received by the treasurer of state, or when credited to an account designated by the treasurer of state for the receipt of tax remittances.

Sec. 5727.311. (A) Any public utility subject to an excise tax imposed by ~~this chapter~~ section 5727.30 of the Revised Code whose tax as certified by the tax commissioner under section 5727.38 of the Revised Code ~~in the year indicated in the following schedule~~ equals or exceeds ~~the amount indicated for that year in the schedule~~ fifty thousand dollars shall make each payment required under division (B) of section 5727.31 of the Revised Code for the second ensuing and each succeeding year by electronic funds transfer as prescribed by division (B) of this section.

~~Year for which tax was certified~~	~~1992~~	~~1993 and thereafter~~
~~Amount of tax certified~~	~~$100,000~~	~~$50,000~~

If the tax certified by the tax commissioner in each of two consecutive years beginning with 1993 is less than fifty thousand dollars, the public utility is relieved of the requirement to remit taxes by electronic funds transfer for the year that next follows the second of the consecutive years in which the tax certified is less than fifty thousand dollars, and is relieved of that requirement for each succeeding year unless the tax certified in a subsequent year equals or exceeds fifty thousand dollars. The tax commissioner shall notify each public utility required to remit taxes by electronic funds transfer of the public utility's obligation to do so, shall maintain an updated list of those public utilities, and shall timely certify the list and any additions thereto or deletions therefrom to the treasurer of state. Failure by the tax commissioner to notify a public utility subject to this section to remit taxes by electronic funds transfer does not relieve the public utility of its obligation to remit taxes by electronic funds transfer.

(B) Public utilities required by this section to remit periodic payments by electronic funds transfer shall remit such payments to the treasurer of state in the manner prescribed by rules adopted by the treasurer under section 113.061 of the Revised Code. The payment of public utility excise taxes by electronic funds transfer does not affect a public utility's obligation to file the annual statement and periodic reports in the manner and at the times prescribed by section 5727.31 of the Revised Code.

A public utility required by this section to remit taxes by electronic funds transfer may apply to the treasurer of state in the manner prescribed by the treasurer of state to be excused from that requirement. The treasurer of state may excuse the public utility from remittance by electronic funds transfer for good cause shown for the period of time requested by the public utility or for a portion of that period. The treasurer of state shall notify the tax commissioner and the public utility of the ~~treasurer's~~ treasurer of state's decision as soon as is practicable.

(C) If a public utility required by this section to remit taxes by electronic funds transfer remits those taxes by some means other than by electronic funds transfer as prescribed by this section and the rules adopted by the treasurer of state, and the treasurer of state determines that the failure to remit taxes as required was not due to reasonable cause or was due to willful neglect, the treasurer of state may impose an additional charge on the public utility equal to five per cent of the amount of the taxes required to be paid by electronic funds transfer, but not to exceed five thousand dollars. Any additional charge imposed under this section is in addition to any other penalty or charge imposed under this chapter, and shall be considered as revenue arising from excise taxes imposed by this chapter.

No additional charge shall be assessed under this division against a public utility that has been notified of its obligation to remit taxes under this section and that remits its first two tax payments after such notification by some means other than electronic funds transfer. The additional charge may be assessed upon the remittance of any subsequent tax payment that the public utility remits by some means other than electronic funds transfer.

Sec. 5727.32. The statement required by section 5727.31 of the Revised Code for the purpose of the public utility excise tax shall contain:

(A) The name of the company;

(B) The nature of the company, whether a person, association, or corporation, and under the laws of what state or country organized;

(C) The location of its principal office;

(D) The name and post-office address of the president, secretary, auditor, treasurer, and superintendent or general manager;

(E) The name and post-office address of the chief officer or managing agent of the company in this state;

(F) The amount of the excise taxes paid or to be paid with the reports made during the current calendar year as provided by section 5727.31 of the Revised Code;

(G) In the case of telegraph and telephone companies:

(1) The gross receipts from all sources, whether messages, telephone tolls, rentals, or otherwise, for business done within this state, including all sums earned or charged, whether actually received or not, for the year ending on the thirtieth day of June, and the company's proportion of gross receipts for business done by it within this state in connection with other companies, firms, corporations, persons, or associations, but excluding all of the following:

(a) All of the receipts derived wholly from interstate business or business done for or with the federal government;

(b) The receipts of amounts billed on behalf of other entities;

(c) The receipts from sales to other telephone companies for resale;

(d) ~~For the year ending June 30, 1990, and each subsequent year, receipts~~ Receipts from sales to providers of telecommunications service for resale, receipts from incoming or outgoing wide area transmission service or wide area transmission type service, including eight hundred or eight-hundred-type service, and receipts from private communications service.

As used in this division, "receipts from sales to other telephone companies for resale" and "receipts from sales to providers of telecommunications service for resale" include, but are not limited to, receipts of carrier access charges. "Carrier access charges" means compensation paid to the taxpayer telephone company by another telephone company or by a provider of telecommunications service for the use of the taxpayer's facilities to originate or terminate telephone calls or telecommunications service.

(2) The total gross receipts for such period from business done within this state.

(H) In the case of all public utilities, except electric companies, rural electric companies, telegraph companies, and telephone companies:

(1) The gross receipts of the company, actually received, from all sources for business done within this state for the year next preceding the first day of May, including the company's proportion of gross receipts for business done by it within this state in connection with other companies, firms, corporations, persons, or associations, but excluding all of the following:

(a) Receipts from interstate business or business done for the federal government;

(b) Receipts from sales to other public utilities for resale, provided such other public utility is required to file a statement pursuant to section 5727.31 of the Revised Code;

(c) ~~For the year ending April 30, 1990, and each subsequent year, receipts from the transmission or delivery of electricity to or for a rural electric company, provided that the electricity that has been so transmitted or delivered is for resale by the rural electric company;~~

~~(d) Receipts of an electric company, derived from the provision of electricity and other services to a qualified former owner of the production facilities which generated the electricity from which those receipts were derived. As used in this division, a "qualified former owner" means a person who meets both of the following conditions:~~

~~(i) On or before October 11, 1991, the person had sold to an electric company part of the production facility at which the electricity is generated, and, for at least twenty years prior to that sale, the facility was used to generate electricity, but it was not owned in whole or in part during that period by an electric company.~~

~~(ii) At the time the electric company provided the electricity or other services for which the exclusion is claimed, the person, or a successor or assign of the person, owned not less than a twenty per cent ownership of the production facility and the rights to not less than twenty per cent of the production of that facility; and the person, or a successor or assign of the person, engaged primarily in a business other than providing electricity to others.~~

~~(e)~~ Receipts of a natural gas company of amounts billed on behalf of other entities. Transportation and billing and collection fees charged to other entities shall be included in the gross receipts of a natural gas company.

(2) The total gross receipts of such company for such period in this state from business done within the state.

The reports required by section 5727.31 of the Revised Code shall contain:

(a) The name and principal mailing address of the company;

(b) The total amount of the gross receipts excise taxes charged or levied as based upon its last preceding annual statement filed prior to the first day of January of the year in which such report is filed;

(c) The amount of the excise taxes due with the report as provided by section 5727.31 of the Revised Code.

Sec. 5727.33. (A) For the purpose of computing the public utility excise tax, the tax commissioner shall ascertain and determine the entire gross receipts actually received from all sources, excluding the receipts described in divisions (B), (C), and (D)~~, and (E)~~ of this section, of each ~~electric, rural electric,~~ natural gas, pipe-line, water-works, heating, and water transportation company for business done within this state for the year ending on the thirtieth day of April, and of each telegraph and telephone company for business done within this state for the year ending on the thirtieth day of June.

(B) In ascertaining and determining the gross receipts of each of the companies named in this section, the commissioner shall exclude all of the following:

(1) All receipts derived wholly from interstate business;

(2) All receipts derived wholly from business done for or with the federal government;

(3) ~~For the year ending April 30, 1990, and each subsequent year, all receipts derived wholly from the transmission or delivery of electricity to or for a rural electric company, provided that the electricity that has been so transmitted or delivered is for resale by the rural electric company;~~

~~(4)~~ All receipts from the sale of merchandise;

~~(5)~~(4) All receipts from sales to other public utilities, except railroad, telegraph, and telephone companies, for resale, provided the other public utility is required to file a statement pursuant to section 5727.31 of the Revised Code.

(C) In ascertaining and determining the gross receipts of a telephone company, the commissioner shall exclude all of the following:

(1) ~~For the year ending June 30, 1988, and each subsequent year, receipts~~ Receipts of amounts billed on behalf of other entities;

(2) ~~For the year ending June 30, 1988, and each subsequent year, receipts~~ Receipts from sales to other telephone companies for resale, as defined in division (G) of section 5727.32 of the Revised Code;

(3) ~~For the year ending June 30, 1990, and each subsequent year, receipts~~ Receipts from incoming or outgoing wide area transmission service or wide area transmission type service, including eight hundred or eight-hundred-type service;

(4) ~~For the year ending June 30, 1990, and each subsequent year, receipts~~ Receipts from private communications service as described in division (AA)(2) of section 5739.01 of the Revised Code;

(5) ~~For the year ending June 30, 1990, and each subsequent year, receipts~~ Receipts from sales to providers of telecommunications service for resale, as defined in division (G) of section 5727.32 of the Revised Code.

(D) ~~In ascertaining and determining the gross receipts of an electric company, the commissioner shall exclude receipts derived from the provision of electricity and other services to a qualified former owner of the production facilities which generated the electricity from which those receipts were derived. As used in this division, a "qualified former owner" means a person who meets both of the following conditions:~~

~~(1) On or before October 11, 1991, the person had sold to an electric company part of the production facility at which the electricity is generated, and, for at least twenty years prior to that sale, the facility was used to generate electricity, but it was not owned in whole or in part during that period by an electric company.~~

~~(2) At the time the electric company provided the electricity or other services for which the exclusion is claimed, the person, or a successor or assign of the person, owned not less than a twenty per cent ownership of the production facility and the rights to not less than twenty per cent of the production of that facility.~~

~~(E)~~ In ascertaining and determining the gross receipts of a natural gas company, the commissioner shall exclude receipts of amounts billed on behalf of other entities. Transportation and billing and collection fees charged to other entities shall be included in the gross receipts of a natural gas company.

The amount ascertained by the commissioner under this section, less a deduction of twenty-five thousand dollars, shall be the gross receipts of such companies for business done within this state for that year.

Sec. 5727.38. On or before the first Monday of November, annually, the tax commissioner shall assess an excise tax against each public utility, except electric companies, rural electric companies, and railroad companies. The tax shall be computed by multiplying the gross receipts as determined by the commissioner under section 5727.33 of the Revised Code by six and three-fourths per cent in the case of pipe-line companies and four and three-fourths per cent in the case of all other companies. The minimum tax for any such company for owning property or doing business in this state shall be ~~ten~~ fifty dollars. The assessment shall be certified to the taxpayer and treasurer of state.

Sec. 5727.42. (A) The treasurer of state shall maintain a list of all excise taxes levied and payments made pursuant to ~~this chapter~~ section 5727.30 of the Revised Code. The treasurer of state shall collect and the taxpayer shall pay all taxes and any penalties thereon. Payments may be made by mail, in person, by electronic funds transfer if required to do so by section 5727.311 of the Revised Code, or by any other means authorized by the treasurer of state. The treasurer of state may adopt rules concerning the methods and timeliness of payment.

(B) Each tax bill issued pursuant to this section shall separately reflect the taxes due, due date, and any other information considered necessary. Except as otherwise provided in division (F) of this section, the last day on which payment may be made without penalty shall be at least twenty but not more than thirty days from the date of mailing the tax bill. The treasurer of state shall mail the tax bill, and the mailing thereof shall be prima-facie evidence of receipt thereof by the taxpayer.

(C) The treasurer of state shall refund taxes as provided in this section, but no refund shall be made to a taxpayer having a delinquent claim certified pursuant to this section that remains unpaid. The treasurer of state may consult the attorney general regarding such claims.

(D) Within twenty days after receipt of any excise tax assessment certified to ~~him~~ the treasurer of state, the treasurer of state shall:

(1) Ascertain the difference between the total taxes shown on such assessment and the sum of all ~~advance~~ estimated payments, exclusive of any penalties thereon, previously made for that year.

(2) If the difference is a deficiency, the treasurer of state shall issue a tax bill.

(3) If the difference is an excess, the treasurer of state shall certify the name of the taxpayer and the amount to be refunded to the director of budget and management for payment to the taxpayer.

If the taxpayer has a deficiency for one tax year and an excess for another tax year, or any combination thereof for more than two years, the treasurer of state may determine the net result and, depending on such result, proceed to mail a tax bill or certify a refund.

(E) If a taxpayer fails to pay all taxes on or before the due date shown on the tax bill, or fails to make an ~~advance~~ estimated payment on or before the due date prescribed in division (B) of section 5727.31 of the Revised Code, but makes payment within ten calendar days of such date, the treasurer of state shall add a penalty equal to five per cent of the amount that should have been timely paid. If payment is not made within ten days of such date, the treasurer of state shall add a penalty equal to fifteen per cent of the amount that should have been timely paid. The treasurer of state shall prepare a delinquent claim for each tax bill on which penalties were added and certify such claims to the attorney general and tax commissioner. The attorney general shall proceed to collect the delinquent taxes and penalties thereon in the manner prescribed by law and notify the treasurer of state and tax commissioner of all collections.

(F) The last day on which a natural gas company that is not required to make payments under division (B) of section 5727.31 of the Revised Code may pay its taxes without penalty shall be the fifteenth day of March of the year following the year in which the commissioner is required to certify ~~his~~ the assessment of the company's tax under section 5727.38 of the Revised Code. The tax due date shall be reflected on the tax bill.

Sec. 5727.45. Four and two-tenths per cent of all excise taxes and penalties collected under sections 5727.01 to 5727.62 of the Revised Code shall be credited to the local government fund for distribution in accordance with section 5747.50 of the Revised Code, six-tenths of one per cent shall be credited to the local government revenue assistance fund for distribution in accordance with section 5747.61 of the Revised Code, and ninety-five and two-tenths per cent shall be credited to the general revenue fund.

~~On or before the first day of December, annually, the tax commissioner shall certify to the treasurer of state the amounts~~

~~to be credited to the local government fund and local government revenue assistance fund from the general revenue fund to ensure that the sum of the amounts credited to the local government fund and local government revenue assistance fund for the calendar year equals the sum that would have been credited during that year if the credit authorized by section 5727.391 of the Revised Code did not exist. The treasurer shall credit any such additional amounts to the two funds not later than the fifth day of December, annually.~~

Sec. 5727.47. A copy of each assessment certified pursuant to section 5727.23~~, 5727.231,~~ or 5727.38 of the Revised Code shall be mailed to the public utility, and its mailing shall be prima-facie evidence of its receipt by the public utility to which it is addressed. If a public utility objects to any assessment certified to it pursuant to such sections, it may file a petition for reassessment with the tax commissioner. The petition must be made in writing, signed by the authorized agent of the utility having knowledge of the facts, and filed with the commissioner, in person or by certified mail, within thirty days from the date that the assessment was mailed. If the petition is filed by certified mail, the date of the United States postmark placed on the sender's receipt by the postal employee to whom the petition is presented shall be treated as the date of filing. A true copy of the assessment objected to shall be attached to the petition and shall be incorporated by reference into the petition, but the failure to attach a copy of the assessment and incorporate it by reference does not invalidate the petition. The petition also shall indicate the utility's objections, but additional objections may be raised in writing if received prior to the date shown on the final determination by the commissioner.

Notwithstanding the fact that a petition has been filed, the tax with respect to the assessment objected to shall be paid as required by law. The acceptance of the tax payment by the treasurer of state or any county treasurer shall not prejudice any claim for taxes on final determination by the commissioner or final decision by the board of tax appeals or any court.

Upon receipt of a properly filed petition, the commissioner shall notify the treasurer of state or the auditor of each county to which the assessment objected to has been certified.

Unless the petitioner waives a hearing, the commissioner shall assign a time and place for the hearing on the petition and notify the petitioner of the time and place of the hearing by personal service or certified mail, but the commissioner may continue the hearing from time to time if necessary.

The commissioner may make such correction to the assessment as ~~he~~ the commissioner finds proper. The commissioner shall serve a copy of ~~his~~ the commissioner's final determination on the petitioner by personal service or certified mail, and ~~his~~ the commissioner's decision in the matter shall be final, subject to appeal as provided in section 5717.02 of the Revised Code. The commissioner also shall transmit a copy of ~~his~~ the final determination to the treasurer of state or applicable county auditor. In the absence of any further appeal, or when a decision of the board of tax appeals or of any court to which the decision has been appealed becomes final, the commissioner shall notify the public utility and, as appropriate, the treasurer of state who shall proceed under section 5727.42 of the Revised Code, or the applicable county auditor who shall proceed under section 5727.471 of the Revised Code. The notification is not subject to further appeal.

Sec. 5727.53. The taxes, fees, and penalties provided by ~~sections 5727.01 to 5727.62, inclusive, of the Revised Code,~~ this chapter that are remitted to the treasurer of state may be recovered by an action brought in the name of the state in the court of common pleas of Franklin ~~County~~ county, or of any county in which such public utility is doing business, or in which the line of any ~~street, suburban, or interurban railroad company or~~ railroad company is located, and such court of common pleas shall have jurisdiction of ~~such~~ the action regardless of the amount involved. The attorney general, on request of the tax commissioner, shall institute such action in the court of common pleas of Franklin ~~County~~ county or of any of such counties the commissioner directs. In any such action it shall be sufficient to allege that the tax, fee, or penalty sought to be recovered stands charged on the delinquent duplicate of the treasurer of state, and that the same has been unpaid for a period of thirty days after having been placed thereon. Sums recovered in any such action shall be paid into the state treasury ~~to the credit of the general revenue fund~~ in the same manner as the tax.

Sec. 5727.60. If a ~~public utility required to file a report with the tax commissioner by sections 5727.02 to 5727.62, inclusive, of the Revised Code,~~ person fails to ~~make such~~ file a report~~, it shall be subject to a penalty of ten dollars per day for each day's omission after the time limited for making such report~~ within the time prescribed by section 5727.08 or 5727.31 of the Revised Code, including any extensions of time granted by the tax commissioner, a penalty of fifty dollars per month, not to exceed five hundred dollars, may be imposed for each month or fraction of a month elapsing between the due date of the report, including any extensions, and the date the report was filed. The penalty under this section for failing to file a report required by section 5727.08 of the Revised Code shall be paid into the state general revenue fund. If the penalty is not paid within fifteen days after notice of the penalty is mailed to the person who failed to timely file the report, the tax commissioner shall certify the penalty as a claim to the attorney general for collection. The penalty under this section for failing to file the report required by section 5727.31 of the Revised Code shall be deposited into the state treasury in the same manner as the tax is deposited, and the commissioner may collect the penalty by assessment pursuant to section 5727.38 of the Revised Code. The tax commissioner may abate this penalty in full or in part.

Sec. 5727.61. Every public utility required by law to make returns, statements, or reports to the tax commissioner under sections 5727.01 to 5727.62 of the Revised Code shall file therewith, in such form as the commissioner prescribes, an affidavit subscribed and sworn to by a person or officer having knowledge of the facts setting forth that such public utility has not, during the preceding year, except as permitted by sections 3517.082, 3599.03, and 3599.031 of the Revised Code, directly or indirectly paid, used or offered, consented, or agreed to pay or use any of its money or property for or in aid of or opposition to a political party, a candidate for election or nomination to public office, or a political action committee, legislative campaign fund, or organization that supports or opposes any such candidate or in any manner used any of its money or property for any partisan political purpose whatever, or for the reimbursement or indemnification of any person for money or property so used. Such forms of affidavit as the commissioner prescribes shall be attached to or made a part of the return, statement, or report required to be made by such public utility under sections 5727.01 to 5727.62 of the Revised Code.

Sec. 5727.72. No officer, employee, or agent of a ~~telegraph~~

~~or telephone company~~ person subject to this chapter shall refuse to attend before ~~a lawful board of appraisers and assessors~~ the department of taxation when required to do so, or refuse to bring with ~~him~~ the officer, employee, or agent and submit for inspection any books or papers of such ~~company~~ person in ~~his~~ the officer's, employee's, or agent's possession, custody, or control, or refuse to answer any questions put to ~~him~~ the officer, employee, or agent concerning the organization, business, or property of such ~~company~~ person.

Sec. 5727.80. As used in sections 5727.80 to 5727.95 of the Revised Code:

(A) "Electric distribution company" means either of the following:

(1) A person who distributes electricity through a meter of an end user in this state;

(2) The end user of electricity in this state, if the end user obtains electricity that is not distributed or transmitted to the end user by an electric distribution company that is required to remit the tax imposed by section 5727.81 of the Revised Code. "Electric distribution company" does not include the end user of electricity in this state who self-generates electricity that is used directly by that end user on site.

(B) "Kilowatt-hour" means one thousand watt hours of electricity.

(C) "meter of an end user in this state" means the meter used to measure the last kilowatt-hour distributed by an electric distribution company to a location in this state, a meter located outside of this state that is used to measure the last kilowatt-hour consumed for the reporting period at a location in this state, or, if no meter is used, the estimated kilowatt-hours distributed in this state.

(D) "Person" has the same meaning as in section 5701.01 of the Revised Code, but also includes a municipal electric utility.

(E) "Municipal electric utility" means a municipal corporation that owns or operates a system for the distribution of electricity.

(F) "Qualified end user" means an end user of electricity that purchases more than three million kilowatt-hours of electricity for a calendar day for use as a raw material in a manufacturing process that features an electrochemical reaction in which electrons from direct current electricity remain a part of the product being manufactured.

Sec. 5727.81. (A) On and after May 1, 2001, for the purpose of raising revenue for public education and state and local government operations, an excise tax is hereby levied and imposed on an electric distribution company, at the following rates per kilowatt-hour of electricity distributed each month by the company through a meter of an end user in this state:

kilowatt-hours distributed to an end user	rate per kilowatt-hour
For the first 2,000	$.00465
For the next 2,001 to 15,000	$.00419
For 15,001 and above	$.00301

The electric distribution company shall base the monthly tax on a thirty-day average of total kilowatt-hours distributed to an end user through the meter of the end user. The electric distribution company shall pay the tax to the treasurer of state in accordance with section 5727.82 of the Revised Code. 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 of tax due.

(B) Each electric distribution company shall pay the tax imposed by this section in all of the following circumstances:

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

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

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

(C) The tax imposed by this section does not apply to the distribution of any kilowatt-hours of electricity to the federal government or to an end user for any day the end user is a qualified end user.

Sec. 5727.82. (A)(1) Except as provided in divisions (A)(2) and (D) of this section, by the twentieth day of each month, each electric distribution company required to pay the tax imposed by section 5727.81 of the Revised Code shall file with the treasurer of state a return as prescribed by the tax commissioner and shall make payment of the full amount of tax due for the preceding month. The first payment of this tax shall be made on or before June 20, 2001.

(2) If the electric distribution company required to pay the tax imposed by section 5727.81 of the Revised Code is a municipal electric utility, it may retain in its general fund that portion of the tax on the kilowatt-hours distributed to end users located within the boundaries of the municipal corporation. However, the municipal electric utility shall make payment in accordance with division (A)(1) of this section of the tax due on the

kilowatt-hours distributed to end users located outside the boundaries of the municipal corporation.

(3) The return shall be signed by the company required to file it, or an authorized employee, officer, or agent of the company. The treasurer shall mark on the return the date it was received and indicate payment or nonpayment of the tax shown to be due on the return. The treasurer immediately shall transmit all returns to the tax commissioner. The return shall be deemed filed when received by the treasurer.

(B) Any electric distribution company required by this section to file a return who fails to file and pay it within the period prescribed shall pay an additional charge of fifty dollars or ten per cent of the tax required to be paid for the reporting period, whichever is greater. The tax commissioner may collect the additional charge by assessment pursuant to section 5727.89 of the Revised Code. The commissioner may abate all or a portion of the additional charge and may adopt rules governing such abatements.

(C) If any tax due is not paid timely in accordance with this section, the electric distribution company liable for the tax shall pay interest, calculated at the rate per annum prescribed by section 5703.47 of the Revised Code, from the date the tax payment was due to the date of payment or to the date an assessment is issued, whichever occurs first. Interest shall be paid in the same manner as the tax, and the commissioner may collect the interest by assessment pursuant to section 5727.89 of the Revised Code.

(D) Not later that the tenth day of each month, a qualified end user shall report in writing to the electric distribution company that distributes electricity to the end user the kilowatt-hours that were consumed as a qualified end user for the prior month and the number of days, if any, on which the end user was not a qualified end user. For each calendar day the end user was not a qualified end user, the end user shall report in writing to the electric distribution company the number of kilowatt-hours used on that day, and the electric distribution company shall pay the tax imposed under section 5727.81 of the Revised Code on each kilowatt-hour that was not distributed to a qualified end user. The electric distribution company may rely in good faith on a qualified end user's report filed under this division, and if it is determined that the end user was not a qualified end user for any calendar day or the quantity of electricity used by the qualified end user was overstated, the tax commissioner shall assess and collect any tax imposed under section 5727.81 of the Revised Code directly from the qualified end user. On request by the commissioner, each end user reporting to an electric distribution company that it is a qualified end user shall provide documentation that establishes the volume of electricity consumed daily by the qualified end user.

Sec. 5727.83. (A) If the total amount of tax required to be remitted by an electric distribution company to this state under section 5727.82 of the Revised Code for any calendar year equals or exceeds fifty thousand dollars, the company shall remit each monthly tax payment in the second ensuing and each succeeding tax year by electronic funds transfer as prescribed by divisions (B) and (C) of this section. For the first year the tax levied by section 5727.81 of the Revised Code is imposed, any electric distribution company that, prior to the effective date of this section, was an electric company or a rural electric company required to remit taxes by electronic funds transfer under section 5727.311 of the Revised Code shall remit the tax imposed by section 5727.81 of the Revised Code by electronic funds transfer in accordance with this section.

If the tax payment for each of two consecutive years is less than fifty thousand dollars, the company is relieved of the requirement to remit taxes by electronic funds transfer for the year that next follows the second of the consecutive years in which the tax payment is less than fifty thousand dollars, and is relieved of that requirement for each succeeding year unless the tax payment in a subsequent year equals or exceeds fifty thousand dollars.

The tax commissioner shall notify each electric distribution company required to remit taxes by electronic funds transfer of the company's obligation to do so, shall maintain an updated list of those companies, and shall timely certify to the treasurer of state the list and any additions thereto or deletions therefrom. Failure by the tax commissioner to notify a company subject to this section to remit taxes by electronic funds transfer does not relieve the company of its obligation to remit taxes in that manner.

(B) An electric distribution company required by this section to remit payments by electronic funds transfer shall remit such payments to the treasurer of state in the manner prescribed by rules adopted by the treasurer of state under section 113.061 of the Revised Code, and on or before the dates specified under section 5727.82 of the Revised Code. The payment of taxes by electronic funds transfer does not affect a company's obligation to file the monthly return as required under section 5727.82 of the Revised Code.

(C) An electric distribution company required by this section to remit taxes by electronic funds transfer may apply to the treasurer of state in the manner prescribed by the treasurer of state to be excused from that requirement. The treasurer of state may excuse the company from remittance by electronic funds transfer for good cause shown for the period of time requested by the company or for a portion of that period. The treasurer of state shall notify the tax commissioner and the company of the treasurer of state's decision as soon as is practicable.

(D) If an electric distribution company required by this section to remit taxes by electronic funds transfer remits those taxes by some means other than by electronic funds transfer as prescribed by this section and the rules adopted by the treasurer of state, and the treasurer of state determines that such failure was not due to reasonable cause or was due to willful neglect, the treasurer of state shall notify the tax commissioner of the failure to remit by electronic funds transfer and shall provide the commissioner with any information used in making that determination. The tax commissioner may collect an additional charge by assessment in the manner prescribed by section 5727.89 of the Revised Code. The additional charge shall equal five per cent of the amount of the taxes required to be paid by electronic funds transfer, but shall not exceed five thousand dollars. Any additional charge assessed under this section is in addition to any other penalty or charge imposed under this chapter, and shall be considered as revenue arising from the tax imposed under this chapter. The tax commissioner may abate all or a portion of such a charge and may adopt rules governing such abatements.

No additional charge shall be assessed under this division against an electric distribution company that has been notified of its obligation to remit taxes under this section and that remits its first two tax payments after such notification by some means other than electronic funds transfer. The additional charge may be assessed upon the remittance of any subsequent tax payment that the company remits by some means other than electronic funds transfer.

Sec. 5727.84. (A) As used in this section and sections 5727.85 and 5727.86 of the Revised Code:

(1) "School district" means a city, local, or exempted village school district.

(2) "Joint vocational school district" means a joint vocational school district created under section 3311.16 of the Revised Code, and includes a cooperative education school district created under section 3311.52 or 3311.521 of the Revised Code.

(3) "Taxing district" means any taxing unit, as defined in section 5705.01 of the Revised Code, excluding school districts and joint vocational school districts.

(4) "State education aid" means the sum of the state basic aid and state special education aid amounts computed for a school district under divisions (A) and (B) of section 3317.022 of the Revised Code.

(5) "Adjusted total taxable value" has the same meaning as in section 3317.02 of the Revised Code.

(6) "Non-transmission/distribution property" means taxable property described in division (A) or (E) of section 5727.111 of the Revised Code, including nuclear fuel materials and assemblies and excluding transmission and distribution taxable property, apportioned to a school district, joint vocational school district, or taxing district pursuant to section 5727.15 of the Revised Code.

(7) "1998 assessment rate" means the percentage of true value at which nontransmission/distribution property was assessed for taxation for tax year 1998.

(8) "State education aid offset" means the sum of the amounts certified for each school district under division (D) of this section.

(9) "Fixed-sum levy" means a tax levied on property at whatever rate is required to produce a specified amount of tax

money or to pay debt charges, and includes school district emergency levies imposed pursuant to section 5705.194 of the Revised Code.

(10) "Fixed-rate levy" means any tax levied on property other than a fixed-sum levy.

(B) All money collected under this chapter arising from the tax imposed by section 5727.81 of the Revised Code shall be credited as follows:

(1) Sixty-three per cent, plus the amount of the state education aid offset, shall be credited to the general revenue fund, except that:

(a) Four and two-tenths per cent of the sixty-three per cent shall be credited to the local government fund, for distribution in accordance with section 5747.50 of the Revised Code; and

(b) Six-tenths of one per cent of the sixty-three per cent shall be credited to the local government revenue assistance fund, for distribution in accordance with section 5747.61 of the Revised Code.

(2) Eleven and one-tenth per cent shall be credited to the local government property tax replacement fund, which is hereby created In the state treasury for the purpose of making the payments described in section 5727.86 of the Revised Code;

(3) Twenty-five and nine-tenths per cent, less an amount equal to the state education aid offset, shall be credited to the school district property tax replacement fund, which is hereby created in the state treasury for the purpose of making the payments described in section 5727.85 of the Revised Code.

(C) Not later than June 1, 2002, the tax commissioner shall certify to the department of education, for each school district, the taxable value of its non-transmission/distribution property for tax year 2001 determined as if that property had been assessed at the 1998 assessment rate, rather than at twenty-five per cent of true value.

(D) Not later than July 31, 2002, the department of education shall determine, for each school district, the difference obtained by subtracting the amount described in division (D)(2) of this section from the amount described in division (D)(1) of this section, and certify that amount to the director of budget and management:

(1) The state education aid computed for the district for fiscal year 2003;

(2) The state education aid that would have been computed for the district for fiscal year 2003 if the district's adjusted total taxable value reflected the amount certified under division (C) of this section.

Sec. 5727.85. (A) As used in this section:

(1) "initial property tax loss" means the sum of the amounts computed for a school district under divisions (d)(1) and (2) of this section.

(2) "current net revenue loss" means the amount computed for a school district under division (C)(2) of this section.

(3) "consumer price index" means the consumer price index (all items, all urban consumers) prepared by the bureau of labor statistics of the United States department of labor.

(4) "School district emergency levies" means tax levies imposed pursuant to section 5705.194 of the Revised Code.

(B) not later than June 1, 2002, 2003, 2004, 2005, and 2006, the tax commissioner shall certify to the department of education all of the following for EACH school district:

(1) THE DIFFERENCE OBTAINED BY subtracting the amount described in division (B)(1)(b) from the amount described in division (B)(1)(a) of this section.

(a) THE TAXES that would have been CHARGED AND PAYABLE AGAINST NON-TRANSMISSION/DISTRIBUTION PROPERTY LISTED FOR TAXATION FOR the preceding TAX YEAR from fixed-rate levies determined as if that property had been assessed at the 1998 assessment rate rather than twenty-five per cent of true value;

(b) THE TAXES CHARGED AND PAYABLE AGAINST NON-TRANSMISSION/DISTRIBUTION PROPERTY LISTED FOR TAXATION FOR the preceding TAX YEAR from fixed-rate levies.

(2) The difference OBTAINED BY subtracting the amount described in division (b)(2)(b) from the amount described in division (B)(2)(a) of this section, and then subtracting from that difference the amount described in division (B)(2)(c) of this section:

(a) THE TAXES that would have been CHARGED AND PAYABLE AGAINST NON-TRANSMISSION/DISTRIBUTION PROPERTY LISTED FOR TAXATION FOR the preceding TAX YEAR from fixed-sum levies determined as if that property had been assessed at the 1998 assessment rate rather than twenty-five per cent of true value;

(b) THE TAXES CHARGED AND PAYABLE AGAINST NON-TRANSMISSION/DISTRIBUTION PROPERTY LISTED FOR TAXATION FOR the preceding TAX YEAR from fixed-sum levies;

(c) for each fixed-sum levy imposed by the district in the preceding tax year, the total taxable value of the district in that year multiplied by one-fourth of one mill.

(3) THE TAXABLE VALUE OF NON-TRANSMISSION/DISTRIBUTION PROPERTY FOR the preceding TAX YEAR determined as if THAT PROPERTY HAD BEEN ASSESSED AT the 1998 assessment rate rather than

twenty-five per cent of true value.

(C) for fiscal years 2003, 2004, 2005, 2006, AND 2007, the department of education shall determine both of the following for each school district:

(1) the difference obtained by subtracting the amount described in division (C)(1)(b) from the amount described in division (C)(1)(a) of this section:

(a) the state education aid computed for the district FOR the FISCAL YEAR on the basis of the adjusted total taxable value;

(b) the state education aid that would be computed for the district FOR the FISCAL year if the district's adjusted total taxable value reflected the amount certified under division (B)(3) of this section.

(2) the difference obtained by subtracting the amount computed under division (C)(1) of this section from the sum of the amounts CERTIFIED under divisions (B)(1) and (2) of this section. the department of education shall certify the amount so DETERMINED to the director of budget and management not later than the thirty-first day of july following receipt of the tax commissioner's certification under division (b) of this section.

(D) NOT LATER THAN JUNE 1, 2002, THE TAX COMMISSIONER SHALL DETERMINE the sum of the amounts described in divisions (D)(1) and (2) of this section FOR EACH school district:

(1) THE DIFFERENCE OBTAINED BY subtracting the amount described in division (d)(1)(b) from the amount described in division (D)(1)(a) of this section.

(a) THE SUM OF (i) THE TAXES CHARGED AND PAYABLE AGAINST non-transmission/distribution property LISTED FOR TAXATION FOR TAX YEAR 1998 from fixed-rate levies, excluding the portion of such taxes charged against NUCLEAR FUEL MATERIALS AND ASSEMBLIES, AND

(ii) the average of the annual TAXES CHARGED AND PAYABLE AGAINST NUCLEAR FUEL MATERIALS AND ASSEMBLIES LISTED FOR TAXATION FOR TAX YEARs 1996, 1997, and 1998 from fixed-rate levies;

(b) THE sum of (i) THE TAXES that would have been CHARGED AND PAYABLE AGAINST non-transmission/distribution property LISTED FOR TAXATION FOR TAX YEAR 1998 from fixed-rate levies determined as if that property had been assessed at twenty-five per cent rather than the 1998 assessment rate, excluding the portion of such taxes charged against NUCLEAR FUEL MATERIALS AND ASSEMBLIES, AND (ii) the average of the annual TAXES that would have been CHARGED AND PAYABLE AGAINST NUCLEAR FUEL MATERIALS AND ASSEMBLIES LISTED FOR TAXATION FOR TAX YEARs 1996, 1997, and 1998 from fixed-rate levies determined as if that property had been assessed at twenty-five per cent rather than the 1998 assessment rate.

(2) the difference OBTAINED BY subtracting the amount described in division (D)(2)(b) from the amount described in division (D)(2)(a) of this section:

(a) THE SUM OF (i) THE TAXES CHARGED AND PAYABLE AGAINST NON-TRANSMISSION/DISTRIBUTION PROPERTY LISTED FOR TAXATION FOR TAX YEAR 1998 from fixed-sum levies, excluding the portion of such taxes charged against NUCLEAR FUEL MATERIALS AND ASSEMBLIES, AND (ii) the average of the annual TAXES CHARGED AND PAYABLE AGAINST NUCLEAR FUEL MATERIALS AND ASSEMBLIES LISTED FOR TAXATION FOR TAX YEARs 1996, 1997, and 1998 from fixed-sum levies;

(b) THE sum of (i) THE TAXES that would have been CHARGED AND PAYABLE AGAINST NON-TRANSMISSION/DISTRIBUTION PROPERTY LISTED FOR TAXATION FOR TAX YEAR 1998 from fixed-sum levies determined as if that property had been assessed at twenty-five per cent rather than the 1998 assessment rate, excluding the portion of such taxes charged against NUCLEAR FUEL MATERIALS AND ASSEMBLIES, AND (ii) the average of the annual TAXES that would have been CHARGED AND PAYABLE AGAINST NUCLEAR FUEL MATERIALS AND ASSEMBLIES LISTED FOR

TAXATION FOR TAX YEARs 1996, 1997, and 1998 from fixed-sum levies determined as if that property had been assessed at twenty-five per cent rather than the 1998 assessment rate.

FOR THE PURPOSE OF DIVISIONS (D)(1) AND (2) OF THIS SECTION, TAXES CHARGED AND PAYABLE SHALL BE COMPUTED ON THE BASIS OF THE PRELIMINARY ASSESSMENT ISSUED PURSUANT TO SECTION 5727.23 OF THE REVISED CODE FOR the TAX YEARs specified.

(E)(1) not later than the thirty-first day of july of 2007 through 2016, the department of education shall determine all of the following for each school district:

(a) the difference obtained by subtracting the district's state education aid computed for fiscal year 2003 from the district's state education aid computed for the current fiscal year;

(b) the inflation-adjusted property tax loss for the preceding calendar year. the inflation-adjusted property tax loss equals the initial property tax loss plus the product obtained by MULTIPLYING the initial property tax loss by the cumulative percentage increase in the consumer price index from January 1, 2002, to the thirty-first day of December of the year preceding the determination.

(c) the difference obtained by subtracting the amount computed under division (E)(1)(a) from the amount computed under division (E)(1)(b) of this section.

(2) if the amount computed under division (E)(1)(c) of this section is greater than or equal to zero, no payment shall be made to the school district from the property tax replacement fund for the current or any ensuing fiscal year.

(3) If the amount computed under division (E)(1)(c) of this section is less than zero, the department of education shall determine the district's current net revenue loss in the same

manner as current net revenue loss is determined under division (C)(2) of this section, except that the department shall subtract from the current net revenue loss the amount of taxes charged from school district emergency levies, as certified by the tax commissioner. the department of education shall certify the resulting amount to the director of budget and management not later than the thirty-first day of July of each fiscal year beginning with fiscal year 2008 and ending with fiscal year 2017. the tax commissioner shall certify the quantities described in divisions (B)(1), (2), and (3) of this section to the DEPARTMENT of education as otherwise required by division (B) of this section, but for the tax year preceding the fiscal year for which the computation is made under this division. the tax commissioner also shall certify the taxes charged from school district emergency levies.

(F) for fiscal years 2003 through 2016, the director of budget and management shall pay FROM the school district property tax replacement fund to the county undivided income tax fund in the proper county treasury one-half of the amount certified for that year under divisions (C)(2) and (E)(3) of this section on or before each of the days prescribed for the settlements under divisions (A) and (C) of section 321.24 of the Revised Code. the county treasurer shall distribute such amounts to the proper school district as if they had been levied and collected as taxes, and the school district shall apportion the amounts so received among its funds in the same proportions as if those amounts had been levied and collected as taxes.

(G) not later than the thirty-first day of July of 2002 through 2016, the tax COMMISSIONER shall determine, for each joint vocational school district, the sum of the amounts described in divisions (B)(1) and (2) of this section, and certify that sum to the director of budget and management. The director shall pay FROM the school district property tax replacement fund to the county undivided income tax fund in the proper county treasury one-half of the amount so certified for that year on or before each of the days prescribed for the settlements under divisions (A) and (C) of section 321.24 of the Revised Code. the county treasurer shall distribute such amounts to the proper joint vocational school district as if they had been levied and collected as taxes, and the joint vocational school district shall apportion the amounts so received among its funds in the same proportions as if those amounts had been levied and collected as taxes.

(H) if, in any fiscal year for which payments are made under division (F) or (G) of this section, the amount credited to the school district property tax replacement fund exceeds the amount so distributed, the director of budget and management shall distribute the excess among school districts and joint vocational school districts. the amount distributed to each district shall bear the same proportion to the excess remaining in the fund as the ADM of the district bears to the ADM of all of the districts. for the purpose of this division, "ADM" means the formula ADM in the case of a school district, and the average daily membership reported under section 3317.03 of the Revised Code in the case of a joint vocational school district.

If, in the opinion of the director of budget and management, the excess remaining in the school district property tax replacement fund in any year is not sufficient to warrant distribution under this division, the excess shall remain to the credit of the fund.

AMOUNTS RECEIVED BY A SCHOOL DISTRICT or joint vocational school district UNDER THIS DIVISION SHALL be used exclusively for capital IMPrOVEMENTS.

(I) if all or a part of the territory of a school district or joint vocational school district is merged with or transferred to another district, the tax commissioner shall adjust the payments made under this section to each of the districts in proportion to the taxable value of non-transmission/distribution property APPORTIONED to the merged or transferred territory pursuant to section 5727.15 of the Revised Code.

(J) There is hereby created the electric property tax study Committee, effective January 1, 2011. The committee shall consist of the following seven members: the tax commissioner, three members of the senate appointed by the president of the senate, and three members of the house of representatives appointed by the speaker of the house of representatives. The appointments shall be made not later than January 31, 2011. The tax commissioner shall be the chairperson of the committee.

The committee shall study the extent to which each school district or joint vocational school district has been compensated, under sections 5727.84 and 5727.85 of the Revised Code as enacted by ________ Bill No. _____ of the 123rd general assembly and any subsequent acts, for the property tax loss caused by the reduction in the assessment rates for electric and rural electric company tangible personal property. Not later than June 30, 2011, the committee shall issue a report of its findings, including any recommendations for providing additional compensation for the property tax loss or regarding remedial legislation, to the President of the Senate and the Speaker of the house of representatives, at which time the committee shall cease to exist.

The Department of Taxation and department of education shall provide such information and assistance as is required for the committee to carry out its duties.

Sec. 5727.86. (A) not later than the thirty-first day of july of 2002 through 2016, the tax commissioner shall determine, for each taxing DISTRICT, THE amounts described in divisions (A)(1) and (2) of this section:

(1) THE DIFFERENCE OBTAINED BY subtracting the amount described in division (a)(1)(b) from the amount described in division (A)(1)(a) of this section.

(a) THE TAXES that would have been CHARGED AND PAYABLE AGAINST NON-TRANSMISSION/DISTRIBUTION PROPERTY LISTED FOR TAXATION FOR the preceding TAX YEAR from fixed-rate levies determined as if that property had been assessed at the 1998 assessment rate rather than twenty-five per cent of true value;

(b) THE TAXES CHARGED AND PAYABLE AGAINST NON-TRANSMISSION/DISTRIBUTION PROPERTY LISTED FOR TAXATION FOR the preceding TAX YEAR from fixed-rate levies.

(2) the difference OBTAINED BY subtracting the amount described in division (A)(2)(b) from the amount described in division (a)(2)(a) of this section, and then subtracting from that difference the amount described in division (A)(2)(c) of this section:

(a) THE TAXES that would have been CHARGED AND PAYABLE AGAINST NON-TRANSMISSION/DISTRIBUTION PROPERTY LISTED FOR TAXATION FOR the preceding TAX YEAR from fixed-sum levies determined as if that property had been assessed at the 1998 assessment rate rather than twenty-five per cent of true value;

(b) THE TAXES CHARGED AND PAYABLE AGAINST NON-TRANSMISSION/DISTRIBUTION PROPERTY LISTED FOR TAXATION FOR the preceding TAX YEAR from fixed-sum levies;

(c) for each fixed-sum levy imposed by the district in the preceding tax year, the total taxable value of the district for the preceding tax year multiplied by one-fourth of one mill.

(B) not later than July 31, 2002, 2003, 2004, 2005, and 2006, the tax commissioner shall certify to the director of budget and management, for each taxing district, the sum of the amounts determined that year under divisions (A)(1) and (2) of this section. the director shall pay those sums in the manner prescribed by division (E) of this section.

(C) not later than July 31, 2007, 2008, 2009, 2010, and 2011, the tax commissioner shall determine, for each taxing district, the sum of the amounts determined that year under divisions (A)(1) and (2) of this section, and shall certify an amount equal to eighty per cent of that sum to the director of budget and management. the director shall pay the amount certified in the manner prescribed by division (e) of this section.

(d) not later than July 31, 2012, 2013, 2014, 2015, and 2016, the tax commissioner shall determine, for each taxing district, the sum of the amounts determined that year under divisions (a)(1) and (2) of this section, and shall certify an amount equal to the FolLOWING percentage of that sum to the director of budget and management:

YEAR	PERCENTAGE
2012	66.7%
2013	53.4%
2014	40.1%
2015	26.8%
2016	13.5%

The director shall pay the amount certified in the manner prescribed by division (E) of this section.

(E) Payments required to be made under divisions (B), (C), and (D) of this section shall be paid FROM the local government property tax replacement fund to the county undivided income tax fund in the proper county treasury. one-half of the amount certified under those divisions shall be paid on or before each of the days prescribed for the settlements under divisions (A) and (C) of section 321.24 of the Revised Code. the county treasurer shall distribute such amounts to the proper taxing district as if they had been levied and collected as taxes, and the taxing district shall apportion the amounts so received among its funds in the same proportions as if those amounts had been levied and collected as taxes.

(F) For each fiscal year that the tax commissioner determines that there is a balance in the local government property tax replacement fund that exceeds the total amount required to be paid to taxing districts under division (E) of this section, that balance shall be distributed to each county as follows:

(1) One-half shall be distributed to each county in proportion to each county's population;

(2) One-half shall be distributed to each county in the proportion that the amount determined under division (B) of this section in 2002 for all taxing districts in the county is of the amounts so determined in 2002 for all taxing districts to which payments are required to be made under division (E) of this section.

The amounts distributed to each county under this division shall be distributed each year by the county budget commission to each taxing district in the county in the proportion that the district's current taxes charged and payable are of the total current taxes charged and payable of all the taxing districts in the county. As used in this division, "current taxes charged and payable" means the taxes charged and payable as most recently determined for taxing districts in the county.

(G) If all or a part of the territories of two or more taxing districts are merged, or UNiNCORPORATED territory of a township is annexed by a municipal CORPORATION, the tax commissioner shall adjust the payments made under this section to each of the taxing districts in proportion to the taxable value of non-transmission/distribution property APPORTIONED to the merged or annexed territory pursuant to section 5727.15 of the Revised Code, or as otherwise provided by a written agreement between the legislative authorities of the taxing districts certified to the tax commissioner not later than the first day of June of the calendar year in which the payment is to be made.

Sec. 5727.87. (A) As used in this section:

(1) "Administrative fees" means the dollar percentages allowed by the county auditor for services or by the county treasurer as fees, or paid to the credit of the real estate assessment fund, under divisions (A) and (B) of section 319.54 and division (A) of section 321.26 of the Revised Code.

(2) "Administrative fee loss" means A county's loss of administrative fees caused by the reduction of the tangible personal property assessment rate under section 5727.111 of the Revised Code, as amended by ___ Bill No. ___ of the 123rd general assembly, determined as follows:

(a) For purposes of the determination under division (B) of this section in years 2002 through 2006, the administrative fee loss shall be determined by subtracting from The dollar amount of administrative fees collected in the county for calendar year 1998, the dollar amount of administrative fees that would have been collected in the county in calendar year 1998 if the tangible personal property of an electric company and a rural electric company were assessed at the rate required by section 5727.111 of the Revised Code, as amended by ___ Bill No. ___ of the 123rd general assembly.

(b) For purposes of the determination under division (B) of this section in years 2007 through 2011, the Administrative fee loss shall be determined by subtracting from the dollar amount of administrative fees collected in the county in calendar year 1998, the dollar amount of administrative fees collected in the county in the current calendar year.

(B) Not later than June 1, 2002 through 2011, the county auditor shall determine the administrative fee loss for the county and certify it to the county budget commission. Notwithstanding divisions (F) and (G) of section 5727.85 and division (E) of section 5727.86 of the Revised Code, prior to distribution by the county treasurer of the payments provided under those divisions, the county budget commission shall deduct from those payments the amount of the administrative fee loss certified by the county auditor, as follows:

(1) Seventy per cent of the administrative fee loss shall be deducted from the payments provided under divisions (F) and (G) of section 5727.85 of the Revised Code;

(2) Thirty per cent of the administrative fee loss shall be deducted from the payments provided under division (E) of section 5727.86 of the Revised Code.

(C) On or before each of the days prescribed for the settlements under divisions (A) and (C) of section 321.24 of the Revised Code in years 2002 through 2011, the county budget commission shall pay one-half of the amount of the administrative fee loss to the county auditor, county treasurer, or real estate assessment fund as if the amount had been allowed as administrative fees, and shall deposit the amount in the same funds as if allowed as administrative fees.

After payment of the administrative fee loss on or before August 10, 2011, all payments under this section shall cease.

Sec. 5727.88. The tax commissioner shall administer sections 5727.80 to 5727.95 of the Revised Code and may adopt such rules as are necessary for the administration and enforcement of the tax imposed by section 5727.81 of the Revised Code. The rules shall prescribe the method for determining whether electricity is distributed through the meter of an end user in this state for purposes of section 5727.81 of the Revised Code. Upon request of the tax commissioner, the public utilities commission shall assist the tax commissioner by providing information regarding any electric distribution company that is subject to regulation by the commission.

Sec. 5727.89. (A) The tax commissioner may make an assessment, based on any information in the commissioner's possession, against any electric distribution company that fails to file a return or pay any tax, interest, or additional charge as required by sections 5727.80 to 5727.95 of the Revised Code.

When information in the possession of the tax commissioner indicates that an electric distribution company liable for the tax imposed by section 5727.81 of the Revised Code has not paid the full amount of tax due, the commissioner may audit a representative sample of the company's business and may issue an assessment based on the audit. The commissioner shall give the company assessed written notice of the assessment by personal service or certified mail.

A penalty of fifteen per cent shall be added to all amounts assessed under this section. The commissioner may adopt rules providing for the remission of penalties.

(B) Unless the party assessed files with the tax commissioner within thirty days after service of the notice of assessment, either personally or by certified mail, a written petition for reassessment signed by the party assessed or the party's authorized agent having knowledge of the facts, the assessment is final and the amount of the assessment is due and payable from the party assessed to the treasurer of state. The petition shall indicate the objections of the party assessed, but additional objections may be raised in writing prior to the date shown on the final determination of the tax commissioner. The commissioner shall grant the petitioner a hearing on the petition, unless waived by the petitioner.

(C) The commissioner may make any correction to the assessment that the commissioner finds proper and shall issue a final determination thereon. The commissioner shall serve a copy of the final determination on the petitioner either by personal service or by certified mail, and the commissioner's decision in the matter is final, subject to appeal under section 5717.02 of the Revised Code.

(D) After an assessment becomes final, if any portion of the assessment, including accrued interest, remains unpaid, a certified copy of the commissioner's entry making the assessment final may be filed in the office of the clerk of the court of common pleas in the county in which the party assessed resides or in which the party's business is conducted. If the party assessed maintains no place of business in this state and is not a resident of this state, the certified copy of the entry may be filed in the office of the clerk of the court of common pleas of Franklin county.

The clerk, immediately upon the filing of the entry, shall enter a judgment for the state against the person assessed in the amount shown on the entry. The judgment may be filed by the clerk in a loose-leaf book entitled "special judgments for the kilowatt-hour tax," and shall have the same effect as other judgments. Execution shall issue upon the judgment upon request of the tax commissioner, and all laws applicable to sales on execution shall apply to sales made under the judgment.

The portion of the assessment not paid within thirty days after the day the assessment was issued shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the day the tax commissioner issues the assessment until the day the assessment is paid. Interest shall be paid in the same manner as the tax and may be collected by the issuance of an assessment under this section.

(E) If the tax commissioner believes that collection of the tax imposed by section 5727.81 of the Revised Code will be jeopardized unless proceedings to collect or secure collection of the tax are instituted without delay, the commissioner may issue a jeopardy assessment against the electric distribution company liable for the tax. Upon issuance of the jeopardy assessment, the commissioner immediately shall file an entry with the clerk of the court of common pleas in the manner prescribed by division (D) of this section. Notice of the jeopardy assessment shall be served on the party assessed or the party's legal representative within five days of the filing of the entry with the clerk. The total amount assessed is immediately due and payable, unless the party assessed files a petition for reassessment in accordance with division (B) of this section and provides security in a form satisfactory to the commissioner and in an amount sufficient to satisfy the unpaid balance of the assessment. Full or partial payment of the assessment does not prejudice the commissioner's consideration of the petition for reassessment.

(F) All money collected by the tax commissioner under this section shall be paid to the treasurer of state, and when paid shall be considered as revenue arising from the tax imposed by section 5727.81 of the Revised Code.

Sec. 5727.90. No assessment of the tax imposed by section 5727.81 of the Revised Code shall be made by the tax commissioner more than four years after the date on which the return for the period assessed was due or filed, whichever date is later. This section does not bar an assessment when any of the following occur:

(A) The party assessed failed to file a return as required by section 5727.82 of the Revised Code;

(B) The party assessed knowingly filed a false or fraudulent return;

(C) The party assessed and the tax commissioner waived in writing the time limitation.

Sec. 5727.91. (A) The treasurer of state shall refund the amount of tax paid under section 5727.81 of the Revised Code that was paid illegally or erroneously, or paid on an illegal or erroneous assessment. An electric distribution company shall file an application for a refund with the tax commissioner on a form prescribed by the commissioner, within four years of the illegal or erroneous payment of the tax.

Upon the filing of the application, the commissioner shall determine the amount of refund due and certify that amount to the director of budget and management and the treasurer of state for payment from the tax refund fund under section 5703.052 of the Revised Code. If the application for refund is for taxes paid on an illegal or erroneous assessment, the tax commissioner shall include in the certified amount interest calculated at the rate per annum under section 5703.47 of the Revised Code from the date of overpayment to the date of the commissioner's certification.

(B) If an electric distribution company entitled to a refund of taxes under this section is indebted to the state for any tax or fee administered by the tax commissioner that is paid to the state or any charge, penalty, or interest arising from such a tax or fee, the amount refundable may be applied in satisfaction of the debt. If the amount refundable is less than the amount of the debt, it may be applied in partial satisfaction of the debt. If the amount refundable is greater than the amount of the debt, the amount remaining after satisfaction of the debt shall be refunded. If the electric distribution company has more than one such debt, any debt subject to section 5739.33 or division (G) of section 5747.07 of the Revised Code shall be satisfied first. This section applies only to debts that have become final.

(C) Any electric distribution company that can substantiate to the tax commissioner that the tax imposed by section 5727.81 of the Revised Code was paid on electricity ultimately consumed at a location outside of this state may claim a refund in the manner and within the time period prescribed in division (A) of this section.

Sec. 5727.92. Every electric distribution company liable for the tax imposed by section 5727.81 of the Revised Code shall keep complete and accurate records of all electric distributions and other records as required by rule of the tax commissioner. The records shall be preserved for four years after the return for the taxes to which the records pertain is due or filed, whichever is later. The company shall make the records available for inspection by the tax commissioner or the commissioner's authorized agent, upon request of the commissioner or such agent.

Sec. 5727.93. (A) No person shall distribute electricity to a meter of an end user in this state who is not registered with the tax commissioner as an electric distribution company.

(B) Each person required to register under division (A) of this section shall register prior to distributing electricity to a meter of an end user in this state. The tax commissioner shall prescribe the form of the registration application. The commissioner shall assign an identification number to each registration and notify the registrant of that number. The registration shall remain in effect until canceled in writing by the registrant upon the cessation of distributing electricity to a meter of an end user in this state or until such registration is denied, revoked, or canceled by the commissioner. A registration may be revoked or canceled by the tax commissioner as provided by Chapter 119. of the Revised Code, for failure of an electric distribution company to pay the tax imposed by section 5727.81 of the Revised Code or to comply with sections 5727.80 to 5727.95 of the Revised Code. An electric distribution company whose registration is denied may petition for a hearing, in accordance with the procedures set forth in divisions (B) and (C) of section 5727.89 of the Revised Code, not later than thirty days after receiving the denial, and the final determination is subject to appeal under section 5717.02 of the Revised Code.

(C) The tax commissioner shall maintain a list of the electric distribution companies registered under this section. The list shall contain the name and address of each company registered by the commissioner. The list and subsequent updates of it may be furnished to companies on the list and shall be open to public inspection in the office of the tax commissioner.

Sec. 5727.94. Each electric distribution company required to pay the tax imposed by section 5727.81 of the Revised Code shall provide to its customers in this state the statement required by section 4933.33 of the Revised Code.

Sec. 5727.95. (A) No electric distribution company shall fail to file any return or report required to be filed pursuant to section 5727.82 of the Revised Code, or file or cause to be filed any incomplete, false, or fraudulent return, report, or statement, or aid or abet another in the filing of any false or fraudulent return, report, or statement.

(B) No person shall distribute electricity to a meter of an end user in this state without holding a valid registration issued under section 5727.93 of the Revised Code.

Sec. 5727.99. (A) Whoever violates section 5727.55 of the Revised Code shall be ~~fines~~ fined not less than one hundred nor more than one thousand dollars.

(B) Whoever violates section 5727.71 of the Revised Code shall be fined not more than five hundred dollars and imprisoned not more than thirty days.

(C) Whoever violates section 5727.72 or 5727.73 of the Revised Code shall be fined not more than five hundred dollars or imprisoned not more than thirty days, or both.

(D) Whoever violates sections 5727.80 to 5727.83, or sections 5727.88 to 5727.95 of the Revised Code or any rule adopted by the tax commissioner under those sections, is guilty of a misdemeanor of the first degree on the first offense; on each subsequent offense, the person is guilty of a felony of the fourth degree.

Sec. 5733.04. As used in this chapter:

(A) "Issued and outstanding shares of stock" applies to nonprofit corporations, as provided in section 5733.01 of the Revised Code, and includes, but is not limited to, membership certificates and other instruments evidencing ownership of an interest in such nonprofit corporations, and with respect to a financial institution ~~which~~ that does not have capital stock, "issued and outstanding shares of stock" includes, but is not limited to, ownership interests of depositors in the capital employed in such an institution.

(B) "Taxpayer" means a corporation subject to the tax imposed by section 5733.06 of the Revised Code.

(C) "Resident" means a corporation organized under the laws of this state.

(D) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(E) "Taxable year" means the period prescribed by division (A) of section 5733.031 of the Revised Code upon the net income of which the value of the taxpayer's issued and outstanding shares of stock is determined under division (B) of section 5733.05 of the Revised Code or the period prescribed by division (A) of section 5733.031 of the Revised Code that immediately precedes the date as of which the total value of the corporation is determined under division (A) or (C) of section 5733.05 of the Revised Code.

(F) "Tax year" means the calendar year in and for which the tax imposed by section 5733.06 of the Revised Code is required to be paid.

(G) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended.

(H) "Federal income tax" means the income tax imposed by the Internal Revenue Code.

(I) Except as provided in section 5733.058 of the Revised Code, "net income" means the taxpayer's taxable income before operating loss deduction and special deductions, as required to be reported for the taxpayer's taxable year under the Internal Revenue Code, subject to the following adjustments:

(1)(a) Deduct any net operating loss incurred in any taxable years ending in 1971 or thereafter but exclusive of any net operating loss incurred in taxable years ending prior to January 1, 1971. This deduction shall not be allowed in any tax year commencing before December 31, 1973, but shall be carried over and allowed in tax years commencing after December 31, 1973, until fully utilized in the next succeeding taxable year or years in which the taxpayer has net income, but in no case for more than the designated carryover period as described in division (I)(1)(b) of this section. The amount of such net operating loss, as determined under the allocation and apportionment provisions of section 5733.051 and division (B) of section 5733.05 of the Revised Code for the year in which the net operating loss occurs, shall be deducted from net income, as determined under the allocation and apportionment provisions of section 5733.051 and division (B) of section 5733.05 of the Revised Code, to the extent necessary to reduce net income to zero with the remaining unused portion of the deduction, if any, carried forward to the remaining years of the designated carryover period as described in division (I)(1)(b) of this section, or until fully utilized, whichever occurs first.

(b) For losses incurred in taxable years ending on or before December 31, 1981, the designated carryover period shall be the five consecutive taxable years after the taxable year in which the net operating loss occurred. For losses incurred in taxable years ending on or after January 1, 1982, the designated carryover period shall be the fifteen consecutive taxable years after the taxable year in which the net operating loss occurs.

(c) The tax commissioner may require a taxpayer to furnish any information necessary to support a claim for deduction under division (I)(1)(a) of this section and no deduction shall be allowed unless the information is furnished.

(2) Deduct any amount included in net income by application of section 78 or 951 of the Internal Revenue Code, amounts received for royalties, technical or other services derived from sources outside the United States, and dividends received from a subsidiary, associate, or affiliated corporation that neither transacts any substantial portion of its business nor regularly maintains any substantial portion of its assets within the United States. For purposes of determining net foreign source income deductible under division (I)(2) of this section, the amount of gross income from all such sources other than income derived by application of section 78 or 951 of the Internal Revenue Code shall be reduced by:

(a) The amount of any reimbursed expenses for personal services performed by employees of the taxpayer for the subsidiary, associate, or affiliated corporation;

(b) Ten per cent of the amount of royalty income and technical assistance fees;

(c) Fifteen per cent of the amount of dividends and all other income.

The amounts described in divisions (I)(2)(a) to (c) of this section are deemed to be the expenses attributable to the production of deductible foreign source income unless the taxpayer shows, by clear and convincing evidence, less actual expenses, or the tax commissioner shows, by clear and convincing evidence, more actual expenses.

(3) Add any loss or deduct any gain resulting from the sale, exchange, or other disposition of a capital asset, or an asset described in section 1231 of the Internal Revenue Code, to the extent that such loss or gain occurred prior to the first taxable year on which the tax provided for in section 5733.06 of the Revised Code is computed on the corporation's net income. For

purposes of division (I)(3) of this section, the amount of the prior loss or gain shall be measured by the difference between the original cost or other basis of the asset and the fair market value as of the beginning of the first taxable year on which the tax provided for in section 5733.06 of the Revised Code is computed on the corporation's net income. At the option of the taxpayer, the amount of the prior loss or gain may be a percentage of the gain or loss, which percentage shall be determined by multiplying the gain or loss by a fraction, the numerator of which is the number of months from the acquisition of the asset to the beginning of the first taxable year on which the fee provided in section 5733.06 of the Revised Code is computed on the corporation's net income, and the denominator of which is the number of months from the acquisition of the asset to the sale, exchange, or other disposition of the asset.

(4) Deduct the dividend received deduction provided by section 243 of the Internal Revenue Code.

(5) Deduct any interest or interest equivalent on public obligations and purchase obligations to the extent included in federal taxable income. As used in divisions (I)(5) and (6) of this section, "public obligations," "purchase obligations," and "interest or interest equivalent" have the same meanings as in section 5709.76 of the Revised Code.

(6) Add any loss or deduct any gain resulting from the sale, exchange, or other disposition of public obligations to the extent included in federal taxable income.

(7) To the extent not otherwise allowed, deduct any dividends or distributions received by a taxpayer from a public utility, if the taxpayer owns at least eighty per cent of the issued and outstanding common stock of the utility. As used in division (I)(7) of this section, "public utility" or "utility" means a

public utility as defined in Chapter 5727. of the Revised Code, whether or not the utility is doing business in the state.

(8) To the extent not otherwise allowed, deduct any dividends received by a taxpayer from an insurance company, if the taxpayer owns at least eighty per cent of the issued and outstanding common stock of the insurance company. As used in division (I)(8) of this section, "insurance company" means an insurance company ~~which~~ that is taxable under Chapter 5725. or 5729. of the Revised Code.

(9) Deduct expenditures for modifying existing buildings or structures to meet American national standards institute standard A-117.1-1961 (R-1971), as amended; provided, that no deduction shall be allowed to the extent that such deduction is not permitted under federal law or under rules of the tax commissioner. Those deductions as are allowed may be taken over a period of five years. The tax commissioner shall adopt rules under Chapter 119. of the Revised Code establishing reasonable limitations on the extent that expenditures for modifying existing buildings or structures are attributable to the purpose of making the buildings or structures accessible to and usable by physically handicapped persons.

(10) Deduct the amount of wages and salaries, if any, not otherwise allowable as a deduction but that would have been allowable as a deduction in computing federal taxable income before operating loss deduction and special deductions for the taxable year, had the targeted jobs credit allowed and determined under sections 38, 51, and 52 of the Internal Revenue Code not been in effect.

(11) Deduct net interest income on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent

the laws of the United States prohibit inclusion of the net interest for purposes of determining the value of the taxpayer's issued and outstanding shares of stock under division (B) of section 5733.05 of the Revised Code. As used in division (I)(11) of this section, "net interest" means interest net of any expenses taken on the federal income tax return that would not have been allowed under section 265 of the Internal Revenue Code if the interest were exempt from federal income tax.

(12)(a) Except as set forth in division (I)(12)(d) of this section, to the extent not included in computing the taxpayer's federal taxable income before operating loss deduction and special deductions, add gains and deduct losses from direct or indirect sales, exchanges, or other dispositions, made by a related entity who is not a taxpayer, of the taxpayer's indirect, beneficial, or constructive investment in the stock or debt of another entity, unless the gain or loss has been included in computing the federal taxable income before operating loss deduction and special deductions of another taxpayer with a more closely related investment in the stock or debt of the other entity. The amount of gain added or loss deducted shall not exceed the product obtained by multiplying such gain or loss by the taxpayer's proportionate share, directly, indirectly, beneficially, or constructively, of the outstanding stock of the related entity immediately prior to the direct or indirect sale, exchange, or other disposition.

(b) Except as set forth in division (I)(12)(e) of this section, to the extent not included in computing the taxpayer's federal taxable income before operating loss deduction and special deductions, add gains and deduct losses from direct or indirect sales, exchanges, or other dispositions made by a related entity who is not a taxpayer, of intangible property other than stock, securities, and debt, if such property was owned, or used in whole or in part, at any time prior to or at the time of the sale, exchange, or disposition by either the taxpayer or by a related entity that was a taxpayer at any time during the related entity's ownership or use of such property, unless the gain or loss has been included in computing the federal taxable income before operating loss deduction and special deductions of another taxpayer with a more closely related ownership or use of such intangible property. The amount of gain added or loss deducted shall not exceed the product obtained by multiplying such gain or loss by the taxpayer's proportionate share, directly, indirectly, beneficially, or constructively, of the outstanding stock of the related entity immediately prior to the direct or indirect sale, exchange, or other disposition.

(c) As used in division (I)(12) of this section, "related entity" means those entities described in divisions (I)(12)(c)(i) to (iii) of this section:

(i) An individual stockholder, or a member of the stockholder's family enumerated in section 318 of the Internal Revenue Code, if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty per cent of the value of the taxpayer's outstanding stock;

(ii) A stockholder, or a stockholder's partnership, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, estates, trusts, and corporations own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty per cent of the value of the taxpayer's outstanding stock;

(iii) A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under division (I)(12)(c)(iv) of this section, if the taxpayer owns, directly, indirectly, beneficially, or constructively, at least fifty per cent of the value of the corporation's outstanding stock.

(iv) The attribution rules of section 318 of the Internal Revenue Code apply for purposes of determining whether the ownership requirements in divisions (I)(12)(c)(i) to (iii) of this section have been met.

(d) For purposes of the adjustments required by division (I)(12)(a) of this section, the term "investment in the stock or debt of another entity" means only those investments where the taxpayer and the taxpayer's related entities directly, indirectly, beneficially, or constructively own, in the aggregate, at any time during the twenty-four month period commencing one year prior to the direct or indirect sale, exchange, or other disposition of such investment at least fifty per cent or more of the value of either the outstanding stock or such debt of such other entity.

(e) For purposes of the adjustments required by division (I)(12)(b) of this section, the term "related entity" excludes all of the following:

(i) Foreign corporations as defined in section 7701 of the Internal Revenue Code;

(ii) Foreign partnerships as defined in section 7701 of the Internal Revenue Code;

(iii) Corporations, partnerships, estates, and trusts created or organized in or under the laws of the Commonwealth of Puerto Rico or any possession of the United States;

(iv) Foreign estates and foreign trusts as defined in section 7701 of the Internal Revenue Code.

The exclusions described in divisions (I)(12)(e)(i) to (iv) of this section do not apply if the corporation, partnership, estate, or trust is described in any one of divisions (C)(1) to (5) of section 5733.042 of the Revised Code.

(f) Nothing in division (I)(12) of this section shall require or permit a taxpayer to add any gains or deduct any losses described in divisions (I)(12)(f)(i) and (ii) of this section:

(i) Gains or losses recognized for federal income tax purposes by an individual, estate, or trust without regard to the attribution rules described in division (I)(12)(c) of this section~~, and~~;

(ii) A related entity's gains or losses described in division (I)(12)(b) if the taxpayer's ownership of or use of such intangible property was limited to a period not exceeding nine months and was attributable to a transaction or a series of transactions executed in accordance with the election or elections made by the taxpayer or a related entity pursuant to section 338 of the Internal Revenue Code.

(13) Any adjustment required by section 5733.042 of the Revised Code.

(14) Add any amount claimed as a credit under section 5733.0611 of the Revised Code to the extent that such amount satisfies either of the following:

(a) It was deducted or excluded from the computation of the corporation's taxable income before operating loss deduction and special deductions as required to be reported for the corporation's taxable year under the Internal Revenue Code;

(b) It resulted in a reduction of the corporation's taxable income before operating loss deduction and special deductions as required to be reported for any of the corporation's taxable years under the Internal Revenue Code.

(15) Deduct the amount contributed by the taxpayer to an individual development account program established by a county department of human services pursuant to sections 329.11 to 329.14 of the Revised Code for the purpose of matching funds deposited by program participants. On request of the tax commissioner, the taxpayer shall provide any information that, in the tax commissioner's opinion, is necessary to establish the amount deducted under division (I)(15) of this section.

(J) Any term used in this chapter has the same meaning as when used in comparable context in the laws of the United States relating to federal income taxes unless a different meaning is clearly required. Any reference in this chapter to the Internal Revenue Code includes other laws of the United States relating to federal income taxes.

(K) "Financial institution" has the meaning given by section 5725.01 of the Revised Code but does not include a production credit association as described in 85 Stat. 597, 12 U.S.C.A. 2091.

(L)(1) A "qualifying holding company" is any corporation satisfying all of the following requirements:

(a) Subject to divisions (L)(2) and (3) of this section, the net book value of the corporation's intangible assets is greater than or equal to ninety per cent of the net book value of all of its assets and at least fifty per cent of the net book value of all of its assets represents direct or indirect investments in the equity of, loans and advances to, and accounts receivable due from related members;

(b) At least ninety per cent of the corporation's gross income for the taxable year is attributable to the following:

(i) The maintenance, management, ownership, acquisition, use, and disposition of its intangible property, its aircraft the use of which is not subject to regulation under 14 C.F.R. part 121 or part 135, and any real property described in division (L)(2)(c) of this section;

(ii) The collection and distribution of income from such property.

(c) The corporation is not a financial institution on the last day of the taxable year ending prior to the first day of the tax year;

(d) The corporation's related members make a good faith and reasonable effort to make timely and fully the adjustments required by division (C)(2) of section 5733.05 of the Revised Code and to pay timely and fully all uncontested taxes, interest, penalties, and other fees and charges imposed under this chapter;

(e) Subject to division (L)(4) of this section, the corporation elects to be treated as a qualifying holding company for the tax year.

A corporation otherwise satisfying divisions (L)(1)(a) to (e) of this section that does not elect to be a qualifying holding company is not a qualifying holding company for the purposes of this chapter.

(2)(a)(i) For purposes of making the ninety per cent computation under division (L)(1)(a) of this section, the net book value of the corporation's assets shall not include the net book value of aircraft or real property described in division (L)(1)(b)(i) of this section.

(ii) For purposes of making the fifty per cent computation under division (L)(1)(a) of this section, the net book value of assets shall include the net book value of aircraft or real property described in division (L)(1)(b)(i) of this section.

(b)(i) As used in division (L) of this section, "intangible asset" includes, but is not limited to, the corporation's direct interest in each pass-through entity only if at all times during the corporation's taxable year ending prior to the first day of the tax year the corporation's and the corporation's related members' combined direct and indirect interests in the capital or profits of such pass-through entity do not exceed fifty per cent. If the corporation's interest in the pass-through entity is an intangible asset for that taxable year, then the distributive share of any income from the pass-through entity shall be income from an intangible asset for that taxable year.

(ii) If a corporation's and the corporation's related members' combined direct and indirect interests in the capital or profits of a pass-through entity exceed fifty per cent at any time during the corporation's taxable year ending prior to the first day of the tax year, "intangible asset" does not include the corporation's direct interest in the pass-through entity, and the corporation shall include in its assets its proportionate share of the assets of any such pass-through entity and shall include in its gross income its distributive share of the gross income of such pass-through entity in the same form as was earned by the pass-through entity.

(iii) A pass-through entity's direct or indirect proportionate share of any other pass-through entity's assets shall be included for the purpose of computing the corporation's proportionate share of the pass-through entity's assets under division (L)(2)(b)(ii) of this section, and such pass-through entity's distributive share of any other pass-through entity's gross income shall be included for purposes of computing the corporation's distributive share of the pass-through entity's gross income under division (L)(2)(b)(ii) of this section.

(c) For the purposes of divisions (L)(1)(b)(i), (1)(b)(ii), (2)(a)(i), and (2)(a)(ii) of this section, real property is described in division (L)(2)(c) of this section only if all of the following conditions are present at all times during the taxable year ending prior to the first day of the tax year:

(i) The real property serves as the headquarters of the corporation's trade or business, or is the place from which the corporation's trade or business is principally managed or directed;

(ii) Not more than ten per cent of the value of the real property and not more than ten per cent of the square footage of the building or buildings that are part of the real property is used, made available, or occupied for the purpose of providing, acquiring, transferring, selling, or disposing of tangible property or services in the normal course of business to persons other than related members, the corporation's employees and their families, and such related members' employees and their families.

(d) As used in division (L) of this section, "related member" has the same meaning as in division (A)(6) of section 5733.042 of the Revised Code without regard to division (B) of that section.

(3) The percentages described in division (L)(1)(a) of this section shall be equal to the quarterly average of those percentages as calculated during the corporation's taxable year ending prior to the first day of the tax year.

(4) With respect to the election described in division (L)(1)(e) of this section:

(a) The election need not accompany a timely filed report;

(b) The election need not accompany the report; rather, the election may accompany a subsequently filed but timely application for refund and timely amended report, or a subsequently filed but timely petition for reassessment;

(c) The election is not irrevocable;

(d) The election applies only to the tax year specified by the corporation;

(e) The corporation's related members comply with division (L)(1)(d) of this section.

Nothing in division (L)(4) of this section shall be construed to extend any statute of limitations set forth in this chapter.

(M) "Qualifying controlled group" means two or more corporations that satisfy the ownership and control requirements of division (A) of section 5733.052 of the Revised Code.

(N) "Limited liability company" means any limited liability company formed under Chapter 1705. of the Revised Code or under the laws of any other state.

(O) "Pass-through entity" means a corporation that has made an election under subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code for its taxable year under that code, or a partnership, limited liability company, or any other person, other than an individual, trust, or estate, if the partnership, limited liability company, or other person is not classified for federal income tax purposes as an association taxed as a corporation.

(P) "Electric company" has the same meaning as in section 5727.01 of the Revised Code.

Sec. 5733.05. As used in this section, "qualified research" means laboratory research, experimental research, and other similar types of research; research in developing or improving a product; or research in developing or improving the means of producing a product. It does not include market research, consumer surveys, efficiency surveys, management studies, ordinary testing or inspection of materials or products for quality control, historical research, or literary research. "Product" as used in this paragraph does not include services or intangible property.

The annual report determines the value of the issued and outstanding shares of stock of the taxpayer, which under division (A) or divisions (B) and (C) of this section is the base or measure of the franchise tax liability. Such determination shall be made as of the date shown by the report to have been the beginning of the corporation's annual accounting period that includes the first day of January of the tax year. For the purposes of this chapter, the value of the issued and outstanding shares of stock of any corporation that is a financial institution shall be deemed to be the value as calculated in accordance with division (A) of this section. For the purposes of this chapter, the value of the issued and outstanding shares of stock of any corporation that is not a financial institution shall be deemed to be the values as calculated in accordance with divisions (B) and (C) of this section.

(A) The total value, as shown by the books of the financial institution, of its capital, surplus, whether earned or unearned, undivided profits, and reserves shall be determined as prescribed by section 5733.056 of the Revised Code for tax years 1998 and thereafter.

(B) The sum of the corporation's net income during the corporation's taxable year, allocated or apportioned to this state as prescribed in divisions (B)(1) and (2) of this section, and subject to sections 5733.052, 5733.053, 5733.057, and 5733.058 of the Revised Code:

(1) The net income allocated to this state as provided by section 5733.051 of the Revised Code.

(2) The amount of Ohio apportioned net income from sources other than those allocated under section 5733.051 of the Revised Code, which shall be determined by multiplying the corporation's

net income by a fraction. The numerator of the fraction is the sum of the following products: the property factor multiplied by twenty, the payroll factor multiplied by twenty, and the sales factor multiplied by sixty. The denominator of the fraction is one hundred, provided that the denominator shall be reduced by twenty if the property factor has a denominator of zero, by twenty if the payroll factor has a denominator of zero, and by sixty if the sales factor has a denominator of zero.

The property, payroll, and sales factors shall be determined as follows:

(a) The property factor is a fraction the numerator of which is the average value of the corporation's real and tangible personal property owned or rented, and used in the trade or business in this state during the taxable year, and the denominator of which is the average value of all the corporation's real and tangible personal property owned or rented, and used in the trade or business everywhere during such year. There shall be excluded from the numerator and denominator of the property factor the original cost of all of the following property within Ohio: property with respect to which a "pollution control facility" certificate has been issued pursuant to section 5709.21 of the Revised Code; property with respect to which an "industrial water pollution control certificate" has been issued pursuant to section 6111.31 of the Revised Code; and property used exclusively during the taxable year for qualified research.

(i) Property owned by the corporation is valued at its original cost. Property rented by the corporation is valued at eight times the net annual rental rate. "Net annual rental rate" means the annual rental rate paid by the corporation less any annual rental rate received by the corporation from subrentals.

(ii) The average value of property shall be determined by averaging the values at the beginning and the end of the taxable year, but the tax commissioner may require the averaging of monthly values during the taxable year, if reasonably required to reflect properly the average value of the corporation's property.

(b) The payroll factor is a fraction the numerator of which is the total amount paid in this state during the taxable year by the corporation for compensation, and the denominator of which is the total compensation paid everywhere by the corporation during such year. There shall be excluded from the numerator and the denominator of the payroll factor the total compensation paid in this state to employees who are primarily engaged in qualified research.

(i) Compensation means any form of remuneration paid to an employee for personal services.

(ii) Compensation is paid in this state if: (1) the recipient's service is performed entirely within this state, (2) the recipient's service is performed both within and without this state, but the service performed without this state is incidental to the recipient's service within this state, (3) some of the service is performed within this state and either the base of operations, or if there is no base of operations, the place from which the service is directed or controlled is within this state, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the recipient's residence is in this state.

(iii) Compensation is paid in this state to any employee of a common or contract motor carrier corporation, who performs the employee's regularly assigned duties on a motor vehicle in more than one state, in the same ratio by which the mileage traveled by such employee within the state bears to the total mileage traveled by such employee everywhere during the taxable year.

(c) The sales factor is a fraction the numerator of which is the total sales in this state by the corporation during the taxable year, and the denominator of which is the total sales by the corporation everywhere during such year. In determining the numerator and denominator of the sales factor, receipts from the sale or other disposal of a capital asset or an asset described in section 1231 of the Internal Revenue Code shall be eliminated. Also, in determining the numerator and denominator of the sales factor, in the case of a reporting corporation owning at least eighty per cent of the issued and outstanding common stock of one or more ~~public utilities or~~ insurance companies or public utilities, except an electric company, or owning at least twenty-five per cent of the issued and outstanding common stock of one or more financial institutions, receipts received by the reporting corporation from such utilities, insurance companies, and financial institutions shall be eliminated.

For the purpose of this section and section 5733.03 of the Revised Code, sales of tangible personal property are in this state where such property is received in this state by the purchaser. In the case of delivery of tangible personal property by common carrier or by other means of transportation, the place at which such property is ultimately received after all transportation has been completed shall be considered as the place at which such property is received by the purchaser. Direct delivery in this state, other than for purposes of transportation, to a person or firm designated by a purchaser constitutes delivery to the purchaser in this state, and direct delivery outside this state to a person or firm designated by a purchaser does not constitute delivery to the purchaser in this state, regardless of where title passes or other conditions of sale.

For the purposes of this section and section 5733.03 of the

Revised Code, sales of electricity and the transmission and distribution of electricity by an electric company shall be treated as a sale of service and not as a sale of tangible personal property.

Sales, other than sales of tangible personal property, are in this state if either:

(i) The income-producing activity is performed solely in this state;

(ii) The income-producing activity is performed both within and without this state and a greater proportion of the income-producing activity is performed within this state than in any other state, based on costs of performance.

(d) If the allocation and apportionment provisions of division (B) of this section do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may request, which request must be in writing and must accompany the report, timely filed petition for reassessment, or timely filed amended report, or the tax commissioner may require, in respect to all or any part of the taxpayer's allocated or apportioned base, if reasonable, any one or more of the following:

(i) Separate accounting;

(ii) The exclusion of any one or more of the factors;

(iii) The inclusion of one or more additional factors ~~which~~ that will fairly represent the taxpayer's allocated or apportioned base in this state.

An alternative method will be effective only with approval by the tax commissioner.

Nothing in this section shall be construed to extend any statute of limitations set forth in this chapter.

(C)(1) Subject to divisions (C)(2) and (3) of this section, the total value, as shown on the books of each corporation that is not a qualified holding company, of the net book value of a corporation's assets less the net carrying value of its liabilities. For the purposes of determining that total value, any reserves shown on the corporation's books shall be considered liabilities or contra assets, except for any reserves that are deemed appropriations of retained earnings under generally accepted accounting principles.

(2)(a) If, on the last day of the taxpayer's taxable year preceding the tax year, the taxpayer is a related member to a corporation that elects to be a qualifying holding company for the tax year beginning after the last day of the taxpayer's taxable year, or if, on the last day of the taxpayer's taxable year preceding the tax year, a corporation that elects to be a qualifying holding company for the tax year beginning after the last day of the taxpayer's taxable year is a related member to the taxpayer, then the taxpayer's total value shall be adjusted by the qualifying amount. Except as otherwise provided under division (C)(2)(b) of this section, "qualifying amount" means the amount that, when added to the taxpayer's total value, and when subtracted from the net carrying value of the taxpayer's liabilities computed without regard to division (C)(2) of this section, or when subtracted from the taxpayer's total value and when added to the net carrying value of the taxpayer's liabilities computed without regard to division (C)(2) of this section, results in the taxpayer's debt-to-equity ratio equaling the debt-to-equity ratio of the qualifying controlled group on the last day of the taxable year ending prior to the first day of the tax year computed on a consolidated basis in accordance with general accepted accounting principles. For the purposes of division (C)(2)(a) of this section, the corporation's total value, after the adjustment required by that division, shall not exceed the net book value of the corporation's assets.

(b)(i) The amount added to the taxpayer's total value and subtracted from the net carrying value of the taxpayer's liabilities shall not exceed the amount of the net carrying value of the taxpayer's liabilities owed to the taxpayer's related members.

(ii) A liability owed to the taxpayer's related members includes, but is not limited to, any amount that the corporation owes to a person that is not a related member if the corporation's related member or related members in whole or in part guarantee any portion or all of that amount, or pledge, hypothecate, mortgage, or carry out any similar transactions to secure any portion or all of that amount.

(3) The base upon which the tax is levied under division (C) of section 5733.06 of the Revised Code shall be computed by multiplying the amount determined under divisions (C)(1) and (2) of this section by the fraction determined under divisions (B)(2)(a) to (c) of this section and, if applicable, divisions (B)(2)(d)(ii) to (iv) of this section but without regard to section 5733.052 of the Revised Code.

(4) For purposes of division (C) of this section, "related member" has the same meaning as in division (A)(6) of section 5733.042 of the Revised Code without regard to division (B) of that section.

Sec. 5733.06. The tax hereby charged each corporation subject to this chapter shall be the greater of the sum of divisions (A) and (B) of this section, after the reduction, if any, provided by division (J) of this section, or division (C) of this section, ~~whichever is greater~~ after the reduction, if any, provided by division (J) of this section, except that the tax hereby charged each financial institution subject to this chapter shall be the amount computed under division (D) of this section:

(A) Except as set forth in division (F) of this section, five and one-tenth per cent upon the first fifty thousand dollars of the value of the taxpayer's issued and outstanding shares of stock as determined under division (B) of section 5733.05 of the Revised Code;

(B) Except as set forth in division (F) of this section, eight and one-half per cent upon the value so determined in excess of fifty thousand dollars; or

(C) Except as otherwise provided under division (G) of this section, four mills times that portion of the value of the issued and outstanding shares of stock as determined under division (C) of section 5733.05 of the Revised Code. For the purposes of division (C) of this section, division (C)(2) of section 5733.065, and division (C) of section 5733.066 of the Revised Code, the value of the issued and outstanding shares of stock of a qualified holding company is zero.

(D) The tax charged each financial institution subject to this chapter shall be that portion of the value of the issued and outstanding shares of stock as determined under division (A) of section 5733.05 of the Revised Code, multiplied by the following amounts:

(1) For tax years prior to the 1999 tax year, fifteen mills;

(2) For the 1999 tax year, fourteen mills;

(3) For tax year 2000 and thereafter, thirteen mills.

(E) No tax shall be charged from any corporation ~~which~~ that has been adjudicated bankrupt, or for which a receiver has been appointed, or ~~which~~ that has made a general assignment for the benefit of creditors, except for the portion of the then current tax year during which the tax commissioner finds such corporation had the power to exercise its corporate franchise unimpaired by such proceedings or act. The minimum payment for all corporations shall be fifty dollars.

The tax charged to corporations under this chapter for the privilege of engaging in business in this state, which is an excise tax levied on the value of the issued and outstanding shares of stock, shall in no manner be construed as prohibiting or otherwise limiting the powers of municipal corporations, joint economic development zones created under section 715.691 of the Revised Code, and joint economic development districts created under section 715.70 or 715.71 or sections 715.72 to 715.81 of the Revised Code in this state to impose an income tax on the income of such corporations.

(F) If two or more taxpayers satisfy the ownership or control requirements of division (A) of section 5733.052 of the Revised Code, each such taxpayer shall substitute "the taxpayer's pro-rata amount" for "fifty thousand dollars" in divisions (A) and (B) of this section. For purposes of this division, "the taxpayer's pro-rata amount" is an amount that, when added to the other such taxpayers' pro-rata amounts, does not exceed fifty thousand dollars. For the purpose of making that computation, the taxpayer's pro-rata amount shall not be less than zero. Nothing in this division derogates from or eliminates the requirement to make the alternative computation of tax under division (C) of this section.

(G) The tax liability of any corporation under division (C) of this section shall not exceed one hundred fifty thousand dollars.

(H)(1) For the purposes of division (H) of this section, "exiting corporation" means a corporation that satisfies all of the following conditions:

(a) The corporation had nexus with or in this state under the Constitution of the United States during any portion of a calendar year;

(b) The corporation was not a taxpayer on the first day of January immediately following that calendar year;

(c) The corporation was not a financial institution on the first day of January immediately following that calendar year;

(d) The corporation was not a transferor as defined in section 5733.053 of the Revised Code during any portion of that calendar year;

(e) During any portion of that calendar year, or any portion of the immediately preceding calendar year, the corporation had net income that was not included in a report filed pursuant to section 5733.02, 5733.021, 5733.03, or 5733.031 of the Revised Code;

(f) The corporation would have been subject to the tax computed under divisions (A), (B), (C), (F), and (G) of this section if the corporation is assumed to have had nexus with or in this state under the Constitution of the United States on the first day of January immediately following the calendar year referred to in division (H)(1)(a) of this section.

(2) For the purposes of division (H) of this section, "unreported net income" means net income that was not previously included in a report filed pursuant to section 5733.02, 5733.021, 5733.03, or 5733.031 of the Revised Code and that was realized or recognized during the calendar year referred to in division (H)(1) of this section or the immediately preceding calendar year.

(3) Each exiting corporation shall pay a tax computed by first allocating and apportioning the unreported net income pursuant to division (B) of section 5733.05 and ~~sections~~ section

5733.051 and, if applicable, section 5733.052 of the Revised Code. The exiting corporation then shall compute the tax due on its unreported net income allocated and apportioned to this state by applying divisions (A), (B), and (F) of this section to that income.

(4) Divisions (C) and (G) of this section, division (D)(2) of section 5733.065, and division (C) of section 5733.066 of the Revised Code do not apply to an exiting corporation, but exiting corporations are subject to every other provision of this chapter.

(5) Notwithstanding sections 5733.02, 5733.021, and 5733.03 of the Revised Code to the contrary, each exiting corporation shall report and pay the tax due under division (H) of this section on or before the thirty-first day of May immediately following the calendar year referred to in division (H)(1)(a) of this section. The exiting corporation shall file that report on the form most recently prescribed by the tax commissioner for the purposes of complying with sections 5733.02 and 5733.03 of the Revised Code. Upon request by the corporation, the tax commissioner may extend the date for filing the report.

(6) The tax commissioner may adopt rules governing division (H) of this section.

(I) Any reference in the Revised Code to "the tax imposed by section 5733.06 of the Revised Code" or "the tax due under section 5733.06 of the Revised Code" includes the taxes imposed under sections 5733.065 and 5733.066 of the Revised Code.

(J)(1) Division (J) of this section applies solely to a corporation directly or indirectly providing public utility services as a heating company or a natural gas company, or both, for its tax year immediately following the year upon which its taxable gross receipts are subject to the excise tax imposed by section 5727.30 of the Revised Code. Section 5733.057 of the

Revised Code shall apply when calculating the adjustments required by division (J) of this section.

(2) Subject to division (J)(4) of this section, the total tax calculated in divisions (A) and (B) of this section shall be reduced by an amount calculated by multiplying such tax by a fraction, the numerator of which is the total taxable gross receipts attributed to providing public utility service as a heating company or natural gas company, or both, under section 5727.03 of the Revised Code for the year upon which the taxable gross receipts are measured immediately preceding the tax year, and the denominator of which is the total gross receipts from all sources for the year upon which the taxable gross receipts are measured immediately preceding the tax year. Nothing herein shall be construed to exclude from the denominator any item of income described in section 5733.051 of the Revised Code.

(3) Subject to division (J)(4) of this section, the total tax calculated in division (C) of this section shall be reduced by an amount calculated by multiplying such tax by the fraction described in division (J)(2) of this section.

(4) In no event shall the reduction provided by division (J)(2) or (J)(3) of this section exceed the amount of the excise tax paid in accordance with section 5727.38 of the Revised Code, for the year upon which the taxable gross receipts are measured immediately preceding the tax year.

Sec. 5733.09. (A) An incorporated company, whether foreign or domestic, owning and operating a public utility in this state, and ~~as such~~ required by law to file reports with the tax commissioner and to pay an excise tax upon its gross receipts, and insurance, fraternal, beneficial, bond investment, and other corporations required by law to file annual reports with the superintendent of insurance and dealers in intangibles, the shares of which are, or the capital or ownership in capital employed by such dealer is, subject to the taxes imposed by section 5707.03 of the Revised Code, shall not be subject to this chapter, except for sections 5733.031, 5733.042, 5733.05, 5733.052, 5733.053, 5733.069, 5733.0611, 5733.40, 5733.41, and sections 5747.40 to 5747.453 of the Revised Code. An electric company subject to the filing requirements of section 5727.08 of the Revised Code or otherwise having nexus with or in this state under the Constitution of the United States, or any other corporation having any gross receipts directly attributable to providing public utility service as an electric company or having any property directly attributable to providing public utility service as an electric company, is subject to this chapter.

(B) A corporation that has made an election under subchapter S, chapter one, subtitle A, of the Internal Revenue Code for its taxable year under such code is exempt from the tax imposed by section 5733.06 of the Revised Code that is based on that taxable year.

A corporation that makes such an election shall file a notice of such election with the tax commissioner between the first day of January and the thirty-first day of March of each tax year that the election is in effect.

(C) An entity defined to be a "real estate investment trust" by section 856 of the Internal Revenue Code, a "regulated investment company" by section 851 of the Internal Revenue Code, or a "real estate mortgage investment conduit" by section 860D of the Internal Revenue Code, is exempt from taxation for a tax year as a corporation under this chapter and is exempt from taxation for a return year as a dealer in intangibles under Chapter 5725. of the Revised Code if it provides the report required by this division. By the last day of March of the tax or return year the entity shall submit to the tax commissioner the name of the entity with a list of the names, addresses, and social security or federal identification numbers of all investors, shareholders, and other similar investors who owned any interest or invested in the entity during the preceding calendar year. The commissioner may extend the date by which the report must be submitted for reasonable cause shown by the entity. The commissioner may prescribe the form of the report required for exemption under this division.

(D)(1) As used in this division:

(a) "Commercial printer" means a person primarily engaged in the business of commercial printing. However, "commercial printer" does not include a person primarily engaged in the business of providing duplicating services using photocopy machines or other xerographic processes.

(b) "Commercial printing" means printing by one or more common processes such as letterpress, lithography, gravure, screen, or digital imaging, and includes related activities such as binding, platemaking, prepress operation, cartographic composition, and typesetting.

(c) "Contract for printing" means an oral or written agreement for the purchase of printed materials produced by a commercial printer.

(d) "Intangible property located at the premises of a commercial printer" means intangible property of any kind owned or licensed by a customer of the commercial printer and furnished to the commercial printer for use in commercial printing.

(e) "Printed material" means any tangible personal property produced or processed by a commercial printer pursuant to a contract for printing.

(f) "Related member" has the same meaning as in division (A)(6) of section 5733.042 of the Revised Code without regard to division (B) of that section.

(2) Except as provided in divisions (D)(3) and (4) of this section, a corporation not otherwise subject to the tax imposed by section 5733.06 of the Revised Code for a tax year does not become subject to that tax for the tax year solely by reason of any one or more of the following occurring in this state during the taxable year that ends immediately prior to the tax year:

(a) Ownership by the corporation or a related member of the corporation of tangible personal property or intangible property located during all or any portion of the taxable year or on the first day of the tax year at the premises of a commercial printer with which the corporation or the corporation's related member has a contract for printing with respect to such property or the premises of a commercial printer's related member with which the corporation or the corporation's related member has a contract for printing with respect to such property;

(b) Sales by the corporation or a related member of the corporation of property produced at and shipped or distributed from the premises of a commercial printer with which the corporation or the corporation's related member has a contract for printing with respect to such property or the premises of a commercial printer's related member with which the corporation or the corporation's related member has a contract for printing with respect to such property;

(c) Activities of employees, officers, agents, or contractors of the corporation or a related member of the corporation on the premises of a commercial printer with which the corporation or the corporation's related member has a contract for printing or the premises of a commercial printer's related member with which the corporation or the corporation's related member has a contract for printing, where the activities are directly and solely related to quality control, distribution, or printing services, or any combination thereof, performed by or at the direction of the commercial printer or the commercial printer's related member.

(3) The exemption under this division does not apply for a taxable year to any corporation having on the first day of January of the tax year or at any time during the taxable year ending immediately preceding the first day of January of the tax year a related member which, on the first day of January of the tax year or during any portion of such taxable year of the corporation, has nexus in or with this state under the Constitution of the United States or holds a certificate of compliance with the laws of this state authorizing it to do business in this state.

(4) With respect to allowing the exemption under this division, the tax commissioner shall be guided by the doctrines of "economic reality," "sham transaction," "step transaction," and "substance over form." A corporation shall bear the burden of establishing by a preponderance of the evidence that any transaction giving rise to an exemption claimed under this division did not have as a principal purpose the avoidance of any portion of the tax imposed by section 5733.06 of the Revised Code.

Application of the doctrines listed in division (D)(4) of this section is not limited to this division.

Sec. 5733.39. (A) As used in this section:

(1) "Compliance facility" means property that is designed, constructed, or installed, and used, at a coal-fired electric generating facility for the primary purpose of complying with Phase I acid rain control requirements under Title IV of the "Clean Air Act Amendments of 1990," 104 Stat. 2584, 42 U.S.C.A.

7651, and that controls or limits emissions of sulfur or nitrogen compounds resulting from the combustion of coal through the removal or reduction of those compounds before, during, or after the combustion of the coal, but before the combustion products are emitted into the atmosphere. "Compliance facility" also includes any of the following:

(a) A facility that removes sulfur compounds from coal before the combustion of the coal and that is located off the premises of the electric generating facility where the coal processed by the compliance facility is burned;

(b) Modifications to the electric generating facility where the compliance facility is constructed or installed that are necessary to accommodate the construction or installation, and operation, of the compliance facility;

(c) A byproduct disposal facility, as defined in section 3734.051 of the Revised Code, that exclusively disposes of wastes produced by the compliance facility and other coal combustion byproducts produced by the generating unit in or to which the compliance facility is incorporated or connected regardless of whether the byproduct disposal facility is located on the same premises as the compliance facility or generating unit that produces the wastes disposed of at the facility;

(d) Facilities or equipment that is acquired, constructed, or installed, and used, at a coal-fired electric generating facility exclusively for the purpose of handling the byproducts produced by the compliance facility or other coal combustion byproducts produced by the generating unit in or to which the compliance facility is incorporated or connected;

(e) A flue gas desulfurization system that is connected to a coal-fired electric generating unit and that either was placed in service prior to July 10, 1991, or construction of which was commenced prior to that date;

(f) Facilities or equipment acquired, constructed, or installed, and used, at a coal-fired electric generating unit primarily for the purpose of handling the byproducts produced by a compliance facility or other coal combustion byproducts produced by the generating unit in or to which the compliance facility is incorporated or connected.

(2) "Ohio coal" has the same meaning as in section 4913.01 of the Revised Code.

(3) "Sale and leaseback transaction" has the same meaning as in section 5727.01 of the Revised Code.

(B) Beginning in tax year 2002, an electric company shall be allowed a nonrefundable credit against the tax imposed by section 5733.06 of the Revised Code for using Ohio coal in any of its coal-fired electric generating units. Section 5733.057 of the Revised Code shall apply when calculating the credit allowed by this section. The credit shall be claimed at the rate of one dollar per ton of Ohio coal burned in a coal-fired electric generating unit during the taxable year ending immediately preceding the tax year. The credit is allowed only if all of the following conditions are met during such taxable year:

(1) The coal-fired electric generating unit is owned and used by the company claiming the credit or leased and used by that company under a sale and leaseback transaction.

(2) A compliance facility is attached to, incorporated in, or used in conjunction with the coal-fired generating unit.

(3) Either of the following applies:

(a) In the case of a coal-fired electric generating unit that burns coal in combination with another fuel for the purpose of complying with Phase I acid rain control requirements under Title

IV of the "Clean Air Act Amendments of 1990," 104 Stat. 2584, 42 U.S.C.A. 7651, at least eighty per cent of the heat input during the taxable year is from Ohio coal.

(b) In the case of any other coal-fired electric generating unit, at least ninety per cent of the heat input during the taxable year is from Ohio coal.

(C) The credit shall be claimed in the order required under section 5733.98 of the Revised Code. If the credit exceeds the tax imposed by section 5733.06 of the Revised Code after all other nonrefundable credits for the tax year as set forth in section 5733.98 of the Revised Code, the excess shall not be allowed as a credit either against the taxes due for any other year or against any other tax or fee. Nothing herein shall be construed to provide for any carryover or carryback of any unused credit provided by any other section of the Revised Code or for any application of any unused credit provided by any other section of the Revised Code against any other tax or fee if such section does not expressly provide either for a carryover or carryback of any unused credit or for any application of an unused credit against any other tax or fee.

(D) The sum of the credits allowed for all years under section 5727.391 of the Revised Code for coal burned in each coal-fired electric generating unit and the sum of the credits allowed for all tax years under this section shall not exceed twenty per cent of the cost of the compliance facility attached to, incorporated in, or used in conjunction with the unit. If a compliance facility is used in conjunction with more than one generating unit, the tax commissioner shall prorate its cost among the units.

(E) The director of environmental protection, upon the request of the tax commissioner, shall certify whether a facility is a compliance facility. In the case of a compliance facility owned by an electric company, the public utilities commission shall certify to the tax commissioner the cost of the facility as of the date it was placed in service. In the case of a compliance facility owned by a person other than an electric company, the tax commissioner shall determine the cost of the facility as of the date it was placed in service. If the owner of such a facility fails to furnish the information necessary to make that determination, no credit shall be allowed.

Sec. 5733.98. (A) To provide a uniform procedure for calculating the amount of tax imposed by section 5733.06 of the Revised Code that is due under this chapter, a taxpayer shall claim any credits to which it is entitled in the following order, except as otherwise provided in section 5733.058 of the Revised Code:

(1) The credit for taxes paid by a qualifying pass-through entity allowed under section 5733.0611 of the Revised Code;

(2) The credit for qualifying affiliated groups under section 5733.068 of the Revised Code;

(3) The subsidiary corporation credit under section 5733.067 of the Revised Code;

(4) The savings and loan assessment credit under section 5733.063 of the Revised Code;

(5) The credit for recycling and litter prevention donations under section 5733.064 of the Revised Code;

(6) The credit for employers that enter into agreements with child day-care centers under section 5733.36 of the Revised Code;

(7) The credit for employers that reimburse employee child day-care expenses under section 5733.38 of the Revised Code;

(8) The credit for manufacturing investments under section 5733.061 of the Revised Code;

(9) The credit for purchases of new manufacturing machinery and equipment under section 5733.31 or section 5733.311 of the Revised Code;

(10) The second credit for purchases of new manufacturing machinery and equipment under section 5733.33 of the Revised Code;

(11) The enterprise zone credit under section 5709.66 of the Revised Code;

(12) The credit for the eligible costs associated with a voluntary action under section 5733.34 of the Revised Code;

(13) The credit for employers that establish on-site child day-care under section 5733.37 of the Revised Code;

(14) The credit for purchases of qualifying grape production property under section 5733.32 of the Revised Code;

(15) The export sales credit under section 5733.069 of the Revised Code;

(16) The credit for research and development and technology transfer investors under section 5733.35 of the Revised Code;

(17) The enterprise zone credits under section 5709.65 of the Revised Code;

(18) The credit for using Ohio coal under section 5733.39 of the Revised Code;

(19) The refundable jobs creation credit under section 5733.0610 of the Revised Code.

(B) For any credit except the refundable jobs creation credit, the amount of the credit for a tax year shall not exceed the tax due after allowing for any other credit that precedes it in the order required under this section. Any excess amount of a particular credit may be carried forward if authorized under the section creating that credit.

Sec. 5739.011. (A) As used in this section:

(1) "Manufacturer" means a person who is engaged in manufacturing, processing, assembling, or refining a product for sale.

(2) "Manufacturing facility" means a single location where a manufacturing operation is conducted, including locations consisting of one or more buildings or structures in a contiguous area owned or controlled by the manufacturer.

(3) "Materials handling" means the movement of the product being or to be manufactured, during which movement the product is not undergoing any substantial change or alteration in its state or form.

(4) "Testing" means a process or procedure to identify the properties or assure the quality of a material or product.

(5) "Completed product" means a manufactured item that is in the form and condition as it will be sold by the manufacturer. An item is completed when all processes that change or alter its state or form or enhance its value are finished, even though the item subsequently will be tested to ensure its quality or be packaged for storage or shipment.

(6) "Continuous manufacturing operation" means the process in which raw materials or components are moved through the steps whereby manufacturing occurs. Materials handling of raw materials or parts from the point of receipt or ~~pre-production~~ preproduction storage or of a completed product, to or from storage, to or from packaging, or to the place from which the completed product will be shipped, is not a part of a continuous manufacturing operation.

(B) For purposes of division (E)(9) of section 5739.01 of the Revised Code, the "thing transferred" includes, but is not limited to, any of the following:

(1) Production machinery and equipment that act upon the product or machinery and equipment that treat the materials or parts in preparation for the manufacturing operation;

(2) Materials handling equipment that moves the product through a continuous manufacturing operation; equipment that temporarily stores the product during the manufacturing operation; or, excluding motor vehicles licensed to operate on public highways, equipment used in intraplant or interplant transfers of work in process where the plant or plants between which such transfers occur are manufacturing facilities operated by the same person;

(3) Catalysts, solvents, water, acids, oil, and similar consumables that interact with the product and that are an integral part of the manufacturing operation;

(4) Machinery, equipment, and other tangible personal property used during the manufacturing operation that control, physically support, produce power for, lubricate, or are otherwise necessary for the functioning of production machinery and equipment and the continuation of the manufacturing operation;

(5) Machinery, equipment, fuel, power, material, parts, and other tangible personal property used to manufacture machinery, equipment, or other tangible personal property used in manufacturing a product for sale;

(6) Machinery, equipment, and other tangible personal property used by a manufacturer to test raw materials, the product being manufactured, or the completed product;

(7) Machinery and equipment used to handle or temporarily store scrap that is intended to be reused in the manufacturing operation at the same manufacturing facility;

(8) ~~Electricity, coke~~ Coke, gas, water, steam, and similar

substances used in the manufacturing operation; machinery and equipment used for, and fuel consumed in, producing or extracting those substances; ~~and~~ machinery, equipment, and other tangible personal property used to treat, filter, pump, ~~alter voltage,~~ or otherwise make the substance suitable for use in the manufacturing operation; and machinery and equipment used to produce electricity for use in the manufacturing operation;

(9) Machinery, equipment, and other tangible personal property used to transport or transmit electricity, coke, gas, water, steam, or similar substances used in the manufacturing operation from the point of generation, if produced by the manufacturer, or from the point where the substance enters the manufacturing facility, if purchased by the manufacturer, to the manufacturing operation;

(10) Machinery, equipment, and other tangible personal property that treats, filters, cools, refines, or otherwise renders water, steam, acid, oil, solvents, or similar substances used in the manufacturing operation reusable, provided that the substances are intended for reuse and not for disposal, sale, or transportation from the manufacturing facility;

(11) Parts, components, and repair and installation services for items described in division (B) of this section.

(C) For purposes of division (E)(9) of section 5739.01 of the Revised Code, the "thing transferred" does not include any of the following:

(1) Tangible personal property used in administrative, personnel, security, inventory control, record-keeping, ordering, billing, or similar functions;

(2) Tangible personal property used in storing raw materials or parts prior to the commencement of the manufacturing operation or used to handle or store a completed product, including storage

that actively maintains a completed product in a marketable state or form;

(3) Tangible personal property used to handle or store scrap or waste intended for disposal, sale, or other disposition, other than reuse in the manufacturing operation at the same manufacturing facility;

(4) Tangible personal property that is or is to be incorporated into realty;

(5) Machinery, equipment, and other tangible personal property used for ventilation, dust~~,~~ or gas collection, humidity or temperature regulation, or similar environmental control, except machinery, equipment, and other tangible personal property that totally regulates the environment in a special and limited area of the manufacturing facility where the regulation is essential for production to occur;

(6) Tangible personal property used for the protection and safety of workers, unless the property is attached to or incorporated into machinery and equipment used in a continuous manufacturing operation;

(7) Tangible personal property used to store fuel, water, solvents, acid, oil, or similar items consumed in the manufacturing operation;

(8) Machinery, equipment, and other tangible personal property used for research and development;

(9) Machinery, equipment, and other tangible personal property used to clean, repair, or maintain real or personal property in the manufacturing facility;

(10) Motor vehicles registered for operation on the public highways.

(D) For purposes of division (E)(9) of section 5739.01 of the

Revised Code, if the "thing transferred" is a machine used by a manufacturer in both a taxable and an exempt manner, it shall be totally taxable or totally exempt from taxation based upon its quantified primary use. If the "things transferred" are fungibles, they shall be taxed based upon the proportion of the fungibles used in a taxable manner.

Sec. 5739.02. For the purpose of providing revenue with which to meet the needs of the state, for the use of the general revenue fund of the state, for the purpose of securing a thorough and efficient system of common schools throughout the state, for the purpose of affording revenues, in addition to those from general property taxes, permitted under constitutional limitations, and from other sources, for the support of local governmental functions, and for the purpose of reimbursing the state for the expense of administering this chapter, an excise tax is hereby levied on each retail sale made in this state.

(A) The tax shall be collected pursuant to the schedules in section 5739.025 of the Revised Code.

The tax applies and is collectible when the sale is made, regardless of the time when the price is paid or delivered.

In the case of a sale, the price of which consists in whole or in part of rentals for the use of the thing transferred, the tax, as regards such rentals, shall be measured by the installments thereof.

In the case of a sale of a service defined under division (MM) or (NN) of section 5739.01 of the Revised Code, the price of which consists in whole or in part of a membership for the receipt of the benefit of the service, the tax applicable to the sale shall be measured by the installments thereof.

(B) The tax does not apply to the following:

(1) Sales to the state or any of its political subdivisions, or to any other state or its political subdivisions if the laws of that state exempt from taxation sales made to this state and its political subdivisions;

(2) Sales of food for human consumption off the premises where sold;

(3) Sales of food sold to students only in a cafeteria, dormitory, fraternity, or sorority maintained in a private, public, or parochial school, college, or university;

(4) Sales of newspapers, and of magazine subscriptions shipped by second class mail, and sales or transfers of magazines distributed as controlled circulation publications;

(5) The furnishing, preparing, or serving of meals without charge by an employer to an employee provided the employer records the meals as part compensation for services performed or work done;

(6) Sales of motor fuel upon receipt, use, distribution, or sale of which in this state a tax is imposed by the law of this state, but this exemption shall not apply to the sale of motor fuel on which a refund of the tax is allowable under section 5735.14 of the Revised Code; and the tax commissioner may deduct the amount of tax levied by this section applicable to the price of motor fuel when granting a refund of motor fuel tax pursuant to section 5735.14 of the Revised Code and shall cause the amount deducted to be paid into the general revenue fund of this state;

(7) Sales of natural gas by a natural gas company, ~~of electricity by an electric company,~~ of water by a water-works company, or of steam by a heating company, if in each case the thing sold is delivered to consumers through ~~wires,~~ pipes~~,~~ or conduits, and all sales of communications services by a telephone or telegraph company, all terms as defined in section 5727.01 of

the Revised Code;

(8) Casual sales by a person, or auctioneer employed directly by the person to conduct such sales, except as to such sales of motor vehicles, watercraft or outboard motors required to be titled under section 1548.06 of the Revised Code, watercraft documented with the United States coast guard, snowmobiles, and all-purpose vehicles as defined in section 4519.01 of the Revised Code;

(9) Sales of services or tangible personal property, other than motor vehicles, mobile homes, and manufactured homes, by churches or by nonprofit organizations operated exclusively for charitable purposes as defined in division (B)(12) of this section, provided that the number of days on which such tangible personal property or services, other than items never subject to the tax, are sold does not exceed six in any calendar year. If the number of days on which such sales are made exceeds six in any calendar year, the church or organization shall be considered to be engaged in business and all subsequent sales by it shall be subject to the tax. In counting the number of days, all sales by groups within a church or within an organization shall be considered to be sales of that church or organization, except that sales made by separate student clubs and other groups of students of a primary or secondary school, and sales made by a parent-teacher association, booster group, or similar organization that raises money to support or fund curricular or extracurricular activities of a primary or secondary school, shall not be considered to be sales of such school, and sales by each such club, group, association, or organization shall be counted separately for purposes of the six-day limitation. This division does not apply to sales by a noncommercial educational radio or television broadcasting station.

(10) Sales not within the taxing power of this state under

the Constitution of the United States;

(11) The transportation of persons or property, unless the transportation is by a private investigation and security service;

(12) Sales of tangible personal property or services to churches, to organizations exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, and to any other nonprofit organizations operated exclusively for charitable purposes in this state, no part of the net income of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which consists of carrying on propaganda or otherwise attempting to influence legislation; sales to offices administering one or more homes for the aged or one or more hospital facilities exempt under section 140.08 of the Revised Code; and sales to organizations described in division (D) of section 5709.12 of the Revised Code.

"Charitable purposes" means the relief of poverty; the improvement of health through the alleviation of illness, disease, or injury; the operation of an organization exclusively for the provision of professional, laundry, printing, and purchasing services to hospitals or charitable institutions; the operation of a home for the aged, as defined in section 5701.13 of the Revised Code; the operation of a radio or television broadcasting station that is licensed by the federal communications commission as a noncommercial educational radio or television station; the operation of a nonprofit animal adoption service or a county humane society; the promotion of education by an institution of learning that maintains a faculty of qualified instructors, teaches regular continuous courses of study, and confers a recognized diploma upon completion of a specific curriculum; the operation of a parent-teacher association, booster group, or similar organization primarily engaged in the promotion and support of the curricular or extracurricular activities of a primary or secondary school; the operation of a community or area center in which presentations in music, dramatics, the arts, and related fields are made in order to foster public interest and education therein; the production of performances in music, dramatics, and the arts; or the promotion of education by an organization engaged in carrying on research in, or the dissemination of, scientific and technological knowledge and information primarily for the public.

Nothing in this division shall be deemed to exempt sales to any organization for use in the operation or carrying on of a trade or business, or sales to a home for the aged for use in the operation of independent living facilities as defined in division (A) of section 5709.12 of the Revised Code.

(13) Building and construction materials and services sold to construction contractors for incorporation into a structure or improvement to real property under a construction contract with this state or a political subdivision thereof, or with the United States government or any of its agencies; building and construction materials and services sold to construction contractors for incorporation into a structure or improvement to real property that are accepted for ownership by this state or any of its political subdivisions, or by the United States government or any of its agencies at the time of completion of such structures or improvements; building and construction materials sold to construction contractors for incorporation into a horticulture structure or livestock structure for a person engaged in the business of horticulture or producing livestock; building materials and services sold to a construction contractor for incorporation into a house of public worship or religious education, or a building used exclusively for charitable purposes under a construction contract with an organization whose purpose is as described in division (B)(12) of this section; building and

construction materials sold for incorporation into the original construction of a sports facility under section 307.696 of the Revised Code; and building and construction materials and services sold to a construction contractor for incorporation into real property outside this state if such materials and services, when sold to a construction contractor in the state in which the real property is located for incorporation into real property in that state, would be exempt from a tax on sales levied by that state;

(14) Sales of ships or vessels or rail rolling stock used or to be used principally in interstate or foreign commerce, and repairs, alterations, fuel, and lubricants for such ships or vessels or rail rolling stock;

(15) Sales to persons engaged in any of the activities mentioned in division (E)(2) or (9) of section 5739.01 of the Revised Code, to persons engaged in making retail sales, or to persons who purchase for sale from a manufacturer tangible personal property that was produced by the manufacturer in accordance with specific designs provided by the purchaser, of packages, including material and parts for packages, and of machinery, equipment, and material for use primarily in packaging tangible personal property produced for sale by or on the order of the person doing the packaging, or sold at retail. "Packages" includes bags, baskets, cartons, crates, boxes, cans, bottles, bindings, wrappings, and other similar devices and containers, and "packaging" means placing therein.

(16) Sales of food to persons using food stamp coupons to purchase the food. As used in division (B)(16) of this section, "food" has the same meaning as in the "Food Stamp Act of 1977," 91 Stat. 958, 7 U.S.C. 2012, as amended, and federal regulations adopted pursuant to that act.

(17) Sales to persons engaged in farming, agriculture,

horticulture, or floriculture, of tangible personal property for use or consumption directly in the production by farming, agriculture, horticulture, or floriculture of other tangible personal property for use or consumption directly in the production of tangible personal property for sale by farming, agriculture, horticulture, or floriculture; or material and parts for incorporation into any such tangible personal property for use or consumption in production; and of tangible personal property for such use or consumption in the conditioning or holding of products produced by and for such use, consumption, or sale by persons engaged in farming, agriculture, horticulture, or floriculture, except where such property is incorporated into real property;

(18) Sales of drugs dispensed by a licensed pharmacist upon the order of a licensed health professional authorized to prescribe drugs to a human being, as the term "licensed health professional authorized to prescribe drugs" is defined in section 4729.01 of the Revised Code; insulin as recognized in the official United States pharmacopoeia; urine and blood testing materials when used by diabetics or persons with hypoglycemia to test for glucose or acetone; hypodermic syringes and needles when used by diabetics for insulin injections; epoetin alfa when purchased for use in the treatment of persons with end-stage renal disease; hospital beds when purchased for use by persons with medical problems for medical purposes; and oxygen and oxygen-dispensing equipment when purchased for use by persons with medical problems for medical purposes;

(19) Sales of artificial limbs or portion thereof, breast prostheses, and other prosthetic devices for humans; braces or other devices for supporting weakened or nonfunctioning parts of the human body; wheelchairs; devices used to lift wheelchairs into motor vehicles and parts and accessories to such devices; crutches

or other devices to aid human perambulation; and items of tangible personal property used to supplement impaired functions of the human body such as respiration, hearing, or elimination. No exemption under this division shall be allowed for nonprescription drugs, medicines, or remedies; items or devices used to supplement vision; items or devices whose function is solely or primarily cosmetic; or physical fitness equipment. This division does not apply to sales to a physician or medical facility for use in the treatment of a patient.

(20) Sales of emergency and fire protection vehicles and equipment to nonprofit organizations for use solely in providing fire protection and emergency services for political subdivisions of the state;

(21) Sales of tangible personal property manufactured in this state, if sold by the manufacturer in this state to a retailer for use in the retail business of the retailer outside of this state and if possession is taken from the manufacturer by the purchaser within this state for the sole purpose of immediately removing the same from this state in a vehicle owned by the purchaser;

(22) Sales of services provided by the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities, or by governmental entities of the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities;

(23) Sales of motor vehicles to nonresidents of this state upon the presentation of an affidavit executed in this state by the nonresident purchaser affirming that the purchaser is a nonresident of this state, that possession of the motor vehicle is taken in this state for the sole purpose of immediately removing it from this state, that the motor vehicle will be permanently

titled and registered in another state, and that the motor vehicle will not be used in this state;

(24) Sales to persons engaged in the preparation of eggs for sale of tangible personal property used or consumed directly in such preparation, including such tangible personal property used for cleaning, sanitizing, preserving, grading, sorting, and classifying by size; packages, including material and parts for packages, and machinery, equipment, and material for use in packaging eggs for sale; and handling and transportation equipment and parts therefor, except motor vehicles licensed to operate on public highways, used in intraplant or interplant transfers or shipment of eggs in the process of preparation for sale, when the plant or plants within or between which such transfers or shipments occur are operated by the same person. "Packages" includes containers, cases, baskets, flats, fillers, filler flats, cartons, closure materials, labels, and labeling materials, and "packaging" means placing therein.

(25)(a) Sales of water to a consumer for residential use, except the sale of bottled water, distilled water, mineral water, carbonated water, or ice;

(b) Sales of water by a nonprofit corporation engaged exclusively in the treatment, distribution, and sale of water to consumers, if such water is delivered to consumers through pipes or tubing.

(26) Fees charged for inspection or reinspection of motor vehicles under section 3704.14 of the Revised Code;

(27) Sales of solar, wind, or hydrothermal energy systems that meet the guidelines established under division (B) of section 1551.20 of the Revised Code, components of such systems that are identified under division (B) or (D) of that section, or charges for the installation of such systems or components, made during

the period from August 14, 1979, through December 31, 1985;

(28) Sales to persons licensed to conduct a food service operation pursuant to section 3732.03 of the Revised Code, of tangible personal property primarily used directly for the following:

(a) To prepare food for human consumption for sale;

(b) To preserve food that has been or will be prepared for human consumption for sale by the food service operator, not including tangible personal property used to display food for selection by the consumer;

(c) To clean tangible personal property used to prepare or serve food for human consumption for sale.

(29) Sales of animals by nonprofit animal adoption services or county humane societies;

(30) Sales of services to a corporation described in division (A) of section 5709.72 of the Revised Code, and sales of tangible personal property that qualifies for exemption from taxation under section 5709.72 of the Revised Code;

(31) Sales and installation of agricultural land tile, as defined in division (B)(5)(a) of section 5739.01 of the Revised Code;

(32) Sales and erection or installation of portable grain bins, as defined in division (B)(5)(b) of section 5739.01 of the Revised Code;

(33) The sale, lease, repair, and maintenance of~~:~~, parts for~~:~~, or items attached to or incorporated in, motor vehicles that are primarily used for transporting tangible personal property by a person engaged in highway transportation for hire;

(34) Sales to the state headquarters of any veterans' organization in Ohio that is either incorporated and issued a

charter by the congress of the United States or is recognized by the United States veterans administration, for use by the headquarters;

(35) Sales to a telecommunications service vendor of tangible personal property and services used directly and primarily in transmitting, receiving, switching, or recording any interactive, two-way electromagnetic communications, including voice, image, data, and information, through the use of any medium, including, but not limited to, poles, wires, cables, switching equipment, computers, and record storage devices and media, and component parts for the tangible personal property. The exemption provided in division (B)(35) of this section shall be in lieu of all other exceptions under division (E)(2) of section 5739.01 of the Revised Code to which a telecommunications service vendor may otherwise be entitled based upon the use of the thing purchased in providing the telecommunications service.

(36) Sales of investment metal bullion and investment coins. "Investment metal bullion" means any elementary precious metal that has been put through a process of smelting or refining, including, but not limited to, gold, silver, platinum, and palladium, and which is in such state or condition that its value depends upon its content and not upon its form. "Investment metal bullion" does not include fabricated precious metal that has been processed or manufactured for one or more specific and customary industrial, professional, or artistic uses. "Investment coins" means numismatic coins or other forms of money and legal tender manufactured of gold, silver, platinum, palladium, or other metal under the laws of the United States or any foreign nation with a fair market value greater than any statutory or nominal value of such coins.

(37)(a) Sales where the purpose of the consumer is to use or consume the things transferred in making retail sales and consisting of newspaper inserts, catalogues, coupons, flyers, gift certificates, or other advertising material that prices and describes tangible personal property offered for retail sale.

(b) Sales to direct marketing vendors of preliminary materials such as photographs, artwork, and typesetting that will be used in printing advertising material; of printed matter that offers free merchandise or chances to win sweepstake prizes and that is mailed to potential customers with advertising material described in division (B)(37)(a) of this section; and of equipment such as telephones, computers, facsimile machines, and similar tangible personal property primarily used to accept orders for direct marketing retail sales.

(c) Sales of automatic food vending machines that preserve food with a shelf life of forty-five days or less by refrigeration and dispense it to the consumer.

For purposes of division (B)(37) of this section, "direct marketing" means the method of selling where consumers order tangible personal property by United States mail, delivery service, or telecommunication and the vendor delivers or ships the tangible personal property sold to the consumer from a warehouse, catalogue distribution center, or similar fulfillment facility by means of the United States mail, delivery service, or common carrier.

(38) Sales to a person engaged in the business of horticulture or producing livestock of materials to be incorporated into a horticulture structure or livestock structure;

(39) The sale of a motor vehicle that is used exclusively for a vanpool ridesharing arrangement to persons participating in the vanpool ridesharing arrangement when the vendor is selling the vehicle pursuant to a contract between the vendor and the department of transportation;

(40) Sales of personal computers, computer monitors, computer keyboards, modems, and other peripheral computer equipment to an individual who is licensed or certified to teach in an elementary or a secondary school in this state for use by that individual in preparation for teaching elementary or secondary school students;

(41) Sales to a professional racing team of any of the following:

(a) Motor racing vehicles;

(b) Repair services for motor racing vehicles;

(c) Items of property that are attached to or incorporated in motor racing vehicles, including engines, chassis, and all other components of the vehicles, and all spare, replacement, and rebuilt parts or components of the vehicles; except not including tires, consumable fluids, paint, and accessories consisting of instrumentation sensors and related items added to the vehicle to collect and transmit data by means of telemetry and other forms of communication.

(42) Sales of used manufactured homes and used mobile homes, as defined in section 5739.0210 of the Revised Code;

(43) Sales of tangible personal property and services to a provider of electricity used or consumed directly and primarily in generating, transmitting, or distributing electricity for use by others, including property that is or is to be incorporated into and will become a part of the consumer's production, transmission, or distribution system and that retains its classification as tangible personal property after incorporation; fuel or power used in the production, transmission, or distribution of electricity; and tangible personal property and services used in the repair and maintenance of the production, transmission, or distribution system, including only those motor vehicles as are specially

designed and equipped for such use. The exemption provided in this division shall be in lieu of all other exceptions in division (E)(2) of section 5739.01 of the Revised Code to which a provider of electricity may otherwise be entitled based on the use of the tangible personal property or service purchased in generating, transmitting, or distributing electricity.

For the purpose of the proper administration of this chapter, and to prevent the evasion of the tax, it is presumed that all sales made in this state are subject to the tax until the contrary is established.

As used in this section, except in division (B)(16) of this section, "food" includes cereals and cereal products, milk and milk products including ice cream, meat and meat products, fish and fish products, eggs and egg products, vegetables and vegetable products, fruits, fruit products, and pure fruit juices, condiments, sugar and sugar products, coffee and coffee substitutes, tea, and cocoa and cocoa products. It does not include: spirituous or malt liquors; soft drinks; sodas and beverages that are ordinarily dispensed at bars and soda fountains or in connection therewith, other than coffee, tea, and cocoa; root beer and root beer extracts; malt and malt extracts; mineral oils, cod liver oils, and halibut liver oil; medicines, including tonics, vitamin preparations, and other products sold primarily for their medicinal properties; and water, including mineral, bottled, and carbonated waters, and ice.

(C) The levy of an excise tax on transactions by which lodging by a hotel is or is to be furnished to transient guests pursuant to this section and division (B) of section 5739.01 of the Revised Code does not prevent any of the following:

(1) A municipal corporation or township from levying an excise tax for any lawful purpose not to exceed three per cent on

transactions by which lodging by a hotel is or is to be furnished to transient guests in addition to the tax levied by this section. If a municipal corporation or township repeals a tax imposed under division (C)(1) of this section and a county in which the municipal corporation or township has territory has a tax imposed under division (C) of section 5739.024 of the Revised Code in effect, the municipal corporation or township may not reimpose its tax as long as that county tax remains in effect. A municipal corporation or township in which a tax is levied under division (B)(2) of section 351.021 of the Revised Code may not increase the rate of its tax levied under division (C)(1) of this section to any rate that would cause the total taxes levied under both of those divisions to exceed three per cent on any lodging transaction within the municipal corporation or township.

(2) A municipal corporation or a township from levying an additional excise tax not to exceed three per cent on such transactions pursuant to division (B) of section 5739.024 of the Revised Code. Such tax is in addition to any tax imposed under division (C)(1) of this section.

(3) A county from levying an excise tax pursuant to division (A) of section 5739.024 of the Revised Code.

(4) A county from levying an excise tax not to exceed three per cent of such transactions pursuant to division (C) of section 5739.024 of the Revised Code. Such a tax is in addition to any tax imposed under division (C)(3) of this section.

(5) A convention facilities authority, as defined in division (A) of section 351.01 of the Revised Code, from levying the excise taxes provided for in division (B) of section 351.021 of the Revised Code.

(6) A county from levying an excise tax not to exceed one and one-half per cent of such transactions pursuant to division (D) of

section 5739.024 of the Revised Code. Such tax is in addition to any tax imposed under division (C)(3) or (4) of this section.

(7) A county from levying an excise tax not to exceed one and one-half per cent of such transactions pursuant to division (E) of section 5739.024 of the Revised Code. Such a tax is in addition to any tax imposed under division (C)(3), (4), or (6) of this section.

(D) The levy of this tax on retail sales of recreation and sports club service shall not prevent a municipal corporation from levying any tax on recreation and sports club dues or on any income generated by recreation and sports club dues.

Section 2. That existing sections 113.061, 133.04, 715.013, 718.01, 1551.33, 1551.35, 3317.028, 4905.01, 4905.03, 4905.10, 4905.34, 4905.402, 4905.42, 4905.70, 4906.10, 4909.01, 4909.05, 4909.15, 4909.161, 4911.18, 4933.33, 4933.81, 4935.04, 5117.01, 5117.02, 5117.03, 5117.04, 5117.05, 5117.07, 5117.08, 5117.09, 5117.10, 5117.12, 5701.03, 5703.052, 5703.053, 5703.14, 5705.34, 5727.01, 5727.05, 5727.06, 5727.11, 5727.111, 5727.15, 5727.30, 5727.31, 5727.311, 5727.32, 5727.33, 5727.38, 5727.42, 5727.45, 5727.47, 5727.53, 5727.60, 5727.61, 5727.72, 5727.99, 5733.04, 5733.05, 5733.06, 5733.09, 5733.98, 5739.011, and 5739.02 and sections 4905.301, 4905.66, 4905.67, 4905.68, 4905.69, 4909.157, 4909.158, 4909.159, 4909.191, 4909.192, 4909.193, 4913.01, 4913.02, 4913.03, 4913.04, 4913.05, 4913.06, 4913.07, 4933.27, 4933.34, 5727.231, and 5727.73 of the Revised Code are hereby repealed.

Section 3. Sections 718.01, 5701.03, 5727.06, 5727.111, and 5727.15 of the Revised Code, as amended by this act, shall take effect January 1, 2001.

Section 4. Sections 113.061, 4933.33, 5703.052, 5703.053, 5727.05, 5727.30, 5727.31, 5727.311, 5727.32, 5727.33, 5727.38, 5727.42, 5727.45, 5727.53, 5727.60, 5727.61, 5727.72, 5739.011, and 5739.02 of the Revised Code, as amended by this act, and section 5727.03 of the Revised Code, as enacted by this act, shall take effect May 1, 2001.

Section 5. Sections 1551.33, 1551.35, 4905.01, 4905.03, 4905.34, 4905.402, 4905.42, 4905.70, 4906.10, 4909.01, 4909.05, 4909.15, 4909.161, 4935.04, 5117.01, 5117.02, 5117.03, 5117.04, 5117.05, 5117.07, 5117.08, 5117.09, 5117.10, and 5703.14 of the Revised Code, as amended by this act, shall take effect on January 1, 2001, but if the Public Utilities Commission issues an order under division (C) of section 4928.01 of the Revised Code, as enacted by this act, the amendments to such sections shall be applied accordingly. In addition, the amendment of division (A)(4)(b) of section 4909.15 of the Revised Code, as amended by this act, shall be not applied until January 1, 2002.

Section 6. Sections 133.04, 5705.34, 5733.04, 5733.05, 5733.06, 5733.09, and 5733.98 of the Revised Code, as amended by this act, and section 5733.39 of the Revised Code, as enacted by this act, shall take effect January 1, 2002.

Section 7. Section 5727.391 of the Revised Code is hereby repealed effective January 1, 2002.

Section 8. Sections 4905.301, 4905.66, 4905.67, 4905.68, 4905.69, 4909.157, 4909.158, 4909.159, 4909.191, 4909.192, 4909.193, 4913.01, 4913.02, 4913.03, 4913.04, 4913.05, 4913.06, 4913.07, 4933.27, and 4933.34 of the Revised Code are hereby repealed effective on January 1, 2001, but if the Public Utilities

Commission issues an order under division (C) of section 4928.01 of the Revised Code, as enacted by this act, the repeal of such sections shall be applied accordingly.

Section 9. The Public Utilities Commission, Consumers' Counsel, and the Attorney General shall develop a memorandum of understanding not later than January 1, 2000, to establish a system to respond effectively and efficiently to residential consumer inquiries and complaints and shall provide a joint report to the General Assembly on the efforts of the three agencies not later than June 30, 2002.

Section 10. (A) As used in this section:

(1) "Electric company" and "rural electric company" have the same meanings as in section 5727.01 of the Revised Code.

(2) "Gross receipts" means gross receipts determined in accordance with section 5727.33 of the Revised Code.

(B) Each electric company and rural electric company shall pay the public utility excise tax imposed by section 5727.30 of the Revised Code on the company's gross receipts received during the period of April 30, 2000, through April 30, 2001. Notwithstanding section 5727.31 of the Revised Code, each electric company and rural electric company shall make tax payments toward that liability. The first payment must be made on or before October 15, 2000, and shall equal one-third of the estimated liability shown in the report filed on or before August 1, 2000. The second payment must be made on or before March 1, 2001, and shall equal one-third of the tax assessed by the Tax Commissioner on or before the first Monday in November, 2000. The last payment must be made on or before June 1, 2001, and shall equal one-fourth of the tax assessed by the Commissioner. The final report for the period of April 30, 2000, through April 30, 2001, shall be filed by an electric company or a rural electric company on or before August 1, 2001, in accordance with division (A) of section 5727.31 and section 5727.32 of the Revised Code.

On or before the first Monday of November 2001, the Tax Commissioner shall assess an excise tax equal to four and three-quarters per cent of the gross receipts received by electric companies and rural electric companies during the period of April 30, 2000, through April 30, 2001. Except as provided in section 5727.03 of the Revised Code, as enacted by this act, after payment of this assessment, electric companies and rural electric companies are not subject to the excise tax on gross receipts imposed by section 5727.30 of the Revised Code.

Section 11. Electric companies, as defined in section 5727.01 of the Revised Code, shall first be subject to the corporation franchise tax under Chapter 5733. of the Revised Code for tax year 2001, as "tax year" is defined in section 5733.04 of the Revised Code. The amendments in this act to sections 4909.15, 5733.04, 5733.05, 5733.06, 5733.09, and 5733.98 of the Revised Code, and the enactment in this act of section 5733.39 of the Revised Code, first apply for tax year 2001.

Section 12. An electric company that is entitled to carry forward a credit against its public utility excise tax liability under section 5727.391 of the Revised Code before the repeal of that section under this act, is not entitled to carry forward any amount remaining after its last public utility excise tax payment and claim that amount as a credit against its corporation franchise tax liability under section 5733.39 of the Revised Code, as enacted by this act.

Section 13. The tax levied under section 5727.81 of the Revised Code first applies on and after May 1, 2001. Before that date, any electric distribution company shall register with the Tax Commissioner in accordance with section 5727.93 of the Revised Code, as enacted by this act.

Section 14. Section 5727.47 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 904 and Am. S.B. 358 of the 119th General Assembly, with the new language of neither of the acts shown in capital letters. This is in recognition of the principle stated in division (B) of section 1.52 of the Revised Code that such amendments are to be harmonized where not substantively irreconcilable and constitutes a legislative finding that such is the resulting version in effect prior to the effective date of this act.