

Interim Report of the Senate Ways and Means Committee

123rd General Assembly

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Sub. S. B. No. 3

A B I L L

To amend sections 113.061, 133.04, 715.013, 718.01,	1
1551.33, 1551.35, 3317.028, 4905.01, 4905.03,	2
4905.10, 4905.34, 4905.402, 4905.42, 4905.70,	3
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4911.18, 4933.33, 4933.81, 4935.04, 5117.01,	5
5117.02, 5117.03, 5117.04, 5117.05, 5117.07,	6
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5727.60, 5727.61, 5727.72, 5727.99, 5733.04,	12
5733.05, 5733.06, 5733.09, 5733.98, 5739.011, and	13
5739.02; to enact sections 4928.01 to 4928.20,	14
4928.31 to 4928.44, 4928.51 to 4928.57, 4928.61 to	15
4928.64, 5727.03, 5727.80 to 5727.95, and 5733.39;	16
and to repeal sections 4905.301, 4905.66, 4905.67,	17
4905.68, 4905.69, 4909.157, 4909.158, 4909.159,	18
4909.191, 4909.192, 4909.193, 4913.01, 4913.02,	19
4913.03, 4913.04, 4913.05, 4913.06, 4913.07,	20
4933.27, 4933.34, 5727.231, 5727.391, and 5727.73	21
of the Revised Code to provide for competition in	22
retail electric service, including provisions	23
regarding market structure, consumer protection,	24
competitive auctioning, and transition revenues;	25
to levy a kilowatt-hour excise tax on electric	26

distribution companies; to revise taxes for 27
electric companies and rural electric companies; 28
and to reduce tax assessment rates on certain 29
electric company and rural electric company 30
tangible personal property. 31

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

Section 1. That sections 113.061, 133.04, 715.013, 718.01, 32
1551.33, 1551.35, 3317.028, 4905.01, 4905.03, 4905.10, 4905.34, 33
4905.402, 4905.42, 4905.70, 4906.10, 4909.01, 4909.05, 4909.15, 34
4909.161, 4911.18, 4933.33, 4933.81, 4935.04, 5117.01, 5117.02, 35
5117.03, 5117.04, 5117.05, 5117.07, 5117.08, 5117.09, 5117.10, 36
5117.12, 5701.03, 5703.052, 5703.053, 5703.14, 5705.34, 5727.01, 37
5727.05, 5727.06, 5727.11, 5727.111, 5727.15, 5727.30, 5727.31, 38
5727.311, 5727.32, 5727.33, 5727.38, 5727.42, 5727.45, 5727.47, 39
5727.53, 5727.60, 5727.61, 5727.72, 5727.99, 5733.04, 5733.05, 40
5733.06, 5733.09, 5733.98, 5739.011, and 5739.02 be amended and 41
sections 4928.01, 4928.02, 4928.03, 4928.04, 4928.05, 4928.06, 42
4928.07, 4928.08, 4928.09, 4928.10, 4928.11, 4928.12, 4928.13, 43
4928.14, 4928.15, 4928.16, 4928.17, 4928.18, 4928.19, 4928.20, 44
4928.31, 4928.32, 4928.33, 4928.34, 4928.35, 4928.36, 4928.37, 45
4928.38, 4928.39, 4928.40, 4928.41, 4928.42, 4928.43, 4928.44, 46
4928.51, 4928.52, 4928.53, 4928.54, 4928.55, 4928.56, 4928.57, 47
4928.58, 4928.61, 4928.62, 4928.63, 4928.64, 5727.03, 5727.80, 48
5727.81, 5727.82, 5727.83, 5727.84, 5727.85, 5727.86, 5727.87, 49
5727.88, 5727.89, 5727.90, 5727.91, 5727.92, 5727.93, 5727.94, 50
5727.95, and 5733.39 of the Revised Code be enacted to read as 51
follows: 52

Sec. 113.061. The treasurer of state shall adopt rules in 53
accordance with Chapter 119. of the Revised Code governing the 54
remittance of taxes by electronic funds transfer as required under 55

sections 5727.311, 5727.83, 5733.022, 5735.062, 5739.032, 56
5739.122, 5741.121, and 5747.072 of the Revised Code and any other 57
section of the Revised Code under which a person is required to 58
remit taxes by electronic funds transfer. The rules shall govern 59
the modes of electronic funds transfer acceptable to the treasurer 60
of state and under what circumstances each mode is acceptable, the 61
content and format of electronic funds transfers, the coordination 62
of payment by electronic funds transfer and filing of associated 63
tax reports and returns, the remittance of taxes by means other 64
than electronic funds transfer by persons otherwise required to do 65
so but relieved of the requirement by the treasurer of state, and 66
any other matter that in the opinion of the treasurer of state 67
facilitates payment by electronic funds transfer in a manner 68
consistent with those sections. 69

Upon failure by a person, if so required, to remit taxes by 70
electronic funds transfer in the manner prescribed under section 71
5727.311, 5727.83, 5733.022, 5735.062, 5739.032, 5739.122, 72
5741.121, or 5747.072 of the Revised Code and rules adopted under 73
this section, the treasurer of state shall notify the tax 74
commissioner of such failure if the treasurer of state determines 75
that such failure was not due to reasonable cause or was due to 76
willful neglect, and shall provide the tax commissioner with any 77
information used in making that determination. The tax 78
commissioner may assess an additional charge as specified in the 79
respective section of the Revised Code governing the requirement 80
to remit taxes by electronic funds transfer. 81

The treasurer of state may implement means of acknowledging, 82
upon the request of a taxpayer, receipt of tax remittances made by 83
electronic funds transfer, and may adopt rules governing 84
acknowledgments. The cost of acknowledging receipt of electronic 85
remittances shall be paid by the person requesting acknowledgment. 86

The treasurer of state, not the tax commissioner, is 87
responsible for resolving any problems involving electronic funds 88
transfer transmissions. 89

Sec. 133.04. (A) As used in this chapter, "net indebtedness" 90
means, as determined pursuant to this section, the principal 91
amount of the outstanding securities of a subdivision less the 92
amount held in a bond retirement fund to the extent such amount is 93
not taken into account in determining the principal amount 94
outstanding under division (AA) of section 133.01 of the Revised 95
Code. For purposes of this definition, the principal amount of 96
outstanding securities includes the principal amount of 97
outstanding securities of another subdivision apportioned to the 98
subdivision as a result of acquisition of territory, and excludes 99
the principal amount of outstanding securities of the subdivision 100
apportioned to another subdivision as a result of loss of 101
territory and the payment or reimbursement obligations of the 102
subdivision under credit enhancement facilities relating to 103
outstanding securities. 104

(B) In calculating the net indebtedness of a subdivision, 105
none of the following securities, including anticipatory 106
securities issued in anticipation of their issuance, shall be 107
considered: 108

(1) Securities issued in anticipation of the levy or 109
collection of special assessments, either in original or refunded 110
form; 111

(2) Securities issued in anticipation of the collection of 112
current revenues for the fiscal year or other period not to exceed 113
twelve consecutive months, or securities issued in anticipation of 114
the collection of the proceeds from a specifically identified 115
voter-approved tax levy; 116

(3) Securities issued for purposes described in section 133.12 of the Revised Code;	117 118
(4) Securities issued under Chapter 122., 140., 165., 725., or 761.7 or section 131.23 of the Revised Code;	119 120
(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;	121 122 123
(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;	124 125 126 127 128
(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;	129 130 131 132
(8) <u>Securities issued in an amount equal to the property tax replacement payments received under section 5727.85 or 5727.86 of the Revised Code;</u>	133 134 135
<u>(9)</u> Other securities, including self-supporting securities, excepted by law from the calculation of net indebtedness or from the application of this chapter;	136 137 138
(9) <u>(10)</u> 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.	139 140 141 142
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.,	143 144 145 146

5725., 5727., 5728., 5729., 5731., 5735., 5737., 5739., 5741., 147
5743., or 5749. of the Revised Code. 148

This section does not prohibit a municipal corporation from 149
levying a tax on amounts received for admission to any place or, 150
on and after January 1, 2001, on the income of an electric 151
company, as defined in section 5727.01 of the Revised Code. 152

Sec. 718.01. (A) As used in this chapter: 153

(1) "Internal Revenue Code" means the Internal Revenue Code 154
of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended. 155

(2) "Schedule C" means internal revenue service schedule C 156
filed by a taxpayer pursuant to the Internal Revenue Code. 157

(3) "Form 2106" means internal revenue service form 2106 158
filed by a taxpayer pursuant to the Internal Revenue Code. 159

(4) "Intangible income" means income of any of the following 160
types: income yield, interest, dividends, or other income arising 161
from the ownership, sale, exchange, or other disposition of 162
intangible property including, but not limited to, investments, 163
deposits, money, or credits as those terms are defined in Chapter 164
5701. of the Revised Code. 165

(B) No municipal corporation with respect to that income 166
~~which~~ that it may tax shall tax such income at other than a 167
uniform rate. 168

(C) No municipal corporation shall levy a tax on income at a 169
rate in excess of one per cent without having obtained the 170
approval of the excess by a majority of the electors of the 171
municipality voting on the question at a general, primary, or 172
special election. The legislative authority of the municipal 173
corporation shall file with the board of elections at least 174
seventy-five days before the day of the election a copy of the 175

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;	268
	269
(2) Propose and support policies for the office consistent	270
with the Ohio coal development agenda and develop means to	271
implement the agenda;	272
(3) Apportion for the office's administrative costs no more	273
than ten per cent of the moneys credited to the Ohio coal	274
development fund created under section 1551.36 of the Revised	275
Code;	276
(4) Initiate, undertake, and support projects to carry out	277
the office's purposes and ensure that the projects are consistent	278
with and meet the selection criteria established by the Ohio coal	279
development agenda;	280
(5) Actively encourage joint participation in and, when	281
feasible, joint funding of the office's projects with governmental	282
agencies, electric utilities, universities and colleges, other	283
public or private interests, or any other person;	284
(6) Establish a table of organization for and employ such	285
employees and agents as are necessary for the administration and	286
operation of the office;	287
(7) Appoint specified members of and convene the technical	288
advisory committee established under section 1551.35 of the	289
Revised Code;	290
(8) Review, with the assistance of the technical advisory	291
committee, proposed coal research and development projects as	292
defined in section 1555.01 of the Revised Code, and coal	293
development projects, submitted to the office by public utilities	294
for the purposes <u>purpose</u> of sections 4905.301, section 4905.304,	295
and 4909.191 of the Revised Code. If the director and the advisory	296
committee determine that any such facility or project has as its	297
purpose the enhanced use of Ohio coal in an environmentally	298

acceptable, cost effective manner, promotes energy conservation, 299
is cost effective, and is environmentally sound, the director 300
shall submit to the public utilities commission a report 301
recommending that the commission allow the recovery of costs 302
associated with the facility or project under section ~~4905.301,~~ 303
~~4905.304, or 4909.191~~ of the Revised Code and including the 304
reasons for the recommendation; 305

(9) Establish such policies, procedures, and guidelines as 306
are necessary to achieve the office's purposes. 307

(C) With the approval of the director of development, the 308
director of the office may exercise any of the powers and duties 309
of the director of development as the directors consider 310
appropriate or desirable to achieve the office's purposes, 311
including, but not limited to, the powers and duties enumerated in 312
sections 1551.11, 1551.12, 1551.13, and 1551.15 of the Revised 313
Code. 314

Additionally, the director of the office may make loans to 315
governmental agencies or persons for projects to carry out the 316
office's purposes. Fees, charges, rates of interest, times of 317
payment of interest and principal, and other terms, conditions, 318
and provisions of the loans shall be such as the director of the 319
office determines to be appropriate and in furtherance of the 320
purposes for which the loans are made. The mortgage lien securing 321
any moneys lent by the director of the office may be subordinate 322
to the mortgage lien securing any moneys lent or invested by a 323
financial institution, but shall be superior to that securing any 324
moneys lent or expended by any other person. The moneys used in 325
making the loans shall be disbursed upon order of the director of 326
the office. 327

Sec. 1551.35. (A) There is hereby established a technical 328
advisory committee to assist the director of the Ohio coal 329

development office established under section 1551.32 of the 330
Revised Code in achieving the office's purposes. The director 331
shall appoint to the committee one member of the public utilities 332
commission ~~of Ohio~~ and one representative each of coal production 333
companies, the united mine workers of America, electric utilities, 334
manufacturers that use Ohio coal, and environmental organizations, 335
as well as two people with a background in coal research and 336
development technology, one of whom is employed at the time of the 337
member's appointment by a state university, as defined in section 338
3345.011 of the Revised Code. In addition, the committee shall 339
include four legislative members. The speaker and minority leader 340
of the house of representatives each shall appoint one member of 341
the house of representatives, and the president and minority 342
leader of the senate each shall appoint one member of the senate, 343
to the committee. The director of environmental protection, 344
representing the environmental protection agency, the Ohio air 345
quality development authority, and the Ohio water development 346
authority, shall serve on the committee as members ex officio. Any 347
member of the committee may designate in writing a substitute to 348
serve in the member's absence on the committee. The director of 349
environmental protection may designate in writing the chief of the 350
air pollution control division of the agency to represent the 351
agency. Members shall serve on the committee at the pleasure of 352
their appointing authority. Members of the committee appointed by 353
the director of the office and, notwithstanding section 101.26 of 354
the Revised Code, legislative members of the committee, when 355
engaged in their official duties as members of the committee, 356
shall be compensated on a per diem basis in accordance with 357
division (J) of section 124.15 of the Revised Code, except that 358
the member of the public utilities commission ~~of Ohio~~ and, while 359
employed by a state university, the member with a background in 360
coal research, shall not be so compensated. Members shall receive 361

their actual and necessary expenses incurred in the performance of 362
their duties. 363

(B) The technical advisory committee shall review and make 364
recommendations concerning the Ohio coal development agenda 365
required under section 1551.34 of the Revised Code, project 366
proposals, research and development projects submitted to the 367
office by public utilities for the ~~purposes~~ purpose of ~~sections~~ 368
~~4905.301~~, section 4905.304, ~~and 4909.191~~ of the Revised Code, 369
proposals for grants, loans, and loan guarantees for purposes of 370
sections 1555.01 to 1555.06 of the Revised Code, and such other 371
topics as the director of the office considers appropriate. 372

(C) The technical advisory committee may hold an executive 373
session at any regular or special meeting for the purpose of 374
considering research and development project proposals or 375
applications for assistance submitted to the Ohio coal development 376
office under section 1551.33, or sections 1555.01 to 1555.06, of 377
the Revised Code, to the extent that such proposals or 378
applications consist of trade secrets or other proprietary 379
information. 380

Any materials or data submitted to, made available to, or 381
received by the director of development or the director of the 382
Ohio coal development office in connection with agreements for 383
assistance entered into under this chapter or Chapter 1555. of the 384
Revised Code, or any information taken from such materials or data 385
for any purpose, to the extent that the materials or data consist 386
of trade secrets or other proprietary information, are not public 387
records for the purposes of section 149.43 of the Revised Code. 388

As used in this division, "trade secrets" has the same 389
meaning as in section 1333.61 of the Revised Code. 390

Sec. 3317.028. (A) On or before the fifteenth day of May in 391

each calendar year, the tax commissioner shall determine for each 392
school district whether the taxable value of all tangible personal 393
property, including utility tangible personal property, subject to 394
taxation by the district in the preceding tax year was less or 395
greater than the taxable value of such property during the second 396
preceding tax year. If any such decrease exceeds five per cent of 397
the district's tangible personal property taxable value included 398
in the total taxable value used in the district's state aid 399
computation for the fiscal year that ends in the current calendar 400
year, or if any such increase exceeds five per cent of the 401
district's total taxable value used in the district's state aid 402
computation for the fiscal year that ends in the current calendar 403
year, the tax commissioner shall certify both of the following to 404
the department of education: 405

~~(A)(1)~~ The taxable value of the tangible personal property 406
increase or decrease, including utility tangible personal property 407
increase or decrease, which shall be considered a change in 408
valuation; ~~and~~ 409

~~(B)(2)~~ The decrease or increase in taxes charged and payable 410
on such change in taxable value calculated in the same manner as 411
in division (A)(3) of section 3317.021 of the Revised Code. 412

(B) Notwithstanding division (A) of this section, when 413
determining under that division in calendar year 2002 whether the 414
taxable value of tangible personal property subject to taxation by 415
each school district in the preceding tax year was less or greater 416
than the taxable value of such property during the second 417
preceding tax year, the Tax Commissioner shall exclude from the 418
taxable value for both years the changes in the taxable value of 419
electric company and rural electric company tangible personal 420
property arising from changes from the assessment rate under 421
section 5727.111 and from changes in the apportionment of such 422

property under section 5727.15 of the Revised Code, both as 423
amended by Bill No. of the 123rd general assembly. 424

(C) Upon receipt of such certification, the department of 425
education shall reduce or increase by the respective amounts 426
certified, the taxable value and the taxes charged and payable 427
that were used in the district's state aid computation under 428
section 3317.022 of the Revised Code for the fiscal year that ends 429
in the current calendar year and shall recompute the state aid for 430
such fiscal year. During the last six months of the fiscal year, 431
the department shall pay the district a sum equal to one-half of 432
the recomputed payments in lieu of the payments otherwise required 433
under such sections. 434

Sec. 4905.01. As used in this chapter: 435

(A) "Railroad" has the meaning set forth in section 4907.02 436
of the Revised Code. 437

(B) "Motor transportation company" has the meaning set forth 438
in sections 4905.03 and 4921.02 of the Revised Code. 439

(C) "Trailer," "public highway," "fixed termini," "regular 440
route," and "irregular route" have the meanings set forth in 441
section 4921.02 of the Revised Code. 442

(D) "Private motor carrier," "contract carrier by motor 443
vehicle," "motor vehicle," and "charter party trip" have the 444
meanings set forth in section 4923.02 of the Revised Code. 445

~~(E) "Delivery cost" means the cost of delivery of fuel, to be 446
used for the generation of electricity, from the site of 447
production directly to the site of an electric generating 448
facility. 449~~

~~(F) "Acquisition cost" means the cost to an electric light 450
company of acquiring fuel for generation of electricity. In the 451
case of a fuel supply owned by the company, such term shall also 452~~

~~include the cost of legally extracting the fuel and its handling~~ 453
~~prior to its shipment to the company. In the case of a coal supply~~ 454
~~owned or controlled in whole or in part by the company, such term~~ 455
~~shall not exceed a price that is, in the judgment of the public~~ 456
~~utilities commission, reasonable when compared to the average cost~~ 457
~~per million British thermal units of similar quality coal~~ 458
~~purchased from all independent like mining operations under~~ 459
~~similar term contracts during the same period. In determining a~~ 460
~~reasonable price for coal from a coal supply owned or controlled~~ 461
~~in whole or in part by the company, the public utilities~~ 462
~~commission shall consider the use of:~~ 463

~~(1) Capital by the developer of the mining operation in a~~ 464
~~manner that did not:~~ 465

~~(a) Take into account intermediate or long-term trends in the~~ 466
~~coal mining industry; or~~ 467

~~(b) Incorporate a design consistent with long-term~~ 468
~~dependability; and~~ 469

~~(c) Take into account the intermediate or long-term cost and~~ 470
~~reliable energy supply interests of the company's customers; or~~ 471

~~(2) Ineffective operating techniques. Such term does not~~ 472
~~embrace any associated cost, including, but not limited to,~~ 473
~~delivery cost, the cost of handling the fuel after its delivery to~~ 474
~~such facility, the cost of such processing, readying, or~~ 475
~~refinement of the fuel as may be necessary in order to use the~~ 476
~~fuel to generate electricity, or the cost of disposing of any~~ 477
~~residue of such fuel after it has been so used. To the extent the~~ 478
~~washing of coal is required, by law or rule, to remove or reduce~~ 479
~~sulfur compounds or any other impurity, "acquisition cost"~~ 480
~~includes the cost of such washing.~~ 481

~~(G) "Fuel component" means acquisition and delivery costs of~~ 482
~~fuel for the generation of electricity, including the allowable~~ 483

~~costs of purchased power as defined in section 4909.159 of the~~ 484
~~Revised Code, divided by the corresponding number of net kilowatt~~ 485
~~hours generated and purchased.~~ 486

~~(H) "Base period" means the most recent six-month period for~~ 487
~~which the public utilities commission has determined either the~~ 488
~~amount of the fuel component or the fuel cost per kilowatt hour~~ 489
~~included in the base rates of an electric light company, whichever~~ 490
~~is last determined.~~ 491

~~(I) "Current period" means the six-month period immediately~~ 492
~~succeeding the base period for which the public utilities~~ 493
~~commission has determined the amount of the fuel component in the~~ 494
~~base rate of an electric light company.~~ 495

~~(J) "Ohio coal research and development costs" means all~~ 496
~~reasonable costs associated with a facility or project undertaken~~ 497
~~by a public utility for which a recommendation to allow the~~ 498
~~recovery of costs associated therewith has been made under~~ 499
~~division (B)(8) of section 1551.33 of the Revised Code, including,~~ 500
~~but not limited to, capital costs, such as costs of debt and~~ 501
~~equity; construction and operation costs; termination and~~ 502
~~retirement costs; costs of feasibility and marketing studies~~ 503
~~associated with the project; and the acquisition and delivery~~ 504
~~costs of Ohio coal used in the project, less any expenditures of~~ 505
~~grant moneys.~~ 506

~~(K) "Compliance facility" means property that is designed,~~ 507
~~constructed, or installed, and used, at a coal-fired electric~~ 508
~~generating facility for the primary purpose of complying with~~ 509
~~Phase I acid rain control requirements under Title IV of the~~ 510
~~"Clean Air Act Amendments of 1990," 104 Stat. 2584, 42 U.S.C.A.~~ 511
~~7651, and that controls or limits emissions of sulfur or nitrogen~~ 512
~~compounds resulting from the combustion of coal through the~~ 513
~~removal or reduction of those compounds before, during, or after~~ 514

~~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 545
state; 546

(2) A telephone company, when engaged in the business of 547
transmitting telephonic messages to, from, through, or in this 548
state and as such is a common carrier; 549

(3) A motor transportation company, when engaged in the 550
business of carrying and transporting persons or property or the 551
business of providing or furnishing such transportation service, 552
for hire, in or by motor-propelled vehicles of any kind, including 553
trailers, for the public in general, over any public street, road, 554
or highway in this state, except as provided in section 4921.02 of 555
the Revised Code; 556

(4) An electric light company, when engaged in the business 557
of supplying electricity for light, heat, or power purposes to 558
consumers within this state; 559

(5) A gas company, when engaged in the business of supplying 560
artificial gas for lighting, power, or heating purposes to 561
consumers within this state or when engaged in the business of 562
supplying artificial gas to gas companies or to natural gas 563
companies within this state, but a producer engaged in supplying 564
to one or more gas or natural gas companies, only such ~~artificial~~ 565
ARTIFICIAL gas as is manufactured by such producer as a by-product 566
of some other process in which such producer is primarily engaged 567
within this state is not thereby a gas company. All rates, 568
rentals, tolls, schedules, charges of any kind, or agreements 569
between any gas company and any other gas company or any natural 570
gas company providing for the supplying of artificial gas and for 571
compensation for the same, are subject to the jurisdiction of the 572
public utilities commission. 573

(6) A natural gas company, when engaged in the business of 574
supplying natural gas for lighting, power, or heating purposes to 575

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; 607

(11) A street railway company, when engaged in the business 608
of operating as a common carrier, a railway, wholly or partly 609
within this state, with one or more tracks upon, along, above or 610
below any public road, street, alleyway, or ground, within any 611
municipal corporation, operated by any motive power other than 612
steam and not a part of an interurban railroad, whether such 613
railway is termed a street, inclined-plane, elevated, or 614
underground railway; 615

(12) A suburban railroad company, when engaged in the 616
business of operating as a common carrier, whether wholly or 617
partially within this state, a part of a street railway 618
constructed or extended beyond the limits of a municipal 619
corporation, and not a part of an interurban railroad; 620

(13) An interurban railroad company, when engaged in the 621
business of operating a railroad, wholly or partially within this 622
state, with one or more tracks from one municipal corporation or 623
point in this state to another municipal corporation or point in 624
this state, whether constructed upon the public highways or upon 625
private rights-of-way, outside of municipal corporations, using 626
electricity or other motive power than steam power for the 627
transportation of passengers, packages, express matter, United 628
States mail, baggage, and freight. Such interurban railroad 629
company is included in the term "railroad" as used in section 630
4907.02 of the Revised Code. 631

(14) A sewage disposal system company, when engaged in the 632
business of sewage disposal services through pipes or tubing, and 633
treatment works, or in a similar manner, within this state. 634

(B) "Motor-propelled vehicle" means any automobile, 635
automobile truck, motor bus, or any other self-propelled vehicle 636
not operated or driven upon fixed rails or tracks. 637

~~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 669
apportioning an amount equal to the appropriation to the public 670
utilities commission for administration of the utilities division 671
in each fiscal year less the total amount to be recovered from 672
those paying the minimum assessment, in proportion to the 673
intrastate gross earnings or receipts of the remaining railroads 674
and public utilities for the calendar year next preceding that in 675
which the assessments are made. 676

In the case of an assessment based on intrastate gross 677
receipts under this section against a public utility that is an 678
electric utility, electric services company, electric cooperative, 679
or governmental aggregator subject to certification under section 680
4928.08 of the Revised Code, such receipts shall be those 681
specified in the utility's, company's, COOPERATIVE'S, OR 682
aggregator's most recent report of intrastate gross receipts and 683
sales of kilowatt hours of electricity, filed with the commission 684
pursuant to division (F) of section 4928.06 of the Revised Code, 685
AND VERIFIED BY THE COMMISSION. 686

(B) On or before the first day of October in each year, the 687
commission shall notify each such railroad and public utility of 688
the sum assessed against it, whereupon payment shall be made to 689
the commission, which shall deposit it into the state treasury to 690
the credit of the public utilities fund, which is hereby created. 691
Any such amounts paid into the fund but not expended by the 692
commission shall be credited ratably, after first deducting any 693
deficits accumulated from prior years, by the commission to 694
railroads and public utilities that pay more than the minimum 695
assessment, according to the respective portions of such sum 696
assessable against them for the ensuing calendar year. The 697
assessments for such calendar year shall be reduced 698
correspondingly. 699

(C) Within five days after the beginning of each fiscal year, 700

the director of budget and management shall transfer from the 701
general revenue fund to the public utilities fund an amount 702
sufficient for maintaining and administering the public utilities 703
commission and exercising its supervision and jurisdiction over 704
the railroads and public utilities of the state during the first 705
four months of the fiscal year. The director shall transfer the 706
same amount back to the general revenue fund from the public 707
utilities fund at such time as the director determines that the 708
balance of the public utilities fund is sufficient to support the 709
appropriations from the fund for the fiscal year. The director may 710
transfer less than that amount if the director determines that the 711
revenues of the public utilities fund during the fiscal year will 712
be insufficient to support the appropriations from the fund for 713
the fiscal year, in which case the amount not paid back to the 714
general revenue fund shall be payable to the general revenue fund 715
in future fiscal years. 716

~~(C)~~(D) For the purpose of this section only, "public utility" 717
includes, in addition to an electric utility, an electric services 718
company, an electric cooperative, or a governmental aggregator 719
subject to certification under section 4928.08 of the Revised 720
Code, to the extent of its engagement in the business of supplying 721
or arranging for the supply in this state of any retail electric 722
service for which it must be so certified. 723

(E) Each public utilities commissioner shall receive a salary 724
fixed at the level set by pay range 49 under schedule E-2 of 725
section 124.152 of the Revised Code. 726

Sec. 4905.34. Except as provided in sections 4905.33 and 727
4905.35 and Chapter 4928. of the Revised Code, Chapters 4901., 728
4903., 4905., 4907., 4909., 4921., and 4923. of the Revised Code 729
do not prevent any public utility or railroad from granting any of 730
its property for any public purpose, or granting reduced rates or 731

free service of any kind to the United States, to the state or any 732
political subdivision of the state, for charitable purposes, for 733
fairs or expositions, to a law enforcement officer residing in 734
free housing provided pursuant to section 3735.43 of the Revised 735
Code, or to any officer or employee of such public utility or 736
railroad or the officer's or employee's family. All contracts and 737
agreements made or entered into by such public utility or railroad 738
for such use, reduced rates, or free service are valid and 739
enforcible at law. As used in this section, "employee" includes 740
furloughed, pensioned, and superannuated employees. 741

Sec. 4905.402. (A) As used in this section: 742

(1) "Control" means the possession of the power to direct the 743
management and policies of a domestic telephone company or a 744
holding company of a domestic telephone company, or the management 745
and policies of a domestic electric utility or a holding company 746
of a domestic electric utility, through the ownership of voting 747
securities, by contract, or otherwise, but does not include the 748
power that results from holding an official position or the 749
possession of corporate office with the domestic ~~telephone~~ company 750
or utility or the holding company. Control is presumed to exist if 751
any person, directly or indirectly, owns, controls, holds the 752
power to vote, or holds with the power to vote proxies ~~which~~ that 753
constitute, twenty per cent or more of the total voting power of 754
the domestic ~~telephone~~ company or utility or the holding company. 755

(2) "Electric utility" has the same meaning as in section 756
4928.07 of the Revised Code. 757

(3) "Holding company" excludes any securities broker 758
performing the usual and customary broker's function. 759

~~(3)~~(4) "Telephone company" means any company described in 760
division (A)(2) of section 4905.03 of the Revised Code that is a 761

public utility under section 4905.02 of the Revised Code and 762
provides basic local exchange service, as defined in section 763
4927.01 of the Revised Code. 764

(B) No person shall acquire control, directly or indirectly, 765
of a domestic telephone company or a holding company controlling a 766
domestic telephone company or of a domestic electric utility or a 767
holding company controlling a domestic electric utility unless 768
that person obtains the prior approval of the public utilities 769
commission under this section. To obtain approval the person shall 770
file an application with the commission demonstrating that the 771
acquisition will promote public convenience and result in the 772
provision of adequate service for a reasonable rate, rental, toll, 773
or charge. The application shall contain such information as the 774
commission may require. If the commission considers a hearing 775
necessary, it may fix a time and place for hearing. If, after 776
review of the application and after any necessary hearing, the 777
commission is satisfied that approval of the application will 778
promote public convenience and result in the provision of adequate 779
service for a reasonable rate, rental, toll, or charge, the 780
commission shall approve the application and make such order as it 781
considers proper. If the commission fails to issue an order within 782
thirty days of the filing of the application, or within twenty 783
days of the conclusion of a hearing, if one is held, the 784
application shall be deemed approved by operation of law. 785

(C) The ~~public utilities~~ commission shall adopt such rules as 786
it finds necessary to carry out this section. 787

(D) If it appears to the ~~public utilities~~ commission or to 788
any person ~~who~~ that may be adversely affected that any person is 789
engaged in or about to engage in any acts or practices that would 790
violate this section, the attorney general, when directed to do so 791
by the commission, or the person claiming to be adversely affected 792
may bring an action in any court of common pleas that has 793

jurisdiction and venue to enjoin such acts or practices and 794
enforce compliance with this section. Upon a proper showing, the 795
court shall grant, without bond, a restraining order or temporary 796
or permanent injunction. 797

(E) The courts of this state have jurisdiction over every 798
person not a resident of or domiciled or authorized to do business 799
in this state ~~who~~ that files, or is prohibited from acting without 800
first filing, an application under division (B) of this section, 801
and over all actions involving such person arising out of 802
violations of this section. The secretary of state shall be the 803
agent for service of process for any such person in any action, 804
suit, or proceeding arising out of violations of this section. 805
Copies of all such lawful process shall be served upon the 806
secretary of state and transmitted by certified mail, with return 807
receipt requested, by the secretary of state to such person at ~~his~~ 808
the person's last known address. 809

Sec. 4905.42. To determine whether it should issue the order 810
referred to in section 4905.40 of the Revised Code, the public 811
utilities commission shall hold such hearings, make such inquiries 812
or investigations, and examine such witnesses, books, papers, 813
documents, and contracts as it deems proper. ~~Within forty-five~~ 814
~~days after an electric light company submits an application under~~ 815
~~that section pertaining to the issuance of stocks, bonds, notes,~~ 816
~~or other evidence of indebtedness to acquire, construct, or~~ 817
~~install a compliance facility, the commission shall complete its~~ 818
~~review and shall render a decision on the application.~~ 819

An order issued under this section shall fix the amount, 820
character, and terms of any issue of stocks, bonds, notes, or 821
other evidence of indebtedness, and the purposes to which the 822
issue or any proceeds of it shall be applied, shall recite that 823
the money, property, consideration, or labor procured or to be 824

procured or paid for by such issue was or is reasonably required 825
for the purposes specified in the order, and shall recite the 826
value of any property, consideration, or service, as found by the 827
commission, for which in whole or in part such issue is proposed 828
to be made. 829

No public utility or railroad shall, without the consent of 830
the commission, apply any such issue or its proceeds to any 831
purpose not specified in the order. Such public utilities or 832
railroads may issue notes for proper corporate purposes, payable 833
at periods of not more than twelve months, without the consent of 834
the commission, but no such notes shall, in whole or in part, 835
directly or indirectly, be refunded by any issue of stocks or 836
bonds, or by any evidence of indebtedness, running for more than 837
twelve months, without the consent of the commission. 838

All stocks, bonds, notes, or other evidence of indebtedness 839
issued by any public utility or railroad without the permission of 840
the commission are void. No interstate railroad or public utility 841
shall be required to apply to the commission for authority to 842
issue stocks, bonds, notes, or other evidence of indebtedness for 843
the acquisition of property, the construction, completion, 844
extension, or improvement of its facilities, or the improvement or 845
maintenance of its service outside this state, or for authority 846
for the discharge or refunding of obligations issued or incurred 847
for such purposes or the reimbursement of moneys actually expended 848
for such purposes outside this state. 849

No pipe-line company--when engaged in the business of 850
transporting oil through pipes or tubing, either wholly or 851
partly--within this state, shall be required to apply to the 852
commission for authority to issue stocks, bonds, notes, or other 853
evidence of indebtedness for the purpose of acquiring or paying 854
for stocks, bonds, notes, or other evidence of indebtedness of any 855
other corporation organized under the laws of this state, any 856

other state, the District of Columbia, the United States, any 857
territory of the United States, any foreign country, or otherwise. 858

No company that is both a pipe_line company engaged as such 859
in the business of transporting natural gas through pipes or 860
tubing in interstate commerce, wholly or partly within this state, 861
and a natural gas company engaged as such in this state solely in 862
the business of supplying natural gas to gas companies or to 863
natural gas companies shall be required to apply to the commission 864
for authority to issue stocks, bonds, notes, or other evidence of 865
indebtedness. 866

Sec. 4905.70. The public utilities commission shall initiate 867
programs that will promote and encourage conservation of energy 868
and a reduction in the growth rate of energy consumption, promote 869
economic efficiencies, and take into account long-run incremental 870
costs. Notwithstanding sections 4905.31, 4905.33, 4905.35, and 871
4909.151 of the Revised Code, the ~~public utilities~~ commission 872
shall examine and issue written findings on the declining block 873
rate structure, lifeline rates, long-run incremental pricing, peak 874
load and off-peak pricing, time of day and seasonal pricing, 875
interruptible load pricing, and single rate pricing where rates do 876
not vary because of classification of customers or amount of 877
usage. ~~The public utilities commission shall establish criteria~~ 878
~~for the investigation, identification, and remedy of the existence~~ 879
~~of any excess capacity, exclusive of capacity used primarily for~~ 880
~~Ohio coal research and development, as defined in section 1555.01~~ 881
~~of the Revised Code, the costs of which have been allowed for~~ 882
~~recovery under section 4905.301 or 4909.15 of the Revised Code, in~~ 883
~~the generating systems of electric light companies.~~ The public 884
~~utilities~~ commission, by a rule adopted no later than October 1, 885
1977, and effective and applicable no later than November 1, 1977, 886
shall require each electric light company to offer to such of 887
their residential customers whose residences are primarily heated 888

by electricity the option of their usage being metered by a demand 889
or load meter. A under the rule, a customer who selects such 890
option may, ~~under the rule,~~ be required by the company, where no 891
such meter is already installed, to pay for such meter and its 892
installation. The rule shall require each company to bill such of 893
its customers who select such option for those kilowatt hours in 894
excess of a prescribed number of kilowatt hours per kilowatt of 895
billing demand, at a rate per kilowatt hour that reflects the 896
lower cost of providing service during off-peak periods. 897

Sec. 4906.10. (A) The power siting board shall render a 898
decision upon the record either granting or denying the 899
application as filed, or granting it upon such terms, conditions, 900
or modifications of the construction, operation, or maintenance of 901
the major utility facility as the board considers appropriate. The 902
certificate shall be conditioned upon the facility being in 903
compliance with standards and rules adopted under sections 904
1501.33, 1501.34, and 4561.32 and Chapters 3704., 3734., and 6111. 905
of the Revised Code. The period of initial operation, under a 906
certificate, shall expire two years after the date on which 907
electric power is first generated by the facility. During the 908
period of initial operation, the facility shall be subject to the 909
enforcement and monitoring powers of the director of environmental 910
protection under Chapters 3704., 3734., and 6111. of the Revised 911
Code and to the emergency provisions ~~thereunder~~ under those 912
chapters. If a major utility facility constructed in accordance 913
with the terms and conditions of its certificate is unable to 914
operate in compliance with all applicable requirements of state 915
laws, rules, and standards pertaining to air pollution, the 916
facility may apply to the director of environmental protection for 917
a conditional operating permit under division (G) of section 918
3704.03 of the Revised Code and the rules adopted thereunder. The 919

operation of a major utility facility in compliance with such a 920
conditional operating permit is not in violation of its 921
certificate. After the expiration of the period of initial 922
operation of a major utility facility, the facility shall be under 923
the jurisdiction of the environmental protection agency and shall 924
comply with all laws, rules, and standards pertaining to air 925
pollution, water pollution, and solid and hazardous waste 926
disposal. 927

The board shall not grant a certificate for the construction, 928
operation, and maintenance of a major utility facility, either as 929
proposed or as modified by the board, unless it finds and 930
determines all of the following: 931

(1) The basis of the need for the facility⁷. In the case of a 932
major utility facility described in division (B)(1) of section 933
4906.01 of the Revised Code to be constructed on or after January 934
1, 2000, the board shall presume the need for the facility as that 935
need is stated in an application pursuant to division (A)(3) of 936
section 4906.06 of the Revised Code. 937

(2) The nature of the probable environmental impact; 938

(3) That the facility represents the minimum adverse 939
environmental impact, considering the state of available 940
technology and the nature and economics of the various 941
alternatives, and other pertinent considerations; 942

(4) In the case of an electric transmission line, that the 943
facility is consistent with regional plans for expansion of the 944
electric power grid of the electric systems serving this state and 945
interconnected utility systems and that the facility will serve 946
the interests of electric system economy and reliability; 947

(5) That the facility will comply with Chapters 3704., 3734., 948
and 6111. of the Revised Code and all rules and standards adopted 949

under those chapters and under sections 1501.33, 1501.34, and 950
4561.32 of the Revised Code. In determining whether the facility 951
will comply with all rules and standards adopted under section 952
4561.32 of the Revised Code, the board shall consult with the 953
office of aviation of the division of transportation assistance of 954
the department of transportation under section 4561.341 of the 955
Revised Code. 956

(6) That the facility will serve the public interest, 957
convenience, and necessity; 958

(7) In addition to the provisions contained in divisions 959
(A)(1) to (6) of this section, and rules adopted thereunder, what 960
its impact will be on the viability as agricultural land of any 961
land in an existing agricultural district established under 962
Chapter 929. of the Revised Code that is located within the site 963
and alternative site of the proposed major utility facility. Rules 964
adopted to evaluate impact under division (A)(7) of this section 965
shall not require the compilation, creation, submission, or 966
production of any information, document, or other data pertaining 967
to land not located within the site and alternative site. 968

(8) That the facility incorporates maximum feasible water 969
conservation practices as determined by the board, considering 970
available technology and the nature and economics of the various 971
alternatives. 972

(B) If the board determines that the location of all or a 973
part of the proposed facility should be modified, it may condition 974
its certificate upon that modification, provided that the 975
municipal corporations and counties, and persons residing therein, 976
affected by the modification shall have been given reasonable 977
notice thereof. 978

(C) A copy of the decision and any opinion issued therewith 979
shall be served upon each party. 980

Sec. 4909.01. As used in this chapter:	981
(A) "Public utility" has the meaning set forth in section 4905.02 of the Revised Code.	982 983
(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.	984 985 986 987 988 989 990
(C) "Railroad" has the meaning set forth in section 4907.02 of the Revised Code.	991 992
(D) "Motor transportation company" has the meaning set forth in sections 4905.03 and 4921.02 of the Revised Code.	993 994
(E) "Trailers," "public highway," "fixed termini," "regular route," and "irregular route" have the meanings set forth in section 4921.02 of the Revised Code.	995 996 997
(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.	998 999 1000
(G) "Delivery cost" and "acquisition cost" have the meanings set forth in section 4905.01 of the Revised Code.	1001 1002
(H) "Compliance facility" has the meaning set forth in section 4905.01 of the Revised Code.	1003 1004
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.	1005 1006 1007 1008

Sec. 4909.05. As used in this section: 1009

(A) A "lease purchase agreement" is an agreement pursuant to 1010
which a public utility leasing property is required to make rental 1011
payments for the term of the agreement and either the utility is 1012
granted the right to purchase the property upon the completion of 1013
the term of the agreement and upon the payment of an additional 1014
fixed sum of money or title to the property vests in the utility 1015
upon the making of the final rental payment. 1016

(B) A "leaseback" is the sale or transfer of property by a 1017
public utility to another person contemporaneously followed by the 1018
leasing of the property to the public utility on a long-term 1019
basis. 1020

The public utilities commission shall prescribe the form and 1021
details of the valuation report of the property of each public 1022
utility or railroad in the state. Such report shall include all 1023
the kinds and classes of property, with the value of each, owned 1024
or held by each public utility or railroad used and useful for the 1025
service and convenience of the public. Such report shall contain 1026
the following facts in detail: 1027

(C) The original cost of each parcel of land owned in fee and 1028
in use at the date certain determined by the commission; and also 1029
a statement of the conditions of acquisition, whether by direct 1030
purchase, by donation, by exercise of the power of eminent domain, 1031
or otherwise; 1032

(D) The actual acquisition cost, not including periodic 1033
rental fees, of rights-of-way, trailways, or other land rights 1034
held by virtue of easements, leases, or other forms of grants of 1035
rights as to usage; 1036

(E) The original cost of all other kinds and classes of 1037
property used and useful in the rendition of service to the 1038

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~~ 1100
~~particular construction project is at least seventy five per cent~~ 1101
~~complete.~~ 1102

~~As used in this division, "pollution control equipment" means~~ 1103
~~any construction project undertaken, in whole or in part, to~~ 1104
~~reduce sulfur or nitrous oxide emissions to levels established by~~ 1105
~~federal, state, or local statute, law, ordinance, regulation, or~~ 1106
~~order. The commission shall determine by rule what projects~~ 1107
~~qualify as pollution control equipment.~~ 1108

In determining the percentage completion of a particular 1109
construction project, the commission shall consider, among other 1110
relevant criteria, the per cent of time elapsed in construction; 1111
the per cent of construction funds, excluding allowance for funds 1112
used during construction, expended, or obligated to such 1113
construction funds budgeted where all such funds are adjusted to 1114
reflect current purchasing power; and any physical inspection 1115
performed by or on behalf of any party, including the commission's 1116
staff. 1117

A reasonable allowance for construction work in progress 1118
~~other than for construction projects involving the installation,~~ 1119
~~renovation, or maintenance of pollution control equipment shall~~ 1120
not exceed ten per cent of the total valuation as stated in this 1121
division, not including such allowance for construction work in 1122
progress. 1123

~~The allowance for construction work in progress for~~ 1124
~~construction projects involving the installation, renovation, or~~ 1125
~~maintenance of pollution control equipment shall be the dollar~~ 1126
~~value of the project and shall not exceed, together with any other~~ 1127
~~allowance for construction work in progress granted under this~~ 1128
~~division, twenty per cent of the total valuation as stated in this~~ 1129
~~division, not including such allowance for construction work in~~ 1130

progress. 1131

Where the commission permits an allowance for construction 1132
work in progress, the dollar value of the project or portion 1133
thereof included in the valuation as construction work in progress 1134
shall not be included in the valuation as plant in service until 1135
such time as the total revenue effect of the construction work in 1136
progress allowance is offset by the total revenue effect of the 1137
plant in service exclusion. Carrying charges calculated in a 1138
manner similar to allowance for funds used during construction 1139
shall accrue on that portion of the project in service but not 1140
reflected in rates as plant in service, and such accrued carrying 1141
charges shall be included in the valuation of the property at the 1142
conclusion of the offset period for purposes of division (J) of 1143
section 4909.05 of the Revised Code. 1144

From and after April 10, 1985, no allowance for construction 1145
work in progress as it relates to a particular construction 1146
project shall be reflected in rates for a period exceeding 1147
forty-eight consecutive months commencing on the date the initial 1148
rates reflecting such allowance become effective, except as 1149
otherwise provided in this division. 1150

~~In the case of a nuclear generating facility that has not 1151
been granted a full construction permit by the nuclear regulatory 1152
commission on or before April 10, 1985, the utility, within six 1153
months after the granting of such permit, shall submit to the 1154
public utilities commission a projected in service date for such 1155
facility. Thereafter, no allowance for construction work in 1156
progress as it relates to such nuclear generating facility shall 1157
be reflected in rates for a period exceeding forty-eight 1158
consecutive months commencing on the date the initial rates 1159
reflecting such allowance become effective, or for a period 1160
commencing on the date the initial rates reflecting such allowance 1161
become effective and ending on the projected in service date 1162~~

~~previously submitted to the commission, whichever period expires~~ 1163
~~first.~~ 1164

The applicable maximum period in rates for an allowance for 1165
construction work in progress as it relates to a particular 1166
construction project shall be tolled if, and to the extent, a 1167
delay in the in-service date of the project is caused by the 1168
action or inaction of any federal, state, county, or municipal 1169
agency having jurisdiction, where such action or inaction relates 1170
to a change in a rule, standard, or approval of such agency, and 1171
where such action or inaction is not the result of the failure of 1172
the utility to reasonably endeavor to comply with any rule, 1173
standard, or approval prior to such change. 1174

In the event that such period expires before the project goes 1175
~~in~~ into service, the commission shall exclude, from the date of 1176
expiration, ~~exclude~~ the allowance for the project as construction 1177
work in progress from rates, except that the commission may extend 1178
the expiration date up to twelve months for good cause shown. 1179

In the event that a utility has permanently canceled, 1180
abandoned, or terminated construction of a project for which it 1181
was previously permitted a construction work in progress 1182
allowance, the commission ~~shall~~ immediately shall exclude the 1183
allowance for the project from the valuation. 1184

In the event that a construction work in progress project 1185
previously included in the valuation is removed from the valuation 1186
pursuant to this division, any revenues collected by the utility 1187
from its customers after April 10, 1985, ~~which~~ that resulted from 1188
such prior inclusion shall be offset against future revenues over 1189
the same period of time as the project was included in the 1190
valuation as construction work in progress. The total revenue 1191
effect of such offset shall not exceed the total revenues 1192
previously collected. 1193

In no event shall the total revenue effect of any offset or 1194
offsets provided herein under division (A)(1) of this section 1195
exceed the total revenue effect of any construction work in 1196
progress allowance. 1197

(2) A fair and reasonable rate of return to the utility on 1198
the valuation as determined in division (A)(1) of this section; 1199

(3) The dollar annual return to which the utility is entitled 1200
by applying the fair and reasonable rate of return as determined 1201
under division (A)(2) of this section to the valuation of the 1202
utility determined under division (A)(1) of this section; 1203

(4) The cost to the utility of rendering the public utility 1204
service for the test period less the total of any interest on cash 1205
or credit refunds paid, pursuant to section 4909.42 of the Revised 1206
Code, by the utility during the test period. 1207

~~(a) Any depreciation expense of a compliance facility shall 1208
be calculated under division (A)(4) of this section on the basis 1209
of the useful service life of the compliance facility or the 1210
remaining useful life of the electric generating unit in 1211
connection with which the compliance facility was acquired, 1212
constructed, or installed, whichever is the shorter time. Division 1213
(A)(4)(a) of this section applies only to depreciation expense of 1214
a compliance facility contained in the environmental compliance 1215
plan of the electric light company approved under Chapter 4913. of 1216
the Revised Code or in its compliance strategy examined under 1217
section 4909.158 of the Revised Code. 1218~~

~~(b)~~ Federal, state, and local taxes imposed on or measured by 1219
net income may, in the discretion of the commission, be computed 1220
by the normalization method of accounting, provided the utility 1221
maintains accounting reserves that reflect differences between 1222
taxes actually payable and taxes on a normalized basis, provided 1223
that no determination as to the treatment in the rate-making 1224

process of such taxes shall be made that will result in loss of 1225
any tax depreciation or other tax benefit to which the utility 1226
would otherwise be entitled, and further provided that such tax 1227
benefit as redounds to the utility as a result of such a 1228
computation may not be retained by the company, used to fund any 1229
dividend or distribution, or utilized for any purpose other than 1230
the defrayal of the operating expenses of the utility and the 1231
defrayal of the expenses of the utility in connection with 1232
construction work. 1233

~~(c)~~(b) The amount of any tax credits granted to an electric 1234
light company under section ~~5727.391~~ 5733.39 of the Revised Code 1235
shall not be retained by the company, used to fund any dividend or 1236
distribution, or utilized for any purposes other than the defrayal 1237
of the allowable operating expenses of the company and the 1238
defrayal of the allowable expenses of the company in connection 1239
with the installation, acquisition, construction, or use of a 1240
compliance facility. The amount of the tax credits granted to an 1241
electric light company under that section shall be returned to its 1242
customers within three years after initially claiming the credit 1243
through an offset to the company's rates or fuel component, as 1244
determined by the commission, as set forth in schedules filed by 1245
the company under section 4905.30 of the Revised Code. As used in 1246
division (A)(4)(c) of this section, "compliance facility" has the 1247
same meaning as in section ~~5727.391~~ 5733.39 of the Revised Code. 1248

(B) The ~~public utilities~~ commission shall compute the gross 1249
annual revenues to which the utility is entitled by adding the 1250
dollar amount of return under division (A)(3) of this section to 1251
the cost of rendering the public utility service for the test 1252
period under division (A)(4) of this section. 1253

(C) The test period, unless otherwise ordered by the ~~public~~ 1254
~~utilities~~ commission, shall be the twelve-month period beginning 1255
six months prior to the date the application is filed and ending 1256

six months subsequent to that date. In no event shall the test 1257
period end more than nine months subsequent to the date the 1258
application is filed. The revenues and expenses of the utility 1259
shall be determined during the test period. The date certain shall 1260
be not later than the date of filing. 1261

(D) When the ~~public utilities~~ commission is of the opinion, 1262
after hearing and after making the determinations under divisions 1263
(A) and (B) of this section, that any rate, fare, charge, toll, 1264
rental, schedule, classification, or service, or any joint rate, 1265
fare, charge, toll, rental, schedule, classification, or service 1266
rendered, charged, demanded, exacted, or proposed to be rendered, 1267
charged, demanded, or exacted, is, or will be, unjust, 1268
unreasonable, unjustly discriminatory, unjustly preferential, or 1269
in violation of law, that the service is, or will be, inadequate, 1270
or that the maximum rates, charges, tolls, or rentals chargeable 1271
by any such public utility are insufficient to yield reasonable 1272
compensation for the service rendered, and are unjust and 1273
unreasonable, the commission shall: 1274

(1) With due regard among other things to the value of all 1275
property of the public utility actually used and useful for the 1276
convenience of the public as determined under division (A)(1) of 1277
this section, excluding from such value the value of any franchise 1278
or right to own, operate, or enjoy the same in excess of the 1279
amount, exclusive of any tax or annual charge, actually paid to 1280
any political subdivision of the state or county, as the 1281
consideration for the grant of such franchise or right, and 1282
excluding any value added to such property by reason of a monopoly 1283
or merger, with due regard in determining the dollar annual return 1284
under division (A)(3) of this section to the necessity of making 1285
reservation out of the income for surplus, depreciation, and 1286
contingencies, and; 1287

(2) With due regard to all such other matters as are proper, 1288

according to the facts in each case, 1289

(a) Including a fair and reasonable rate of return determined 1290
by the commission with reference to a cost of debt equal to the 1291
actual embedded cost of debt of such public utility, 1292

(b) But not including the portion of any periodic rental or 1293
use payments representing that cost of property ~~which~~ that is 1294
included in the valuation report under divisions (F) and (G) of 1295
section 4909.05 of the Revised Code, fix and determine the just 1296
and reasonable rate, fare, charge, toll, rental, or service to be 1297
rendered, charged, demanded, exacted, or collected for the 1298
performance or rendition of the service that will provide the 1299
public utility the allowable gross annual revenues under division 1300
(B) of this section, and order such just and reasonable rate, 1301
fare, charge, toll, rental, or service to be substituted for the 1302
existing one. After such determination and order no change in the 1303
rate, fare, toll, charge, rental, schedule, classification, or 1304
service shall be made, rendered, charged, demanded, exacted, or 1305
changed by such public utility without the order of the 1306
commission, and any other rate, fare, toll, charge, rental, 1307
classification, or service is prohibited. 1308

(E) Upon application of any person or any public utility, and 1309
after notice to the parties in interest and opportunity to be 1310
heard as provided in Chapters 4901., 4903., 4905., 4907., 4909., 1311
4921., and 4923. of the Revised Code for other hearings, has been 1312
given, the commission may rescind, alter, or amend an order fixing 1313
any rate, fare, toll, charge, rental, classification, or service, 1314
or any other order made by the commission. Certified copies of 1315
such orders shall be served and take effect as provided for 1316
original orders. 1317

Sec. 4909.161. (A) Notwithstanding the provisions of Chapters 1318
4905. and 4909. of the Revised Code, the payment of any type of 1319

increased excise tax levy shall be considered to be a normal 1320
expense incurred by a public utility in the course of rendering 1321
service to the public, and may be recovered as such in accordance 1322
with an order of the public utilities commission. Any public 1323
utility required to pay any such increased excise tax levy may 1324
file with the public utilities commission revised rate schedules 1325
~~which~~ that will permit full recovery on an interim or permanent 1326
basis in its rates, of the amount of any resultant increased tax 1327
payments and the commission shall promptly act to approve such 1328
schedules. 1329

(B) Notwithstanding Chapters 4905. and 4909. of the Revised 1330
Code, the payment of the kilowatt-hour tax imposed by section 1331
5727.81 of the Revised Code shall be considered a normal expense 1332
incurred by an electric distribution company, as defined in 1333
section 5727.80 of the Revised Code, in the course of rendering 1334
service to the public, and may be recovered as such in accordance 1335
with an order of the commission. An electric distribution company 1336
required to pay the kilowatt-hour tax may file with the commission 1337
revised rate schedules that will permit full recovery on a 1338
permanent basis in its rates, of the amount of any resultant tax 1339
payments, and the commission shall act promptly to approve those 1340
schedules. in approving the schedules, the commission shall 1341
provide that the rate effect of the kilowatt-hour tax does not 1342
vary by customer and is equal for each customer based solely on 1343
kilowatt hours of electricity distributed. As used in this 1344
division, "kilowatt hour" means one thousand watt-hours of 1345
electricity. 1346

Sec. 4911.18. (A) For the sole purpose of maintaining and 1347
administering the office of the consumers' counsel and exercising 1348
the powers of the consumers' counsel under this chapter, an amount 1349
equal to the appropriation to the office of the consumers' counsel 1350

in each fiscal year shall be apportioned among and assessed 1351
against the ~~each~~ public ~~utilities~~ utility within the state, as 1352
defined in section 4911.01 of the Revised Code, by first computing 1353
an assessment as though it were to be made in proportion to the 1354
intrastate gross earnings or receipts of the public ~~utilities~~ 1355
~~companies~~ utility for the calendar year next preceding that in 1356
which the ~~assessments are~~ assessment is made, excluding earnings 1357
or receipts from sales to other public utilities for resale. The 1358
office may include in that first computation any amount of a 1359
railroad's or public utility's intrastate gross earnings or 1360
receipts underreported in a prior year. in addition to whatever 1361
penalties apply under the Revised Code to such underreporting, the 1362
office shall assess the railroad or public utility interest at the 1363
rate stated in section 1343.03 of the Revised Code. the office 1364
shall deposit any interest so collected into the consumers' 1365
counsel operating fund. 1366

The final computation of the assessment shall consist of 1367
imposing upon each ~~company~~ public utility whose assessment under 1368
the first computation would have been fifty dollars or less an 1369
assessment of fifty dollars and recomputing the assessment of the 1370
remaining companies by apportioning an amount equal to the 1371
appropriation to the office of consumers' counsel in each fiscal 1372
year less the total amount to be recovered from those paying the 1373
minimum assessment, in proportion to the intrastate gross earnings 1374
or receipts of the remaining companies for the calendar year next 1375
preceding that in which the assessments are made, excluding 1376
earnings or receipts from sales to other public utilities for 1377
resale. 1378

In the case of an assessment based on intrastate gross 1379
receipts under this section against a public utility that is an 1380
electric utility, electric services company, electric cooperative, 1381
or governmental aggregator subject to certification under section 1382

4928.08 of the Revised Code, such receipts shall be those 1383
specified in the utility's, company's, COOPERATIVE'S, OR 1384
aggregator's most recent report of intrastate gross receipts and 1385
sales of kilowatt hours of electricity, filed with the public 1386
utilities commission pursuant to division (F) of section 4928.06 1387
of the Revised Code, AND VERIFIED BY THE COMMISSION. 1388

(B) On or before the first day of October in each year, the 1389
office of consumers' counsel shall notify each public utility 1390
~~company~~ of the sum assessed against it, whereupon payment shall be 1391
made to the counsel, who shall deposit it into the state treasury 1392
to the credit of the consumers' counsel operating fund, which is 1393
hereby created. Any such amounts paid into the fund but not 1394
expended by the ~~counsel office~~ shall be credited ratably by the 1395
~~counsel office~~ to the public ~~utility companies which~~ utilities 1396
that pay more than the minimum assessment, according to the 1397
respective portions of such sum assessable against them for the 1398
ensuing calendar year, after first deducting any deficits 1399
accumulated from prior years. The assessments for such calendar 1400
year shall be reduced correspondingly. 1401

(C) Within five days after the beginning of each fiscal year, 1402
the director of budget and management shall transfer from the 1403
general revenue fund to the consumers' counsel operating fund an 1404
amount sufficient for maintaining and administering the office of 1405
the consumers' counsel and exercising the powers of the consumers' 1406
counsel under this chapter during the first four months of the 1407
fiscal year. Not later than the thirty-first day of December of 1408
the fiscal year, the same amount shall be transferred back to the 1409
general revenue fund from the consumers' counsel operating fund. 1410
1411

(D) As used in this section, "public utility" includes, in 1412
addition to an electric utility, an electric services company, an 1413
electric cooperative, or a governmental aggregator subject to 1414

certification under section 4928.08 of the Revised Code, to the 1415
extent of its engagement in the business of supplying or arranging 1416
for the supply in this state of any retail electric service for 1417
which it must be so certified. 1418

Sec. 4928.01. (A) As used in this chapter: 1419

(1) "Ancillary service" means any function necessary to the 1420
provision of electric transmission or distribution service to a 1421
retail customer and includes, but is not limited to, scheduling, 1422
system control, and dispatch services; reactive supply from 1423
generation resources and voltage control service; reactive supply 1424
from transmission resources service; regulation service; frequency 1425
response service; energy imbalance service; operating 1426
reserve-spinning reserve service; operating reserve-supplemental 1427
reserve service; load following; back-up supply service; 1428
real-power loss replacement service; dynamic scheduling; system 1429
black start capability; and network stability service. 1430

(2) "Auction customer" means a customer that, at any time 1431
during the market development period, has not made an affirmative 1432
choice to be supplied retail electric generation service by its 1433
electric distribution utility or has not contracted with an 1434
another generation supplier, or a customer that elects to opt into 1435
the competitive auction process provided by section 4928.44 of the 1436
revised Code. 1437

(3) "Billing and collection agent" means a fully independent 1438
agent, not affiliated with or otherwise controlled by an electric 1439
utility, to the extent that the agent is under contract with the 1440
utility solely to provide billing and collection for retail 1441
electric service on behalf of the utility. 1442

(4) "Certified territory" means the certified territory 1443
established for an electric supplier under sections 4933.81 to 1444
4933.90 of the Revised Code as amended by .B. No. of the 1445

<u>123rd general assembly.</u>	1446
(5) <u>"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.</u>	1447 1448 1449 1450 1451
(6) <u>"Competitive retail electric service" means a component of retail electric service that is competitive as provided under division (B) of this section.</u>	1452 1453 1454
(7) <u>"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.</u>	1455 1456 1457 1458 1459
(8) <u>"ELECTRIC DISTRIBUTION UTILITY" MEANS AN ELECTRIC UTILITY THAT SUPPLIES AT LEAST retail ELECTRIC DISTRIBUTION SERVICE.</u>	1460 1461 1462
(9) <u>"Electric light company" has the same meaning as in section 4905.03 of the Revised Code and includes an electric services company.</u>	1463 1464 1465
(10) <u>"Electric load center" has the same meaning as in section 4933.81 of the Revised Code.</u>	1466 1467
(11) <u>"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.</u>	1468 1469 1470 1471 1472 1473 1474 1475

(12) "Electric supplier" has the same meaning as in section 1476
4933.81 of the Revised Code. 1477

(13) "Electric utility" means an electric light company that 1478
is engaged on a for-profit basis in the business of supplying a 1479
noncompetitive retail electric service in this state or in the 1480
businesses of supplying both a noncompetitive and a competitive 1481
retail electric service in this state. "Electric utility" excludes 1482
municipal electric utility or a billing and collection agent. 1483
1484

(14) "governmental aggregator" means a legislative AUTHORITY 1485
of a municipal corporation, a board of township trustees, or a 1486
board of county commissioners acting as an aggregator for the 1487
provision of a competitive retail electric service under AUTHORITY 1488
conferred under section 4928.20 of the Revised Code. 1489

(15) A PERSON ACTS "KNOWINGLY," REGARDLESS OF THE PERSON'S 1490
PURPOSE, WHEN THE PERSON IS AWARE THAT THE PERSON'S CONDUCT WILL 1491
PROBABLY CAUSE A CERTAIN RESULT OR WILL PROBABLY BE OF A CERTAIN 1492
NATURE. A PERSON HAS KNOWLEDGE OF CIRCUMSTANCES WHEN THE PERSON IS 1493
AWARE THAT SUCH CIRCUMSTANCES PROBABLY EXIST. 1494

(16) "Low-income customer assistance programs" means the 1495
percentage of income payment plan program as PRESCRIBED IN RULES 1496
4901:1-18-02(B) TO (G) and 4901:1-18-04(B) OF THE OHIO 1497
ADMINISTRATIVE CODE IN EFFECT on the effective date of this 1498
section or, if modified pursuant to AUTHORITY under section 1499
4928.52 of the Revised Code, THE PROGRAM AS MODIFIED; the home 1500
energy assistance program AS PRESCRIBED IN section 5117.21 of the 1501
Revised Code and IN EXECUTIVE ORDER 97-1023-V or, if modified 1502
pursuant to AUTHORITY under section 4928.52 of the Revised Code, 1503
THE PROGRAM AS MODIFIED; the home weatherization assistance 1504
program AS PRESCRIBED in division (A)(6) of section 122.011 and in 1505
section 122.02 of the Revised Code or, if modified pursuant to 1506

AUTHORITY under section 4928.52 of the Revised Code, THE PROGRAM 1507
AS MODIFIED; THE OHIO ENERGY CREDIT PROGRAM AS PRESCRIBED IN 1508
sections 5117.01 to 5117.05, 5117.07 to 5117.12, and 5117.99 OF 1509
THE REVISED CODE or, if modified pursuant to AUTHORITY under 1510
section 4928.52 of the Revised Code, THE PROGRAM AS MODIFIED; and 1511
the TARGETED energy EFFICIENCY and WEATHERIZATION PROGRAM 1512
established under section 4928.55 of the Revised Code. 1513

(17) "Market development period" for an electric utility 1514
means the period of time beginning on the starting date of 1515
competitive retail electric service and ending on the applicable 1516
date for that utility as specified in section 4928.39 or 4928.40 1517
of the Revised Code, irrespective of whether the utility applies 1518
to receive transition revenues under this chapter. 1519

(18) "Market power" means the ability to impose on customers 1520
a sustained price for a product or service ABOVE the price that 1521
would prevail in a COMPETITIVE market. 1522

(19) "Municipal electric utility" means a municipal 1523
corporation that owns or operates facilities to generate, 1524
transmit, or distribute electricity. 1525

(20) "Noncompetitive retail electric service" means a 1526
component of retail electric service that is noncompetitive as 1527
provided under division (B) of this section. 1528

(21) "Person" has the same meaning as in section 1.59 of the 1529
Revised Code. 1530

(22) "Project" means any real or personal property connected 1531
with all or part of an industrial, distribution, commercial, or 1532
research facility, not-for-profit facility, or residence that is 1533
to be acquired, constructed, RECONSTRUCTED, enlarged, improved, 1534
furnished, or equipped, or any combination of those activities, 1535
with aid furnished pursuant to sections 4928.61 to 4928.64 of the 1536
Revised Code for the purposes of not-for-profit, industrial, 1537

commercial, distribution, residential, and research development in 1538
this state. "Project" includes, but is not limited to, any 1539
small-scale renewables project. 1540

(23) "Retail electric service" means any service involved in 1541
supplying or arranging for the supply of electricity to ultimate 1542
consumers in this state, from the point of generation to the point 1543
of consumption. for the purposes of this chapter, retail electric 1544
service includes one or more of the following "service 1545
components": generation service, aggregation service, power 1546
marketing service, power brokerage service, transmission service, 1547
distribution service, ancillary service, metering service, and 1548
billing and collection service. 1549

(24) "starting date of competitive retail electric service" 1550
means january 1, 2001, except as provided in division (C) of this 1551
section. 1552

(B) For the purposes of this chapter, a retail electric 1553
service component shall be deemed a competitive retail electric 1554
service if the service component is competitive pursuant to a 1555
declaration by a provision of the Revised Code or pursuant to an 1556
order of the public utilities commission authorized under division 1557
(A) of section 4928.04 of the Revised Code. Otherwise, the service 1558
component shall be deemed a noncompetitive retail electric 1559
service. 1560

(C) Prior to January 1, 2001, the public utilities commission 1561
may issue an order delaying the january 1, 2001, starting date of 1562
competitive retail electric service by a specified number of days 1563
not to exceed six months, but only for extreme technical 1564
conditions precluding the start of competitive retail electric 1565
service on january 1, 2001. if the commission issues such an 1566
order, the expiration date of the market development period for an 1567
electric utility under section 4928.39 or 4928.40 of the Revised 1568
Code is hereby shortened by the number of days of that delay. 1569

1570

Sec. 4928.02. It is the policy of this state to do the 1571
following throughout this state beginning on the starting date of 1572
competitive retail electric service: 1573

(A) Ensure the availability to consumers of adequate, 1574
reliable, safe, efficient, nondiscriminatory, and reasonably 1575
priced retail electric service; 1576

(B) Ensure the availability of unbundled and comparable 1577
retail electric service that provides consumers with the supplier, 1578
price, terms, conditions, and quality options they elect to meet 1579
their respective needs; 1580

(C) Ensure diversity of electricity supplies and suppliers, 1581
by giving consumers effective choices over the selection of those 1582
supplies and suppliers; 1583

(D) Encourage innovation and market access for cost-effective 1584
supply- and demand-side retail electric service; 1585

(E) Encourage cost-effective and efficient access to 1586
information regarding the operation of the transmission and 1587
distribution systems of electric utilities in order to promote 1588
effective customer choice of retail electric service; 1589

(F) Recognize the continuing emergence of competitive 1590
electricity markets through the development and implementation of 1591
flexible regulatory treatment; 1592

(G) Ensure effective competition in the provision of retail 1593
electric service by avoiding anticompetitive subsidies flowing 1594
from a noncompetitive retail electric service to a competitive 1595
retail electric service or to a product or service other than 1596
retail electric service, and vice versa; 1597

(H) Ensure retail electric service consumers protection 1598
against unreasonable sales practices, market deficiencies, and 1599

market power; 1600

(I) Facilitate the state's effectiveness in the global 1601
economy. 1602

Sec. 4928.03. Beginning on The starting date of competitive 1603
retail electric service, retail electric generation, aggregation, 1604
power marketing, and power brokerage services supplied to 1605
consumers within the certified territory of an electric utility 1606
are competitive retail electric services that the consumers may 1607
obtain subject to this chapter from any supplier or suppliers. In 1608
accordance with a filing under division (F) of section 4933.81 of 1609
the Revised Code, retail electric generation, aggregation, power 1610
marketing, or power brokerage services supplied to consumers 1611
within the certified territory of an electric cooperative are 1612
competitive retail electric services that the consumers may obtain 1613
subject to this chapter from any supplier or suppliers. 1614

Beginning on The starting date of competitive retail electric 1615
service and Notwithstanding any other provision of law, each 1616
consumer in this state and the suppliers to a consumer shall have 1617
comparable and nondiscriminatory access to noncompetitive retail 1618
electric services of an electric utility in this state for the 1619
purpose of satisfying the consumer's electricity requirements in 1620
keeping with the policy specified in section 4928.02 of the 1621
Revised Code. 1622

Sec. 4928.04. (A) The public utilities commission by order 1623
may declare that retail ancillary, metering, or billing and 1624
collection service supplied to consumers within the certified 1625
territory of an electric utility on or after the starting date of 1626
competitive retail electric service is a competitive retail 1627
electric service that the consumers may obtain from any supplier. 1628
the commission may issue such order, after investigation and 1629

public hearing, only if it first determines either of the 1630
following: 1631

(1) There will be effective competition with respect to the 1632
service. 1633

(2) The customers of the service have reasonably available 1634
alternatives. 1635

The commission shall initiate a proceeding on or before march 1636
31, 2003, on the question of the desirability, feasibility, and 1637
timing of any such competition. 1638

(B) In carrying out division (A) of this section, the 1639
commission may prescribe different classifications, procedures, 1640
terms, or conditions for different electric utilities and for the 1641
retail electric services they provide that are declared 1642
competitive pursuant to that division, provided the 1643
classifications, procedures, terms, or conditions are reasonable 1644
and do not confer any undue economic, competitive, or market 1645
advantage or preference upon any electric utility. 1646

Sec. 4928.05. (A)(1) On and after the starting date of 1647
competitive retail electric service, a competitive retail electric 1648
service supplied by an electric utility shall not be subject to 1649
supervision and regulation by the public utilities commission 1650
under Chapters 4901. to 4909., 4933., 4935., or 4963. of the 1651
Revised Code, except sections 4905.10, 4905.33, 4905.35, and 1652
4933.81 to 4933.90; except sections 4905.06, 4935.03, 4963.40, and 1653
4963.41 of the Revised Code regarding service reliability and 1654
public safety; and except as otherwise provided in this chapter. 1655
The commission's AUTHORITY to enforce those excepted provisions 1656
with respect to a COMPETITIVE retail electric service shall be 1657
such AUTHORITY as is provided for their enforcement under Chapters 1658
4901. to 4909., 4933., 4935., and 4963. of the Revised Code and 1659

this chapter. 1660

On and after the starting date of competitive retail electric 1661
service, a competitive retail electric service supplied by an 1662
electric cooperative shall not be subject to supervision and 1663
regulation by the commission under Chapters 4901. to 4909., 4933., 1664
4935., or 4963. of the Revised Code, except as otherwise expressly 1665
provided in sections 4928.01 to 4928.10 and 4928.16 of the Revised 1666
Code. 1667

(2) On and after the starting date of competitive retail 1668
electric service, a noncompetitive retail electric service 1669
supplied by an electric utility shall be subject to supervision 1670
and regulation by the commission under Chapters 4901. to 4909., 1671
4933., 4935., and 4963. of the Revised Code and this chapter, to 1672
the extent that AUTHORITY is not preempted by federal law. The 1673
commission's AUTHORITY to enforce those provisions with respect to 1674
a noncompetitive retail electric service shall be the AUTHORITY 1675
provided under those chapters and this chapter, to the extent the 1676
AUTHORITY is not preempted by federal law. 1677

The commission shall exercise its jurisdiction with respect 1678
to the delivery of electricity by an electric utility in this 1679
state on or after The starting date of competitive retail electric 1680
service so as to ensure that no aspect of the delivery of 1681
electricity to ultimate consumers in this state that consists of a 1682
noncompetitive retail electric service is unregulated. 1683

On and after that starting date, a noncompetitive retail 1684
electric service supplied by an electric cooperative shall not be 1685
subject to supervision and regulation by the commission under 1686
Chapters 4901. to 4909., 4933., 4935., and 4963. of the Revised 1687
Code, except sections 4933.81 to 4933.90 and 4935.03 of the 1688
Revised Code. The commission's authority to enforce those excepted 1689
sections with respect to a noncompetitive retail electric service 1690

of an electric cooperative shall be such authority as is provided 1691
for their enforcement under Chapters 4933. and 4935. of the 1692
Revised Code. 1693

(B) Nothing in this chapter affects the authority of the 1694
commission under Title XLIX of the Revised Code to regulate an 1695
electric light company in this state or an electric service 1696
supplied in this state prior to the starting date of COMPETITIVE 1697
retail electric SERVICE. 1698

Sec. 4928.06. (A) Beginning on the starting date of 1699
competitive retail electric service, the public utilities 1700
commission shall ensure that the policy specified in section 1701
4928.02 of the Revised Code is effectuated. To the extent 1702
necessary, the commission shall adopt rules to carry out this 1703
chapter. Initial rules necessary for the commencement of the 1704
competitive retail electric service under this chapter shall be 1705
adopted within one hundred eighty days after the effective date of 1706
this section. Except as otherwise provided in this chapter, the 1707
proceedings and orders of the commission under the chapter shall 1708
be subject to and governed by Chapter 4903. of the Revised Code. 1709

(B) If the commission determines, on or after The starting 1710
date of competitive retail electric service, that there is a 1711
decline or loss of effective competition with respect to a 1712
competitive retail electric service declared competitive by 1713
commission order issued pursuant to division (A) of section 1714
4928.04 of the Revised Code, the commission shall ensure that that 1715
service is provided at compensatory, fair, and nondiscriminatory 1716
prices and terms and conditions. 1717

(C) In addition to its authority under section 4928.04 of the 1718
Revised Code and divisions (A) and (B) of this section, the 1719
commission, on an ongoing basis, shall monitor and evaluate the 1720
provision of retail electric service in this state for the purpose 1721

of discerning any noncompetitive retail electric service that 1722
should be available on a competitive basis on or after The 1723
starting date of competitive retail electric service pursuant to a 1724
declaration in the revised code, and for the purpose of discerning 1725
any competitive retail electric service that is no longer subject 1726
to effective competition on or after that date. Upon such 1727
evaluation, the commission periodically shall report its findings 1728
and any recommendations for legislation to the standing committees 1729
of both houses of the general assembly that have primary 1730
jurisdiction regarding public utility legislation. but, Until 1731
2008, the commission and the consumer's counsel also shall provide 1732
BIENNIAL reports to those standing committees, regarding the 1733
effectiveness of competition in the supply of competitive retail 1734
electric SERVICES in this state. 1735

(D) In determining, for purposes of division (B) or (C) of 1736
this section or division (b) of section 4928.44 of the Revised 1737
Code, whether there is effective competition in the provision of a 1738
retail electric service by an electric utility or reasonably 1739
available alternatives for that service, the commission shall 1740
consider factors including, but not limited to, all of the 1741
following: 1742

(1) The number and size of alternative providers of that 1743
service; 1744

(2) The extent to which the service is available from 1745
alternative suppliers in the relevant market; 1746

(3) The ability of alternative suppliers to make functionally 1747
equivalent or substitute services readily available at competitive 1748
prices, terms, and conditions; 1749

(4) Other indicators of market power, which may include 1750
market share, growth in market share, ease of entry, and the 1751
affiliation of suppliers of services. 1752

the burden of proof shall be on Any entity requesting, under 1753
division (b) or (c) of this section, a determination by the 1754
commission of the existence of or a lack of effective competition 1755
or reasonably available alternatives. 1756

(E)(1) beginning on The starting date of competitive retail 1757
electric service, The commission has authority under Chapters 1758
4901. to 4909. of the Revised Code, and shall exercise that 1759
authority, to resolve abuses of market power by any electric 1760
utility that interfere with effective competition in the provision 1761
of retail electric service. 1762

(2) In addition to the commission's AUTHORITY under division 1763
(E)(1) of this section, THE COMMISSION, BEGINNING THE FIRST YEAR 1764
AFTER THE MARKET DEVELOPMENT PERIOD OF A PARTICULAR ELECTRIC 1765
UTILITY AND AFTER REASONABLE NOTICE AND OPPORTUNITY FOR HEARING, 1766
MAY TAKE SUCH MEASURES WITHIN A TRANSMISSION CONSTRAINED AREA IN 1767
THE UTILITY'S CERTIFIED TERRITORY as are necessary TO ENSURE THAT 1768
RETAIL ELECTRIC GENERATION SERVICE IS PROVIDED AT REASONABLE RATES 1769
within that area. THE COMMISSION MAY EXERCISE THIS AUTHORITY ONLY 1770
UPON FINDINGS THAT an electric UTILITY is or has engaged in the 1771
abuse of MARKET POWER AND That that abuse IS NOT ADEQUATELY 1772
MITIGATED BY RULES AND PRACTICES OF ANY INDEPENDENT TRANSMISSION 1773
ENTITY CONTROLLING THE TRANSMISSION FACILITIES. ANY SUCH MEASURE 1774
SHALL BE TAKEN ONLY TO THE EXTENT NECESSARY TO PROTECT CUSTOMERS 1775
IN THE AREA FROM THE particular abuse of MARKET POWER AND TO THE 1776
EXTENT the COMMISSION'S AUTHORITY IS NOT PREEMPTED BY FEDERAL LAW. 1777
THE measure SHALL REMAIN in effect UNTIL THE COMMISSION, AFTER 1778
reasonable NOTICE AND OPPORTUNITY FOR HEARING, DETERMINES THAT THE 1779
particular abuse of MARKET POWER HAS BEEN MITIGATED. 1780

(F) An electric utility, electric services company, electric 1781
cooperative, or governmental aggregator subject to certification 1782
under section 4928.08 of the Revised code shall provide the 1783
commission with such information as the commission considers 1784

necessary to carry out this chapter. An electric light company 1785
shall provide the commission with such information as the 1786
commission considers necessary to carry out divisions (B) to (E) 1787
of this section. The commission shall take such measures as it 1788
considers necessary to protect the confidentiality of any such 1789
information. 1790

The commission shall require each electric utility and each 1791
electric services company subject to certification to file with 1792
the commission on and after the starting date of competitive 1793
retail electric service an annual report of its intrastate gross 1794
receipts and sales of kilowatt-hours of electricity, and shall 1795
require each electric cooperative and each governmental aggregator 1796
subject to certification to file an annual report on and after 1797
that starting date of such receipts and sales from the provision 1798
of those retail electric services for which it is subject to 1799
certification. for the purpose of the reports, sales of retail 1800
electric services are deemed to occur at the meter of the retail 1801
customer. 1802

Sec. 4928.07. To the maximum extent practicable on or after 1803
The starting date of competitive retail electric service, an 1804
electric utility, electric services company, electric cooperative, 1805
or governmental aggregator subject to certification under section 1806
4928.08 of the Revised Code shall separately price competitive 1807
retail electric services, and the PRICES SHALL BE ITEMIZED on the 1808
bill of a customer or otherwise disclosed to the customer. 1809
Although a competitive retail electric service shall be supplied 1810
to any consumer on such a basis, such an electric utility, 1811
electric services company, electric cooperative, or governmental 1812
AGGREGATOR may repackage the service on or after The starting date 1813
and offer it on a bundled basis with other retail electric 1814
services to meet consumer preferences. Such repackaging by an 1815
electric utility shall be subject to sections 4905.33 to 4905.35 1816

of the Revised Code. repackaging by such an electric services 1817
company, electric cooperative, or governmental aggregator shall be 1818
subject to the limitation that no such entity shall furnish free 1819
service or service for less than actual cost for the purpose of 1820
destroying competition. 1821

Sec. 4928.08. (A) This section applies to an electric 1822
cooperative, or to a governmental AGGREGATOR that is a municipal 1823
electric utility, only to the extent of a competitive retail 1824
electric service it provides to a customer to whom it does not 1825
provide a noncompetitive retail electric service through 1826
transmission or distribution facilities it singly or jointly owns 1827
or operates. 1828

(B) No electric utility, electric services company, electric 1829
cooperative, or governmental aggregator shall provide a 1830
competitive retail electric service to a consumer in this state on 1831
and after the starting date of competitive retail electric service 1832
without first being certified by the public utilities commission 1833
regarding its managerial, technical, and financial capability to 1834
provide that service. Certification shall be granted pursuant to 1835
procedures and standards the commission shall prescribe in 1836
accordance with division (C) of this section, except that 1837
certification or certification renewal shall be deemed approved 1838
thirty days after the filing of an application with the commission 1839
unless the commission suspends that approval for good cause shown. 1840
In the case of such a suspension, the commission shall act to 1841
approve or deny certification or certification renewal to the 1842
applicant not later than ninety days after the date of the 1843
suspension 1844

(C) Capability standards adopted in rules under division (B) 1845
of this section shall be sufficient to ensure compliance with the 1846
minimum service requirements established under section 4928.10 of 1847

the Revised Code and with section 4928.09 of the Revised Code. The 1848
standards shall allow flexibility for voluntary aggregation, to 1849
encourage market creativity in responding to consumer needs and 1850
demands. The rules shall include procedures for biennially 1851
renewing certification. 1852

(d) The commission may suspend, rescind, or conditionally 1853
rescind the certificate of any electric utility, electric services 1854
company, electric cooperative, or governmental aggregator issued 1855
under this section if the commission determines, after reasonable 1856
notice and opportunity for hearing, that the utility, company, 1857
cooperative, or AGGREGATOR has failed to comply with any 1858
applicable certification standards or has engaged in 1859
anticompetitive or unfair, deceptive, or unconscionable acts or 1860
practices in this state. 1861

(e) no electric distribution utility on and after the 1862
starting date of competitive retail electric service shall 1863
knowingly distribute electricity, to a retail consumer in this 1864
state, for any supplier of electricity that has not been certified 1865
by the commission pursuant to this section. 1866

Sec. 4928.09. (A)(1) No person shall operate in this state as 1867
an electric utility, an electric services company, or a billing 1868
and collection agent on and after the starting date of competitive 1869
retail electric service unless that person first does both of the 1870
following: 1871

(a) Consents irrevocably to the jurisdiction of the courts of 1872
this state and service of process in this state, including, 1873
without limitation, service of summonses and subpoenas, for any 1874
civil or criminal proceeding arising out of or relating to such 1875
operation, by providing that irrevocable consent in ACCORDANCE 1876
with division (A)(4) of this section; 1877

(b) Designates an agent authorized to receive that service of 1878

process in this state, by filing with the commission a document 1879
designating that agent. 1880

(2) No person shall continue to operate as such an electric 1881
utility, electric services company, or billing and collection 1882
agent unless that person continues to consent to such jurisdiction 1883
and service of process in this state and continues to designate an 1884
agent as provided under this division, by refileing in accordance 1885
with division (A)(4) of this section the appropriate documents 1886
filed under division (A)(1) of this section or, as applicable, the 1887
appropriate amended documents filed under division (A)(3) of this 1888
section. Such refileing shall occur during the month of December of 1889
every fourth year after the initial filing of a document under 1890
division (A)(1) of this section. 1891

(3) If the address of the person filing a document under 1892
division (A)(1) or (2) of this section changes, or if a person's 1893
agent or the address of the agent changes, from that listed on the 1894
most recently filed of such documents, the person shall file an 1895
amended document containing the new information. 1896

(4) The consent and designation required by divisions (A)(1) 1897
to (3) of this section shall be in writing, on forms prescribed by 1898
the public utilities commission. The original of each such 1899
document or amended document shall be legible and shall be filed 1900
with the commission, with a copy filed with the office of the 1901
consumers' counsel and with the attorney general's office. 1902

(B) A person who enters this state pursuant to a summons, 1903
subpoena, or other form of process authorized by this section is 1904
not subject to arrest or service of process, whether civil or 1905
criminal, in connection with other matters that arose before the 1906
person's entrance into this state pursuant to such summons, 1907
subpoena, or other form of process. 1908

(C) Divisions (A) and (B) of this section do not apply to any 1909

<u>of the following:</u>	1910
(1) <u>A corporation incorporated under the laws of this state</u>	1911
<u>that has appointed a statutory agent pursuant to section 1701.07</u>	1912
<u>or 1702.06 of the Revised Code;</u>	1913
(2) <u>A foreign corporation licensed to transact business in</u>	1914
<u>this state that has appointed a designated agent pursuant to</u>	1915
<u>section 1703.041 of the Revised Code;</u>	1916
(3) <u>Any OTHER person that is a resident of this state or that</u>	1917
<u>files consent to service of process and designates a statutory</u>	1918
<u>agent pursuant to other laws of this state.</u>	1919
 Sec. 4928.10. <u>For the protection of consumers in this state,</u>	1920
<u>the public utilities commission shall adopt rules under division</u>	1921
<u>(A) of section 4928.06 of the Revised Code specifying the</u>	1922
<u>necessary minimum service requirements, on or after The starting</u>	1923
<u>date of competitive retail electric service, of an electric</u>	1924
<u>utility, electric services company, electric cooperative, or</u>	1925
<u>governmental aggregator subject to certification under section</u>	1926
<u>4928.08 of the Revised Code regarding the provision of such a</u>	1927
<u>service directly or through its billing and collection agent.</u>	1928
<u>Rules adopted under this section shall include a prohibition</u>	1929
<u>against unfair, deceptive, and unconscionable acts and practices</u>	1930
<u>in the marketing, solicitation, and sale of a competitive retail</u>	1931
<u>electric service and in the administration of any contract for</u>	1932
<u>such a service, and also shall include additional consumer</u>	1933
<u>protections concerning all of the following:</u>	1934
 (A) <u>Contract disclosure. The rules shall include requirements</u>	1935
<u>that an electric utility, electric services company, electric</u>	1936
<u>cooperative, or governmental aggregator subject to certification</u>	1937
<u>under section 4928.08 of the Revised Code do both of the</u>	1938
<u>following:</u>	1939

(1) Provide consumers with adequate, accurate, and 1940
understandable pricing and terms and conditions of service, 1941
including any switching fees, and with a document containing the 1942
terms and conditions of pricing and service before the consumer 1943
enters into the contract for service; 1944

(2) Disclose the conditions under which a customer may 1945
rescind a contract without penalty. 1946

(B) Service termination. The rules shall include disclosure 1947
of the terms identifying how customers may switch or terminate 1948
service, including any required notice and any penalties. 1949

(C) Minimum content of customer bills. The rules shall 1950
include all of the following requirements: 1951

(1) uniform price disclosure and Disclosures of total billing 1952
units for the billing period and historical annual usage; 1953

(2) To the maximum extent practicable, separate listing of 1954
each service component to enable a customer to recalculate its 1955
bill for accuracy; 1956

(3) Identification of the supplier of each service; 1957

(4) Statement of where and how payment may be made and 1958
provision of a toll-free or local customer assistance and 1959
complaint number for the electric utility, electric services 1960
company, electric cooperative, or governmental aggregator, as well 1961
as a consumer assistance telephone number or numbers for state 1962
agencies, such as the commission, the office of the consumers' 1963
counsel, and the attorney general's office, with the available 1964
hours noted. 1965

(D) Disconnection and service termination, including 1966
requirements with respect to master-metered buildings. The rules 1967
shall include policies and procedures that are consistent with 1968
sections 4933.121 and 4933.122 of the Revised Code and the 1969

<u>commission's rules adopted under those sections, and that provide</u>	1970
<u>for all of the following:</u>	1971
(1) <u>Coordination between suppliers for the purpose of</u>	1972
<u>maintaining service;</u>	1973
(2) <u>The allocation of partial payments between suppliers when</u>	1974
<u>service components are jointly billed;</u>	1975
(3) <u>A prohibition against blocking, or authorizing the</u>	1976
<u>blocking of, customer access to a noncompetitive retail electric</u>	1977
<u>service when a customer is delinquent in payments to the electric</u>	1978
<u>utility or electric services company for a competitive retail</u>	1979
<u>electric service;</u>	1980
(4) <u>A prohibition against switching, or authorizing the</u>	1981
<u>switching of, a customer's supplier of competitive retail electric</u>	1982
<u>service without the prior consent of the customer in accordance</u>	1983
<u>with appropriate confirmation practices, which may include</u>	1984
<u>independent, third-party verification procedures.</u>	1985
(5) <u>A requirement of disclosure of the conditions under which</u>	1986
<u>a customer may rescind a decision to switch its supplier without</u>	1987
<u>penalty;</u>	1988
(6) <u>Specification of any required notice and any penalty for</u>	1989
<u>early termination of contract.</u>	1990
(E) <u>Minimum service quality, safety, and reliability.</u>	1991
<u>However, service quality, SAFETY, and reliability requirements for</u>	1992
<u>electric generation service shall be determined primarily through</u>	1993
<u>market expectations and contractual relationships.</u>	1994
(f) <u>Generation resource mix and environmental characteristics</u>	1995
<u>of power supplies. the rules shall include requirements for</u>	1996
<u>determination of the approximate generation resource mix and</u>	1997
<u>environmental characteristics of the power supplies and disclosure</u>	1998
<u>to the customer prior to the customer entering into a contract to</u>	1999

purchase and four times per year under the contract. The rules 2000
also shall require that the electric utility, electric services 2001
company, electric cooperative, or governmental AGGREGATOR provide, 2002
or cause its billing and collection agent to provide, a customer 2003
with information comparing the projected, with the actual and 2004
verifiable, resource mix and environmental characteristics. This 2005
disclosure shall occur not less than annually or not less than 2006
once during the contract period if the contract period is less 2007
than one year, and prior to any renewal of a contract. 2008

2009

(g) Customer information. The rules shall include 2010
requirements that the electric utility, electric services company, 2011
electric cooperative, or governmental aggregator make generic 2012
customer load pattern information available to other electric 2013
light companies on a comparable and nondiscriminatory basis, and 2014
make customer-specific information available to other electric 2015
light companies on a comparable and nondiscriminatory basis 2016
unless, as to customer-specific information, the customer objects. 2017
the rules shall ensure that customers are informed clearly and 2018
frequently of the right to OBJECT and of applicable procedures. 2019

Sec. 4928.11. For the protection of consumers in this state, 2020
the public utilities commission shall adopt rules under division 2021
(A) of section 4928.06 of the Revised Code that specify minimum 2022
service quality, safety, and reliability requirements for 2023
NONCOMPETITIVE retail electric services supplied by an electric 2024
utility in this state, to the extent such AUTHORITY is not 2025
preempted by federal law. the rules shall include prescriptive 2026
standards for inspection, maintenance, repair, and replacement of 2027
the transmission and distribution systems of electric utilities; 2028
shall apply to each substantial type of transmission or 2029
distribution equipment or facility; shall provide for high 2030
quality, safe, and reliable electric service; and shall include 2031

standards for operation, reliability, and SAFETY during periods of 2032
emergency and disaster. the rules also shall include 2033
nondiscriminatory metering standards. 2034

The commission shall require each electric utility to report 2035
annually to the commission on and after the starting date of 2036
competitive retail electric service, regarding its compliance with 2037
the rules. the commission shall make the filed reports available 2038
to the public. Periodically as determined by commission rule under 2039
division (A) of section 4928.06 of the Revised Code and in a 2040
proceeding initiated under division (B) of section 4928.16 of the 2041
Revised Code, the commission shall review a utility's report to 2042
determine the utility's compliance and may act pursuant to 2043
DIVISION (B) of section 4928.16 of the Revised Code to enforce 2044
compliance. 2045

Sec. 4928.12. (A) Except as otherwise provided in sections 2046
4928.31 to 4928.40 of the Revised Code, no entity shall own or 2047
control transmission facilities located in this state on or after 2048
the starting date of competitive retail electric service unless 2049
that entity is a member of, and transfers control of those 2050
facilities to, one or more qualifying transmission entities, as 2051
described in division (B) of this section, that are operational. 2052

(B) An entity that owns or controls TRANSMISSION FACILITIES 2053
LOCATED IN THIS STATE complies with division (A) of this section 2054
if each transmission entity of which it is a member meets all of 2055
the following specifications: 2056

(1) The transmission entity is APPROVED BY THE FEDERAL ENERGY 2057
REGULATORY COMMISSION. 2058

(2) the transmission entity effects SEPARATE CONTROL OF 2059
TRANSMISSION FACILITIES FROM CONTROL OF GENERATION FACILITIES. 2060

(3) The transmission entity prohibits or otherwise precludes 2061

<u>PANCAKED TRANSMISSION RATES.</u>	2062
(4) <u>The transmission entity IMPROVES SERVICE</u>	2063
<u>RELIABILITY WITHIN THIS STATE.</u>	2064
(5) <u>the transmission entity achieves the objectives of an</u>	2065
<u>open and competitive electric generation marketplace, elimination</u>	2066
<u>of barriers to market entry, and preclusion of control of</u>	2067
<u>bottleneck electric transmission facilities in the provision of</u>	2068
<u>retail electric service.</u>	2069
(6) <u>The TRANSMISSION entity is of sufficient scope or</u>	2070
<u>otherwise operates to substantially increase economical supply</u>	2071
<u>options for consumers.</u>	2072
(7) <u>the governance structure or control of the transmission</u>	2073
<u>entity is independent of the owners and users of the TRANSMISSION</u>	2074
<u>facilities, and no member of its board of directors has an</u>	2075
<u>affiliation, with such an owner or user or with an affiliate of an</u>	2076
<u>owner or user during the member's tenure on the board, such as to</u>	2077
<u>unduly affect the transmission entity's performance.</u>	2078
(8) <u>The transmission entity operates under policies that</u>	2079
<u>promote positive performance designed to satisfy the electricity</u>	2080
<u>requirements of customers.</u>	2081
(9) <u>The transmission entity is capable of maintaining</u>	2082
<u>real-time reliability of the electric transmission system,</u>	2083
<u>ensuring comparable and nondiscriminatory transmission access and</u>	2084
<u>necessary services, minimizing system congestion, and further</u>	2085
<u>addressing real or potential transmission constraints.</u>	2086
(C) <u>to the extent that a transmission entity under division</u>	2087
<u>(A) of this section is authorized to build transmission</u>	2088
<u>facilities, that TRANSMISSION entity has the powers provided in</u>	2089
<u>and is subject to sections 1723.01 to 1723.08 of the Revised Code.</u>	2090
(D) <u>For the purpose of forming or participating in a regional</u>	2091

regulatory oversight body or mechanism developed for any 2092
transmission entity under division (A) of this section that is of 2093
regional scope and operates within this state: 2094

(1) The commission may make joint investigations, hold joint 2095
hearings, within or outside this state, and issue joint or 2096
concurrent orders in conjunction or concurrence with any official 2097
or agency of any state or of the United States, whether in the 2098
holding of those investigations or hearings, or in the making of 2099
those orders, the commission is functioning under agreements or 2100
compacts between states, under the concurrent power of states to 2101
regulate interstate commerce, as an agency of the United States, 2102
or otherwise. 2103

(2) The commission may negotiate and enter into agreements or 2104
compacts with agencies of other states for cooperative regulatory 2105
efforts and for the enforcement of the respective state laws 2106
regarding the transmission entity. 2107

(E) If a qualifying transmission entity is not operational as 2108
contemplated in division (A)(2) of this section and division (A) 2109
of section 4928.34 of the Revised Code, the commission by rule or 2110
order shall take such measures or impose such requirements on all 2111
for-profit entities that own or control electric transmission 2112
FACILITIES located in this state as the commission determines 2113
necessary and proper to achieve independent, nondiscriminatory 2114
operation of, and separate ownership and control of, such electric 2115
transmission facilities on or after the starting date of 2116
competitive retail electric service. 2117

Sec. 4928.13. through a periodic filing with the public 2118
utilities commission in such form as the commission shall 2119
prescribe by rule under division (A) of section 4928.06 of the 2120
Revised Code, each electric utility that owns nuclear generation 2121
facilities located in this state shall demonstrate compliance with 2122

DECOMMISSIONING requirements of the nuclear regulatory commission 2123
and public utilities commission and shall demonstrate adequate 2124
financing mechanisms to fund facility DECOMMISSIONING. 2125

Sec. 4928.14. (A) After its competitive auction period, an 2126
ELECTRIC DISTRIBUTION utility in this state shall provide 2127
consumers, on a comparable and nondiscriminatory basis within its 2128
certified territory, a standard service offer of all competitive 2129
retail electric services necessary to maintain essential electric 2130
service to consumers, including a firm supply of electric 2131
generation service. such offer shall be filed with the public 2132
utilities commission under section 4905.30 of the Revised Code. 2133

(B) After that competitive auction period, the failure of a 2134
supplier to provide retail electric generation service to 2135
customers within the certified territory of the electric 2136
distribution utility shall result in the supplier's customers, 2137
after reasonable notice, defaulting to the utility's standard 2138
service offer filed under division (A) of this section until the 2139
customer chooses an alternative supplier. A supplier is deemed 2140
under this section to have failed to provide such service if the 2141
commission finds, after reasonable notice and opportunity for 2142
hearing, that any of the following conditions are MET: 2143

(1) the supplier has defaulted on its contracts with 2144
customers, is in receivership, or has filed for bankruptcy; 2145

(2) the supplier is no longer capable of providing the 2146
service; 2147

(3) the supplier is unable to provide delivery to 2148
transmission or distribution facilities for such period of time as 2149
may be reasonably specified by commission rule adopted under 2150
division (A) of section 4928.06 of the Revised Code; 2151

(4) The supplier's certification has been suspended, 2152

conditionally rescinded, or rescinded under division (D) of 2153
section 4928.08 of the Revised Code. 2154

Sec. 4928.15. (A) Except as otherwise provided in sections 2155
4928.31 to 4928.40 of the Revised Code, no electric utility shall 2156
supply noncompetitive retail electric DISTRIBUTION service in this 2157
state on or after The starting date of competitive retail electric 2158
service except pursuant to a schedule for that service that is 2159
consistent with the state policy specified in section 4928.02 of 2160
the Revised Code and filed with the public utilities COMMISSION 2161
under section 4905.30 of the Revised Code. the schedule shall 2162
provide that electric distribution service under the schedule is 2163
available to all consumers within the utility's certified 2164
territory and to any supplier to those consumers on a 2165
nondiscriminatory and comparable basis. distribution service rates 2166
and charges under the schedule shall be established in accordance 2167
with Chapters 4905. and 4909. of the Revised Code or may be 2168
determined in accordance with performance-based ratemaking as 2169
authorized under division (c) of this section. The schedule shall 2170
include an obligation to build distribution facilities when 2171
necessary to provide adequate distribution service, provided that 2172
a customer requesting that service may be required to pay all or 2173
part of the reasonable incremental cost of the new facilities, in 2174
accordance with rules, policy, precedents, or orders of the 2175
commission. 2176

(B) Except as otherwise provided in sections 4928.31 to 2177
4928.40 of the Revised Code and except as preempted by federal 2178
law, no electric utility shall supply the transmission service or 2179
ancillary service component of noncompetitive retail electric 2180
service in this state on or after The starting date of competitive 2181
retail electric service except pursuant to a schedule for that 2182
service component that is consistent with the state policy 2183
specified in section 4928.02 of the Revised Code and filed with 2184

the COMMISSION under section 4905.30 of the Revised Code. The 2185
schedule shall provide that transmission or ancillary service 2186
under the schedule is available to all consumers and to any 2187
supplier to those consumers on a nondiscriminatory and comparable 2188
basis. Service rates and charges under the schedule shall be 2189
established in accordance with Chapters 4905. and 4909. of the 2190
Revised Code or may be determined in accordance with 2191
performance-based ratemaking as authorized under division (c) of 2192
this section. 2193

(C) On or after the expiration date of an electric utility's 2194
market development period, the commission by order may use 2195
performance-based ratemaking to establish rates and charges for a 2196
noncompetitive retail electric service supplied in this state by 2197
the utility, subject to the assurance of the safety and 2198
reliability of the electric transmission and distribution systems 2199
in this state and upon determining that such ratemaking is 2200
consistent with the policy specified in section 4928.02 of the 2201
Revised Code; is in the public interest; and will be superior to 2202
the ratemaking under section 4909.15 of the Revised Code in 2203
providing incentives to the utility to achieve efficiency in the 2204
provision of noncompetitive retail electric services, to invest in 2205
distribution system assets, and to provide lower rates and 2206
superior services for customers. Under such performance-based 2207
ratemaking, the commission may authorize that rates be capped or 2208
otherwise limited, may provide for limited review of costs once 2209
the rates are set, and may require that any operating efficiencies 2210
be reflected in adjustments built into the rate-making approach. 2211

Sec. 4928.16. (A)(1) The public utilities commission has 2212
jurisdiction under section 4905.26 of the Revised Code, upon 2213
complaint of any person or upon complaint or initiative of the 2214
commission on or after the starting date of competitive retail 2215
electric service, regarding the provision of such a service by an 2216

electric utility, electric services company, electric cooperative, 2217
or governmental aggregator subject to certification under section 2218
4928.08 of the Revised Code or by a winning bidder under section 2219
4928.44 of the Revised Code. 2220

(2) The commission also has jurisdiction under section 2221
4905.26 of the Revised Code, upon complaint of any person or upon 2222
complaint or initiative of the commission on or after the starting 2223
date of competitive retail electric service, to determine whether 2224
an electric utility has violated or failed to comply with any 2225
provision of sections 4928.01 to 4928.15, any provision of 2226
divisions (A) to (D) of section 4928.35, or division (G) of 2227
section 4928.44 of the Revised Code, or with any rule or order 2228
adopted or issued under those sections; whether an electric 2229
services company, electric cooperative, or governmental aggregator 2230
subject to certification under section 4928.08 of the Revised Code 2231
has violated or failed to comply with any provision of sections 2232
4928.01 to 4928.10 of the Revised Code or any rule or order 2233
adopted or issued under those sections; or whether a winning 2234
bidder under section 4928.44 of the Revised Code has violated or 2235
failed to comply with any provision of that section or any rule or 2236
order adopted under the section. 2237

(B) In addition to its authority under division (C) of 2238
section 4928.08 of the Revised Code and to any other remedies 2239
provided by law, the commission, after reasonable notice and 2240
opportunity for hearing in accordance with section 4905.26 of the 2241
Revised Code, may do any of the following: 2242

(1) Order rescission of a contract or restitution to 2243
customers in any complaint brought pursuant to division (A)(1) or 2244
(2) of this section; 2245

(2) Order any remedy or forfeiture provided under sections 2246
4905.54 to 4905.60 and 4905.64 of the Revised Code upon a finding 2247

under division (A)(2) of this section that the electric utility 2248
has violated or failed to comply with any provision of sections 2249
4928.01 to 4928.15, or any provision of divisions (A) to (D) of 2250
section 4928.35, division (G) of section 4928.44 of the Revised 2251
Code, or with any rule or order adopted or issued under those 2252
sections. in addition, the commission may order any remedy 2253
provided under section 4905.22, 4905.37, or 4905.38 of the Revised 2254
Code if the violation or failure to comply by an electric utility 2255
related to the provision of a noncompetitive retail electric 2256
service. 2257

(3) Order any remedy or forfeiture provided under sections 2258
4905.54 to 4905.60 and 4905.64 of the Revised Code upon a finding 2259
under division (A)(2) of this section that the electric services 2260
company, electric cooperative, or governmental aggregator subject 2261
to certification under section 4928.08 of the Revised Code has 2262
violated or failed to comply with any provision of sections 2263
4928.01 to 4928.10 of the Revised Code or any rule or order 2264
adopted or issued under those sections; or upon a finding that the 2265
winning bidder under section 4928.44 of the Revised Code has 2266
violated or failed to comply with any provision of that section or 2267
any rule or order adopted under the section. 2268

(C)(1) In addition to the authority conferred under section 2269
4911.15 of the Revised Code, the consumers' counsel may file a 2270
complaint under division (A)(1) or (2) of this section on behalf 2271
of residential consumers in this state or appear before the 2272
commission as a representative of those consumers pursuant to any 2273
complaint filed under division (A)(1) or (2) of this section. 2274

(2) In addition to the authority conferred under section 2275
4911.19 of the Revised Code, the consumers' counsel, upon 2276
reasonable grounds on and after the starting date of competitive 2277
retail electric service, may file with the commission under 2278
section 4905.26 of the Revised Code a complaint for discovery if 2279

the recipient of an inquiry under section 4911.19 of the Revised 2280
Code fails to provide a response within the time specified in that 2281
section. 2282

(D) Section 4905.61 of the Revised Code applies to a 2283
violation by an electric utility of, or to a failure of an 2284
electric utility to comply with, any provision of sections 4928.01 2285
to 4928.15, any provision of divisions (A) to (D) of section 2286
4928.35, or division (G) of section 4928.44 of the Revised Code, 2287
or with any rule or order adopted or issued under those sections. 2288

Sec. 4928.17. (A) except as otherwise provided in sections 2289
4928.31 to 4928.40 of the Revised Code and beginning on The 2290
starting date of competitive retail electric service, no electric 2291
utility shall engage in this state, either directly or through an 2292
affiliate, in the businesses of supplying a noncompetitive retail 2293
electric service and supplying a competitive retail electric 2294
service, or in the businesses of supplying a noncompetitive retail 2295
electric service and supplying a product or service other than 2296
retail electric service, unless the utility implements and 2297
operates under a corporate separation plan that is approved by the 2298
public utilities commission under this section, is consistent with 2299
the policy specified in section 4928.02 of the Revised Code, and 2300
achieves all of the following: 2301

(1) The plan provides, at minimum, for the provision of the 2302
competitive retail electric service or the nonelectric product or 2303
service through a fully separated affiliate of the utility, and 2304
the plan includes separate accounting requirements, a code of 2305
conduct, and such other measures as are necessary to effectuate 2306
the policy specified in section 4928.02 of the Revised Code. 2307

(2) The plan satisfies the public interest in preventing 2308
unfair competitive advantage and preventing the abuse of market 2309
power. 2310

(3) The plan is sufficient to ensure that the utility will 2311
not extend any undue preference or advantage to any affiliate, 2312
division, or part of its own business engaged in the business of 2313
supplying the competitive retail electric service or NONELECTRIC 2314
product or service, and to ensure that any such affiliate, 2315
division, or part will not receive undue preference or advantage 2316
from any affiliate, division, or part of the business engaged in 2317
business of supplying the noncompetitive retail electric service. 2318
No such utility, affiliate, division, or part shall extend such 2319
undue preference. 2320

(B) The commission may approve, modify and approve, or 2321
disapprove a corporate separation plan filed with the commission 2322
under division (A) of this section. the commission shall adopt 2323
rules pursuant to division (A) of section 4928.06 of the Revised 2324
Code regarding corporate separation AND procedures for plan filing 2325
and approval. The rules shall include limitations on affiliate 2326
practices solely for the purpose of maintaining a separation of 2327
the affiliate's business from the business of its utility 2328
affiliate to prevent unfair competitive advantage by VIRTUE of 2329
that relationship. The rules also shall include an opportunity for 2330
any person having a real and substantial interest in the corporate 2331
separation plan to file specific objections to the plan and 2332
propose specific responses to issues raised in the objections, 2333
which objections and responses the commission shall address in its 2334
final order. Prior to commission approval of the plan, the 2335
commission shall afford a hearing upon those aspects of the plan 2336
that the commission determines reasonably require a hearing. the 2337
commission may reject and require refileing of a substantially 2338
inadequate plan under this section. 2339

(C) The commission shall issue an order approving or 2340
modifying and approving a corporate separation plan under this 2341
section, to be effective on the date specified in the order, only 2342

upon findings that the plan reasonably complies with the 2343
requirements of division (A) of this section and will provide for 2344
ongoing compliance with the policy specified in section 4928.02 of 2345
the Revised Code. 2346

(D) Any party may seek an amendment to a CORPORATE separation 2347
plan approved under this section, and the commission, pursuant to 2348
a request from any party or on its own initiative, may order as it 2349
considers necessary the filing of an amended CORPORATE separation 2350
plan to reflect changed circumstances. 2351

(E) Notwithstanding section 4905.20, 4905.21, 4905.46, or 2352
4905.48 of the Revised Code, an electric utility may divest itself 2353
of any generating asset at any time without commission approval, 2354
subject to the provisions of Title XLIX of the Revised Code 2355
relating to the transfer of transmission, distribution, or 2356
ancillary service provided by such generating asset. 2357

Sec. 4928.18. (A) Notwithstanding division (D)(2)(a) of 2358
section 4909.15 of the Revised Code, nothing in this chapter 2359
prevents the public utilities commission from exercising its 2360
AUTHORITY under Title XLIX of the Revised Code to protect 2361
customers of retail electric service supplied by an electric 2362
utility FROM any adverse effect of the utility's provision of a 2363
product or service other than retail electric service. 2364

(B) The commission has jurisdiction under section 4905.26 of 2365
the Revised Code, upon complaint of any person or upon complaint 2366
or initiative of the commission on or after the starting date of 2367
competitive retail electric service, to determine whether an 2368
electric utility or its affiliate has violated any provision of 2369
section 4928.17 of the Revised Code or an order issued or rule 2370
adopted under that section. for this purpose, the commission may 2371
examine such books, accounts, or other records kept by an electric 2372
utility or its affiliate as may relate to the businesses for which 2373

corporate separation is required under section 4928.17 of the 2374
Revised Code, and may investigate such utility or affiliate 2375
operations as may relate to those businesses and investigate the 2376
interrelationship of those operations. any such examination or 2377
investigation by the commission shall be governed by chapter 4903. 2378
OF the revised code. 2379

(C) In addition to any remedies otherwise provided by law, 2380
the commission, regarding a determination of a violation pursuant 2381
to division (B) of this section, may do any of the following: 2382

(1) Issue an order directing the utility or affiliate to 2383
comply; 2384

(2) Modify an order as the commission finds reasonable and 2385
appropriate and order the utility or affiliate to comply with the 2386
modified order; 2387

(3) Suspend or abrogate an order, in whole or in part; 2388

(4) Issue an order that the utility or affiliate pay 2389
restitution to any person injured by the violation or failure to 2390
comply; 2391

(5) impose a forfeiture on the utility or affiliate of up to 2392
twenty-five thousand dollars per day per violation. The recovery 2393
and deposit of any such forfeiture shall be subject to sections 2394
4905.57 and 4905.59 of the Revised Code. 2395

(D) In addition to any other remedies AUTHORIZED by law, the 2396
commission, regarding a violation by an electric utility relating 2397
to a corporate separation plan involving competitive retail 2398
electric service, may do any of the following: 2399

(1) Suspend or abrogate an order, to the extent it is in 2400
effect, authorizing an opportunity for the utility to receive 2401
transition revenues under a transition plan approved by the 2402
commission under section 4928.33 of the Revised Code; 2403

(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 2434
section is not a public utility engaging in the WHOLESale purchase 2435
and resale of electricity, and provision of the AGGREGATED service 2436
is not a wholesale utility transaction. a governmental aggregator 2437
shall be subject to supervision and regulation by the public 2438
utilities commission only to the extent of any competitive retail 2439
electric service it provides and commission authority under this 2440
chapter. 2441

(C) This section does not apply in the case of a municipal 2442
corporation that supplies such aggregated service to electric load 2443
centers to which its municipal electric utility also supplies a 2444
noncompetitive retail electric service through transmission or 2445
distribution facilities the utility singly or jointly owns or 2446
operates. 2447

Sec. 4928.31. (A) Not later than ninety days after the 2448
effective date of this section, an electric utility supplying 2449
retail electric service in this state on that date shall file with 2450
the public utilities commission a plan for the utility's provision 2451
of retail electric service in this state during the market 2452
development period. this transition plan shall be in such form as 2453
the commission shall prescribe by rule adopted under division (A) 2454
of section 4928.06 of the Revised Code, and shall include all of 2455
the following: 2456

(1) A RATE UNBUNDLING PLAN that specifies, consistent with 2457
divisions (A)(1) to (7) of section 4928.34 of the Revised Code and 2458
any rules adopted by the commission under division (A) of section 2459
4928.06 of the Revised Code, THE UNBUNDLED COMPONENTS FOR ELECTRIC 2460
GENERATION, TRANSMISSION, AND DISTRIBUTION SERVICE AND SUCH OTHER 2461
UNBUNDLED service COMPONENTS AS THE COMMISSION requires, to BE 2462
CHARGED BY THE UTILITY beginning on THE STARTING DATE OF 2463
COMPETITIVE RETAIL ELECTRIC SERVICE; and that includes information 2464

the commission requires to fix and determine those components; 2465

(2) A corporate separation plan consistent with section 2466
4928.17 of the Revised Code and any rules adopted by the 2467
commission under division (A) of section 4928.06 of the Revised 2468
Code; 2469

(3) A plan for the independent operation of THE UTILITY'S 2470
transmission facilities consistent with section 4928.13 and 2471
division (A)(9) of section 4928.34 of the Revised Code and any 2472
rules adopted by the commission under division (A) of section 2473
4928.06 of the Revised Code; 2474

(4) such plan or plans as the commission requires to address 2475
operational support systems and any other technical implementation 2476
issues pertaining to COMPETITIVE retail electric service 2477
consistent with any rules adopted by the commission under division 2478
(A) of section 4928.06 of the Revised Code; 2479

(5) A consumer education plan consistent with section 4928.42 2480
of the Revised Code and any rules adopted by the commission under 2481
division (A) of section 4928.06 of the Revised Code. 2482
2483

Additionally, a transition plan under this SECTION MAY 2484
include An application for the opportunity to receive transition 2485
revenues as authorized under sections 4928.31 to 4928.40 of the 2486
Revised Code, which application shall be consistent with those 2487
sections and any rules adopted by the commission under division 2488
(A) of section 4928.06 of the Revised Code. 2489

the commission may reject and require refiling, in whole or 2490
in part, of any substantially inadequate transition plan. 2491

(B) The electric utility shall provide public notice of its 2492
filing under division (A) of this section, in a form and manner 2493
that the commission shall prescribe by rule adopted under division 2494
(A) of section 4928.06 of the Revised Code. however, the adoption 2495

of rules regarding the public notice under this division, 2496
regarding the form of the transition plan under division (A) of 2497
this section, and regarding procedures for expedited discovery 2498
under division (A) of section 4928.32 of the Revised Code are not 2499
subject to section 111.15 of the Revised Code. 2500

Sec. 4928.32. (A) the public utilities commission shall 2501
establish reasonable procedures for expedited discovery in any 2502
proceeding initiated to consider a transition plan filed under 2503
section 4928.31 of the Revised Code. 2504

(B) Not later than forty-five days after the date on which an 2505
electric utility files a transition plan under section 4928.31 of 2506
the Revised Code, any person having a real and substantial 2507
interest in the transition plan may file with the commission 2508
preliminary objections to the transition plan, which shall 2509
identify with specificity issues pertaining to any aspect of the 2510
transition plan, and any such person may propose specific 2511
responses to those issues. The commission shall address THOSE 2512
OBJECTIONS and RESPONSES in its final order. 2513

in addition, after the plan's filing, the commission staff 2514
shall file with the commission a report of its recommendations 2515
with respect to the plan. Prior to commission approval of the 2516
plan, the commission shall afford a hearing upon those aspects of 2517
the plan that the commission determines reasonably require a 2518
hearing. 2519

(C) The commission shall maintain a complete record of all 2520
proceedings relative to a transition plan filed under section 2521
4928.31 of the Revised Code and shall issue and file with the 2522
record of the case findings of fact and written opinions setting 2523
forth the reasons for any modification to or its approval of a 2524
transition plan. 2525

Sec. 4928.33. (A) Not later than two hundred seventy-five 2526
days after the date an electric utility files a transition plan 2527
under section 4928.31 of the Revised Code, but, in any event, not 2528
later THAN october 31, 2000, the public utilities commission shall 2529
issue a final order approving the transition plan as filed under 2530
section 4928.31 of the Revised Code or an order modifying and 2531
approving that plan. The order is subject to section 4903.15 of 2532
the Revised Code and is subject to review and appeal under chapter 2533
4903. of the Revised Code. 2534

(B) If the COMMISSION fails to issue, by october 31, 2000, a 2535
final order approving a transition plan, or such a final order has 2536
been enjoined in whole or in part pending appeal to a court, the 2537
commission shall issue an interim order prescribing a transition 2538
plan, to have effect on an interim basis only, and containing the 2539
plan components required by division (A) of section 4928.31 of the 2540
Revised Code and providing for the opportunity for transition 2541
revenue receipt if such an application were included in the plan 2542
filed by the utility under that section. the interim order is 2543
subject to section 4903.15 of the Revised Code, but is not subject 2544
to review and appeal under Chapter 4903. of the Revised Code. 2545

An interim plan prescribed under the interim order shall be 2546
effective for the electric utility beginning on the starting date 2547
of competitive retail electric service and shall continue in 2548
effect until such time as any other replacement transition plan 2549
takes effect pursuant to a final commission order or resolution of 2550
an appeal. any interim plan so prescribed shall comply with THE 2551
aPPLICABLE provisions of section 4928.34 of the revised Code. A 2552
final commission order shall provide for a reconciliation of those 2553
amounts determined in the final order relative to division (A) of 2554
section 4928.31 of the Revised Code as compared to the interim 2555
amounts as determined under this division. 2556

(C) No electric utility required to file a transition plan 2557
under section 4928.31 of the Revised Code shall fail to implement 2558
a transition plan approved or prescribed for the utility by a 2559
commission order issued under division (a) or (b) of this section. 2560
No electric utility shall provide retail electric service in this 2561
state during the market development period except pursuant to such 2562
an approved or prescribed transition plan. 2563

Sec. 4928.34. (A) The public utilities commission shall not 2564
approve or prescribe a transition plan under division (A) or (B) 2565
of section 4928.33 of the Revised Code unless the commission first 2566
makes all of the following determinations: 2567

(1) The unbundled components for the electric transmission 2568
component of retail electric service, as specified in the 2569
utility's rate unbundling plan required by division (A)(1) of 2570
section 4928.31 of the Revised Code, equal the tariff rates 2571
determined by the federal energy regulatory commission that are in 2572
effect on the date of the approval of the transition plan under 2573
sections 4928.31 to 4928.40 of the Revised Code, as each such rate 2574
is determined applicable to each particular customer class by the 2575
commission. 2576

(2) the unbundled components for retail electric distribution 2577
service in the rate unbundling plan equal the sum of the costs 2578
ATTRIBUTABLE to the utility's transmission and distribution rates 2579
and charges under its schedule of rates and charges in effect on 2580
the effective date of this section less the tariff rates for 2581
electric transmission service determined by the federal energy 2582
regulatory commission as described in division (A)(1) of this 2583
section. 2584

(3) all other unbundled components required by the commission 2585
in the rate unbundling plan equal the costs attributable to the 2586
particular service as reflected in the utility's schedule of rates 2587

and charges in effect on the effective date of this section. 2588
2589

(4) the unbundled components for retail electric generation 2590
service in the rate unbundling plan equal the residual amount 2591
remaining after the determination of the transmission, 2592
distribution, and other unbundled components. 2593

(5) all unbundled components in the rate unbundling plan have 2594
been adjusted to reflect any rate reductions under rate 2595
settlements in effect on the effective date of this section. 2596
however, all earnings obligations, RESTRICTIONS, or caps imposed 2597
on an electric utility in a commission order prior to the 2598
effective date of this section are void. 2599

(6) Subject to division (A)(5) of this section, the total of 2600
all unbundled components in the rate UNBUNDLING plan are capped 2601
and do not exceed the total of all rates and charges in effect 2602
under the applicable bundled schedule of the electric utility 2603
PURSUANT TO SECTION 4905.30 OF THE REVISED CODE in effect on the 2604
day before the effective date of this section, including the 2605
transition charge determined under section 4928.39 or 4928.40 of 2606
the Revised Code, any changes in the taxation of electric 2607
UTILITIES and retail electric service under .B. No. of the 2608
123rd General Assembly, the universal service rider AUTHORIZED by 2609
section 4928.51 of the Revised Code, and the temporary surcharge 2610
AUTHORIZED by section 4928.61 of the Revised Code. for the purpose 2611
of this division, the rate cap applicable to a customer receiving 2612
electric service pursuant to an arrangement approved by the 2613
commission under section 4905.31 of the revised code is the total 2614
of all rates and charges in effect under such bundled schedule 2615
that otherwise would apply to the customer absent THE CONTRACT. 2616
2617

(7) The rate unbundling plan complies with any rules adopted 2618
by the commission under division (A) of section 4928.06 of the 2619

<u>Revised Code.</u>	2620
<u>(8) The corporate separation plan required by division (a)(2)</u>	2621
<u>of section 4928.31 of the Revised Code complies with section</u>	2622
<u>4928.17 of the Revised Code and any rules adopted by the</u>	2623
<u>commission under division (A) of section 4928.06 of the Revised</u>	2624
<u>Code.</u>	2625
<u>(9) The independent transmission plan required by division</u>	2626
<u>(A)(3) of section 4928.31 of the Revised Code reasonably complies</u>	2627
<u>with section 4928.12 of the Revised Code and any rules adopted by</u>	2628
<u>the commission under division (A) of section 4928.06 of the</u>	2629
<u>Revised Code, and reasonably complies with the following</u>	2630
<u>requirements:</u>	2631
<u>(a) the electric utility, on or before the starting date of</u>	2632
<u>competitive retail electric service, is a member of, and transfers</u>	2633
<u>control of transmission facilities it owns or controls in this</u>	2634
<u>state to, one or more qualifying transmission entities as</u>	2635
<u>described in division (B) of section 4928.12 of the Revised Code.</u>	2636
<u>(b) the electric utility, on or before june 30, 2001, is a</u>	2637
<u>member of, and transfers control of transmission facilities it</u>	2638
<u>owns or controls in this state to, one or more such qualifying</u>	2639
<u>transmission entities that are operational.</u>	2640
<u>(10) any plan or plans the commission requires to address</u>	2641
<u>operational support systems and any other technical implementation</u>	2642
<u>issues pertaining to COMPETITIVE retail electric service COMPLY</u>	2643
<u>WITH any rules adopted by the commission under division (A) of</u>	2644
<u>section 4928.06 of the Revised Code.</u>	2645
<u>(11) The consumer education plan required under division</u>	2646
<u>(A)(5) of section 4928.31 of the Revised Code complies with</u>	2647
<u>section 4928.42 of the Revised Code and any rules adopted by the</u>	2648
<u>commission under division (A) of section 4928.06 of the Revised</u>	2649
<u>Code.</u>	2650

(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. 2651
2652
2653

(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. 2654
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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. 2657
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(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. 2661
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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. 2670
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(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, 2714
including a firm supply of electric generation service priced in 2715
accordance with the schedule containing the utility's UNBUNDLED 2716
generation service component. IMMEDIATELY upon approval of its 2717
transition plan, the utility shall file the standard service offer 2718
with the commission under section 4905.30 of the Revised Code. 2719
during the market development period, the failure of a supplier to 2720
deliver retail electric generation service shall result in the 2721
supplier's customers, after reasonable notice, defaulting to the 2722
utility's standard service offer filed under this division until 2723
the customer chooses an alternative supplier. a supplier is deemed 2724
under this section to have failed to deliver such service if any 2725
of the conditions specified in divisions (b)(1) to (4) of section 2726
4928.14 of the Revised Code is met. 2727

(E) An amendment of a corporate separation plan contained in 2728
a transition plan approved by the commission under section 4928.33 2729
of the Revised Code shall be filed and approved as a corporate 2730
separation plan pursuant to section 4928.17 of the Revised Code. 2731

(F) Any change to an electric utility's opportunity to 2732
receive transition revenues under a transition plan approved in 2733
accordance with section 4928.33 of the Revised Code shall be 2734
authorized only as provided in sections 4928.31 to 4928.40 of the 2735
Revised Code. 2736

Sec. 4928.36. The public utilities commission has 2737
jurisdiction under section 4905.26 of the Revised Code, upon 2738
complaint by any person or upon complaint or initiative of the 2739
commission on or after the starting date of competitive retail 2740
electric service, to determine whether an electric utility has 2741
failed to implement, in conformance with an order under section 2742
4928.33 of the Revised Code or in ongoing compliance with 2743
applicable provisions of the policy specified in section 4928.02 2744

of the Revised Code, a transition plan approved under section 2745
4928.33 of the Revised Code. If, after reasonable notice and 2746
opportunity for hearing as provided in section 4905.26 of the 2747
Revised Code, the commission determines that the utility has 2748
failed to so comply, the commission, in addition to any other 2749
remedies provided by law, may use the remedies specified in 2750
divisions (C)(1) to (3) and (D)(1) and (2) of section 4928.18 of 2751
the Revised Code to enforce compliance. 2752

Sec. 4928.37. (A)(1) Sections 4928.31 to 4928.40 of the 2753
Revised Code provide an electric utility the opportunity to 2754
receive transition revenues that may assist it in making the 2755
transition to a fully competitive retail electric generation 2756
market, and provide consumers shopping incentives during the 2757
transition to spur the development of effective competition in the 2758
supply of retail electric generation service. The level of 2759
allowable utility revenues that is likely to RESULT under sections 2760
4928.31 to 4928.40 of the Revised Code reflects an assessment of 2761
the disparate competitive positions of the electric utilities in 2762
this state on the effective date of this section and an assessment 2763
of the level of consumer savings practicable and necessary to spur 2764
effective competition. the market development periods for the 2765
utilities consider the economic DEVELOPMENT needs of this state to 2766
move to a competitive market in a timely manner given regional 2767
developments and reflect a desire to assert state authority to 2768
determine retail electric service restructuring for this state. 2769

The approaches to determining the transition charge under 2770
sections 4928.39 and 4928.40 of the Revised Code are reasonable 2771
and fair to all stakeholders, rationally represent an appropriate 2772
sharing of the risks and REWARDS of regulated electric utilities 2773
moving to a competitive market, and advance the ultimate consumer 2774
protection of encouraging effective competition by providing 2775

shopping incentives and competitive margin. Overall, under 2776
sections 4928.31 to 4928.40 of the Revised Code, in areas of this 2777
state where it is needed more, competition should be established 2778
quickly and consumers will have the protection of effective 2779
markets; in areas where there is less margin for competition, 2780
consumers will have the protections of price caps during the 2781
market development period. 2782

An electric Utility for which transition revenues are 2783
approved pursuant to sections 4928.31 to 4928.40 of the Revised 2784
Code shall receive those revenues through both of the following 2785
mechanisms beginning on the starting date of competitive retail 2786
electric service and ending on the expiration date of its 2787
transition charge as determined under section 4928.39 or 4928.40 2788
of the Revised Code: 2789

(a) payment of unbundled rates for retail electric services 2790
by each customer that takes retail electric generation service 2791
during the market development period from the customer's electric 2792
distribution utility, which rates shall be specified in schedules 2793
filed under section 4928.35 of the Revised Code. 2794

(b) Payment of a nonbypassable and competitively neutral 2795
transition charge by each customer that takes retail electric 2796
generation service during the market development period from a 2797
supplier other than the customer's electric distribution utility, 2798
as such transition charge is determined under section 4928.39 or 2799
4928.40 of the Revised Code. the transition charge shall be 2800
payable by each such retail electric distribution service customer 2801
in the certified territory of the electric utility for which the 2802
transition revenues are approved, and shall be billed on each 2803
kilowatt-hour of electricity consumed as registered on the 2804
customer's meter, as kilowatt-hour is defined in section 4909.161 2805
of the Revised Code. the transition charge shall vary by customer 2806
class and, as reflected in section 4928.39 or 4928.40 of the 2807

Revised Code, shall be determined based on a benchmark or be 2808
otherwise structured to provide shopping incentives to customers 2809
sufficient to spur the development of effective competition in the 2810
supply of retail electric generation service. 2811

(2) Notwithstanding division (B)(1)(b) of this section, the 2812
transition charge shall not be payable on electricity supplied by 2813
a municipal electric utility to a retail electric distribution 2814
service customer in the certified territory of the electric 2815
utility for which the transition revenues are approved, if the 2816
municipal electric utility provides electric transmission or 2817
distribution service, or both services, through transmission or 2818
distribution facilities singly or jointly owned or operated by the 2819
municipal electric utility. 2820

(3) the transition charge shall not be discounted by any 2821
party unless there is a determination by the Department of 2822
Development that such a discount is part of an approved economic 2823
development package involving state or local funding and is 2824
necessary for economic development to occur within this state 2825
instead of another state. 2826

(4) Nothing prevents payment of all or part of the transition 2827
charge by another party on a customer's behalf if that payment 2828
does not contravene sections 4905.33 to 4905.35 of the Revised 2829
Code or this chapter. 2830

(B) The electric utility shall separately itemize and 2831
disclose, or cause its billing and collection agent to separately 2832
itemize and disclose, the transition charge on the customer's bill 2833
in accordance with reasonable SPECIFICATIONS the commission shall 2834
prescribe by rule under division (A) of section 4928.06 of the 2835
Revised Code. 2836

Sec. 4928.38. (A) The application for the opportunity to 2837
receive transition revenues that an electric utility files as part 2838

of its transition plan under section 4928.31 of the Revised Code 2839
shall specify whether the applicant is selecting the determination 2840
of a transition charge pursuant to section 4928.39 or 4928.40 of 2841
the Revised Code. This selection shall be binding and shall not be 2842
subject to change for any reason on or after the date of the 2843
application's filing. 2844

(B) Pursuant to a transition plan approved under section 2845
4928.33 of the Revised Code, An electric utility in this state may 2846
receive transition revenues under sections 4928.31 to 4928.40 of 2847
the Revised Code, beginning on The starting date of competitive 2848
retail electric service. Except as provided in sections 4905.33 to 2849
4905.35 of the Revised Code and this Chapter, an electric utility 2850
that receives such transition revenues shall be wholly responsible 2851
for how to use those revenues and wholly responsible for whether 2852
it is in a competitive position after the market development 2853
period. The utility's receipt of transition revenues shall 2854
terminate at the end of the market development period. With the 2855
termination of that approved revenue source, the utility shall be 2856
fully on its own in the competitive market. The commission shall 2857
not authorize the receipt of transition revenues or any equivalent 2858
revenues by an electric utility except as expressly authorized in 2859
sections 4928.31 to 4928.40 of the Revised Code. 2860

Sec. 4928.39. (A) in the case of an application under section 2861
4928.31 of the Revised Code requesting the OPPORTUNITY to receive 2862
transition revenues under this section, the transition charge for 2863
each customer class of each utility, except as otherwise provided 2864
in division (B) of this section, shall be determined by the public 2865
utilities commission subtracting from that class's average rate 2866
per kilowatt-hour the sum of the applicable unbundled transmission 2867
and distribution rates for each class PLUS a benchmark for each 2868
customer class for the purpose of so determining the transition 2869

charge: 2870

(1) A class's average rate per kilowatt-hour shall be set as 2871
an amount equal to the revenues for the class as reported in the 2872
utility's 1997 FEderal energy regulatory commission Form 1 divided 2873
by the kilowatt-hour sales reported for the class in that 2874
document. 2875

(2) The applicable unbundled transmission and distribution 2876
rates shall be the unbundled transmission and DISTRIBUTION 2877
components specified in the rate unbundling plan of the utility's 2878
transition plan as set by the commission for approval under 2879
section 4928.33 of the Revised Code. 2880

(3)(a) Except as otherwise provided under division (B) of 2881
this section, the benchmark for each customer class shall be as 2882
follows: 2883

	<u>Residential</u>	<u>Commercial</u>	<u>Industrial</u>	<u>Other</u>	
	<u>Customers</u>	<u>Customers</u>	<u>Customers</u>	<u>Customers</u>	
<u>Cleveland</u>	<u>5.375</u>	<u>5.081</u>	<u>3.281</u>	<u>4.458</u>	2886
<u>Electric</u>					
<u>Illuminating</u>					
<u>Cincinnati</u>	<u>4.404</u>	<u>4.092</u>	<u>2.441</u>	<u>3.769</u>	2887
<u>Gas &</u>					
<u>Electric</u>					
<u>Columbus</u>	<u>4.526</u>	<u>4.083</u>	<u>2.517</u>	<u>2.651</u>	2888
<u>Southern</u>					
<u>Power</u>					
<u>Dayton Power</u>	<u>4.270</u>	<u>3.764</u>	<u>2.185</u>	<u>3.376</u>	2889
<u>& Light</u>					
<u>Ohio Edison</u>	<u>4.630</u>	<u>4.383</u>	<u>2.585</u>	<u>3.201</u>	2890
<u>Ohio Power</u>	<u>4.032</u>	<u>3.627</u>	<u>2.073</u>	<u>5.086</u>	2891
<u>Toledo Edison</u>	<u>5.196</u>	<u>5.160</u>	<u>3.094</u>	<u>4.650</u>	2892
<u>Monongahela</u>	<u>4.639</u>	<u>4.376</u>	<u>2.720</u>	<u>7.528</u>	2893

Power

(b) Each benchmark in division (A)(3)(a) of this section is 2894
determined by adding variable cost as determined under division 2895
(A)(4) of this section and a class adder as determined under 2896
division (A)(7) of this section. 2897

(4) Variable cost is determined by adding, to account costs 2898
in division (a)(5) of this section, ten per cent of the class 2899
average rate per kilowatt-hour. 2900

(5) Account costs for calculating variable cost under 2901
division (a)(4) of this section are derived by dividing by the 2902
total kilowatt-hour sales reported in the utility's 1997 Federal 2903
energy regulatory commission Form 1 the sum of all expenses 2904
reported in that document for Accounts 500 through 509, excluding 2905
507, 512 through 514, 517 through 524, 530 through 532, 546 2906
through 549, and 555 through 557. 2907

(6) The class adder for the industrial class is set at zero. 2908
The class adder for each other class is determined by applying a 2909
class allocator to a total amount equal to 1.5 cents per 2910
kilowatt-hour multiplied by the total kilowatt-hour sales for 1997 2911
for the residential, commercial, and other classes of the 2912
utility's customers, as reported in the utility's 1997 Federal 2913
energy regulatory commission Form 1. 2914

(7) The class allocator is determined based upon each class's 2915
contribution to total revenues. Each such contribution is 2916
determined by multiplying the applicable class average rate per 2917
kilowatt-hour in 1997 by that class's sales as reported in the 2918
utility's 1997 Federal energy regulatory commission Form 1. Each 2919
class contribution is divided by the sum of the contributions for 2920
the residential, commercial, and other classes to derive the class 2921
allocator. 2922

(B) only if the benchmark plus the applicable unbundled 2923

transmission and distribution rate for a customer class exceeds 2924
the class AVERAGE rate per kilowatt-hour, the TRANSITION charge 2925
for the class shall be set at zero, and the commission shall set 2926
the benchmark equal to the CLASS's AVERAGE rate per kilowatt-hour 2927
less THE APPLICABLE unbundled transmission and distribution rate. 2928

(C) The transition charge under divisions (A) and (B) of this 2929
section shall be adjusted to reflect the effect of any change in 2930
the taxation of electric utilities or electric services as 2931
prescribed in . B. No. of the 123rd general assembly. 2932

(D) The expiration date of a transition charge determined 2933
under DIVISiONS (A) to (C) of this section for each electric 2934
utility and the expiration date of the utility's market 2935
development period shall be as follows: Cleveland Electric 2936
ILLUMINATING, March 31, 2005; Cincinnati Gas & Electric, March 31, 2937
2004; Columbus Southern Power, June 30, 2004; Dayton Power & 2938
Light, September 30, 2003; ohio edison, March 31, 2005; Ohio 2939
Power, March 31, 2005; TOLEDO Edison, March 31, 2005; and 2940
Monongahela power, March 31, 2002. 2941

(E) The transition charge determined pursuant to divisions 2942
(A) to (D) of this section shall not be adjusted by the commission 2943
during the utility's market development period for any reason, 2944
except that, three months prior to the midpoint of a utility's 2945
market development period, the commission shall initiate a 2946
proceeding and conclude it prior to the end of the three months to 2947
determine whether only the transition charge for residential and 2948
commercial consumers should be adjusted and so fixed for the 2949
remainder of the period specified in division (d) of this section. 2950
the approach under this section assumes a composite market price 2951
for electricity of three cents per kilowatt-hour and assumes an 2952
average of TWENTY per cent of the customers of an electric utility 2953
changing to an alternative generation supplier during the market 2954
development period. the commission may adjust the transition 2955

charge under this division by adjusting only the benchmark if, 2956
after reasonable notice and opportunity for hearing, the 2957
commission finds that either of those assumptions have changed 2958
significantly during the time in which the charge has been in 2959
effect. the commission shall not adjust the charge for any other 2960
reasons, including to recognize any gain or loss from the sale of 2961
a utility asset during the market development period. 2962

Sec. 4928.40. (A) In the case of an application under section 2963
4928.31 of the Revised Code requesting the opportunity to receive 2964
transition revenues under this section, the public utilities 2965
commission shall determine a transition charge sufficient in each 2966
year of the utility's market development period to provide the 2967
utility the opportunity to receive total allowable transition 2968
revenues based solely on a consideration of the utility's 2969
financial need as demonstrated by the electric utility's financial 2970
books and records as of the date of filing. In establishing the 2971
allowable amount of transition revenues for an electric utility 2972
under this section, the commission shall provide strictly for the 2973
maintenance of the utility's basic financial integrity and for all 2974
of the following: 2975

(1) The amount awarded is a direct result of imminent 2976
financial injury to the financial integrity of the utility as a 2977
whole, is limited to the extent that the imminent financial injury 2978
was proximately caused by electric industry restructuring, and is 2979
not otherwise offset by the utility's opportunity to earn a fair 2980
and reasonable rate of return on its electric transmission or 2981
distribution businesses or its opportunity to earn revenues in 2982
state, national, and international markets. 2983

(2) Under the standard set forth in division (A)(1) of this 2984
section and during the utility's market development period, the 2985
utility is able, based on a cash flow analysis of the utility, to 2986

meet its then-existing legal debt obligations not otherwise 2987
mitigatable and to provide a modest dividend to shareholders. For 2988
the purpose of calculating the amount of allowable transition 2989
revenues under this section, the commission shall assume payment 2990
of a modest dividend determined by the commission solely for the 2991
purpose of this section. 2992

(3) The amount awarded is the minimum amount required to 2993
prevent or mitigate such financial injury. 2994

(4) The transition charge approved under section 4928.33 of 2995
the Revised Code allows for the maximum amount of competition to 2996
develop during the utility's market development period, consistent 2997
with the standards stated in divisions (A)(1) to (3) of this 2998
section. Accordingly, to the extent the commission determines 2999
feasible, the transition charge shall decline during each year of 3000
the period. 3001

As a further condition of having the opportunity to receive 3002
transition revenues under this section, the electric utility shall 3003
provide the commission during the utility's market development 3004
period with full access to its books and records and the books and 3005
records of its affiliates solely for the purpose of determining 3006
the electric utility's financial integrity under this section. 3007
Parties to the application approval proceeding may propose, and 3008
the commission may adopt, such true-up procedures as are necessary 3009
to ensure that the standards set forth in divisions (A)(1) to (4) 3010
of this section are met. 3011

(B) the expiration date of a transition charge specified 3012
under division (A) of this section and of the utility's market 3013
development period shall be March 31, 2005. however, three months 3014
prior to the midpoint of the utility's market development period, 3015
the commission shall initiate a proceeding and conclude it prior 3016
to the end of the three months to determine whether circumstances 3017
have changed significantly since the beginning of the market 3018

development period such that an extension of the expiration date 3019
is warranted. if, after reasonable notice and opportunity for 3020
hearing, the commission makes such a determination, it shall 3021
report its findings and any recommendations to the general 3022
assembly, and shall extend the expiration date only in accordance 3023
with such further legislation as is enacted by the general 3024
assembly. 3025

Sec. 4928.41. The transition revenue authority provided under 3026
sections 4928.31 to 4928.40 of the Revised Code for electric 3027
utilities does not affect the authority of an electric cooperative 3028
in this state to receive transition revenues. 3029

Sec. 4928.42. PRIOR TO THE STARTING DATE OF COMPETITIVE 3030
RETAIL ELECTRIC SERVICE, THE public utilities COMMISSION, IN 3031
CONSULTATION WITH THE CONSUMERS' COUNSEL AND WITH OTHER STATE 3032
AGENCIES AS CONSIDERED NECESSARY, SHALL PRESCRIBE AND ADOPT BY 3033
ORDER A GENERAL PLAN BY WHICH EACH ELECTRIC UTILITY shall PROVIDE 3034
DURING ITS MARKET DEVELOPMENT PERIOD CONSUMER EDUCATION ON 3035
ELECTRIC RESTRUCTURING UNDER this chapter. THE GENERAL PLAN SHALL 3036
REQUIRE the UTILITIES TO SPEND ON SUCH CONSUMER EDUCATION WITHIN 3037
their respective CERTIFIED DISTRIBUTION SERVICE TERRITORIES IN THE 3038
AGGREGATE UP TO SIXTEEN MILLION DOLLARS IN THE FIRST YEAR OF THAT 3039
PERIOD AND AN ADDITIONAL SEVENTEEN MILLION DOLLARS IN THE 3040
AGGREGATE IN DECREASING AMOUNTS OVER THE REMAINING YEARS OF each 3041
utility's MARKET DEVELOPMENT PERIOD, WITH THE AGGREGATE AMOUNTS 3042
DIVIDED AMONG THE UTILITIES BASED ON THEIR RESPECTIVE NUMBER OF 3043
CUSTOMERS AS OF DECEMBER 31, 1997. THE GENERAL PLAN SHALL PROHIBIT 3044
SUCH CONSUMER EDUCATION FROM OCCURRING IN COMBINATION WITH 3045
MARKETING FOR THE UTILITY'S OR ITS AFFILIATE'S RETAIL ELECTRIC 3046
SERVICES. transition revenues provided under sections 4928.31 to 3047
4928.40 of the Revised Code include the costs of the consumer 3048
education required under this section. 3049

Sec. 4928.43. (A) At the same time it files a transition plan 3050
under section 4928.31 of the Revised Code, an electric utility 3051
shall file with the public utilities commission solely for 3052
information purposes a plan for providing severance, retraining, 3053
early retirement, retention, outplacement, and other assistance 3054
for the utility's employees whose employment in electric 3055
generation-related activities and other related areas is affected 3056
by electric industry restructuring under this chapter. this 3057
employee assistance plan shall not be deemed a part of the 3058
transition plan for purposes of sections 4928.31 to 4928.40 of the 3059
Revised Code, but shall be included in the public notice of the 3060
utility's filing under division (B) of section 4928.31 of the 3061
Revised Code and shall be included in the record required under 3062
division (c) of section 4928.32 of the Revised Code. Transition 3063
revenues provided under sections 4928.31 to 4928.40 of the Revised 3064
Code include the costs of such assistance. 3065

(B) Each state agency that provides employment assistance and 3066
job training programs, including the bureau of employment services 3067
and the department of development, shall provide concentrated 3068
attention through those programs to assisting employees whose 3069
employment in electric generation-related activities and other 3070
related areas is affected by electric industry restructuring under 3071
this chapter. 3072

Sec. 4928.44. (A) This section does not apply to an electric 3073
utility if neither it nor any of its affiliates owns or controls 3074
any electric generation facilities in this state. 3075

(B) a competitive auction of retail electric generation 3076
service shall be held for the auction customers of an electric 3077
utility for the twelve-month period beginning on the first day of 3078
the competitive auction period. thereafter, such yearly 3079

competitive auctioning of the utility's auction customers shall 3080
continue until the public utilities commission by order declares 3081
the auctioning terminated, upon a commission finding that neither 3082
the utility nor any of its affiliates owns or controls any 3083
generating facilities in this state or that there is effective 3084
competition in the utility's certified territory. the burden of 3085
proof in either instance shall lie with the utility. upon issuance 3086
of a termination order under this division, competitive auctioning 3087
of such retail electric service is terminated and shall not be 3088
renewed by the commission. 3089

(C) At the end of competitive auctioning for a particular 3090
electric utility, auction customers, after reasonable notice, 3091
shall default to the utility's standard service offer under 3092
DIVISION (A) of section 4928.15 of the Revised Code until the 3093
customer chooses an alternative supplier. 3094

(D) an auction under this section shall be ACCOMPLISHED 3095
through an open, real-time auction conducted by an independent 3096
party selected by the commission. bid documents shall address such 3097
minimum standards of managerial, financial, and technical 3098
capability of the supplier to deliver power under the bid as the 3099
commission shall prescribe by rule under division (A) of section 3100
4928.06 of the Revised Code. The auction customers of the electric 3101
utility shall be auctioned in ten blocks, each representing ten 3102
per cent of the aggregated load of those customers. 3103

3104
(E) The commission shall select the winning bidders based on 3105
the bids submitted by qualified bidders in the auction process 3106
conducted by the independent party. The sole selection criterion 3107
shall be lowest price. The price charged an auction customer shall 3108
be the average price that results from the ten winning bids. the 3109
price received by the winning bidder shall be the bidder's bid 3110
price, and the commission shall develop a procedure providing for 3111

prompt and fair disbursement of revenues to winning bidders based 3112
on such bid prices. 3113

(F) an auction customer's bill shall disclose the price to be 3114
paid by the customer and state that the price for the generation 3115
service was derived through competitive auction. The bill also 3116
shall disclose fuel mix and environmental characteristics of the 3117
fuel supply as required under division (F) of section 4928.10 of 3118
the Revised Code. 3119

(G) Until the commission determines an acceptable bid in the 3120
case of a technical flaw in any part of an auction proposal for 3121
the ten blocks of load, the electric distribution utility shall 3122
supply generation for the auction customers whose service is 3123
affected by the technical flaw. the price for that generation 3124
SERVICE shall be the UNBUNDLED generation service component 3125
specified in the utility's schedule filed under section 4928.34 of 3126
the Revised Code, and such schedule shall be in effect for that 3127
temporary service. such price shall be included in the calculation 3128
of the average price under DIVISION (E) of this section until such 3129
time as a bid is accepted and the average price RECALCULATED 3130
accordingly. If the electric distribution utility incurs a loss 3131
due to providing the temporary service at the price specified in 3132
the schedule, the commission shall authorize the electric 3133
distribution utility, through the filing of revised DISTRIBUTION 3134
service schedules under section 4905.30 of the Revised Code, to 3135
recover up to such amount of the loss as the commission considers 3136
reasonable upon a determination that the utility supplied the 3137
service at the least cost given market conditions at the time. 3138
3139

(H) the commission shall adopt rules under division (A) of 3140
section 4928.06 of the Revised Code ensuring fairness in the 3141
auction process and the performance of a winning bidder, and 3142
providing for default service if a winning bidder fails to perform 3143

under the terms and conditions applicable to its provision of 3144
service. 3145

(I) an auction customer may opt out of an auction pool under 3146
this section at any time upon payment of any APPLICABLE SWITCHING 3147
fee, which fee shall be a nominal amount based on the winning 3148
bidder's administrative costs. the switching fee shall be 3149
DISCLOSED in any bid submitted under this section. 3150

(J) Competitive auctioning under this section is within the 3151
authority of this state under section 722(g) of the "energy policy 3152
act of 1992," 106 Stat. 2776, 16 U.S.C. 824k(g). 3153

Sec. 4928.51. (A) There is hereby established in the state 3154
treasury a universal service fund, into which shall be deposited 3155
all universal service revenues remitted to the director of 3156
development under this section, for the exclusive purposes of 3157
providing funding for the low-income customer assistance programs 3158
and for the consumer education program authorized under section 3159
4928.56 of the Revised Code, and paying the administrative costs 3160
of the low-income customer assistance programs and the consumer 3161
education program. Interest on the fund shall be credited to the 3162
fund. disbursements from the fund shall be made to any supplier 3163
that provides a competitive retail electric service to a customer 3164
who is approved to receive assistance under a specified low-income 3165
customer assistance program and to any authorized provider of 3166
weatherization or energy efficiency service to a customer approved 3167
to receive such assistance under a specified low-income customer 3168
ASSISTANCE program. 3169

(B) universal service revenues shall include all of the 3170
following: 3171

(1) Revenues remitted to the director after collection by an 3172
electric distribution utility beginning on the starting date of 3173

competitive retail electric service, attributable to the 3174
collection from customers of the universal service rider 3175
prescribed under section 4928.52 of the Revised Code; 3176

(2) Revenues remitted to the director that have been 3177
collected by an electric distribution utility beginning on the 3178
starting date of competitive retail electric service as customer 3179
payments under the percentage of income payment plan program, 3180
including revenues remitted under division (c) of this section; 3181

(3) adequate revenues remitted to the director after 3182
collection by a MUNICIPAL electric utility or electric cooperative 3183
in this state not earlier than the starting date of competitive 3184
retail ELECTRIC service upon the utility's or cooperative's 3185
decision to participate in the low-income customer assistance 3186
programs. such REMITTANCES shall entitle the customers of the 3187
utility or cooperative to receive benefits from the low-INCOME 3188
customer assistance programs funded through the universal service 3189
fund for the time the utility or cooperative is such a 3190
PARTICIPANT. 3191

(C) beginning on the starting date of competitive retail 3192
electric service, an electric distribution utility shall transfer 3193
to the director the right to collect all arrearage payments of a 3194
customer for percentage of income payment plan program debt owed 3195
to the utility on the day before that date or retain the right to 3196
collect that debt but remit to the director all program revenues 3197
received by the utility for that customer. 3198

Sec. 4928.52. (A) Beginning on the starting date of 3199
competitive retail electric service, the universal service rider 3200
shall replace the percentage of income payment plan rider in 3201
existence on the effective date of this section and shall be a 3202
rider on retail electric distribution service rates as such rates 3203
are determined by the public utilities commission pursuant to this 3204

chapter. the universal service rider for the first five years 3205
after the starting date of competitive retail electric service 3206
shall be the sum of all of the following: 3207

(1) the level of the percentage of income payment plan 3208
program rider in existence on the effective date of this section; 3209

(2) an amount equal to the level of funding for low-income 3210
customer energy efficiency programs provided through electric 3211
utility rates in effect on the effective date of this section; 3212

(3) any additional amount necessary and SUFFICIENT to fund 3213
through the universal service rider the ADMINISTRATIVE costs of 3214
the low-income customer ASSISTANCE programs and the consumer 3215
education program created in section 4928.57 of the Revised Code. 3216

(B) If, during or after the five-year period specified in 3217
division (a) of this section, the director of development, after 3218
CONSULTATION with the universal service advisory board, determines 3219
that revenues in the universal service fund and revenues from 3220
federal or other sources of funding for those programs, including 3221
general revenue fund appropriations for the ohio energy credit 3222
program, will be insufficient to cover the administrative costs of 3223
the low-income customer ASSISTANCE programs and the consumer 3224
education program and provide adequate funding for THOSE PROGRAMS, 3225
the director shall file a petition with the commission for an 3226
increase in the universal service rider. the commission, after 3227
reasonable notice and OPPORTUNITY for hearing, may adjust the 3228
universal service rider by the minimum amount necessary to provide 3229
the additional revenues. the commission shall not decrease the 3230
universal service rider without the approval of the director, 3231
after consultation by the director with the advisory board. 3232

(c) the universal service rider established under DIVISION 3233
(A) or (B) of this section shall be set in such a manner so as not 3234
to shift among the customer classes of electric distribution 3235

utilities the costs of funding low-income customer ASSISTANCE 3236
programs. 3237

Sec. 4928.53. (A) Beginning on the starting date of 3238
competitive retail electric service, the director of development 3239
is hereby authorized to administer the low-income customer 3240
assistance programs. for that purpose, the tax commissioner and 3241
the public utilities commission shall cooperate with and provide 3242
such assistance as the director REQUIRES FOR ADMINISTRATION of the 3243
low-income customer assistance programs. the department shall 3244
consolidate the administration of and coordinate the operations of 3245
those programs within the department to provide, to the maximum 3246
extent possible, for efficient program administration and a 3247
one-stop application and ELIGIBILITY determination process at the 3248
local level for consumers. 3249

(B)(1) not later than june 30, 2000, the director, in 3250
accordance with chapter 119. of the Revised Code, shall adopt 3251
rules to carry out sections 4928.51 to 4928.58 of the Revised Code 3252
and ensure the effective and EFFICIENT ADMINISTRATION and 3253
operation of the low-income customer assistance programs. the 3254
rules shall take effect on the starting date of competitive ReTAIL 3255
electric service. 3256

(2) the director's authority to adopt rules under this 3257
division for the Ohio energy credit program shall be subject to 3258
such rule-making AUTHORITY as is conferred on the director by 3259
sections 5117.01 to 5117.12 of the Revised Code. 3260

(3) the director's AUTHORITY to adopt rules under this 3261
division for the percentage of income payment plan program shall 3262
include authority to adopt rules prescribing criteria for customer 3263
eligibility and policies REGARDING payment arrangements and 3264
responsibilities, procedures for verifying customer eligibility, 3265
procedures for disbursing public funds to suppliers and otherwise 3266

administering funds under the director's jurisdiction, and 3267
requirements as to timely remittances of revenues described in 3268
division (B) of section 4928.51 of the Revised Code the director's 3269
authority in division (B)(3) of this section excludes authority to 3270
prescribe service disconnection and customer billing policies and 3271
procedures and to address complaints against suppliers under the 3272
percentage of payment plan program, which excluded authority shall 3273
be exercised by the public utilities commission, in coordination 3274
with the director. Rules initially adopted by the director for the 3275
percentage of income payment plan program shall incorporate the 3276
eligibility criteria and payment arrangement and responsibility 3277
policies set forth in rule 4901:1-18-04(B) of the Ohio 3278
Administrative Code in effect on the effective date of this 3279
section. 3280

Sec. 4928.54. Beginning on the starting date of competitive 3281
retail electric service, the director of development may aggregate 3282
percentage of income payment plan program customers for the 3283
purpose of competitively auctioning the supply of competitive 3284
retail electric generation service to bidders certified under 3285
section 4928.08 of the Revised Code and further qualified under 3286
ELIGIBILITY criteria the director prescribes by rule under 3287
division (b) of section 4928.53 of the Revised Code after 3288
consultation with the commission and electric light companies 3289
regarding any such rule. the objectives of the auction shall be to 3290
provide reliable retail electric generation service at the lowest 3291
cost to the customers, and the sole selection criterion for a 3292
winning bid shall be lowest bid price. the rules adopted by the 3293
director under division (b) of section 4928.53 of the Revised Code 3294
shall ensure a fair and unbiased auction process and the 3295
performance of any winning bidder. 3296

Sec. 4928.55. (A) there is hereby created the universal 3297

service ADVISORY board, consisting of fifteen members as follows: 3298
the director of development, the CHAIRPERSON of the public 3299
utilities commission, and the consumers' counsel, each serving 3300
ex-officio and represented by a designee at the official's 3301
discretion; two members of the house of representatives appointed 3302
by the speaker of the house of representatives, NEITHER of the 3303
SAME POLITICAL party, and two members of the senate appointed by 3304
the president of the senate, neither of the same political party; 3305
and eight members appointed by the governor with the advice and 3306
consent of the senate, consisting of one representative of 3307
suppliers of competitive retail electric service, one 3308
representative of the residential class of electric utility 3309
customers, one representative of the industrial class of electric 3310
utility customers, and one representative of the commercial class 3311
of electric utility customers, one customer RECEIVING assistance 3312
under one or more of the low-income customer assistance programs, 3313
to represent customers eligible for any such assistance, one 3314
representative of the general public, one representative of local 3315
in-take agencies, and one representative of a community-based 3316
organization serving low-income customers. initial appointments 3317
shall be made not later than June 30, 2000. 3318

(B) Initial terms of three of the appointed members shall end 3319
on June 30, 2003, and initial terms of the remaining three 3320
appointed MEMBERS shall end on June 30, 2004. thereafter, terms of 3321
appointed members shall be for three years, with each term ending 3322
on the same day of the same month as the term it succeeds. each 3323
member shall hold office from the date of the member's appointment 3324
until the end of the term for which the member was appointed. 3325
members may be reappointed. 3326

Vacancies shall be filled in the manner provided for original 3327
appointments. Any member APPOINTED to fill a vacancy occurring 3328
prior to the expiration date of the term for which the member's 3329

predecessor was appointed shall hold office as a member for the 3330
REMAINDER of that term. a member shall continue in office after 3331
the expiration date of the member's term until the member's 3332
successor takes office or until a period of sixty days has 3333
elapsed, whichever occurs first. 3334

(C) Board members shall be reimbursed for their actual and 3335
necessary expenses incurred in the performance of board duties. 3336
such REIMBURSEMENTS constitute administrative costs of the 3337
low-income customer assistance programs for the purpose of 3338
division (A) of section 4928.51 of the Revised Code. 3339

(d) the advisory board shall select a chairperson from among 3340
its members. only board members appointed by the governor with THE 3341
advice and consent of the senate shall be voting members of the 3342
board; each shall have one vote in all deliberations of the board. 3343
a majority of the voting members constitute a quorum. 3344

(e) the duties of the advisory board shall be to advise the 3345
director in the administration of the UNIVERSAL service fund and 3346
the low-income customer assistance programs and advise the 3347
director on the director's recommendation to the commission 3348
regarding the appropriate level of the universal service rider. 3349

(f) the advisory board is not an agency, as defined in 3350
section 101.82 of the Revised Code, for purposes of divisions (A) 3351
and (B) of section 101.84 of the Revised Code. 3352

Sec. 4928.56. The director of development shall establish an 3353
energy efficiency and weatherization program targeted to 3354
high-cost, high-volume use structures occupied by customers 3355
eligible for the percentage of income PAYMENT plan program, with 3356
the goal to reducing the energy bills of the occupants. Acceptance 3357
of energy efficiency and WEaTHERIZATION services provided by the 3358
program shall be a condition for the eligibility of any such 3359

customer to participate in the percentage of income payment plan 3360
program. Any difference between universal service fund revenues 3361
under section 4928.51 of the Revised Code and any savings in 3362
percentage of income payment plan program costs as a result of 3363
competitive auctioning under section 4928.54 of the Revised Code 3364
shall be reinvested in the targeted energy EFFICIENCY and 3365
WEATHERIZATION program. if there are no savings, each electric 3366
utility that collects revenues from its customers to fund energy 3367
efficiency programs shall remit those revenues to the director 3368
pursuant to rules adopted under division (B) of section 4928.53 of 3369
the Revised Code. 3370

Sec. 4928.57. The director of development may adopt rules in 3371
accordance with Chapter 119. of the Revised Code establishing an 3372
education program for consumers eligible to participate in the 3373
low-income customer assistance programs. the education program 3374
shall provide information to consumers regarding energy efficiency 3375
and energy conservation. 3376

Sec. 4928.58. On and after the starting date of competitive 3377
retail electric service, the director of development shall provide 3378
a report every two years until 2008 to the standing committees of 3379
the general assembly that deal with public utility matters, 3380
regarding the effectiveness of the low-income customer assistance 3381
programs and the consumer education program, and the effectiveness 3382
of the energy EFFICIENCY revolving loan program created under 3383
sections 4928.61 to 4928.64 of the Revised Code. 3384

Sec. 4928.61. (A) There is hereby established in the state 3385
treasury an energy efficiency revolving loan fund, into which 3386
shall be deposited all energy EFFICIENCY revenues remitted to the 3387
director of development under division (B) of this section, for 3388
the exclusive purposes of funding the energy efficiency revolving 3389

loan program created under section 4928.62 of the Revised Code and 3390
paying the program's administrative costs. Interest on the fund 3391
shall be credited to the fund. 3392

(B) energy efficiency revenues shall include all of the 3393
following: 3394

(1) revenues remitted to the director after collection by 3395
each electric DISTRIBUTION utility in this state of a surcharge on 3396
retail electric distribution service rates as such rates are 3397
determined by the public utilities commission pursuant to this 3398
chapter. the amount of the surcharge shall vary by certified 3399
territory, shall be an amount per kilowatt-hour as defined in 3400
section 4909.161 of the Revised Code, and shall equal the amount 3401
in the utility's rates in effect on the effective date of this 3402
section that is attributable to the utility's energy EFFICIENCY OR 3403
demand-side management programs. The surcharge shall be imposed 3404
beginning on the starting date of competitive retail electric 3405
service and shall terminate at the end of five years following 3406
that starting date or until the energy efficiency revolving loan 3407
fund reaches one hundred million dollars, whichever is first. 3408

(2) Revenues from energy efficiency revolving loan program 3409
loan repayments and payments from energy efficiency revolving loan 3410
program loan collections pursuant to section 4928.62 of the 3411
Revised Code; 3412

(3) Adequate revenues remitted to the director after 3413
collection by a MUNICIPAL electric utility or electric cooperative 3414
in this state not earlier than the starting date of competitive 3415
retail electric service upon the utility's or cooperative's 3416
decision to participate in the energy efficiency revolving loan 3417
PROGRAM. Such remittances entitle the customers of the utility or 3418
cooperative to receive benefits from the energy efficiency 3419
revolving loan program for the time the utility or cooperative is 3420

such a participant. 3421

(C) each electric distribution utility in this state shall 3422
remit to the director on a quarterly basis the revenues described 3423
in divisions (B)(1) and (2) of this section. Such remittances 3424
shall begin with the first quarter following the starting date of 3425
competitive RETAIL ELECTRIC service as defined in SECTION 4928.01 3426
of the Revised Code and continue only until the end of five years 3427
following that starting date or until the energy efficiency 3428
revolving loan fund reaches one hundred million dollars, whichever 3429
is first. 3430

Sec. 4928.62. (A) Beginning on the starting date of 3431
competitive retail electric service, there is hereby created the 3432
energy EFFICIENCY revolving loan program, which shall be 3433
administered by the director of development. Under the program, 3434
the director may AUTHORIZE the use of moneys in the energy 3435
efficiency revolving loan fund for financial assistance for 3436
projects in this state. the assistance shall be distributed among 3437
the certified territories of electric distribution utilities in 3438
amounts proportionate to the remittances of the utilities under 3439
division (B)(1) of section 4928.61 of the Revised Code. the 3440
assistance shall be in the form of loans at below market rates, 3441
loan GUARANTEES for such loans, and linked deposits for such loans 3442
through approved lending institutions. the director shall not 3443
AUTHORIZE financial assistance under the program unless the 3444
director first DETERMINES all of the following: 3445

(1) the project will include an investment in products, 3446
technologies, or services for residential, small commercial and 3447
small industrial business, local government, educational 3448
institution, nonprofit ENTITY, or agricultural customers of an 3449
electric distribution utility in this state or a participating 3450
MUNICIPAL electric utility or electric cooperative in this state. 3451

(2) the project will IMPROVE energy efficiency in a cost 3452
efficient manner by using both the most appropriate national, 3453
federal, or other standards for products as determined by the 3454
director, and the best practices for use of technology, products, 3455
or services in the context of the total facility or building. 3456

(3) the project will benefit the economic and environmental 3457
welfare of the citizens of this state. 3458

(4) the receipt of financial assistance is a major factor in 3459
the applicant's decision to proceed with or invest in the project. 3460

(B) In carrying out sections 4928.61 to 4928.65 of the 3461
Revised Code, the director may do all of the following for THE 3462
PURPOSE of the energy efficiency revolving loan program: 3463

(1) acquire in the name of the director any property of any 3464
kind or character in accordance with this section, by purchase, 3465
purchase at foreclosure, or EXCHANGE, on such terms and in such 3466
manner as the director considers proper; 3467

(2) make and enter into all contracts and agreements 3468
necessary or incidental to the performance of the director's 3469
duties and the exercise of the director's powers under those 3470
sections; 3471

(3) employ or enter into contracts with financial 3472
consultants, marketing consultants, consulting engineers, 3473
architects, managers, construction experts, attorneys, technical 3474
MONITORS, energy evaluators, OR OTHER EMPLOYEES or agents as the 3475
director considers necessary, and shall fix their compensation; 3476

(4) adopt rules prescribing the application procedures for 3477
financial assistance under the program; the terms and conditions 3478
of any loans, loan guarantees, linked deposits, and contracts; 3479
criteria pertaining to the eligibility of participating lenders; 3480
and any OTHER MATTERS necessary for the implementation of the 3481

program; 3482

(5) do all things necessary and appropriate for the operation 3483
of the program. 3484

(C) financial statements, financial data, and trade secrets 3485
submitted to or received by the director from an applicant or 3486
recipient of financial assistance under sections 4928.61 to 3487
4928.65 of the Revised Code, or any INFORMATION taken from those 3488
statements, data, or trade secrets for any purpose, are not public 3489
records for the purpose of section 149.43 of the Revised Code. 3490

Sec. 4928.63. (A) there is hereby created the energy 3491
efficiency revolving loan program advisory board, consisting of 3492
sixteen members as follows: the director of development, the 3493
CHAIRPERSON of the public utilities commission, the consumers' 3494
counsel, and the director of the air quality development 3495
authority, each serving ex-officio and represented by a designee 3496
at the official's discretion; two members of the house of 3497
representatives appointed by the speaker of the house of 3498
representatives, NEITHER of the SAME POLITICAL party, and two 3499
members of the senate appointed by the president of the senate, 3500
neither of the same political party; and eight representatives 3501
appointed by the governor with the advice and consent of the 3502
senate, consisting of one representative of environmental 3503
protection interests, one representative of the residential class 3504
of electric utility customers, one representative of the 3505
industrial class of electric utility customers, and one 3506
representative of the commercial class of electric utility 3507
customers, one REPRESENTATIVE of AGRICULTURAL or rural customers 3508
of an electric utility, one representative of lending institutions 3509
in this state, one representative of the general public, and one 3510
person CONSIDERED an expert in energy efficiency or renewables 3511
technology. initial appointments shall be made not later than June 3512

30, 2000. 3513

(b) initial terms of three of the appointed members shall end 3514
on june 30, 2003, and initial terms of the remaining three 3515
APPOINTED MEMBERS shall end on june 30, 2004. thereafter, terms of 3516
appointed members shall be for three years, with each term ending 3517
on the same day of the same month as the term it succeeds. each 3518
member shall hold office from the date of the member's appointment 3519
until the end of the term for which the member was appointed. 3520
members may be reappointed. 3521

vacancies shall be filled in the manner provided for original 3522
appointments. any member APPOINTED to fill a vacancy occurring 3523
prior to the expiration date of the term for which the member's 3524
predecessor was appointed shall hold office as a member for the 3525
REMAINDER of that term. a member shall continue in office after 3526
the expiration date of the member's term until the member's 3527
successor takes office or until a period of sixty days has 3528
elapsed, whichever occurs first. 3529

(C) board members shall be reimbursed for their actual and 3530
necessary expenses incurred in the performance of board duties. 3531
such reimbursements constitute administrative costs of the energy 3532
efficiency revolving loan program for the purpose of DIVISION (A) 3533
of section 4928.61 of the Revised Code. 3534

(D) The advisory board shall select a chairperson from among 3535
its members. only appointed members shall be voting members of the 3536
board and shall have one vote in all deliberations of the board. a 3537
majority of the voting members constitute a quorum. 3538

(e) the duties of the advisory board shall be to advise the 3539
director of development on the administration of the energy 3540
efficiency revolving loan program and the energy EFFICIENCY 3541
revolving loan program fund under sections 4928.61 to 4928.64 of 3542
the Revised Code. 3543

(f) the advisory board is not an agency, as defined in 3544
section 101.82 of the Revised Code, for purposes of divisions (A) 3545
and (B) of section 101.84 of the Revised Code. 3546

Sec. 4928.64. the director of development and the energy 3547
efficiency revolving loan fund advisory board have the powers and 3548
duties provided in sections 4928.61 to 4928.63 of the Revised 3549
Code, in order to promote the welfare of the people of this state, 3550
to stabilize the economy, to ASSIST in the improvement and 3551
development within this state of not-for-profit entity, 3552
industrial, commercial, DISTRIBUTION, residential, and research 3553
buildings and activities required for the people of this state, to 3554
improve the ECONOMIC welfare of the people of this state, and also 3555
to ASSIST in the improvement of air, water, or thermal POLLUTION 3556
control facilities and SOLID waste disposal facilities. it is 3557
hereby determined that the accomplishment of those purposes is 3558
essential so that the people of this state may maintain their 3559
present high standards in comparison with the people of other 3560
states and so that opportunities for improving the economic 3561
welfare of the people of this state, for improving the housing of 3562
residents of this state, and for favorable markets for the 3563
products of this state's natural resources, agriculture, and 3564
manufacturing shall be improved; and that it is necessary for this 3565
state to establish the program authorized pursuant to sections 3566
4928.61 to 4928.63 of the Revised Code, to establish the energy 3567
efficiency revolving loan program and program fund and the energy 3568
efficiency REVOLVING loan program advisory board, and to vest the 3569
director and the board with the powers and duties PROVIDED in 3570
sections 4928.61 to 4928.63 of the Revised Code. 3571

Sec. 4933.33. Annually, each electric light company shall 3572
cause to appear on each customer bill, or shall distribute to each 3573
of its customers, the following statement: 3574

"Under state law, the amount you are being billed includes: 3575

(1) ~~Gross receipts~~ Kilowatt-hour taxes that have been in 3576
effect since ~~1969~~ 2001 and are currently at \$. % (The 3577
current ~~total percentage~~ dollar figure of the ~~total gross receipts~~ 3578
kilowatt-hour taxes levied in ~~Chapter 5727~~ by section 5727.81 of 3579
the Revised Code and ~~any other section of law~~ shall be placed in 3580
the blank); and 3581

(2) Assessments to assist in the support of the operations of 3582
the PUCO and the office of the consumers' counsel that have been 3583
in effect since 1912 and 1977, respectively." 3584

Nothing in this section shall be construed to mean ~~either~~ 3585
that an electric light company operated not for profit ~~or one that~~ 3586
~~is owned or operated by a municipal corporation~~ is subject to this 3587
section, or that an electric light company subject to this section 3588
may not cause such appearance or distribute such statement on a 3589
more frequent basis. 3590

Sec. 4933.81. As used in sections 4933.81 to 4933.90 of the 3591
Revised Code: 3592

(A) "Electric supplier" means any electric light company as 3593
defined in section 4905.03 of the Revised Code, including electric 3594
light companies organized as nonprofit corporations, but not 3595
including ~~a municipal corporation~~ corporations or other ~~unit~~ units 3596
of local government that ~~provides~~ provide electric service. 3597

(B) "Adequate facilities" means distribution lines or 3598
facilities having sufficient capacity to meet the maximum 3599
estimated electric service requirements of its existing customers 3600
and of any new customer occurring during the year following the 3601
commencement of permanent electric service, and to assure all such 3602
customers of reasonable continuity and quality of service. 3603
Distribution facilities and lines of an electric supplier shall be 3604

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 ~~construction~~ 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 3636
to that service component. the filing shall specify the date on 3637
which such territory is so eliminated. notwithstanding division 3638
(B) of section 4928.01 of the Revised Code, such a service 3639
component may include retail ancillary, metering, or billing and 3640
collection service irrespective of whether that service component 3641
has or has not been declared competitive under section 4928.04 of 3642
the Revised Code. upon receipt of the filing by the commission, 3643
the not-for-profit electric supplier's certified territory shall 3644
be eliminated permanently as to the service component specified in 3645
the filing as of the date specified in the filing. nothing in this 3646
division AUTHORIZES commission supervision or REGULATION of the 3647
provision of retail electric service by a not-for-profit electric 3648
supplier. as used in this division, "competitive retail electric 3649
service" and "retail electric service" have the same meanings as 3650
in section 4928.01 of the Revised Code. 3651

(G) "Certified territory" means a geographical area the 3652
boundaries of which have been established pursuant to sections 3653
4933.81 to 4933.90 of the Revised Code within which an electric 3654
supplier is authorized and required to provide electric service. 3655

(H) "Other unit of local government" means any governmental 3656
unit or body that may come into existence after the effective date 3657
of this section with powers and authority similar to those of a 3658
municipal corporation, or ~~which~~ that is created to replace or 3659
exercise the relevant powers of any one or more municipal 3660
corporations. 3661

Sec. 4935.04. (A) As used in this chapter: 3662

(1) "Major utility facility" means÷ 3663

~~(a) An electric generating plant and associated facilities~~ 3664
~~designed for, or capable of, operation at a capacity of fifty~~ 3665
~~megawatts or more;~~ 3666

~~(b)~~ An electric transmission line and associated facilities 3667
of a design capacity of one hundred twenty-five kilovolts or more; 3668

~~(c)~~~~(b)~~ A gas or natural gas transmission line and associated 3669
facilities designed for, or capable of, transporting gas or 3670
natural gas at pressures in excess of one hundred twenty-five 3671
pounds per square inch. 3672

"Major utility facility" does not include electric, gas, or 3673
natural gas distributing lines and gas or natural gas gathering 3674
lines and associated facilities as defined by the public utilities 3675
commission; facilities owned or operated by industrial firms, 3676
persons, or institutions that produce or transmit gas, or natural 3677
gas, or electricity primarily for their own use or as a byproduct 3678
of their operations; gas or natural gas transmission lines and 3679
associated facilities over which an agency of the United States 3680
has certificate jurisdiction; facilities owned or operated by a 3681
person furnishing gas or natural gas directly to fifteen thousand 3682
or fewer customers within this state. 3683

(2) "Person" has the meaning set forth in section 4906.01 of 3684
the Revised Code. 3685

(B) Each person owning or operating a gas or natural gas 3686
transmission line and associated facilities within this state over 3687
which an agency of the United States has certificate jurisdiction 3688
shall furnish to the commission a copy of the energy information 3689
filed by the person with that agency of the United States. 3690

(C) Each person owning or operating a major utility facility 3691
within this state, or furnishing gas, natural gas, or electricity 3692
directly to more than fifteen thousand customers within this state 3693
annually shall furnish a report to the commission for its review. 3694
The report shall be termed the long-term forecast report and shall 3695
contain: 3696

(1) A year-by-year, ten-year forecast of annual energy 3697

demand, peak load, reserves, and a general description of the	3698
resource plan to meet demand;	3699
(2) A range of projected loads during the period;	3700
(3) A description of major utility facilities planned to be	3701
added or taken out of service in the next ten years, including	3702
prospective sites for generating plants and , to the extent the	3703
information is available, <u>prospective sites</u> for transmission line	3704
locations;	3705
(4) For gas and natural gas, a projection of anticipated	3706
supply, supply prices, and sources of supply over the forecast	3707
period;	3708
(5) For electricity, a range of projected loads and a	3709
projection of annual energy demand, anticipated generating	3710
capacity, and system seasonal peak demand for a twenty-year	3711
period;	3712
(6) A description of proposed changes in the transmission	3713
system planned for the next five years;	3714
(7) (6) A month-by-month forecast of both energy demand and	3715
peak load for electric utilities, and gas sendout for gas and	3716
natural gas utilities, for the next two years. The report shall	3717
describe the major utility facilities that, in the judgment of	3718
such person, will be required to supply system demands during the	3719
forecast period. The report from a gas or natural gas utility	3720
shall cover the ten- and five-year periods next succeeding the	3721
date of the report, and the report from an electric utility shall	3722
cover the twenty-, ten-, and five-year periods next succeeding the	3723
date of the report. Each report shall be made available to the	3724
public and furnished upon request to municipal corporations and	3725
governmental agencies charged with the duty of protecting the	3726
environment or of planning land use. The report shall be in such	3727
form and shall contain such information as may be prescribed by	3728

the commission. 3729

Each person not owning or operating a major utility facility 3730
within this state and serving fifteen thousand or fewer gas, ~~or~~ 3731
natural gas, or electric customers within this state shall furnish 3732
such information as the commission ~~may require~~ requires. 3733

(D) The commission shall: 3734

(1) Review and comment on the reports filed under division 3735
(C) of this section, and make the information contained ~~therein~~ in 3736
the reports readily available to the public and other interested 3737
government agencies; 3738

(2) Compile and publish each year the ~~general locations of~~ 3739
~~the proposed power plant sites and~~ general locations of proposed 3740
and existing transmission line routes within its jurisdiction as 3741
identified in the reports filed under division (C) of this 3742
section, identifying the general location of such sites and routes 3743
and the approximate year when construction is expected to 3744
commence, and to make such information readily available to the 3745
public, to each newspaper of daily or weekly circulation within 3746
the area affected by the proposed site and route, and to 3747
interested federal, state, and local agencies; 3748

(3) Hold a public hearing: 3749

(a) On the first long-term forecast report filed after 3750
January 11, 1983; 3751

(b) At least once in every five years, on the latest report 3752
furnished by any person subject to this section; 3753

(c) On the latest report furnished by any person subject to 3754
this section if the report contains a substantial change from the 3755
preceding report furnished by that person. "Substantial change" 3756
includes, but is not limited to: 3757

(i) ~~The addition or cancellation of a generating facility of~~ 3758

~~fifty megawatts or more in the report furnished pursuant to~~ 3759
~~division (C) of this section;~~ 3760

~~(ii)~~ A change in forecasted peak loads or energy consumption 3761
over the forecast period of greater than an average of one-half of 3762
one per cent per year; 3763

~~(iii)~~(ii) Demonstration of good cause to the commission by an 3764
interested party. 3765

The commission shall fix a time for the hearing, which shall 3766
be not later than ninety days after the report is filed, and 3767
publish notice of the date, time of day, and location of the 3768
hearing in a newspaper of general circulation in each county in 3769
which the person furnishing the report has or intends to locate a 3770
major utility facility and will provide service during the period 3771
covered by the report. The notice shall be published not less than 3772
fifteen nor more than thirty days before the hearing and shall 3773
state the matters to be considered. 3774

Absent a showing of good cause, the commission shall not hold 3775
hearings under division (D)(3) of this section with respect to 3776
persons who, as the primary purpose of their business, furnish 3777
gas, or natural gas, or electricity directly to fifteen thousand 3778
or fewer customers within this state solely for direct consumption 3779
by those customers. 3780

(4) Require such information from persons subject to its 3781
jurisdiction as necessary to assist in the conduct of hearings and 3782
any investigation or studies it may undertake; 3783

(5) Conduct any studies or investigations that are necessary 3784
or appropriate to carry out its responsibilities under this 3785
section. 3786

(E)(1) The scope of the hearing held under division (D)(3) of 3787
this section shall be limited to issues relating to forecasting. 3788
The power siting board, the office of consumers' counsel, and all 3789

other persons having an interest in the proceedings shall be 3790
afforded the opportunity to be heard and to be represented by 3791
counsel. The commission may adjourn the hearing from time to time. 3792
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(2) The hearing shall include, but not be limited to, a 3794
review of: 3795

(a) The projected loads and energy requirements for each year 3796
of the period; 3797

(b) The estimated installed capacity and supplies to meet the 3798
projected load requirements. 3799

(F) Based upon the report furnished pursuant to division (C) 3800
of this section and the hearing record, the commission, within 3801
ninety days from the close of the record in the hearing, shall 3802
determine if: 3803

(1) All information relating to current activities, 3804
facilities agreements, and published energy policies of the state 3805
has been completely and accurately represented; 3806

(2) The load requirements are based on substantially accurate 3807
historical information and adequate methodology; 3808

(3) The forecasting methods consider the relationships 3809
between price and energy consumption; 3810

(4) The report identifies and projects reductions in energy 3811
demands due to energy conservation measures in the industrial, 3812
commercial, residential, transportation, and energy production 3813
sectors in the service area; 3814

(5) Utility company forecasts of loads and resources are 3815
reasonable in relation to population growth estimates made by 3816
state and federal agencies, transportation, and economic 3817
development plans and forecasts, and make recommendations where 3818
possible for necessary and reasonable alternatives to meet 3819

forecasted electric power demand; 3820

(6) The report considers plans for expansion of the regional 3821
power grid and the planned facilities of other utilities in the 3822
state; 3823

(7) All assumptions made in the forecast are reasonable and 3824
adequately documented. 3825

(G) The commission shall adopt rules under section 111.15 of 3826
the Revised Code to establish criteria for evaluating the 3827
long-term forecasts of needs for gas and electric power 3828
transmission service, to conduct hearings held under this section, 3829
to establish reasonable fees to defray the direct cost of the 3830
hearings and the review process, and such other rules as are 3831
necessary and convenient to implement this section. 3832

(H) The hearing record produced under this section and the 3833
determinations of the commission shall be introduced into evidence 3834
and shall be considered in determining the basis of need for power 3835
siting board deliberations under division (A)(1) of section 3836
4906.10 of the Revised Code. The hearing record produced under 3837
this section shall be introduced into evidence and shall be 3838
considered by the public utilities commission in its initiation of 3839
programs, examinations, and findings, ~~investigations, and remedies~~ 3840
under section 4905.70 of the Revised Code, and shall be considered 3841
in ~~their~~ the commission's determinations with respect to the 3842
establishment of just and reasonable rates under section 4909.15 3843
of the Revised Code and financing utility facilities and 3844
authorizing issuance of all securities under sections 4905.40, 3845
4905.401, 4905.41, and 4905.42 of the Revised Code. The forecast 3846
findings also shall serve as the basis for all other energy 3847
planning and development activities of the state government where 3848
~~electric and~~ gas data are required. 3849

(I)(1) No court other than the supreme court shall have power 3850

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.

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~~(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.

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

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~~(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.

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~~(7)~~(G) "Household" means any dwelling unit, including a unit
in a multiple unit dwelling, a manufactured home, or a mobile

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home, to which utility heating services or energy commodities are 3913
provided. 3914

~~(8)~~(H) "Payment" means the one hundred twenty-five-dollar 3915
payment provided under division (A) of section 5117.10 of the 3916
Revised Code. 3917

~~(9)~~(I) "Permanently and totally disabled" refers to a person 3918
who has, on the first day of July of the year an application is 3919
made, some impairment in body or mind that makes the person unfit 3920
to work at any substantially remunerative employment that the 3921
person would otherwise be reasonably able to perform and that 3922
will, with reasonable probability, continue for an indefinite 3923
period of at least twelve months without any present indication of 3924
recovery therefrom, or who has been certified as permanently and 3925
totally disabled by a state or federal agency having the function 3926
of so classifying persons. 3927

~~(10)~~(J) "Sixty-five years of age or older" refers to a person 3928
who has attained age sixty-four prior to the first day of January 3929
of the year of application for reduction in utility charges. 3930
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~~(11)~~(K) "Total income" means the adjusted gross income of the 3932
head of household and the person's spouse for the year preceding 3933
the year in which an application is made, as determined under the 3934
"Internal Revenue Code of 1954," 68A Stat. 3, 26 U.S.C. 1, as 3935
amended, minus the amount of disability benefits included in 3936
adjusted gross income but not to exceed fifty-two hundred dollars, 3937
plus old age and survivors benefits received pursuant to the 3938
"Social Security Act," retirement, pension, annuity, or other 3939
retirement payments or benefits not included in federal adjusted 3940
gross income; payments received pursuant to the "Railroad 3941
Retirement Act," 50 Stat. 307, 45 U.S.C. 228; and interest on 3942
federal, state, and local government obligations. Disability 3943
benefits paid by the veteran's administration or a branch of the 3944

armed forces of the United States on account of an injury or 3945
disability shall not be included in total income. 3946

~~(B) As used in sections 5117.01 to 5117.12 of the Revised 3947
Code: 3948~~

~~(1) "Applicant" means any person who has submitted an 3949
application under division (C) of section 5117.03 of the Revised 3950
Code. 3951~~

~~(2) "Application" means the application in section 5117.03 of 3952
the Revised Code. 3953~~

~~(3) "Program" means the Ohio energy credit program 3954
established under sections 5117.01 to 5117.12 of the Revised Code. 3955~~

~~(4)(L) "Purchased power costs" means charges for the costs of 3956
power purchased by an electric light company under Chapters 4905. 3957
and 4909. of the Revised Code and includes charges resulting from 3958
the exchange of electric power. 3959~~

Sec. 5117.02. (A) The director of development, to the extent 3960
necessary in consultation with the tax commissioner, shall adopt 3961
rules, or amendments and rescissions of rules, pursuant to section 3962
4928.52 of the Revised Code, for the administration of the Ohio 3963
energy credit program under sections 5117.01 to 5117.12 of the 3964
Revised Code. 3965

(B) As a means of efficiently administering the program 3966
~~established by sections 5117.01 to 5117.12 of the Revised Code, 3967
the tax commissioner~~ director may extend, by as much as a total of 3968
thirty days, any date specified in such sections for the 3969
performance of a particular action by an individual or an officer. 3970

(C)(1) Except as provided in division (C)(2) of this section, 3971
the director, to the extent necessary in consultation with the tax 3972
commissioner, shall adopt, in accordance with divisions (A), (B), 3973
(C), (D), (E), and (H) of section 119.03 and section 119.04 of the 3974

Revised Code, ~~adopt~~ whatever rules, or amendments or rescissions 3975
of rules are required by or are otherwise necessary to implement 3976
sections 5117.01 to 5117.12 of the Revised Code. A rule, 3977
amendment, or rescission adopted under this division is not exempt 3978
from the hearing requirements of section 119.03 of the Revised 3979
Code pursuant to division (G) of that section, or subject to 3980
section 111.15 or 5703.14 of the Revised Code. 3981

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(2) If an emergency necessitates the immediate adoption of a 3983
rule, or the immediate adoption of an amendment or rescission of a 3984
rule that is required by or otherwise necessary to implement 3985
sections 5117.01 to 5117.12 of the Revised Code, the director, to 3986
the extent necessary in consultation with the tax commissioner 3987
~~may~~, immediately may adopt the emergency rule, amendment, or 3988
rescission without complying with division (A), (B), (C), (D), 3989
(E), or (H) of section 119.03 of the Revised Code so long as ~~he~~ 3990
the director states the reasons for the necessity in the emergency 3991
rule, amendment, or rescission. The emergency rule, amendment, or 3992
rescission is effective on the day copies of the emergency rule, 3993
amendment, or rescission, in final form and in compliance with 3994
division (A)(2) of section 119.04 of the Revised Code, are filed 3995
as follows: two certified copies of the emergency rule, amendment, 3996
or rescission shall be filed with both the secretary of state and 3997
the director of the legislative service commission, and one 3998
certified copy of the emergency rule, amendment, or rescission 3999
shall be filed with the joint committee on agency rule review. If 4000
all copies are not filed on the same day, the emergency rule, 4001
amendment, or rescission is effective on the day on which the 4002
latest filing is made. An emergency rule, amendment, or rescission 4003
adopted under this division is not subject to section 111.15, 4004
division (F) of section 119.03, or section 5703.14 of the Revised 4005
Code. An emergency rule, amendment, or rescission adopted under 4006
this division continues in effect until amended or rescinded by 4007

the director, to the extent necessary in consultation with the tax 4008
commissioner, in accordance with division (C)(1) or (2) of this 4009
section, except that the rescission of an emergency rescission 4010
does not revive the rule rescinded. 4011

(D) Except where otherwise provided, each form, application, 4012
notice, and the like used in fulfilling the requirements of 4013
sections 5117.01 to 5117.12 of the Revised Code shall be approved 4014
by the director, to the extent necessary in consultation with the 4015
tax commissioner. 4016

Sec. 5117.03. (A)(1) The director of development, to the 4017
extent necessary in consultation with the tax commissioner, shall 4018
prescribe the form of the application for assistance under the 4019
Ohio energy credit program. The application shall be in the form 4020
of a signed statement, shall require no more information than is 4021
necessary to establish an applicant's eligibility under section 4022
5117.07 of the Revised Code, and shall be clear and concise in its 4023
format, requirements, and instructions. The form shall request the 4024
following information: 4025

(a) The name and address of the applicant; 4026

(b) The type of energy or commodity that is the source of the 4027
heat produced by the primary heating system in the residence of 4028
the applicant; 4029

(c) The name of the energy company or energy dealer that 4030
supplies the energy or commodity that is the source of the heat 4031
produced by the primary heating system in the residence of the 4032
applicant and, if the applicant receives ~~his~~ the applicant's 4033
energy from a company, the applicant's account number; 4034

(d) The applicant's total income or current total income; 4035

(e) In the case of an application based upon physical 4036
disability, a certification signed by a physician, in the case of 4037

an application based upon mental disability, a certification 4038
signed by a physician or psychologist, or in the case of either 4039
such disability, a certification from a state or federal agency 4040
having the function of so classifying persons; 4041

(f) The age of the applicant; 4042

(g) Any other information required to make eligibility 4043
determinations under section 5117.07 of the Revised Code. 4044

Each form shall contain a statement that signing such 4045
application constitutes a delegation of authority by the applicant 4046
to the commissioner to examine any financial records that relate 4047
to income earned by the applicant as stated on the application for 4048
the purpose of determining eligibility under section 5117.07 of 4049
the Revised Code and possible violation of division (B) of section 4050
5117.11 of the Revised Code. 4051

(2) The tax commissioner shall mail or otherwise provide an 4052
application form to each person requesting such form. 4053

(B)(1) The director, to the extent necessary in consultation 4054
with the tax commissioner, shall devise and prescribe an 4055
application renewal form on which the head of household may 4056
indicate by check mark that ~~he~~ the head of household received a 4057
credit or payment for the preceding heating season. Application 4058
renewal forms shall seek from persons applying on such basis a 4059
certification by the applicant attesting to ~~his~~ the applicant's 4060
permanent and total disability and the name of a physician, 4061
psychologist, or government agency willing to provide an 4062
additional certification if so requested under division (D) of 4063
section 5117.07 of the Revised Code. Such forms shall also include 4064
such other information as the director, to the extent necessary in 4065
consultation with the tax commissioner, requires and shall be 4066
clear and concise in format, requirements, and instructions. 4067
4068

(2) On or before the fifteenth day of June, the ~~tax~~ 4069
~~commissioner~~ director shall mail or otherwise provide an 4070
application renewal form to each head of household who received a 4071
credit or payment during the preceding heating season. 4072

(3) Application renewal forms shall be reviewed and disposed 4073
of in the same manner provided for application forms in section 4074
5117.07 of the Revised Code. 4075

(C) Applications and application renewal forms shall be 4076
returned to the ~~tax-commissioner~~ director no later than the first 4077
day of September. If an applicant is determined eligible for a 4078
credit under division (A)(1) of section 5117.07 of the Revised 4079
Code and the applicant's account number is not provided on the 4080
application form pursuant to division (A)(1)(c) of this section, 4081
the ~~tax-commissioner~~ director shall make a good faith effort to 4082
acquire such number before certifying the applicant's eligibility 4083
to an energy company under section 5117.08 of the Revised Code. 4084
The ~~tax-commissioner~~ director may request an energy company to 4085
assist in efforts to acquire an applicant's account number and, if 4086
so requested, a company shall cooperate in such efforts. 4087

Sec. 5117.04. (A) Every energy company and energy dealer 4088
~~shall~~, at least once during June, and once during August, shall 4089
begin to distribute to each of its residential heating customers a 4090
plain and clear notice, printed in ten-point type on a sheet or 4091
card on which no other words appear on either the front or back, 4092
that states the right of qualified residential customers to 4093
receive a credit or payment under the Ohio energy credit program 4094
and that explains in detail, in a fashion reasonably calculated to 4095
inform, the relevant mechanisms established under sections 5117.01 4096
to 5117.12 of the Revised Code to effectuate that right. The 4097
notice shall also contain, in ten-point boldface type, the 4098
following statement: "The right of eligible customers to receive a 4099

credit against utility bills or a payment for energy bills is 4100
provided in legislation (House Bill 657) passed by the General 4101
Assembly and signed by the Governor." 4102

(B) The ~~tax commissioner~~ director of development shall cause 4103
to be printed notices of the type specified in division (A) of 4104
this section and application forms in sufficient quantity for 4105
distribution. The ~~tax commissioner~~ director shall maintain a 4106
system for distributing application forms to appropriate public 4107
locations. The distribution system shall be designed to make 4108
application forms available to as many qualified persons as 4109
possible. 4110

(C) The ~~tax commissioner~~ director shall arrange for the 4111
establishment of a toll-free telephone number to enable all 4112
persons in this state to make inquiries and obtain information 4113
concerning the credits or payments. 4114

Sec. 5117.05. The ~~tax commissioner~~ director of development, 4115
in consultation with the commission on Hispanic-Latino affairs, 4116
shall develop an outreach program, including Spanish-speaking 4117
communication formats, designed to make all Spanish-speaking 4118
persons who meet the eligibility requirements for participation in 4119
the Ohio energy credit program aware of the nature and extent of 4120
available benefits and methods for acquiring and making 4121
applications. The program shall include assistance to such persons 4122
in making applications. The ~~commissioner~~ director shall implement 4123
the program in cooperation with the commission ~~on Hispanic-Latino~~ 4124
~~affairs~~. 4125

Sec. 5117.07. (A) On or before the first day of October, the 4126
~~tax commissioner~~ director of development shall review all 4127
applications submitted under division (C) of section 5117.03 of 4128
the Revised Code and shall determine the eligibility of each 4129

applicant to receive a credit or payment. 4130

(1) An applicant is eligible for a credit of thirty per cent 4131
if the applicant is a head of household, has a total income of 4132
five thousand dollars or less or a current total income of two 4133
thousand five hundred dollars or less, owns and occupies or rents 4134
and occupies a household receiving the source of energy for its 4135
primary heating system from an energy company and such energy is 4136
separately metered, and is either of the following: 4137

(a) Sixty-five years of age or older; 4138

(b) Permanently and totally disabled. 4139

(2) An applicant is eligible for a credit of twenty-five per 4140
cent if the applicant is a head of household, has a total income 4141
of more than five thousand dollars but not more than nine thousand 4142
dollars or a current total income of more than two thousand five 4143
hundred dollars but not more than four thousand five hundred 4144
dollars, is sixty-five years of age or older or permanently and 4145
totally disabled, and owns and occupies or rents and occupies a 4146
household receiving the source of energy for its primary heating 4147
system from an energy company and such energy is separately 4148
metered. 4149

(3) An applicant is eligible for a payment if either of the 4150
following applies to the applicant: 4151

(a) ~~He~~ The applicant would be eligible for the credit under 4152
division (A)(1) or (2) of this section but for the fact that the 4153
source of energy for the primary heating system of the applicant's 4154
household is not separately metered; 4155

(b) ~~He~~ The applicant is a head of household, has a total 4156
income of no more than nine thousand dollars or a current total 4157
income of no more than four thousand five hundred dollars, is 4158
sixty-five years of age or older or permanently and totally 4159

disabled, and owns and occupies or rents and occupies a household 4160
receiving the source of energy for its primary heating system from 4161
an energy dealer. 4162

(4) In the case of a multiple unit dwelling for which 4163
separate metering for the source of energy for its primary heating 4164
system is not provided, more than one applicant occupying such 4165
dwelling may be determined eligible for a payment under division 4166
(A)(3)(a) of this section. 4167

(B) Notwithstanding division (A) of this section: 4168

(1) No head of household who resides in public housing or 4169
receives a rent subsidy from a government agency is eligible for a 4170
credit or payment unless the person's rent subsidy does not 4171
reflect the costs of ~~his~~ that person's household receiving the 4172
source of energy for its primary heating system; 4173

(2) A resident of a nursing home, hospital, or other extended 4174
health care facility is not eligible for a credit or payment for 4175
the costs of providing the source of energy for the primary 4176
heating system of the facility. 4177

(C) The director, in consultation with the tax commissioner, 4178
shall establish a procedure whereby ~~he~~ the commissioner can verify 4179
total income and current total income for the calendar year in 4180
which an applicant is determined eligible for a payment or credit. 4181
If a person receives a credit or payment that ~~he~~ the person is 4182
ineligible to receive under division (A) of this section as 4183
determined by the commissioner, that person shall refund to the 4184
~~tax commissioner~~ director the credit or payment, or excess portion 4185
of a credit or payment, ~~he~~ that person received. The sum refunded 4186
shall be deposited in the state treasury to the credit of the 4187
~~general revenue fund~~ universal service fund created in section 4188
4928.51 of the Revised Code. 4189

(D) The ~~tax commissioner~~ director may request an additional 4190

certification of permanent and total disability for any applicant 4191
claiming such status on an application renewal form submitted 4192
under section 5117.03 of the Revised Code. Such certification 4193
shall be requested from the person or agency named on the form 4194
pursuant to division (B)(1) of section 5117.03 of the Revised 4195
Code. If such additional certification is refused due to a 4196
conclusion by the person or agency that the applicant is not 4197
permanently and totally disabled, the ~~commissioner~~ director shall 4198
determine the applicant ineligible for any credit or payment. If 4199
such additional certification is unavailable or refused for any 4200
other reason, the ~~tax-commissioner~~ director may determine the 4201
applicant to be eligible for a credit or payment provided ~~he~~ the 4202
director has good cause to believe the applicant is permanently 4203
and totally disabled. 4204

(E) On or before the first day of October, the ~~tax~~ 4205
~~commissioner~~ director shall notify each applicant of the 4206
disposition of ~~his~~ the applicant's application under divisions (A) 4207
and (B) of this section. At the same time, ~~he~~ the director shall 4208
notify the applicant, regardless of whether ~~his~~ the applicant's 4209
application is approved or disapproved, that the applicant may be 4210
eligible to participate in a state or federal weatherization 4211
program and should contact ~~his~~ the applicant's community action 4212
agency for further information. If an application is disapproved, 4213
the applicant may appeal to the ~~tax-commissioner~~ director for a 4214
hearing on the matter. A notice of disapproval shall include a 4215
detailed explanation of the applicant's right of appeal under this 4216
chapter. Any such appeal shall be on an appeal form prescribed by 4217
the ~~tax-commissioner~~ director and shall be filed with the ~~tax~~ 4218
~~commissioner~~ director within twenty days of the receipt of the 4219
notice of disapproval. 4220

Sec. 5117.08. (A)(1) On or before the tenth day of October, 4221
the ~~tax-commissioner~~ director of development shall begin to 4222

prepare and certify to each energy company that provides energy 4223
for home heating a list containing the name and account number of 4224
each head of household determined eligible for a credit under 4225
divisions (A) and (B) of section 5117.07 of the Revised Code and 4226
served by that company, the address of the household, and the 4227
source of the heat produced by the primary heating system in the 4228
residence of the applicant. The ~~tax commissioner~~ may director, for 4229
good cause, may certify addenda to such lists, containing the 4230
names of any heads of household whose names were not included in 4231
the earlier lists but who, except for failure to meet the deadline 4232
requirements of sections 5117.01 to 5117.12 of the Revised Code, 4233
would have been certified in the original lists. Within thirty 4234
days of receipt of such list and in any month for which a credit 4235
is required under sections 5117.01 to 5117.12 of the Revised Code, 4236
the company may verify that each head of household on the 4237
~~commissioner's~~ director's list receives energy for home heating at 4238
the household address appearing on such list or that the source of 4239
heat produced by the primary heating system in the household is 4240
energy supplied by the company. If the company determines that a 4241
person listed does not receive energy for home heating at such 4242
address or that the source of the heat produced by the primary 4243
heating system in the residence of such person is not supplied by 4244
the company, it shall notify the ~~commissioner~~ director of such 4245
fact and may refuse to grant the credit provided under division 4246
(A) of section 5117.07 of the Revised Code. Upon receipt of such 4247
notice, the ~~commissioner~~ director shall determine the accuracy of 4248
the determination of the company and, should ~~he~~ the director not 4249
concur with the company, shall order the company to provide the 4250
credit. 4251

(2) The good faith exercise by any company of any power of 4252
refusal granted under division (A)(1) of this section does not 4253
subject such company to any penalty or liability provided under 4254

division (A) of section 5117.11 of the Revised Code. 4255

(B)(1) Nothing in sections 5117.01 to 5117.12 of the Revised 4256
Code shall be construed to abridge the right of an otherwise 4257
eligible applicant to receive a credit or payment because ~~he~~ the 4258
applicant has either changed the location of ~~his~~ the applicant's 4259
residence or the nature of the occupancy of ~~his~~ the applicant's 4260
residence, as between a tenant or an owner, at a time that could, 4261
as a result of the operation of sections 5117.01 to 5117.12 of the 4262
Revised Code, cause ~~him~~ the applicant to be disqualified from 4263
receiving, or continuing to receive, the credit or payment. 4264

(2) Where a person who submits a form or information required 4265
under sections 5117.01 to 5117.10 of the Revised Code does so in a 4266
timely fashion but, because of the occurrence of an error or 4267
omission with respect to such form or information, either on ~~his~~ 4268
the person's own part or on the part of those persons required by 4269
sections 5117.01 to 5117.12 of the Revised Code to take 4270
administrative, executive, or ministerial action regarding such 4271
form or information, the certification of eligibility by the ~~tax~~ 4272
~~commissioner~~ director to an energy company takes place after the 4273
expiration of a deadline imposed under sections 5117.01 to 5117.12 4274
of the Revised Code, the company shall grant the credit within 4275
thirty days and, whenever appropriate, grant the credit on a 4276
retroactive basis. 4277

(3) The ~~tax commissioner~~ director shall adopt a rule ensuring 4278
that the requirements of divisions (B)(1) and (2) of this section 4279
are effectuated. 4280

Sec. 5117.09. (A) With respect to each of its residential 4281
customers, every energy company shall, after receipt of a 4282
certification list provided under division (A) of section 5117.08 4283
of the Revised Code, cause the granting of a credit in accordance 4284
with this section against the monthly billing of each household 4285

appearing on the list except as provided in division (A) of 4286
section 5117.08 of the Revised Code. In the case of an applicant 4287
who has a total income of five thousand dollars or less or a 4288
current total income of two thousand five hundred dollars or less, 4289
the credit shall amount to thirty per cent of the current monthly 4290
bill rendered to such household by the company for the billing 4291
months of December, January, February, March, and April following 4292
the receipt of a list on which the household appears. In the case 4293
of an applicant who has a total income of more than five thousand 4294
dollars but not more than nine thousand dollars or a current total 4295
income of more than two thousand five hundred dollars but not more 4296
than four thousand five hundred dollars, the credit shall amount 4297
to twenty-five per cent of the current monthly bill rendered to 4298
such household by the company for the billing months of December, 4299
January, February, March, and April following the receipt of a 4300
list on which the household appears. If purchased power costs are 4301
incurred by an energy company during the billing month for which a 4302
credit is provided under this division, the credit shall also be 4303
applied to such costs, whether or not the costs are charged to a 4304
current ~~month~~ MONTHLY bill for such months. 4305

(B) Every energy company shall read the meter of each of its 4306
qualified residential customers who may receive a credit under 4307
division (A) of this section at least one time for the service 4308
period of November and at least one time in the service period for 4309
the current monthly bill rendered for the billing month of April. 4310
In the event a company is unable to read a meter because of 4311
failure to gain access after a good faith effort or because a 4312
certification list was supplied to the utility fewer than thirty 4313
days prior to the normal date of meter reading, the company may 4314
render a calculated bill. In such instances, the company shall 4315
make an adjustment to the amount of the credit granted to the 4316
customer based upon the next actual reading of the meter if the 4317

reading shows the previous calculation to have been in error and 4318
set forth the amount of such adjustments in the report required to 4319
be filed with the ~~tax commissioner~~ director of development under 4320
division (D) of this section. 4321

(C) On each billing that is subject to a credit under 4322
division (A) of this section, there shall appear in ten-point type 4323
both the amount of the credit and to the left of such amount "Ohio 4324
Energy Credit." 4325

(D) On or before the fifteenth day of each month following 4326
one in which credits were provided under division (A) of this 4327
section, each energy company shall, on a form prescribed by the 4328
~~tax commissioner~~ director and requesting information that ~~he~~ the 4329
director determines is necessary for the purpose of verifying the 4330
propriety of the payment of credits, certify to the ~~commissioner~~ 4331
director the total amount of all credits it granted pursuant to 4332
division (A) of this section during the preceding month. Not later 4333
than thirty days after ~~his~~ receipt of such certification, the 4334
~~commissioner~~ director shall pay the company the amount certified. 4335
If the ~~commissioner~~ director determines that a company previously 4336
received amounts greater than the amounts of credits properly 4337
granted, such company, upon notice from the ~~commissioner~~ director, 4338
shall reimburse the ~~commissioner~~ director in the amount of the 4339
overpayments. Such reimbursements shall be deposited in the 4340
general revenue fund. 4341

(E)(1) Any energy company that purposely fails to grant the 4342
credit provided under division (A) of this section is liable to 4343
each person entitled to the credit and certified to the company by 4344
the ~~tax commissioner~~ director pursuant to division (A) of section 4345
5117.08 of the Revised Code in treble the amount of the total 4346
credit not granted. The consumers' counsel ~~may~~, on behalf of any 4347
person or persons not granted the credit, may bring an action to 4348
recover such treble damages in the court of common pleas of the 4349

county in which is located the office of the company nearest the 4350
household of any such person or persons. The consumers' counsel 4351
~~may~~ also, on behalf of any persons not granted the credit, may 4352
bring a class action to recover such treble damages in the court 4353
of common pleas of any county in which is located an office of the 4354
company and, if feasible, in which is located a significant number 4355
of members of the class. Any treble damage recovery under this 4356
division does not, in any manner, diminish any other liability 4357
provided under sections 5117.01 to 5117.12 of the Revised Code. 4358
Clerical errors shall not be considered an offense or incur 4359
liability under this division. 4360

(2) An action shall be brought by the consumers' counsel 4361
under division (E)(1) of this section only after ~~he~~ the consumers' 4362
counsel has made a good faith attempt to dispose of the claim by 4363
settlement, including a good faith request for only such 4364
information in the possession of an energy company as is needed to 4365
determine the existence or extent of such a right of action. 4366

(3) Nothing in division (E)(1) of this section shall be 4367
construed to prevent persons acting without the assistance of the 4368
consumers' counsel from bringing an action or class action under 4369
such division. 4370

Sec. 5117.10. (A) On or before the fifteenth day of January, 4371
the ~~tax commissioner~~ director of development shall pay each 4372
applicant determined eligible for a payment under divisions (A) 4373
and (B) of section 5117.07 of the Revised Code one hundred 4374
twenty-five dollars. 4375

(B) The ~~tax commissioner~~ director may withhold from any 4376
payment to which a person would otherwise be entitled under 4377
division (A) of this section any amount that the ~~tax commissioner~~ 4378
director determines was erroneously received by such person in a 4379
preceding year under this or the program established under Am. 4380

Sub. H.B. 230, as amended by Am. H.B. 937, Am. Sub. H.B. 1073, Am. 4381
Sub. S.B. 493, and Am. Sub. S.B. 523 of the 112th general 4382
assembly, provided the ~~tax commissioner~~ director has employed all 4383
other legal methods reasonably available to obtain reimbursement 4384
for the erroneous payment or credit prior to the commencement of 4385
the current program year. 4386

(C) Payments made under this section and credits granted 4387
under section 5117.09 of the Revised Code shall not be considered 4388
income for the purpose of determining eligibility or the level of 4389
benefits or assistance under section 329.042 or Chapters 5107., 4390
5111., and 5115. of the Revised Code; supplemental security income 4391
payments under Title XVI of the "Social Security Act," 49 Stat. 4392
620 (1935), 42 U.S.C. 301, as amended; or any other program under 4393
which eligibility or the level of benefits or assistance is based 4394
upon need measured by income. 4395

Sec. 5117.12. (A) On or before the thirty-first day of August 4396
of each year, each energy company shall file a written report with 4397
the ~~tax commissioner~~ director of development regarding the impact, 4398
if any, of the requirements of division (E) of section 5117.11 of 4399
the Revised Code on the number of uncollectible and past due 4400
residential accounts for the twelve-month period ending on the 4401
preceding thirty-first day of July. The report shall include such 4402
information as is prescribed by the ~~tax commissioner~~ director. The 4403
information shall be based on actual reviews of residential 4404
customer accounts and shall be presented in verifiable form. The 4405
~~tax commissioner~~ director may consult with the public utilities 4406
commission and the consumers' counsel in prescribing the contents 4407
of such reports and complying with the requirements of division 4408
(C)(4) of this section. 4409

(B) Before the thirty-first day of January of each year, the 4410
~~tax commissioner~~ director shall prepare a written report including 4411

a final review of the Ohio energy credit program for which 4412
applications were required to be mailed or provided by the 4413
fifteenth day of June of the second preceding calendar year 4414
pursuant to section 5117.03 of the Revised Code and an interim 4415
review of the program for which applications were required to be 4416
mailed or provided by the fifteenth day of June of the preceding 4417
calendar year under such section. On or before the thirty-first 4418
day of January of each year, the ~~commissioner~~ director shall 4419
provide written copies of such report to the speaker of the house 4420
of representatives, president of the senate, minority leaders of 4421
the house of representatives and senate, chairpersons of the house 4422
finance and appropriations committee and senate finance committee, 4423
chairpersons of the committees of the house of representatives and 4424
senate customarily entrusted with matters concerning public 4425
utilities, clerk of the house of representatives, and clerk of the 4426
senate. 4427

(C) Each report prepared under division (B) of this section 4428
shall include a review of: 4429

(1) Program costs; 4430

(2) The number of persons receiving credits or payments under 4431
the program; 4432

(3) Progress in the implementation of any changes in the 4433
program made by the general assembly within the period covered by 4434
the report; 4435

(4) The impact, if any, of the requirements of division (E) 4436
of section 5117.11 of the Revised Code on the number of 4437
uncollectible and past due residential accounts of energy 4438
companies for the twelve-month period ending on the preceding 4439
thirty-first day of July; 4440

(5) The impact of any federal energy assistance programs 4441
available to the same groups of people as are eligible for the 4442

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. 4473

(B) "Business fixture" means an item of tangible personal 4474
property that has become permanently attached or affixed to the 4475
land or to a building, structure, or improvement, and that 4476
primarily benefits the business conducted by the occupant on the 4477
premises and not the realty. "Business fixture" includes, but is 4478
not limited to, machinery, equipment, signs, storage bins and 4479
tanks, whether above or below ground, and broadcasting, 4480
transportation, transmission, and distribution systems, whether 4481
above or below ground. "Business fixture" also means those 4482
portions of buildings, structures, and improvements that are 4483
specially designed, constructed, and used for the business 4484
conducted in the building, structure, or improvement, including, 4485
but not limited to, foundations and supports for machinery and 4486
equipment. "Business fixture" does not include fixtures that are 4487
common to buildings, including, but not limited to, heating, 4488
ventilation, and air conditioning systems primarily used to 4489
control the environment for people or animals, tanks, towers, and 4490
lines for potable water or water for fire control, electrical and 4491
communication lines, and other fixtures that primarily benefit the 4492
realty and not the business conducted by the occupant on the 4493
premises. 4494

Sec. 5703.052. There is hereby created in the state treasury 4495
the tax refund fund, from which refunds shall be paid for taxes 4496
illegally or erroneously assessed or collected, or for any other 4497
reason overpaid, that are levied by Chapter 4301., 4305., 5728., 4498
5729., 5733., 5735., 5739., 5741., 5743., 5747., 5748., 5749., or 4499
5753., ~~and~~ sections 3737.71, 3905.35, 3905.36, 4303.33, 5707.03, 4500
5725.18, 5727.38, and 5727.81, and former sections 5727.27 and 4501
5727.40 of the Revised Code. Refunds for fees illegally or 4502
erroneously assessed or collected, or for any other reason 4503
overpaid, that are levied by sections 3734.90 to 3734.9014 of the 4504

Revised Code also shall be paid from the fund. However, refunds 4505
for taxes levied under section 5739.101 of the Revised Code shall 4506
not be paid from the tax refund fund, but shall be paid as 4507
provided in section 5739.104 of the Revised Code. 4508

Upon certification by the tax commissioner to the treasurer 4509
of state of a tax refund, fee refund, or tax credit due, or by the 4510
superintendent of insurance of a domestic or foreign insurance tax 4511
refund, the treasurer of state may place the amount certified to 4512
the credit of the fund. The certified amount transferred shall be 4513
derived from current receipts of the same tax or the fee for which 4514
the refund arose or, in the case of a tax credit refund, from the 4515
current receipts of the taxes levied by sections 5739.02 and 4516
5741.02 of the Revised Code. 4517

If the tax refund arises from a tax payable to the general 4518
revenue fund, and current receipts from that source are inadequate 4519
to make the transfer of the amount so certified, the treasurer of 4520
state may transfer such certified amount from current receipts of 4521
the sales tax levied by section 5739.02 of the Revised Code. 4522

Sec. 5703.053. As used in this section, "postal service" 4523
means the United States postal service. 4524

An application to the tax commissioner for a tax refund under 4525
sections 4307.05, 4307.07, 5727.91, 5728.061, 5735.122, 5735.13, 4526
5735.14, 5735.141, 5735.142, 5739.07, 5741.10, 5743.05, 5743.53, 4527
5749.08, and 5753.06 of the Revised Code or division (B) of 4528
section 5703.05 of the Revised Code, or a fee refunded under 4529
section 3734.905 of the Revised Code, that is received after the 4530
last day for filing under such section shall be considered to have 4531
been filed in a timely manner if: 4532

(A) The application is delivered by the postal service and 4533
the earliest postal service postmark on the cover in which the 4534

application is enclosed is not later than the last day for filing 4535
the application; 4536

(B) The application is delivered by the postal service, the 4537
only postmark on the cover in which the application is enclosed 4538
was affixed by a private postal meter, the date of that postmark 4539
is not later than the last day for filing the application, and the 4540
application is received within seven days of such last day; or 4541

(C) The application is delivered by the postal service, no 4542
postmark date was affixed to the cover in which the application is 4543
enclosed or the date of the postmark so affixed is not legible, 4544
and the application is received within seven days of the last day 4545
for making the application. 4546

Sec. 5703.14. (A) Any rule adopted by the board of tax 4547
appeals and any rule of the department of taxation adopted by the 4548
tax commissioner shall be effective on the tenth day after the day 4549
on which the rule in final form and in compliance with division 4550
(B) of this section is filed by the board or the commissioner as 4551
follows: 4552

(1) Two certified copies of the rule shall be filed with both 4553
the secretary of state and the director of the legislative service 4554
commission; 4555

(2) Two certified copies of the rule shall be filed with the 4556
joint committee on agency rule review. Division (A)(2) of this 4557
section does not apply to any rule to which division (H) of 4558
section 119.03 of the Revised Code does not apply. 4559

If all copies are not filed on the same day, the rule shall 4560
be effective on the tenth day after the day on which the latest 4561
filing is made. If the board or the commissioner in adopting a 4562
rule designates an effective date that is later than the effective 4563
date provided for by this division, the rule if filed as required 4564

by this division shall become effective on the later date 4565
designated by the board or commissioner. 4566

(B) The board and commissioner shall file the rule in 4567
compliance with the following standards and procedures: 4568

(1) The rule shall be numbered in accordance with the 4569
numbering system devised by the director for the Ohio 4570
administrative code. 4571

(2) The rule shall be prepared and submitted in compliance 4572
with the rules of the legislative service commission. 4573

(3) The rule shall clearly state the date on which it is to 4574
be effective and the date on which it will expire, if known. 4575

(4) Each rule that amends or rescinds another rule shall 4576
clearly refer to the rule that is amended or rescinded. Each 4577
amendment shall fully restate the rule as amended. 4578

If the director of the legislative service commission or ~~his~~ 4579
the director's designee gives the board or commissioner written 4580
notice pursuant to section 103.05 of the Revised Code that a rule 4581
filed by the board or commissioner is not in compliance with the 4582
rules of the legislative service commission, the board or 4583
commissioner shall within thirty days after receipt of the notice 4584
conform the rule to the rules of the legislative service 4585
commission as directed in the notice. 4586

All rules of the department and board filed pursuant to 4587
division (A)(1) of this section shall be recorded by the secretary 4588
of state and the director under the name of the department or 4589
board and shall be numbered in accordance with the numbering 4590
system devised by the director. The secretary of state and the 4591
director shall preserve the rules in an accessible manner. Each 4592
such rule shall be a public record open to public inspection and 4593
may be lent to any law publishing company that wishes to reproduce 4594

it. Each such rule shall also be made available to interested 4595
parties upon request directed to the department. 4596

(C) Applications for review of any rule adopted and 4597
promulgated by the commissioner may be filed with the board by any 4598
person who has been or may be injured by the operation of the 4599
rule. The appeal may be taken at any time after the rule is filed 4600
with the secretary of the state, the director of the legislative 4601
service commission, and, if applicable, the joint committee on 4602
agency rule review. Failure to file an appeal does not preclude 4603
any person from seeking any other remedy against the application 4604
of the rule to ~~him~~ the person. The applications shall set forth, 4605
or have attached thereto and incorporated by reference, a true 4606
copy of the rule, and shall allege that the rule complained of is 4607
unreasonable and shall state the grounds upon which the allegation 4608
is based. Upon the filing of the application, the board shall 4609
notify the commissioner of the filing of the application, fix a 4610
time for hearing the application, notify the commissioner and the 4611
applicant of the time for the hearing, and afford both an 4612
opportunity to be heard. The appellant, the tax commissioner, and 4613
any other interested persons that the board permits, may introduce 4614
evidence. The burden of proof to show that the rule is 4615
unreasonable shall be upon the appellant. After the hearing, the 4616
board shall determine whether the rule complained of is reasonable 4617
or unreasonable. A determination that the rule complained of is 4618
unreasonable shall require a majority vote of the three members of 4619
the board, and the reasons for the determination shall be entered 4620
on the journal of the board. 4621

Upon determining that the rule complained of is unreasonable, 4622
the board shall file copies of its determination as follows: 4623

(1) Two certified copies of the determination shall be filed 4624
with both the secretary of state and the director of the 4625
legislative service commission, who shall note the date of their 4626

receipt of the certified copies conspicuously in their files of 4627
the rules of the department; 4628

(2) Two certified copies of the determination shall be filed 4629
with the joint committee on agency rule review. Division (C)(2) of 4630
this section does not apply to any rule to which division (H) of 4631
section 119.03 of the Revised Code does not apply. 4632

On the tenth day after the copies of the determination have 4633
been received by the secretary of state, the director, and, if 4634
applicable, the joint committee, the rule referred to in the 4635
determination shall cease to be in effect. If all copies of the 4636
determination are not filed on the same day, the rule shall remain 4637
in effect until the tenth day after the day on which the latest 4638
filing is made. This section does not apply to licenses issued 4639
under sections 5735.02, 5739.17, and 5743.15 of the Revised Code, 4640
which shall be governed by sections 119.01 to 119.13 of the 4641
Revised Code. 4642

The board is not required to hear an application for the 4643
review of any rule where the grounds of the allegation that the 4644
rule is unreasonable have been previously contained in an 4645
application for review and have been previously heard and passed 4646
upon by the board. 4647

(D) This section does not apply to the adoption of any rule, 4648
or to the amendment or rescission of any rule by the director of 4649
development in consultation with the tax commissioner under 4650
division (C)(1) or (2) of section 5117.02 of the Revised Code. 4651

(E) As used in this section, "substantive revision" has the 4652
same meaning as in division (J) of section 119.01 of the Revised 4653
Code. 4654

Sec. 5705.34. When the budget commission has completed its 4655
work with respect to a tax budget, it shall certify its action to 4656

the taxing authority, together with an estimate by the county 4657
auditor of the rate of each tax necessary to be levied by the 4658
taxing authority within its subdivision or taxing unit, and what 4659
part thereof is in excess of, and what part within, the ten-mill 4660
tax limitation. The certification shall also indicate the date on 4661
which each tax levied by the taxing authority will expire. 4662

~~Each~~ If a taxing authority levies a tax for a fixed sum of 4663
money or to pay debt charges for the tax year for which the tax 4664
budget is prepared, and the tax was levied in tax year 1998, the 4665
county auditor, when estimating the rate at which the tax shall be 4666
levied in the current year, shall estimate the rate necessary to 4667
raise the required sum less the estimated amount of any payments 4668
made for the tax year to a taxing unit under sections 5727.85 and 4669
5727.86 of the Revised Code. The estimated rate shall be the rate 4670
of the levy that the budget commission certifies with its action 4671
under this section. 4672

Each taxing authority, by ordinance or resolution, shall 4673
authorize the necessary tax levies and certify them to the county 4674
auditor before the first day of October in each year, or at such 4675
later date as is approved by the tax commissioner, except that the 4676
certification by a board of education shall be made by the first 4677
day of April or at such later date as is approved by the 4678
commissioner, and except that a township board of park 4679
commissioners that is appointed by the board of township trustees 4680
and oversees a township park district that contains only 4681
unincorporated territory shall authorize only those taxes approved 4682
by, and only at the rate approved by, the board of township 4683
trustees as required by division (C) of section 511.27 of the 4684
Revised Code. If the levying of a tax to be placed on the 4685
duplicate of the current year is approved by the electors of the 4686
subdivision under sections 5705.01 to 5705.47 of the Revised Code; 4687
if the rate of a school district tax is increased due to the 4688

repeal of a school district income tax and property tax rate 4689
reduction at an election held pursuant to section 5748.04 of the 4690
Revised Code; or if refunding bonds to refund all or a part of the 4691
principal of bonds payable from a tax levy for the ensuing fiscal 4692
year are issued or sold and in the process of delivery, the budget 4693
commission shall reconsider and revise its action on the budget of 4694
the subdivision or school library district for whose benefit the 4695
tax is to be levied after the returns of such election are fully 4696
canvassed, or after the issuance or sale of such refunding bonds 4697
is certified to it. 4698

Sec. 5727.01. As used in this chapter: 4699

(A) "Public utility" means each person referred to as a 4700
telephone company, telegraph company, electric company, natural 4701
gas company, pipe-line company, water-works company, water 4702
transportation company, heating company, rural electric company, 4703
or railroad company. 4704

(B) "Gross receipts" means the entire receipts for business 4705
done by any person from operation as a public utility, or 4706
incidental thereto, or in connection therewith. The gross receipts 4707
for business done by an incorporated company engaged in operation 4708
as a public utility includes the entire receipts for business done 4709
by such company under the exercise of its corporate powers, 4710
whether from the operation as a public utility or from any other 4711
business. 4712

(C) "Rural electric company" means any nonprofit corporation, 4713
organization, association, or cooperative engaged in the business 4714
of supplying electricity to its members or persons owning an 4715
interest therein in an area the major portion of which is rural. 4716
4717

(D) Any person: 4718

- (1) Is a telegraph company when engaged in the business of transmitting telegraphic messages to, from, through, or in this state; 4719
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4721
- (2) Is a telephone company when primarily engaged in the business of providing local exchange telephone service, excluding cellular radio service, in this state; 4722
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4724
- (3) Is an electric company when engaged in the business of generating, transmitting, or distributing electricity within this state for use by others; 4725
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4727
- (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; 4728
4729
4730
- (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; 4731
4732
4733
- (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; 4734
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4736
- (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; 4737
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- (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; 4742
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- (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, 4745
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4747
4748

or interurban railroad company. 4749

As used in division (D)(2) of this section, "local exchange 4750
telephone service" means making available or furnishing access and 4751
a dial tone to all persons within a local calling area for use in 4752
originating and receiving voice grade communications over a 4753
switched network operated by the provider of the service within 4754
the area and for gaining access to other telecommunication 4755
services. 4756

(E) "Taxable property" means the property required by section 4757
5727.06 of the Revised Code to be assessed by the tax 4758
commissioner, but does not include either of the following: 4759

(1) An item of tangible personal property that for the period 4760
subsequent to the effective date of an air, water, or noise 4761
pollution control certificate and continuing so long as the 4762
certificate is in force, has been certified as part of the 4763
pollution control facility with respect to which the certificate 4764
has been issued; 4765

(2) An item of tangible personal property that during the 4766
construction of a plant or facility and until the item is first 4767
capable of operation, whether actually used in operation or not, 4768
is incorporated in or being held exclusively for incorporation in 4769
that plant or facility. 4770

(F) ~~"Taxing~~ Except as provided in section 5727.84 of the 4771
Revised Code, "taxing district" means a municipal corporation or 4772
township, or part thereof, in which the aggregate rate of taxation 4773
is uniform. 4774

(G) "Telecommunications service" has the same meaning as in 4775
division (AA) of section 5739.01 of the Revised Code. 4776

(H) "Interexchange telecommunications company" means a person 4777
that is engaged in the business of transmitting telephonic 4778
messages to, from, through, or in this state, but that is not a 4779

telephone company. 4780

(I) "Sale and leaseback transaction" means a transaction in 4781
which a public utility or interexchange telecommunications company 4782
sells any tangible personal property to a person other than a 4783
public utility or interexchange telecommunications company and 4784
~~within the same calendar year~~ leases that property back from the 4785
buyer. 4786

(J) "Production equipment" means all taxable steam, nuclear, 4787
hydraulic, and other production plant equipment used to generate 4788
electricity. "Production equipment" does not include taxable 4789
station equipment that is located at a production plant. 4790

Sec. 5727.03. (A) A person engaged in the activity of an 4791
electric company, a rural electric company, a heating company, or 4792
a natural gas company, or any combination thereof, shall file a 4793
separate report under section 5727.08 of the Revised Code and a 4794
separate statement under section 5727.31 of the Revised Code for 4795
service provided as an electric company, a rural electric company, 4796
a heating company, or a natural gas company. The tax commissioner 4797
shall separately calculate and assess taxable property and taxable 4798
gross receipts. Division (B) of this section shall be used to 4799
calculate the taxable property that cannot be directly attributed 4800
to providing service as an electric company, a rural electric 4801
company, a heating company, or a natural gas company, and division 4802
(C) of this section shall be used to calculate the taxable gross 4803
receipts that cannot be directly attributed to providing service 4804
as an electric company, a rural electric company, a heating 4805
company, or a natural gas company. 4806

(B) The taxable property that cannot be directly attributed 4807
to providing service as an electric company, a rural electric 4808
company, a heating company, or a natural gas company shall be 4809
reported and taxed as property used to provide service: 4810

(1) As an electric company, by multiplying the taxable cost 4811
of the property that cannot be directly attributed to providing 4812
service as an electric company, a rural electric company, a 4813
heating company, or a natural gas company by a fraction, the 4814
numerator of which is the taxable cost of property that can be 4815
directly attributed to providing service as an electric company, 4816
and the denominator of which is the sum of the taxable costs of 4817
property that can be directly attributed to providing service as 4818
an electric company, a rural electric company, a heating company, 4819
or a natural gas company; 4820

(2) As a rural electric company, by multiplying the taxable 4821
cost of the property that cannot be directly attributed to 4822
providing service as an electric company, a rural electric 4823
company, a heating company, or a natural gas company by a 4824
fraction, the numerator of which is the taxable cost of property 4825
that can be directly attributed to providing service as a rural 4826
electric company, and the denominator of which is the sum of the 4827
taxable costs of property that can be directly attributed to 4828
providing service as an electric company, a rural electric 4829
company, a heating company, or a natural gas company; 4830

(3) As a heating company, by multiplying the taxable cost of 4831
the property that cannot be directly attributed to providing 4832
service as an electric company, a rural electric company, a 4833
heating company, or a natural gas company by a fraction, the 4834
numerator of which is the taxable cost of property that can be 4835
directly attributed to providing service as a heating company, and 4836
the denominator of which is the sum of the taxable costs of 4837
property that can be directly attributed to providing service as 4838
an electric company, a rural electric company, a heating company, 4839
or a natural gas company; 4840

(4) As a natural gas company, by multiplying the taxable cost 4841
of the property that cannot be directly attributed to providing 4842

service as an electric company, a rural electric company, a 4843
heating company, or a natural gas company by a fraction, the 4844
numerator of which is the taxable cost of property that can be 4845
directly attributed to providing service as a natural gas company, 4846
and the denominator of which is the sum of the taxable costs of 4847
property that can be directly attributed to providing service as 4848
an electric company, a rural electric company, a heating company, 4849
or a natural gas company. 4850

(C) Taxable gross receipts that cannot be directly attributed 4851
to providing service as an electric company, a rural electric 4852
company, a heating company, or a natural gas company shall be 4853
reported and taxed as gross receipts of a person engaged in 4854
business: 4855

(1) As an electric company, by multiplying the taxable gross 4856
receipts that cannot be directly attributed to providing service 4857
as an electric company, a rural electric company, a heating 4858
company, or a natural gas company by a fraction, the numerator of 4859
which is the taxable gross receipts that can be directly 4860
attributed to providing service as an electric company, and the 4861
denominator of which is the sum of the gross receipts that can be 4862
directly attributed to providing service as an electric company, a 4863
rural electric company, a heating company, or a natural gas 4864
company; 4865

(2) As a rural electric company, by multiplying the taxable 4866
gross receipts that cannot be directly attributed to providing 4867
service as an electric company, a rural electric company, a 4868
heating company, or a natural gas company by a fraction, the 4869
numerator of which is the taxable gross receipts that can be 4870
directly attributed to providing service as a rural electric 4871
company, and the denominator of which is the sum of the gross 4872
receipts that can be directly attributed to providing service as 4873
an electric company, a rural electric company, a heating company, 4874

or a natural gas company; 4875

(3) As a heating company, by multiplying the taxable gross 4876
receipts that cannot be directly attributed to providing service 4877
as an electric company, a rural electric company, a heating 4878
company, or a natural gas company by a fraction, the numerator of 4879
which is the taxable gross receipts that can be directly 4880
attributed to providing service as a heating company, and the 4881
denominator of which is the sum of the gross receipts that can be 4882
directly attributed to providing service as an electric company, a 4883
rural electric company, a heating company, or a natural gas 4884
company; 4885

(4) As a natural gas company, by multiplying the taxable 4886
gross receipts that cannot be directly attributed to providing 4887
service as an electric company, a rural electric company, a 4888
heating company, or a natural gas company by a fraction, the 4889
numerator of which is the taxable gross receipts that can be 4890
directly attributed to providing service as a natural gas company, 4891
and the denominator of which is the sum of the gross receipts that 4892
can be directly attributed to providing service as an electric 4893
company, a rural heating company, a heating company, or a natural 4894
gas company. 4895

Sec. 5727.05. ~~This chapter does~~ Sections 5727.01 to 5727.61 4896
of the Revised Code do not apply to either of the following: 4897

(A) Nonprofit corporations as defined in division (C) of 4898
section 1702.01 of the Revised Code that are engaged exclusively 4899
in the treatment, distribution, and sale of water to consumers; 4900

(B) Municipal corporations within this state. 4901

Sec. 5727.06. (A) Except as otherwise provided by law, the 4902
following constitutes the taxable property of a public utility or 4903
interexchange telecommunications company that shall be assessed by 4904

the tax commissioner: 4905

(1) In the case of a railroad company, all real property and 4906
tangible personal property owned or operated by the railroad 4907
company in this state on the thirty-first day of December of the 4908
preceding year; 4909

(2) In the case of a water transportation company, all 4910
tangible personal property, except watercraft, owned or operated 4911
by the water transportation company in this state on the 4912
thirty-first day of December of the preceding year and all 4913
watercraft owned or operated by the water transportation company 4914
in this state during the preceding calendar year; 4915

(3) In the case of all other public utilities and 4916
interexchange telecommunications companies, all tangible personal 4917
property that on the thirty-first day of December of the preceding 4918
year was both located in this state and: 4919

(a) Owned by the public utility or interexchange 4920
telecommunications company; or 4921

(b) Leased by the public utility or interexchange 4922
telecommunications company under a sale and leaseback transaction. 4923

(B) In the case of an interexchange telecommunications 4924
company, all taxable property shall be subject to the provisions 4925
of this chapter and shall be valued by the commissioner in 4926
accordance with division ~~(B)~~(A) of section 5727.11 of the Revised 4927
Code and assessed by the commissioner in accordance with division 4928
~~(G)~~(F) of section 5727.111 of the Revised Code. A person described 4929
by this division shall file the report required by section 5727.08 4930
of the Revised Code. Persons described in this division shall not 4931
be considered taxpayers, as defined in division (B) of section 4932
5711.01 of the Revised Code, and shall not be required to file a 4933
return and list their taxable property under any provision of 4934

Chapter 5711. of the Revised Code. 4935

(C) The lien of the state for taxes levied each year on the 4936
real and personal property of public utilities and interexchange 4937
telecommunications companies shall attach thereto on the 4938
thirty-first day of December of the preceding year. 4939

(D) Property that is required by division (A)(3)(b) of this 4940
section to be assessed by the tax commissioner under this chapter 4941
shall not be listed by the owner of the property under Chapter 4942
5711. of the Revised Code. 4943

(E) The tax commissioner may adopt rules governing the 4944
listing of the taxable property of public utilities and 4945
interexchange telecommunications companies and the determination 4946
of true value. 4947

Sec. 5727.11. (A) ~~As used in this section, section 5727.111,~~ 4948
~~and division (C) of section 5727.15 of the Revised Code,~~ 4949
~~"production equipment" means all taxable steam, nuclear,~~ 4950
~~hydraulic, and other production plant equipment, and all taxable~~ 4951
~~station equipment that is located at a production plant.~~ 4952

~~(B)~~ Except as provided in divisions ~~(B)~~, (C), (D), ~~(E)~~, and 4953
~~(G)(F)~~ of this section, the true value of all taxable property 4954
required by division (A)(2) or (3) of section 5727.06 of the 4955
Revised Code to be assessed by the tax commissioner shall be 4956
determined by a method of valuation using cost as capitalized on 4957
the public utility's books and records less composite annual 4958
allowances as prescribed by the commissioner. If the commissioner 4959
finds that application of this method will not result in the 4960
determination of true value of the public utility's taxable 4961
property, ~~he~~ the commissioner may use another method of valuation. 4962
~~The cost of property subject to a sale and leaseback transaction~~ 4963
~~is the cost of the property as capitalized on the books and~~ 4964
~~records of the public utility owning the property immediately~~ 4965

~~prior to the sale and leaseback transaction.~~ 4966

~~(C)~~(B) The true value of current gas stored underground is 4967
the cost of that gas shown on the books and records of the public 4968
utility on the thirty-first day of December of the preceding year. 4969

~~(D)~~(C) The true value of noncurrent gas stored underground is 4970
thirty-five per cent of the cost of that gas shown on the books 4971
and records of the public utility on the thirty-first day of 4972
December of the preceding year. 4973

~~(E) The (D)(1) Except as provided in division (D)(2) of this~~ 4974
~~section, the true value of the production equipment of an electric~~ 4975
~~company and the true value of all taxable property of a rural~~ 4976
~~electric company is the equipment's or property's cost as~~ 4977
~~capitalized on the company's books and records less fifty per cent~~ 4978
~~of that cost as an allowance for depreciation and obsolescence.~~ 4979
~~The cost of equipment or property subject to a sale and leaseback~~ 4980
~~transaction is the cost of the property as capitalized on the~~ 4981
~~books and records of the public utility owning the equipment or~~ 4982
~~property immediately prior to the sale and leaseback transaction.~~ 4983

(2) The true value of the production plant equipment of an 4984
electric company or rural electric company purchased or placed 4985
into service after the effective date of this amendment is the 4986
purchase price of the equipment as capitalized on the company's 4987
books and records less composite annual allowances as prescribed 4988
by the tax commissioner. 4989

~~(F)~~(E) The true value of taxable property described in 4990
division (A)(2) or (3) of section 5727.06 of the Revised Code 4991
shall not include the allowance for funds used during construction 4992
or interest during construction ~~which~~ that has been capitalized on 4993
the public utility's books and records as part of the total cost 4994
of the taxable property. This division shall not apply to a 4995
production plant put into service on or after January 1, 2001, or 4996

to the production equipment of an electric company or a rural 4997
electric company purchased by an electric company or a rural 4998
electric company. 4999

~~(G)~~(F) The true value of watercraft owned or operated by a 5000
water transportation company shall be determined by multiplying 5001
the true value of the watercraft as determined under division 5002
~~(B)~~(A) of this section by a fraction, the numerator of which is 5003
the number of revenue-earning miles traveled by the watercraft in 5004
the waters of this state and the denominator of which is the 5005
number of revenue-earning miles traveled by the watercraft in all 5006
waters. 5007

(G) The cost of property subject to a sale and leaseback 5008
transaction is the cost of the property as capitalized on the 5009
books and records of the public utility owning the property 5010
immediately prior to the sale and leaseback transaction. 5011

Sec. 5727.111. The taxable property of each public utility, 5012
except a railroad company, and of each interexchange 5013
telecommunications company shall be assessed at the following 5014
percentages of true value: 5015

(A) Fifty per cent in the case of the taxable transmission 5016
and distribution property of a rural electric company, and 5017
twenty-five per cent for all its other taxable property; 5018

(B) In the case of a telephone or telegraph company, ~~the~~ 5019
~~percentage provided under division (E) of section 5711.22 of the~~ 5020
~~Revised Code~~ twenty-five per cent for taxable property first 5021
subject to taxation in this state for tax year 1995 or thereafter, 5022
and eighty-eight per cent for all other taxable property; 5023

(C) Eighty-eight per cent in the case of a natural gas or 5024
pipe-line company; 5025

(D) Eighty-eight per cent in the case of a water-works or 5026

heating company;	5027
(E) One hundred per cent in the case of the taxable	5028
production equipment of an electric company;	5029
(F) Eighty-eight (1) Except as provided in division (E)(2) of	5030
this section, eighty-eight per cent in the case of all taxable	5031
personal <u>the taxable transmission and distribution</u> property of an	5032
electric company, other than its production equipment and	5033
<u>twenty-five per cent for all its other taxable property;</u>	5034
(2) <u>Property listed and assessed under divisions (B)(1) and</u>	5035
<u>(2) of section 5711.22 of the Revised Code shall continue to be</u>	5036
<u>assessed at one hundred per cent for production equipment and</u>	5037
<u>eighty-eight per cent for all other taxable property until January</u>	5038
<u>1, 2002.</u>	5039
(G) The percentage provided under division (E) of section	5040
5711.22 of the Revised Code (F) <u>Twenty-five per cent</u> in the case	5041
of an interexchange telecommunications company;	5042
(H) (G) Twenty-five per cent in the case of a water	5043
transportation company.	5044
Sec. 5727.15. When all the taxable property of a public	5045
utility is located in one taxing district, the tax commissioner	5046
shall apportion the total taxable value thereof to that taxing	5047
district.	5048
When taxable property of a public utility is located in more	5049
than one taxing district, the commissioner shall apportion the	5050
total taxable value thereof among the taxing districts as follows:	5051
(A)(1) In the case of a telegraph, interexchange	5052
telecommunications, or telephone company that owns miles of wire	5053
in this state, the value apportioned to each taxing district shall	5054
be the same percentage of the total value apportioned to all	5055
taxing districts as the miles of wire owned by the company within	5056

the taxing district are to the total miles of wire owned by the 5057
company within this state; 5058

(2) In the case of a telegraph, interexchange 5059
telecommunications, or telephone company that does not own miles 5060
of wire in this state, the value apportioned to each taxing 5061
district shall be the same percentage of the total value 5062
apportioned to all taxing districts as the cost of the taxable 5063
property physically located in the taxing district is of the total 5064
cost of all taxable property physically located in this state. 5065

(B) In the case of a railroad company: 5066

(1) The taxable value of real and personal property not used 5067
in railroad operations shall be apportioned according to its 5068
situs; 5069

(2) The taxable value of personal property used in railroad 5070
operations shall be apportioned to each taxing district in 5071
proportion to the miles of track and trackage rights, weighted to 5072
reflect the relative use of such personal property in each taxing 5073
district; 5074

(3) The taxable value of real property used in railroad 5075
operations shall be apportioned to each taxing district in 5076
proportion to its relative value in each taxing district. 5077

(C) In the case of an electric company: 5078

(1) ~~Seventy per cent of the~~ The taxable value of all 5079
production equipment ~~and of all station equipment that is not~~ 5080
~~production equipment~~ shall be apportioned to the taxing district 5081
in which such property is physically located; and 5082

(2) The ~~remaining value of such property, together with the~~ 5083
value of all other taxable personal property, shall be apportioned 5084
to each taxing district in the ~~per cent~~ proportion that the cost 5085
of ~~all transmission and distribution~~ the taxable personal property 5086

physically located in the each taxing district is of the total 5087
cost of all transmission and distribution taxable personal 5088
property physically located in this state. 5089

~~(3) If an electric company's taxable value for the current 5090
year includes the value of any production equipment at a plant at 5091
which the initial cost of the plant's production equipment 5092
exceeded one billion dollars, then prior to making the 5093
apportionments required for that company by divisions (C)(1) and 5094
(2) of this section, the tax commissioner shall do the following: 5095~~

~~(a) Subtract four hundred twenty million dollars from the 5096
total taxable value of the production equipment at that plant for 5097
the current tax year. 5098~~

~~(b) Multiply the difference thus obtained by a fraction, the 5099
numerator of which is the portion of the taxable value of that 5100
plant's production equipment included in the company's total value 5101
for the current tax year, and the denominator of which is the 5102
total taxable value of such equipment included in the total 5103
taxable value of all electric companies for such year. 5104~~

~~(c) Apportion the product thus obtained to taxing districts 5105
in the manner prescribed in division (C)(2) of this section. 5106~~

~~(d) Deduct the amounts so apportioned from the taxable value 5107
of the company's production equipment at the plant, prior to 5108
making the apportionments required by divisions (C)(1) and (2) of 5109
this section. 5110~~

~~For purposes of division (C) of this section, "initial cost" 5111
applies only to production equipment of plants placed in 5112
commercial operation on or after January 1, 1987, and means the 5113
cost of all production equipment at a plant for the first year the 5114
plant's equipment was subject to taxation. 5115~~

~~(D) In the case of all other public utilities, the value of 5116
the property to be apportioned shall be apportioned to each taxing 5117~~

district in proportion to the entire value of such property within 5118
this state. 5119

Sec. 5727.30. Each public utility, except electric companies, 5120
rural electric companies, and railroad companies, shall be subject 5121
to an annual excise tax, as provided by sections 5727.31 to 5122
5727.62 of the Revised Code, for the privilege of owning property 5123
in this state or doing business in this state during the 5124
twelve-month period next succeeding the period upon which the tax 5125
is based. The tax shall be imposed against each such public 5126
utility ~~which~~ that, on the first day of such twelve-month period, 5127
owns property in this state or is doing business in this state, 5128
and the lien for the tax, including any penalties and interest 5129
accruing thereon, shall attach on such day to the property of the 5130
public utility in this state. 5131

Sec. 5727.31. (A) Each public utility, ~~except railroad~~ 5132
~~companies, doing business or owning property in this state shall~~ 5133
subject to the tax imposed under section 5727.30 of the Revised 5134
Code, annually, on or before the first day of August, shall file 5135
with the tax commissioner a statement in such form as the 5136
commissioner prescribes. 5137

(B)(1) Annually, on or before the fifteenth day of October of 5138
the current year, each public utility ~~subject to the excise taxes~~ 5139
~~levied by this chapter~~ whose estimated excise taxes for the 5140
current year as based upon the statement required to be filed in 5141
that year by division (A) of this section are, in the case of a 5142
public utility other than a natural gas company, one thousand 5143
dollars or more, or are, in the case of a natural gas company, 5144
three hundred twenty-five thousand dollars or more, shall file 5145
with the treasurer of state a report, in such form as the tax 5146
commissioner prescribes, showing the amount of excise tax 5147

estimated to be charged or levied pursuant to law for the current 5148
year upon the basis of such annual statement, and shall remit a 5149
portion of the estimated excise taxes shown to be due by the 5150
report. The portion of the estimated excise taxes due at the time 5151
the report is filed shall be one-third of its total excise taxes 5152
estimated to be charged or levied for the current year based upon 5153
the annual statement filed under division (A) of this section. 5154

(2) Annually, on or before the first day of March and June, 5155
each public utility ~~subject to the excise taxes levied by this~~ 5156
~~chapter~~ whose excise taxes as based upon its last preceding annual 5157
statement filed under division (A) of this section prior to the 5158
first day of January were, in the case of a public utility other 5159
than a natural gas company, one thousand dollars or more, or were, 5160
in the case of a natural gas company, three hundred twenty-five 5161
thousand dollars or more, shall file with the treasurer of state a 5162
report, in such form as the tax commissioner prescribes, showing 5163
the amount of excise tax charged or levied pursuant to law upon 5164
the basis of such annual statement, and shall remit a portion of 5165
the excise taxes shown to be due by each such report. The portion 5166
of the excise taxes due at the time each such report is filed 5167
shall be one-third of its total excise taxes so charged or levied 5168
based upon such annual statement. 5169

(C) Any public utility subject to the excise taxes imposed by 5170
~~this chapter~~ section 5727.30 of the Revised Code whose tax as 5171
certified under section 5727.38 of the Revised Code in a year 5172
equals or exceeds the amount specified for that year in section 5173
5727.311 of the Revised Code shall make the payments required 5174
under this section in the second ensuing and each succeeding year 5175
in the manner prescribed by section 5727.311 of the Revised Code, 5176
except as otherwise prescribed by that section. 5177

(D)(1) For purposes of this section, a report required to be 5178
filed under division (B) of this section is considered filed when 5179

it is received by the treasurer of state. 5180

(2) For purposes of this section and sections 5727.311 and 5181
5727.42 of the Revised Code, remittance of an excise tax required 5182
to be made under this section is considered to be made when the 5183
remittance is received by the treasurer of state, or when credited 5184
to an account designated by the treasurer of state for the receipt 5185
of tax remittances. 5186

Sec. 5727.311. (A) Any public utility subject to an excise 5187
tax imposed by ~~this chapter~~ section 5727.30 of the Revised Code 5188
whose tax as certified by the tax commissioner under section 5189
5727.38 of the Revised Code ~~in the year indicated in the following~~ 5190
~~schedule~~ equals or exceeds ~~the amount indicated for that year in~~ 5191
~~the schedule~~ fifty thousand dollars shall make each payment 5192
required under division (B) of section 5727.31 of the Revised Code 5193
for the second ensuing and each succeeding year by electronic 5194
funds transfer as prescribed by division (B) of this section. 5195
~~Year for which~~ 5196
~~tax was certified~~ ~~1992~~ ~~1993 and thereafter~~ 5197
~~Amount of tax~~ ~~\$100,000~~ ~~\$50,000~~ 5198
~~certified~~

If the tax certified by the tax commissioner in each of two 5199
consecutive years beginning with 1993 is less than fifty thousand 5200
dollars, the public utility is relieved of the requirement to 5201
remit taxes by electronic funds transfer for the year that next 5202
follows the second of the consecutive years in which the tax 5203
certified is less than fifty thousand dollars, and is relieved of 5204
that requirement for each succeeding year unless the tax certified 5205
in a subsequent year equals or exceeds fifty thousand dollars. The 5206
tax commissioner shall notify each public utility required to 5207
remit taxes by electronic funds transfer of the public utility's 5208
obligation to do so, shall maintain an updated list of those 5209

public utilities, and shall timely certify the list and any 5210
additions thereto or deletions therefrom to the treasurer of 5211
state. Failure by the tax commissioner to notify a public utility 5212
subject to this section to remit taxes by electronic funds 5213
transfer does not relieve the public utility of its obligation to 5214
remit taxes by electronic funds transfer. 5215

(B) Public utilities required by this section to remit 5216
periodic payments by electronic funds transfer shall remit such 5217
payments to the treasurer of state in the manner prescribed by 5218
rules adopted by the treasurer under section 113.061 of the 5219
Revised Code. The payment of public utility excise taxes by 5220
electronic funds transfer does not affect a public utility's 5221
obligation to file the annual statement and periodic reports in 5222
the manner and at the times prescribed by section 5727.31 of the 5223
Revised Code. 5224

A public utility required by this section to remit taxes by 5225
electronic funds transfer may apply to the treasurer of state in 5226
the manner prescribed by the treasurer of state to be excused from 5227
that requirement. The treasurer of state may excuse the public 5228
utility from remittance by electronic funds transfer for good 5229
cause shown for the period of time requested by the public utility 5230
or for a portion of that period. The treasurer of state shall 5231
notify the tax commissioner and the public utility of the 5232
~~treasurer's~~ treasurer of state's decision as soon as is 5233
practicable. 5234

(C) If a public utility required by this section to remit 5235
taxes by electronic funds transfer remits those taxes by some 5236
means other than by electronic funds transfer as prescribed by 5237
this section and the rules adopted by the treasurer of state, and 5238
the treasurer of state determines that the failure to remit taxes 5239
as required was not due to reasonable cause or was due to willful 5240
neglect, the treasurer of state may impose an additional charge on 5241

the public utility equal to five per cent of the amount of the 5242
taxes required to be paid by electronic funds transfer, but not to 5243
exceed five thousand dollars. Any additional charge imposed under 5244
this section is in addition to any other penalty or charge imposed 5245
under this chapter, and shall be considered as revenue arising 5246
from excise taxes imposed by this chapter. 5247

No additional charge shall be assessed under this division 5248
against a public utility that has been notified of its obligation 5249
to remit taxes under this section and that remits its first two 5250
tax payments after such notification by some means other than 5251
electronic funds transfer. The additional charge may be assessed 5252
upon the remittance of any subsequent tax payment that the public 5253
utility remits by some means other than electronic funds transfer. 5254

Sec. 5727.32. The statement required by section 5727.31 of 5255
the Revised Code for the purpose of the public utility excise tax 5256
shall contain: 5257

(A) The name of the company; 5258

(B) The nature of the company, whether a person, association, 5259
or corporation, and under the laws of what state or country 5260
organized; 5261

(C) The location of its principal office; 5262

(D) The name and post-office address of the president, 5263
secretary, auditor, treasurer, and superintendent or general 5264
manager; 5265

(E) The name and post-office address of the chief officer or 5266
managing agent of the company in this state; 5267

(F) The amount of the excise taxes paid or to be paid with 5268
the reports made during the current calendar year as provided by 5269
section 5727.31 of the Revised Code; 5270

(G) In the case of telegraph and telephone companies: 5271

(1) The gross receipts from all sources, whether messages, 5272
telephone tolls, rentals, or otherwise, for business done within 5273
this state, including all sums earned or charged, whether actually 5274
received or not, for the year ending on the thirtieth day of June, 5275
and the company's proportion of gross receipts for business done 5276
by it within this state in connection with other companies, firms, 5277
corporations, persons, or associations, but excluding all of the 5278
following: 5279

(a) All of the receipts derived wholly from interstate 5280
business or business done for or with the federal government; 5281

(b) The receipts of amounts billed on behalf of other 5282
entities; 5283

(c) The receipts from sales to other telephone companies for 5284
resale; 5285

(d) ~~For the year ending June 30, 1990, and each subsequent~~ 5286
~~year, receipts~~ Receipts from sales to providers of 5287
telecommunications service for resale, receipts from incoming or 5288
outgoing wide area transmission service or wide area transmission 5289
type service, including eight hundred or eight-hundred-type 5290
service, and receipts from private communications service. 5291

As used in this division, "receipts from sales to other 5292
telephone companies for resale" and "receipts from sales to 5293
providers of telecommunications service for resale" include, but 5294
are not limited to, receipts of carrier access charges. "Carrier 5295
access charges" means compensation paid to the taxpayer telephone 5296
company by another telephone company or by a provider of 5297
telecommunications service for the use of the taxpayer's 5298
facilities to originate or terminate telephone calls or 5299
telecommunications service. 5300

(2) The total gross receipts for such period from business 5301
done within this state. 5302

(H) In the case of all public utilities, except electric 5303
companies, rural electric companies, telegraph companies, and 5304
telephone companies: 5305

(1) The gross receipts of the company, actually received, 5306
from all sources for business done within this state for the year 5307
next preceding the first day of May, including the company's 5308
proportion of gross receipts for business done by it within this 5309
state in connection with other companies, firms, corporations, 5310
persons, or associations, but excluding all of the following: 5311

(a) Receipts from interstate business or business done for 5312
the federal government; 5313

(b) Receipts from sales to other public utilities for resale, 5314
provided such other public utility is required to file a statement 5315
pursuant to section 5727.31 of the Revised Code; 5316

~~(c) For the year ending April 30, 1990, and each subsequent 5317~~
~~year, receipts from the transmission or delivery of electricity to 5318~~
~~or for a rural electric company, provided that the electricity 5319~~
~~that has been so transmitted or delivered is for resale by the 5320~~
~~rural electric company; 5321~~

~~(d) Receipts of an electric company, derived from the 5322~~
~~provision of electricity and other services to a qualified former 5323~~
~~owner of the production facilities which generated the electricity 5324~~
~~from which those receipts were derived. As used in this division, 5325~~
~~a "qualified former owner" means a person who meets both of the 5326~~
~~following conditions: 5327~~

~~(i) On or before October 11, 1991, the person had sold to an 5328~~
~~electric company part of the production facility at which the 5329~~
~~electricity is generated, and, for at least twenty years prior to 5330~~
~~that sale, the facility was used to generate electricity, but it 5331~~
~~was not owned in whole or in part during that period by an 5332~~
~~electric company. 5333~~

~~(ii) At the time the electric company provided the~~ 5334
~~electricity or other services for which the exclusion is claimed,~~ 5335
~~the person, or a successor or assign of the person, owned not less~~ 5336
~~than a twenty per cent ownership of the production facility and~~ 5337
~~the rights to not less than twenty per cent of the production of~~ 5338
~~that facility; and the person, or a successor or assign of the~~ 5339
~~person, engaged primarily in a business other than providing~~ 5340
~~electricity to others.~~ 5341

~~(e)~~ Receipts of a natural gas company of amounts billed on 5342
behalf of other entities. Transportation and billing and 5343
collection fees charged to other entities shall be included in the 5344
gross receipts of a natural gas company. 5345

(2) The total gross receipts of such company for such period 5346
in this state from business done within the state. 5347

The reports required by section 5727.31 of the Revised Code 5348
shall contain: 5349

(a) The name and principal mailing address of the company; 5350

(b) The total amount of the gross receipts excise taxes 5351
charged or levied as based upon its last preceding annual 5352
statement filed prior to the first day of January of the year in 5353
which such report is filed; 5354

(c) The amount of the excise taxes due with the report as 5355
provided by section 5727.31 of the Revised Code. 5356

Sec. 5727.33. (A) For the purpose of computing the public 5357
utility excise tax, the tax commissioner shall ascertain and 5358
determine the entire gross receipts actually received from all 5359
sources, excluding the receipts described in divisions (B), (C), 5360
~~and (D), and (E)~~ of this section, of each ~~electric, rural~~ 5361
~~electric,~~ natural gas, pipe-line, water-works, heating, and water 5362
transportation company for business done within this state for the 5363

year ending on the thirtieth day of April, and of each telegraph 5364
and telephone company for business done within this state for the 5365
year ending on the thirtieth day of June. 5366

(B) In ascertaining and determining the gross receipts of 5367
each of the companies named in this section, the commissioner 5368
shall exclude all of the following: 5369

(1) All receipts derived wholly from interstate business; 5370

(2) All receipts derived wholly from business done for or 5371
with the federal government; 5372

~~(3) For the year ending April 30, 1990, and each subsequent 5373~~
~~year, all receipts derived wholly from the transmission or 5374~~
~~delivery of electricity to or for a rural electric company, 5375~~
~~provided that the electricity that has been so transmitted or 5376~~
~~delivered is for resale by the rural electric company; 5377~~

~~(4) All receipts from the sale of merchandise; 5378~~

~~(5)~~(4) All receipts from sales to other public utilities, 5379
except railroad, telegraph, and telephone companies, for resale, 5380
provided the other public utility is required to file a statement 5381
pursuant to section 5727.31 of the Revised Code. 5382

(C) In ascertaining and determining the gross receipts of a 5383
telephone company, the commissioner shall exclude all of the 5384
following: 5385

~~(1) For the year ending June 30, 1988, and each subsequent 5386~~
~~year, receipts Receipts of amounts billed on behalf of other 5387~~
~~entities; 5388~~

~~(2) For the year ending June 30, 1988, and each subsequent 5389~~
~~year, receipts Receipts from sales to other telephone companies 5390~~
for resale, as defined in division (G) of section 5727.32 of the 5391
Revised Code; 5392

(3) ~~For the year ending June 30, 1990, and each subsequent~~ 5393
~~year, receipts Receipts~~ from incoming or outgoing wide area 5394
~~transmission service or wide area transmission type service,~~ 5395
~~including eight hundred or eight-hundred-type service;~~ 5396

(4) ~~For the year ending June 30, 1990, and each subsequent~~ 5397
~~year, receipts Receipts~~ from private communications service as 5398
~~described in division (AA)(2) of section 5739.01 of the Revised~~ 5399
~~Code;~~ 5400

(5) ~~For the year ending June 30, 1990, and each subsequent~~ 5401
~~year, receipts Receipts~~ from sales to providers of 5402
~~telecommunications service for resale, as defined in division (G)~~ 5403
~~of section 5727.32 of the Revised Code.~~ 5404

(D) ~~In ascertaining and determining the gross receipts of an~~ 5405
~~electric company, the commissioner shall exclude receipts derived~~ 5406
~~from the provision of electricity and other services to a~~ 5407
~~qualified former owner of the production facilities which~~ 5408
~~generated the electricity from which those receipts were derived.~~ 5409
~~As used in this division, a "qualified former owner" means a~~ 5410
~~person who meets both of the following conditions:~~ 5411

(1) ~~On or before October 11, 1991, the person had sold to an~~ 5412
~~electric company part of the production facility at which the~~ 5413
~~electricity is generated, and, for at least twenty years prior to~~ 5414
~~that sale, the facility was used to generate electricity, but it~~ 5415
~~was not owned in whole or in part during that period by an~~ 5416
~~electric company.~~ 5417

(2) ~~At the time the electric company provided the electricity~~ 5418
~~or other services for which the exclusion is claimed, the person,~~ 5419
~~or a successor or assign of the person, owned not less than a~~ 5420
~~twenty per cent ownership of the production facility and the~~ 5421
~~rights to not less than twenty per cent of the production of that~~ 5422
~~facility.~~ 5423

(E) In ascertaining and determining the gross receipts of a 5424
natural gas company, the commissioner shall exclude receipts of 5425
amounts billed on behalf of other entities. Transportation and 5426
billing and collection fees charged to other entities shall be 5427
included in the gross receipts of a natural gas company. 5428

The amount ascertained by the commissioner under this 5429
section, less a deduction of twenty-five thousand dollars, shall 5430
be the gross receipts of such companies for business done within 5431
this state for that year. 5432

Sec. 5727.38. On or before the first Monday of November, 5433
annually, the tax commissioner shall assess an excise tax against 5434
each public utility, except electric companies, rural electric 5435
companies, and railroad companies. The tax shall be computed by 5436
multiplying the gross receipts as determined by the commissioner 5437
under section 5727.33 of the Revised Code by six and three-fourths 5438
per cent in the case of pipe-line companies and four and 5439
three-fourths per cent in the case of all other companies. The 5440
minimum tax for any such company for owning property or doing 5441
business in this state shall be ~~ten~~ fifty dollars. The assessment 5442
shall be certified to the taxpayer and treasurer of state. 5443

Sec. 5727.42. (A) The treasurer of state shall maintain a 5444
list of all excise taxes levied and payments made pursuant to ~~this~~ 5445
~~chapter~~ section 5727.30 of the Revised Code. The treasurer of 5446
state shall collect and the taxpayer shall pay all taxes and any 5447
penalties thereon. Payments may be made by mail, in person, by 5448
electronic funds transfer if required to do so by section 5727.311 5449
of the Revised Code, or by any other means authorized by the 5450
treasurer of state. The treasurer of state may adopt rules 5451
concerning the methods and timeliness of payment. 5452

(B) Each tax bill issued pursuant to this section shall 5453

separately reflect the taxes due, due date, and any other 5454
information considered necessary. Except as otherwise provided in 5455
division (F) of this section, the last day on which payment may be 5456
made without penalty shall be at least twenty but not more than 5457
thirty days from the date of mailing the tax bill. The treasurer 5458
of state shall mail the tax bill, and the mailing thereof shall be 5459
prima-facie evidence of receipt thereof by the taxpayer. 5460

(C) The treasurer of state shall refund taxes as provided in 5461
this section, but no refund shall be made to a taxpayer having a 5462
delinquent claim certified pursuant to this section that remains 5463
unpaid. The treasurer of state may consult the attorney general 5464
regarding such claims. 5465

(D) Within twenty days after receipt of any excise tax 5466
assessment certified to ~~him~~ the treasurer of state, the treasurer 5467
of state shall: 5468

(1) Ascertain the difference between the total taxes shown on 5469
such assessment and the sum of all ~~advance~~ estimated payments, 5470
exclusive of any penalties thereon, previously made for that year. 5471

(2) If the difference is a deficiency, the treasurer of state 5472
shall issue a tax bill. 5473

(3) If the difference is an excess, the treasurer of state 5474
shall certify the name of the taxpayer and the amount to be 5475
refunded to the director of budget and management for payment to 5476
the taxpayer. 5477

If the taxpayer has a deficiency for one tax year and an 5478
excess for another tax year, or any combination thereof for more 5479
than two years, the treasurer of state may determine the net 5480
result and, depending on such result, proceed to mail a tax bill 5481
or certify a refund. 5482

(E) If a taxpayer fails to pay all taxes on or before the due 5483

date shown on the tax bill, or fails to make an ~~advance~~ estimated 5484
payment on or before the due date prescribed in division (B) of 5485
section 5727.31 of the Revised Code, but makes payment within ten 5486
calendar days of such date, the treasurer of state shall add a 5487
penalty equal to five per cent of the amount that should have been 5488
timely paid. If payment is not made within ten days of such date, 5489
the treasurer of state shall add a penalty equal to fifteen per 5490
cent of the amount that should have been timely paid. The 5491
treasurer of state shall prepare a delinquent claim for each tax 5492
bill on which penalties were added and certify such claims to the 5493
attorney general and tax commissioner. The attorney general shall 5494
proceed to collect the delinquent taxes and penalties thereon in 5495
the manner prescribed by law and notify the treasurer of state and 5496
tax commissioner of all collections. 5497

(F) The last day on which a natural gas company that is not 5498
required to make payments under division (B) of section 5727.31 of 5499
the Revised Code may pay its taxes without penalty shall be the 5500
fifteenth day of March of the year following the year in which the 5501
commissioner is required to certify ~~his~~ the assessment of the 5502
company's tax under section 5727.38 of the Revised Code. The tax 5503
due date shall be reflected on the tax bill. 5504

Sec. 5727.45. Four and two-tenths per cent of all excise 5505
taxes and penalties collected under sections 5727.01 to 5727.62 of 5506
the Revised Code shall be credited to the local government fund 5507
for distribution in accordance with section 5747.50 of the Revised 5508
Code, six-tenths of one per cent shall be credited to the local 5509
government revenue assistance fund for distribution in accordance 5510
with section 5747.61 of the Revised Code, and ninety-five and 5511
two-tenths per cent shall be credited to the general revenue fund. 5512

~~On or before the first day of December, annually, the tax~~ 5513
~~commissioner shall certify to the treasurer of state the amounts~~ 5514

~~to be credited to the local government fund and local government~~ 5515
~~revenue assistance fund from the general revenue fund to ensure~~ 5516
~~that the sum of the amounts credited to the local government fund~~ 5517
~~and local government revenue assistance fund for the calendar year~~ 5518
~~equals the sum that would have been credited during that year if~~ 5519
~~the credit authorized by section 5727.391 of the Revised Code did~~ 5520
~~not exist. The treasurer shall credit any such additional amounts~~ 5521
~~to the two funds not later than the fifth day of December,~~ 5522
~~annually.~~ 5523

Sec. 5727.47. A copy of each assessment certified pursuant to 5524
section 5727.23, ~~5727.231~~, or 5727.38 of the Revised Code shall be 5525
mailed to the public utility, and its mailing shall be prima-facie 5526
evidence of its receipt by the public utility to which it is 5527
addressed. If a public utility objects to any assessment certified 5528
to it pursuant to such sections, it may file a petition for 5529
reassessment with the tax commissioner. The petition must be made 5530
in writing, signed by the authorized agent of the utility having 5531
knowledge of the facts, and filed with the commissioner, in person 5532
or by certified mail, within thirty days from the date that the 5533
assessment was mailed. If the petition is filed by certified mail, 5534
the date of the United States postmark placed on the sender's 5535
receipt by the postal employee to whom the petition is presented 5536
shall be treated as the date of filing. A true copy of the 5537
assessment objected to shall be attached to the petition and shall 5538
be incorporated by reference into the petition, but the failure to 5539
attach a copy of the assessment and incorporate it by reference 5540
does not invalidate the petition. The petition also shall indicate 5541
the utility's objections, but additional objections may be raised 5542
in writing if received prior to the date shown on the final 5543
determination by the commissioner. 5544

Notwithstanding the fact that a petition has been filed, the 5545

tax with respect to the assessment objected to shall be paid as 5546
required by law. The acceptance of the tax payment by the 5547
treasurer of state or any county treasurer shall not prejudice any 5548
claim for taxes on final determination by the commissioner or 5549
final decision by the board of tax appeals or any court. 5550

Upon receipt of a properly filed petition, the commissioner 5551
shall notify the treasurer of state or the auditor of each county 5552
to which the assessment objected to has been certified. 5553

Unless the petitioner waives a hearing, the commissioner 5554
shall assign a time and place for the hearing on the petition and 5555
notify the petitioner of the time and place of the hearing by 5556
personal service or certified mail, but the commissioner may 5557
continue the hearing from time to time if necessary. 5558

The commissioner may make such correction to the assessment 5559
as ~~he~~ the commissioner finds proper. The commissioner shall serve 5560
a copy of ~~his~~ the commissioner's final determination on the 5561
petitioner by personal service or certified mail, and ~~his~~ the 5562
commissioner's decision in the matter shall be final, subject to 5563
appeal as provided in section 5717.02 of the Revised Code. The 5564
commissioner also shall transmit a copy of ~~his~~ the final 5565
determination to the treasurer of state or applicable county 5566
auditor. In the absence of any further appeal, or when a decision 5567
of the board of tax appeals or of any court to which the decision 5568
has been appealed becomes final, the commissioner shall notify the 5569
public utility and, as appropriate, the treasurer of state who 5570
shall proceed under section 5727.42 of the Revised Code, or the 5571
applicable county auditor who shall proceed under section 5727.471 5572
of the Revised Code. The notification is not subject to further 5573
appeal. 5574

Sec. 5727.53. The taxes, fees, and penalties provided by 5575
~~sections 5727.01 to 5727.62, inclusive, of the Revised Code, this~~ 5576

chapter that are remitted to the treasurer of state may be 5577
recovered by an action brought in the name of the state in the 5578
court of common pleas of Franklin ~~County~~ county, or of any county 5579
in which such public utility is doing business, or in which the 5580
line of any ~~street, suburban, or interurban railroad company or~~ 5581
railroad company is located, and such court of common pleas shall 5582
have jurisdiction of ~~such~~ the action regardless of the amount 5583
involved. The attorney general, on request of the tax 5584
commissioner, shall institute such action in the court of common 5585
pleas of Franklin ~~County~~ county or of any of such counties the 5586
commissioner directs. In any such action it shall be sufficient to 5587
allege that the tax, fee, or penalty sought to be recovered stands 5588
charged on the delinquent duplicate of the treasurer of state, and 5589
that the same has been unpaid for a period of thirty days after 5590
having been placed thereon. Sums recovered in any such action 5591
shall be paid into the state treasury ~~to the credit of the general~~ 5592
~~revenue fund~~ in the same manner as the tax. 5593

Sec. 5727.60. ~~If a public utility required to file a report~~ 5594
~~with the tax commissioner by sections 5727.02 to 5727.62,~~ 5595
~~inclusive, of the Revised Code, person fails to make such file a~~ 5596
~~report, it shall be subject to a penalty of ten dollars per day~~ 5597
~~for each day's omission after the time limited for making such~~ 5598
~~report within the time prescribed by section 5727.08 or 5727.31 of~~ 5599
~~the Revised Code, including any extensions of time granted by the~~ 5600
~~tax commissioner, a penalty of fifty dollars per month, not to~~ 5601
~~exceed five hundred dollars, may be imposed for each month or~~ 5602
~~fraction of a month elapsing between the due date of the report,~~ 5603
~~including any extensions, and the date the report was filed. The~~ 5604
~~penalty under this section for failing to file a report required~~ 5605
~~by section 5727.08 of the Revised Code shall be paid into the~~ 5606
~~state general revenue fund. If the penalty is not paid within~~ 5607

fifteen days after notice of the penalty is mailed to the person 5608
who failed to timely file the report, the tax commissioner shall 5609
certify the penalty as a claim to the attorney general for 5610
collection. The penalty under this section for failing to file the 5611
report required by section 5727.31 of the Revised Code shall be 5612
deposited into the state treasury in the same manner as the tax is 5613
deposited, and the commissioner may collect the penalty by 5614
assessment pursuant to section 5727.38 of the Revised Code. The 5615
tax commissioner may abate this penalty in full or in part. 5616

Sec. 5727.61. Every public utility required by law to make 5617
returns, statements, or reports to the tax commissioner under 5618
sections 5727.01 to 5727.62 of the Revised Code shall file 5619
therewith, in such form as the commissioner prescribes, an 5620
affidavit subscribed and sworn to by a person or officer having 5621
knowledge of the facts setting forth that such public utility has 5622
not, during the preceding year, except as permitted by sections 5623
3517.082, 3599.03, and 3599.031 of the Revised Code, directly or 5624
indirectly paid, used or offered, consented, or agreed to pay or 5625
use any of its money or property for or in aid of or opposition to 5626
a political party, a candidate for election or nomination to 5627
public office, or a political action committee, legislative 5628
campaign fund, or organization that supports or opposes any such 5629
candidate or in any manner used any of its money or property for 5630
any partisan political purpose whatever, or for the reimbursement 5631
or indemnification of any person for money or property so used. 5632
Such forms of affidavit as the commissioner prescribes shall be 5633
attached to or made a part of the return, statement, or report 5634
required to be made by such public utility under sections 5727.01 5635
to 5727.62 of the Revised Code. 5636

Sec. 5727.72. No officer, employee, or agent of a ~~telegraph~~ 5637

~~or telephone company person subject to this chapter shall refuse~~ 5638
~~to attend before a lawful board of appraisers and assessors the~~ 5639
~~department of taxation when required to do so, or refuse to bring~~ 5640
~~with him the officer, employee, or agent and submit for inspection~~ 5641
~~any books or papers of such company person in his the officer's,~~ 5642
~~employee's, or agent's possession, custody, or control, or refuse~~ 5643
~~to answer any questions put to him the officer, employee, or agent~~ 5644
~~concerning the organization, business, or property of such company~~ 5645
~~person.~~ 5646

Sec. 5727.80. As used in sections 5727.80 to 5727.95 of the 5647
Revised Code: 5648

(A) "Electric distribution company" means either of the 5649
following: 5650

(1) A person who distributes electricity through a meter of 5651
an end user in this state; 5652

(2) The end user of electricity in this state, if the end 5653
user obtains electricity that is not distributed or transmitted to 5654
the end user by an electric distribution company that is required 5655
to remit the tax imposed by section 5727.81 of the Revised Code. 5656
"Electric distribution company" does not include the end user of 5657
electricity in this state who self-generates electricity that is 5658
used directly by that end user on site. 5659

(B) "Kilowatt-hour" means one thousand watt hours of 5660
electricity. 5661

(C) "meter of an end user in this state" means the meter used 5662
to measure the last kilowatt-hour distributed by an electric 5663
distribution company to a location in this state, a meter located 5664
outside of this state that is used to measure the last 5665
kilowatt-hour consumed for the reporting period at a location in 5666
this state, or, if no meter is used, the estimated kilowatt-hours 5667

distributed in this state. 5668

(D) "Person" has the same meaning as in section 5701.01 of 5669
the Revised Code, but also includes a municipal electric utility. 5670

(E) "Municipal electric utility" means a municipal 5671
corporation that owns or operates a system for the distribution of 5672
electricity. 5673

(F) "Qualified end user" means an end user of electricity 5674
that purchases more than three million kilowatt-hours of 5675
electricity for a calendar day for use as a raw material in a 5676
manufacturing process that features an electrochemical reaction in 5677
which electrons from direct current electricity remain a part of 5678
the product being manufactured. 5679

Sec. 5727.81. (A) On and after May 1, 2001, for the purpose 5680
of raising revenue for public education and state and local 5681
government operations, an excise tax is hereby levied and imposed 5682
on an electric distribution company, at the following rates per 5683
kilowatt-hour of electricity distributed each month by the company 5684
through a meter of an end user in this state: 5685

<u>kilowatt-hours distributed to</u>	<u>rate per kilowatt-hour</u>	
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<u>an end user</u>		5687
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<u>For the first 2,000</u>	<u>\$.00465</u>	5688
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<u>For the next 2,001 to 15,000</u>	<u>\$.00419</u>	5689
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<u>For 15,001 and above</u>	<u>\$.00301</u>	5690
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The electric distribution company shall base the monthly tax 5691
on a thirty-day average of total kilowatt-hours distributed to an 5692
end user through the meter of the end user. The electric 5693
distribution company shall pay the tax to the treasurer of state 5694
in accordance with section 5727.82 of the Revised Code. Only the 5695
distribution of electricity through a meter of an end user in this 5696
state shall be used by the electric distribution company to 5697
compute the amount or estimated amount of tax due. 5698

<u>(B) Each electric distribution company shall pay the tax</u>	5699
<u>imposed by this section in all of the following circumstances:</u>	5700
<u>(1) The electricity is distributed by the company through a</u>	5701
<u>meter of an end user in this state;</u>	5702
<u>(2) the company is distributing electricity through a meter</u>	5703
<u>located in another state, but the electricity is consumed in this</u>	5704
<u>state in the manner prescribed by rule of the tax commissioner;</u>	5705
<u>(3) the company is distributing electricity in this state</u>	5706
<u>without the use of a meter, but the electricity is consumed in</u>	5707
<u>this state as estimated and in the manner prescribed by rule of</u>	5708
<u>the tax commissioner.</u>	5709
<u>(C) The tax imposed by this section does not apply to the</u>	5710
<u>distribution of any kilowatt-hours of electricity to the federal</u>	5711
<u>government or to an end user for any day the end user is a</u>	5712
<u>qualified end user.</u>	5713
 Sec. 5727.82. <u>(A)(1) Except as provided in divisions (A)(2)</u>	5714
<u>and (D) of this section, by the twentieth day of each month, each</u>	5715
<u>electric distribution company required to pay the tax imposed by</u>	5716
<u>section 5727.81 of the Revised Code shall file with the treasurer</u>	5717
<u>of state a return as prescribed by the tax commissioner and shall</u>	5718
<u>make payment of the full amount of tax due for the preceding</u>	5719
<u>month. The first payment of this tax shall be made on or before</u>	5720
<u>June 20, 2001.</u>	5721
 <u>(2) If the electric distribution company required to pay the</u>	5722
<u>tax imposed by section 5727.81 of the Revised Code is a municipal</u>	5723
<u>electric utility, it may retain in its general fund that portion</u>	5724
<u>of the tax on the kilowatt-hours distributed to end users located</u>	5725
<u>within the boundaries of the municipal corporation. However, the</u>	5726
<u>municipal electric utility shall make payment in accordance with</u>	5727
<u>division (A)(1) of this section of the tax due on the</u>	5728

kilowatt-hours distributed to end users located outside the 5729
boundaries of the municipal corporation. 5730

(3) The return shall be signed by the company required to 5731
file it, or an authorized employee, officer, or agent of the 5732
company. The treasurer shall mark on the return the date it was 5733
received and indicate payment or nonpayment of the tax shown to be 5734
due on the return. The treasurer immediately shall transmit all 5735
returns to the tax commissioner. The return shall be deemed filed 5736
when received by the treasurer. 5737

(B) Any electric distribution company required by this 5738
section to file a return who fails to file and pay it within the 5739
period prescribed shall pay an additional charge of fifty dollars 5740
or ten per cent of the tax required to be paid for the reporting 5741
period, whichever is greater. The tax commissioner may collect the 5742
additional charge by assessment pursuant to section 5727.89 of the 5743
Revised Code. The commissioner may abate all or a portion of the 5744
additional charge and may adopt rules governing such abatements. 5745
5746

(C) If any tax due is not paid timely in accordance with this 5747
section, the electric distribution company liable for the tax 5748
shall pay interest, calculated at the rate per annum prescribed by 5749
section 5703.47 of the Revised Code, from the date the tax payment 5750
was due to the date of payment or to the date an assessment is 5751
issued, whichever occurs first. Interest shall be paid in the same 5752
manner as the tax, and the commissioner may collect the interest 5753
by assessment pursuant to section 5727.89 of the Revised Code. 5754
5755

(D) Not later than the tenth day of each month, a qualified 5756
end user shall report in writing to the electric distribution 5757
company that distributes electricity to the end user the 5758
kilowatt-hours that were consumed as a qualified end user for the 5759
prior month and the number of days, if any, on which the end user 5760

was not a qualified end user. For each calendar day the end user 5761
was not a qualified end user, the end user shall report in writing 5762
to the electric distribution company the number of kilowatt-hours 5763
used on that day, and the electric distribution company shall pay 5764
the tax imposed under section 5727.81 of the Revised Code on each 5765
kilowatt-hour that was not distributed to a qualified end user. 5766
The electric distribution company may rely in good faith on a 5767
qualified end user's report filed under this division, and if it 5768
is determined that the end user was not a qualified end user for 5769
any calendar day or the quantity of electricity used by the 5770
qualified end user was overstated, the tax commissioner shall 5771
assess and collect any tax imposed under section 5727.81 of the 5772
Revised Code directly from the qualified end user. On request by 5773
the commissioner, each end user reporting to an electric 5774
distribution company that it is a qualified end user shall provide 5775
documentation that establishes the volume of electricity consumed 5776
daily by the qualified end user. 5777

Sec. 5727.83. (A) If the total amount of tax required to be 5778
remitted by an electric distribution company to this state under 5779
section 5727.82 of the Revised Code for any calendar year equals 5780
or exceeds fifty thousand dollars, the company shall remit each 5781
monthly tax payment in the second ensuing and each succeeding tax 5782
year by electronic funds transfer as prescribed by divisions (B) 5783
and (C) of this section. For the first year the tax levied by 5784
section 5727.81 of the Revised Code is imposed, any electric 5785
distribution company that, prior to the effective date of this 5786
section, was an electric company or a rural electric company 5787
required to remit taxes by electronic funds transfer under section 5788
5727.311 of the Revised Code shall remit the tax imposed by 5789
section 5727.81 of the Revised Code by electronic funds transfer 5790
in accordance with this section. 5791

If the tax payment for each of two consecutive years is less 5792

than fifty thousand dollars, the company is relieved of the 5793
requirement to remit taxes by electronic funds transfer for the 5794
year that next follows the second of the consecutive years in 5795
which the tax payment is less than fifty thousand dollars, and is 5796
relieved of that requirement for each succeeding year unless the 5797
tax payment in a subsequent year equals or exceeds fifty thousand 5798
dollars. 5799

The tax commissioner shall notify each electric distribution 5800
company required to remit taxes by electronic funds transfer of 5801
the company's obligation to do so, shall maintain an updated list 5802
of those companies, and shall timely certify to the treasurer of 5803
state the list and any additions thereto or deletions therefrom. 5804
Failure by the tax commissioner to notify a company subject to 5805
this section to remit taxes by electronic funds transfer does not 5806
relieve the company of its obligation to remit taxes in that 5807
manner. 5808

(B) An electric distribution company required by this section 5809
to remit payments by electronic funds transfer shall remit such 5810
payments to the treasurer of state in the manner prescribed by 5811
rules adopted by the treasurer of state under section 113.061 of 5812
the Revised Code, and on or before the dates specified under 5813
section 5727.82 of the Revised Code. The payment of taxes by 5814
electronic funds transfer does not affect a company's obligation 5815
to file the monthly return as required under section 5727.82 of 5816
the Revised Code. 5817

(C) An electric distribution company required by this section 5818
to remit taxes by electronic funds transfer may apply to the 5819
treasurer of state in the manner prescribed by the treasurer of 5820
state to be excused from that requirement. The treasurer of state 5821
may excuse the company from remittance by electronic funds 5822
transfer for good cause shown for the period of time requested by 5823
the company or for a portion of that period. The treasurer of 5824

state shall notify the tax commissioner and the company of the 5825
treasurer of state's decision as soon as is practicable. 5826

(D) If an electric distribution company required by this 5827
section to remit taxes by electronic funds transfer remits those 5828
taxes by some means other than by electronic funds transfer as 5829
prescribed by this section and the rules adopted by the treasurer 5830
of state, and the treasurer of state determines that such failure 5831
was not due to reasonable cause or was due to willful neglect, the 5832
treasurer of state shall notify the tax commissioner of the 5833
failure to remit by electronic funds transfer and shall provide 5834
the commissioner with any information used in making that 5835
determination. The tax commissioner may collect an additional 5836
charge by assessment in the manner prescribed by section 5727.89 5837
of the Revised Code. The additional charge shall equal five per 5838
cent of the amount of the taxes required to be paid by electronic 5839
funds transfer, but shall not exceed five thousand dollars. Any 5840
additional charge assessed under this section is in addition to 5841
any other penalty or charge imposed under this chapter, and shall 5842
be considered as revenue arising from the tax imposed under this 5843
chapter. The tax commissioner may abate all or a portion of such a 5844
charge and may adopt rules governing such abatements. 5845

No additional charge shall be assessed under this division 5846
against an electric distribution company that has been notified of 5847
its obligation to remit taxes under this section and that remits 5848
its first two tax payments after such notification by some means 5849
other than electronic funds transfer. The additional charge may be 5850
assessed upon the remittance of any subsequent tax payment that 5851
the company remits by some means other than electronic funds 5852
transfer. 5853

Sec. 5727.84. (A) As used in this section and sections 5854
5727.85 and 5727.86 of the Revised Code: 5855

- (1) "School district" means a city, local, or exempted village school district. 5856
5857
- (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. 5858
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5861
- (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. 5862
5863
5864
- (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. 5865
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- (5) "Adjusted total taxable value" has the same meaning as in section 3317.02 of the Revised Code. 5869
5870
- (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. 5871
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- (7) "1998 assessment rate" means the percentage of true value at which nontransmission/distribution property was assessed for taxation for tax year 1998. 5878
5879
5880
- (8) "State education aid offset" means the sum of the amounts certified for each school district under division (D) of this section. 5881
5882
5883
- (9) "Fixed-sum levy" means a tax levied on property at whatever rate is required to produce a specified amount of tax 5884
5885

money or to pay debt charges, and includes school district 5886
emergency levies imposed pursuant to section 5705.194 of the 5887
Revised Code. 5888

(10) "Fixed-rate levy" means any tax levied on property other 5889
than a fixed-sum levy. 5890

(B) All money collected under this chapter arising from the 5891
tax imposed by section 5727.81 of the Revised Code shall be 5892
credited as follows: 5893

(1) Sixty-three per cent, plus the amount of the state 5894
education aid offset, shall be credited to the general revenue 5895
fund, except that: 5896

(a) Four and two-tenths per cent of the sixty-three per cent 5897
shall be credited to the local government fund, for distribution 5898
in accordance with section 5747.50 of the Revised Code; and 5899

(b) Six-tenths of one per cent of the sixty-three per cent 5900
shall be credited to the local government revenue assistance fund, 5901
for distribution in accordance with section 5747.61 of the Revised 5902
Code. 5903

(2) Eleven and one-tenth per cent shall be credited to the 5904
local government property tax replacement fund, which is hereby 5905
created In the state treasury for the purpose of making the 5906
payments described in section 5727.86 of the Revised Code; 5907

(3) Twenty-five and nine-tenths per cent, less an amount 5908
equal to the state education aid offset, shall be credited to the 5909
school district property tax replacement fund, which is hereby 5910
created in the state treasury for the purpose of making the 5911
payments described in section 5727.85 of the Revised Code. 5912

(C) Not later than June 1, 2002, the tax commissioner shall 5913
certify to the department of education, for each school district, 5914
the taxable value of its non-transmission/distribution property 5915

for tax year 2001 determined as if that property had been assessed 5916
at the 1998 assessment rate, rather than at twenty-five per cent 5917
of true value. 5918

(D) Not later than July 31, 2002, the department of education 5919
shall determine, for each school district, the difference obtained 5920
by subtracting the amount described in division (D)(2) of this 5921
section from the amount described in division (D)(1) of this 5922
section, and certify that amount to the director of budget and 5923
management: 5924

(1) The state education aid computed for the district for 5925
fiscal year 2003; 5926

(2) The state education aid that would have been computed for 5927
the district for fiscal year 2003 if the district's adjusted total 5928
taxable value reflected the amount certified under division (C) of 5929
this section. 5930

Sec. 5727.85. (A) As used in this section: 5931

(1) "initial property tax loss" means the sum of the amounts 5932
computed for a school district under divisions (d)(1) and (2) of 5933
this section. 5934

(2) "current net revenue loss" means the amount computed for 5935
a school district under division (C)(2) of this section. 5936

(3) "consumer price index" means the consumer price index 5937
(all items, all urban consumers) prepared by the bureau of labor 5938
statistics of the United States department of labor. 5939

(4) "School district emergency levies" means tax levies 5940
imposed pursuant to section 5705.194 of the Revised Code. 5941

(B) not later than June 1, 2002, 2003, 2004, 2005, and 2006, 5942
the tax commissioner shall certify to the department of education 5943
all of the following for EACH school district: 5944

(1) THE DIFFERENCE OBTAINED BY subtracting the amount 5945
described in division (B)(1)(b) from the amount described in 5946
division (B)(1)(a) of this section. 5947

(a) THE TAXES that would have been CHARGED AND PAYABLE 5948
AGAINST NON-TRANSMISSION/DISTRIBUTION PROPERTY LISTED FOR TAXATION 5949
FOR the preceding TAX YEAR from fixed-rate levies determined as if 5950
that property had been assessed at the 1998 assessment rate rather 5951
than twenty-five per cent of true value; 5952

(b) THE TAXES CHARGED AND PAYABLE AGAINST 5953
NON-TRANSMISSION/DISTRIBUTION PROPERTY LISTED FOR TAXATION FOR the 5954
preceding TAX YEAR from fixed-rate levies. 5955

(2) The difference OBTAINED BY subtracting the amount 5956
described in division (b)(2)(b) from the amount described in 5957
division (B)(2)(a) of this section, and then subtracting from that 5958
difference the amount described in division (B)(2)(c) of this 5959
section: 5960

(a) THE TAXES that would have been CHARGED AND PAYABLE 5961
AGAINST NON-TRANSMISSION/DISTRIBUTION PROPERTY LISTED FOR TAXATION 5962
FOR the preceding TAX YEAR from fixed-sum levies determined as if 5963
that property had been assessed at the 1998 assessment rate rather 5964
than twenty-five per cent of true value; 5965

(b) THE TAXES CHARGED AND PAYABLE AGAINST 5966
NON-TRANSMISSION/DISTRIBUTION PROPERTY LISTED FOR TAXATION FOR the 5967
preceding TAX YEAR from fixed-sum levies; 5968

(c) for each fixed-sum levy imposed by the district in the 5969
preceding tax year, the total taxable value of the district in 5970
that year multiplied by one-fourth of one mill. 5971

(3) THE TAXABLE VALUE OF NON-TRANSMISSION/DISTRIBUTION 5972
PROPERTY FOR the preceding TAX YEAR determined as if THAT PROPERTY 5973
HAD BEEN ASSESSED AT the 1998 assessment rate rather than 5974

<u>twenty-five per cent of true value.</u>	5975
<u>(C) for fiscal years 2003, 2004, 2005, 2006, AND 2007, the</u>	5976
<u>department of education shall determine both of the following for</u>	5977
<u>each school district:</u>	5978
<u>(1) the difference obtained by subtracting the amount</u>	5979
<u>described in division (C)(1)(b) from the amount described in</u>	5980
<u>division (C)(1)(a) of this section:</u>	5981
<u>(a) the state education aid computed for the district FOR the</u>	5982
<u>FISCAL YEAR on the basis of the adjusted total taxable value;</u>	5983
<u>(b) the state education aid that would be computed for the</u>	5984
<u>district FOR the FISCAL year if the district's adjusted total</u>	5985
<u>taxable value reflected the amount certified under division (B)(3)</u>	5986
<u>of this section.</u>	5987
<u>(2) the difference obtained by subtracting the amount</u>	5988
<u>computed under division (C)(1) of this section from the sum of the</u>	5989
<u>amounts CERTIFIED under divisions (B)(1) and (2) of this section.</u>	5990
<u>the department of education shall certify the amount so DETERMINED</u>	5991
<u>to the director of budget and management not later than the</u>	5992
<u>thirty-first day of july following receipt of the tax</u>	5993
<u>commissioner's certification under division (b) of this section.</u>	5994
<u>(D) NOT LATER THAN JUNE 1, 2002, THE TAX COMMISSIONER SHALL</u>	5995
<u>DETERMINE the sum of the amounts described in divisions (D)(1) and</u>	5996
<u>(2) of this section FOR EACH school district:</u>	5997
<u>(1) THE DIFFERENCE OBTAINED BY subtracting the amount</u>	5998
<u>described in division (d)(1)(b) from the amount described in</u>	5999
<u>division (D)(1)(a) of this section.</u>	6000
<u>(a) THE SUM OF (i) THE TAXES CHARGED AND PAYABLE AGAINST</u>	6001
<u>non-transmission/distribution property LISTED FOR TAXATION FOR TAX</u>	6002
<u>YEAR 1998 from fixed-rate levies, excluding the portion of such</u>	6003
<u>taxes charged against NUCLEAR FUEL MATERIALS AND ASSEMBLIES, AND</u>	6004

(ii) the average of the annual TAXES CHARGED AND PAYABLE AGAINST 6005
NUCLEAR FUEL MATERIALS AND ASSEMBLIES LISTED FOR TAXATION FOR TAX 6006
YEARS 1996, 1997, and 1998 from fixed-rate levies; 6007

(b) THE sum of (i) THE TAXES that would have been CHARGED AND 6008
PAYABLE AGAINST non-transmission/distribution property LISTED FOR 6009
TAXATION FOR TAX YEAR 1998 from fixed-rate levies determined as if 6010
that property had been assessed at twenty-five per cent rather 6011
than the 1998 assessment rate, excluding the portion of such taxes 6012
charged against NUCLEAR FUEL MATERIALS AND ASSEMBLIES, AND (ii) 6013
the average of the annual TAXES that would have been CHARGED AND 6014
PAYABLE AGAINST NUCLEAR FUEL MATERIALS AND ASSEMBLIES LISTED FOR 6015
TAXATION FOR TAX YEARS 1996, 1997, and 1998 from fixed-rate levies 6016
determined as if that property had been assessed at twenty-five 6017
per cent rather than the 1998 assessment rate. 6018

(2) the difference OBTAINED BY subtracting the amount 6019
described in division (D)(2)(b) from the amount described in 6020
division (D)(2)(a) of this section: 6021

(a) THE SUM OF (i) THE TAXES CHARGED AND PAYABLE AGAINST 6022
NON-TRANSMISSION/DISTRIBUTION PROPERTY LISTED FOR TAXATION FOR TAX 6023
YEAR 1998 from fixed-sum levies, excluding the portion of such 6024
taxes charged against NUCLEAR FUEL MATERIALS AND ASSEMBLIES, AND 6025
(ii) the average of the annual TAXES CHARGED AND PAYABLE AGAINST 6026
NUCLEAR FUEL MATERIALS AND ASSEMBLIES LISTED FOR TAXATION FOR TAX 6027
YEARS 1996, 1997, and 1998 from fixed-sum levies; 6028

(b) THE sum of (i) THE TAXES that would have been CHARGED AND 6029
PAYABLE AGAINST NON-TRANSMISSION/DISTRIBUTION PROPERTY LISTED FOR 6030
TAXATION FOR TAX YEAR 1998 from fixed-sum levies determined as if 6031
that property had been assessed at twenty-five per cent rather 6032
than the 1998 assessment rate, excluding the portion of such taxes 6033
charged against NUCLEAR FUEL MATERIALS AND ASSEMBLIES, AND (ii) 6034
the average of the annual TAXES that would have been CHARGED AND 6035
PAYABLE AGAINST NUCLEAR FUEL MATERIALS AND ASSEMBLIES LISTED FOR 6036

TAXATION FOR TAX YEARS 1996, 1997, and 1998 from fixed-sum levies 6037
determined as if that property had been assessed at twenty-five 6038
per cent rather than the 1998 assessment rate. 6039

FOR THE PURPOSE OF DIVISIONS (D)(1) AND (2) OF THIS SECTION, 6040
TAXES CHARGED AND PAYABLE SHALL BE COMPUTED ON THE BASIS OF THE 6041
PRELIMINARY ASSESSMENT ISSUED PURSUANT TO SECTION 5727.23 OF THE 6042
REVISED CODE FOR THE TAX YEARS specified. 6043

(E)(1) not later than the thirty-first day of july of 2007 6044
through 2016, the department of education shall determine all of 6045
the following for each school district: 6046

(a) the difference obtained by subtracting the district's 6047
state education aid computed for fiscal year 2003 from the 6048
district's state education aid computed for the current fiscal 6049
year; 6050

(b) the inflation-adjusted property tax loss for the 6051
preceding calendar year. the inflation-adjusted property tax loss 6052
equals the initial property tax loss plus the product obtained by 6053
MULTIPLYING the initial property tax loss by the cumulative 6054
percentage increase in the consumer price index from January 1, 6055
2002, to the thirty-first day of December of the year preceding 6056
the determination. 6057

(c) the difference obtained by subtracting the amount 6058
computed under division (E)(1)(a) from the amount computed under 6059
division (E)(1)(b) of this section. 6060

(2) if the amount computed under division (E)(1)(c) of this 6061
section is greater than or equal to zero, no payment shall be made 6062
to the school district from the property tax replacement fund for 6063
the current or any ensuing fiscal year. 6064

(3) If the amount computed under division (E)(1)(c) of this 6065
section is less than zero, the department of education shall 6066
determine the district's current net revenue loss in the same 6067

manner as current net revenue loss is determined under division 6068
(C)(2) of this section, except that the department shall subtract 6069
from the current net revenue loss the amount of taxes charged from 6070
school district emergency levies, as certified by the tax 6071
commissioner. the department of education shall certify the 6072
resulting amount to the director of budget and management not 6073
later than the thirty-first day of July of each fiscal year 6074
beginning with fiscal year 2008 and ending with fiscal year 2017. 6075
the tax commissioner shall certify the quantities described in 6076
divisions (B)(1), (2), and (3) of this section to the DEPARTMENT 6077
of education as otherwise required by division (B) of this 6078
section, but for the tax year preceding the fiscal year for which 6079
the computation is made under this division. the tax commissioner 6080
also shall certify the taxes charged from school district 6081
emergency levies. 6082

(E) for fiscal years 2003 through 2016, the director of 6083
budget and management shall pay FROM the school district property 6084
tax replacement fund to the county undivided income tax fund in 6085
the proper county treasury one-half of the amount certified for 6086
that year under divisions (C)(2) and (E)(3) of this section on or 6087
before each of the days prescribed for the settlements under 6088
divisions (A) and (C) of section 321.24 of the Revised Code. the 6089
county treasurer shall distribute such amounts to the proper 6090
school district as if they had been levied and collected as taxes, 6091
and the school district shall apportion the amounts so received 6092
among its funds in the same proportions as if those amounts had 6093
been levied and collected as taxes. 6094

(G) not later than the thirty-first day of July of 2002 6095
through 2016, the tax COMMISSIONER shall determine, for each joint 6096
vocational school district, the sum of the amounts described in 6097
divisions (B)(1) and (2) of this section, and certify that sum to 6098
the director of budget and management. The director shall pay FROM 6099

the school district property tax replacement fund to the county 6100
undivided income tax fund in the proper county treasury one-half 6101
of the amount so certified for that year on or before each of the 6102
days prescribed for the settlements under divisions (A) and (C) of 6103
section 321.24 of the Revised Code. the county treasurer shall 6104
distribute such amounts to the proper joint vocational school 6105
district as if they had been levied and collected as taxes, and 6106
the joint vocational school district shall apportion the amounts 6107
so received among its funds in the same proportions as if those 6108
amounts had been levied and collected as taxes. 6109

6110

(H) if, in any fiscal year for which payments are made under 6111
division (F) or (G) of this section, the amount credited to the 6112
school district property tax replacement fund exceeds the amount 6113
so distributed, the director of budget and management shall 6114
distribute the excess among school districts and joint vocational 6115
school districts. the amount distributed to each district shall 6116
bear the same proportion to the excess remaining in the fund as 6117
the ADM of the district bears to the ADM of all of the districts. 6118
for the purpose of this division, "ADM" means the formula ADM in 6119
the case of a school district, and the average daily membership 6120
reported under section 3317.03 of the Revised Code in the case of 6121
a joint vocational school district. 6122

If, in the opinion of the director of budget and management, 6123
the excess remaining in the school district property tax 6124
replacement fund in any year is not sufficient to warrant 6125
distribution under this division, the excess shall remain to the 6126
credit of the fund. 6127

AMOUNTS RECEIVED BY A SCHOOL DISTRICT or joint vocational 6128
school district UNDER THIS DIVISION SHALL be used exclusively for 6129
capital IMPROVEMENTS. 6130

(I) if all or a part of the territory of a school district or 6131

joint vocational school district is merged with or transferred to 6132
another district, the tax commissioner shall adjust the payments 6133
made under this section to each of the districts in proportion to 6134
the taxable value of non-transmission/distribution property 6135
APPORTIONED to the merged or transferred territory pursuant to 6136
section 5727.15 of the Revised Code. 6137

(J) There is hereby created the electric property tax study 6138
Committee, effective January 1, 2011. The committee shall consist 6139
of the following seven members: the tax commissioner, three 6140
members of the senate appointed by the president of the senate, 6141
and three members of the house of representatives appointed by the 6142
speaker of the house of representatives. The appointments shall be 6143
made not later than January 31, 2011. The tax commissioner shall 6144
be the chairperson of the committee. 6145

The committee shall study the extent to which each school 6146
district or joint vocational school district has been compensated, 6147
under sections 5727.84 and 5727.85 of the Revised Code as enacted 6148
by _____ Bill No. _____ of the 123rd general assembly and any 6149
subsequent acts, for the property tax loss caused by the reduction 6150
in the assessment rates for electric and rural electric company 6151
tangible personal property. Not later than June 30, 2011, the 6152
committee shall issue a report of its findings, including any 6153
recommendations for providing additional compensation for the 6154
property tax loss or regarding remedial legislation, to the 6155
President of the Senate and the Speaker of the house of 6156
representatives, at which time the committee shall cease to exist. 6157

The Department of Taxation and department of education shall 6158
provide such information and assistance as is required for the 6159
committee to carry out its duties. 6160

Sec. 5727.86. (A) not later than the thirty-first day of july 6161
of 2002 through 2016, the tax commissioner shall determine, for 6162

each taxing DISTRICT, THE amounts described in divisions (A)(1) 6163
and (2) of this section: 6164

(1) THE DIFFERENCE OBTAINED BY subtracting the amount 6165
described in division (a)(1)(b) from the amount described in 6166
division (A)(1)(a) of this section. 6167

(a) THE TAXES that would have been CHARGED AND PAYABLE 6168
AGAINST NON-TRANSMISSION/DISTRIBUTION PROPERTY LISTED FOR TAXATION 6169
FOR the preceding TAX YEAR from fixed-rate levies determined as if 6170
that property had been assessed at the 1998 assessment rate rather 6171
than twenty-five per cent of true value; 6172

(b) THE TAXES CHARGED AND PAYABLE AGAINST 6173
NON-TRANSMISSION/DISTRIBUTION PROPERTY LISTED FOR TAXATION FOR the 6174
preceding TAX YEAR from fixed-rate levies. 6175

(2) the difference OBTAINED BY subtracting the amount 6176
described in division (A)(2)(b) from the amount described in 6177
division (a)(2)(a) of this section, and then subtracting from that 6178
difference the amount described in division (A)(2)(c) of this 6179
section: 6180

(a) THE TAXES that would have been CHARGED AND PAYABLE 6181
AGAINST NON-TRANSMISSION/DISTRIBUTION PROPERTY LISTED FOR TAXATION 6182
FOR the preceding TAX YEAR from fixed-sum levies determined as if 6183
that property had been assessed at the 1998 assessment rate rather 6184
than twenty-five per cent of true value; 6185

(b) THE TAXES CHARGED AND PAYABLE AGAINST 6186
NON-TRANSMISSION/DISTRIBUTION PROPERTY LISTED FOR TAXATION FOR the 6187
preceding TAX YEAR from fixed-sum levies; 6188

(c) for each fixed-sum levy imposed by the district in the 6189
preceding tax year, the total taxable value of the district for 6190
the preceding tax year multiplied by one-fourth of one mill. 6191

(B) not later than July 31, 2002, 2003, 2004, 2005, and 2006, 6192

the tax commissioner shall certify to the director of budget and 6193
management, for each taxing district, the sum of the amounts 6194
determined that year under divisions (A)(1) and (2) of this 6195
section. the director shall pay those sums in the manner 6196
prescribed by division (E) of this section. 6197

(C) not later than July 31, 2007, 2008, 2009, 2010, and 2011, 6198
the tax commissioner shall determine, for each taxing district, 6199
the sum of the amounts determined that year under divisions (A)(1) 6200
and (2) of this section, and shall certify an amount equal to 6201
eighty per cent of that sum to the director of budget and 6202
management. the director shall pay the amount certified in the 6203
manner prescribed by division (e) of this section. 6204

(d) not later than July 31, 2012, 2013, 2014, 2015, and 2016, 6206
the tax commissioner shall determine, for each taxing district, 6207
the sum of the amounts determined that year under divisions (a)(1) 6208
and (2) of this section, and shall certify an amount equal to the 6209
FOLLOWING percentage of that sum to the director of budget and 6210
management: 6211

<u>YEAR</u>	<u>PERCENTAGE</u>	
2012	66.7%	6212
2013	53.4%	6213
2014	40.1%	6214
2015	26.8%	6215
2016	13.5%	6216

The director shall pay the amount certified in the manner 6218
prescribed by division (E) of this section. 6219

(E) Payments required to be made under divisions (B), (C), 6220
and (D) of this section shall be paid FROM the local government 6221
property tax replacement fund to the county undivided income tax 6222
fund in the proper county treasury. one-half of the amount 6223
certified under those divisions shall be paid on or before each of 6224

the days prescribed for the settlements under divisions (A) and 6225
(C) of section 321.24 of the Revised Code. the county treasurer 6226
shall distribute such amounts to the proper taxing district as if 6227
they had been levied and collected as taxes, and the taxing 6228
district shall apportion the amounts so received among its funds 6229
in the same proportions as if those amounts had been levied and 6230
collected as taxes. 6231

(E) For each fiscal year that the tax commissioner determines 6232
that there is a balance in the local government property tax 6233
replacement fund that exceeds the total amount required to be paid 6234
to taxing districts under division (E) of this section, that 6235
balance shall be distributed to each county as follows: 6236
6237

(1) One-half shall be distributed to each county in 6238
proportion to each county's population; 6239

(2) One-half shall be distributed to each county in the 6240
proportion that the amount determined under division (B) of this 6241
section in 2002 for all taxing districts in the county is of the 6242
amounts so determined in 2002 for all taxing districts to which 6243
payments are required to be made under division (E) of this 6244
section. 6245

The amounts distributed to each county under this division 6246
shall be distributed each year by the county budget commission to 6247
each taxing district in the county in the proportion that the 6248
district's current taxes charged and payable are of the total 6249
current taxes charged and payable of all the taxing districts in 6250
the county. As used in this division, "current taxes charged and 6251
payable" means the taxes charged and payable as most recently 6252
determined for taxing districts in the county. 6253

(G) If all or a part of the territories of two or more taxing 6254
districts are merged, or UNiNCORPORATED territory of a township is 6255

annexed by a municipal CORPORATION, the tax commissioner shall 6256
adjust the payments made under this section to each of the taxing 6257
districts in proportion to the taxable value of 6258
non-transmission/distribution property APPORTIONED to the merged 6259
or annexed territory pursuant to section 5727.15 of the Revised 6260
Code, or as otherwise provided by a written agreement between the 6261
legislative authorities of the taxing districts certified to the 6262
tax commissioner not later than the first day of June of the 6263
calendar year in which the payment is to be made. 6264

Sec. 5727.87. (A) As used in this section: 6265

(1) "Administrative fees" means the dollar percentages 6266
allowed by the county auditor for services or by the county 6267
treasurer as fees, or paid to the credit of the real estate 6268
assessment fund, under divisions (A) and (B) of section 319.54 and 6269
division (A) of section 321.26 of the Revised Code. 6270

(2) "Administrative fee loss" means A county's loss of 6271
administrative fees caused by the reduction of the tangible 6272
personal property assessment rate under section 5727.111 of the 6273
Revised Code, as amended by Bill No. of the 123rd general 6274
assembly, determined as follows: 6275

(a) For purposes of the determination under division (B) of 6276
this section in years 2002 through 2006, the administrative fee 6277
loss shall be determined by subtracting from The dollar amount of 6278
administrative fees collected in the county for calendar year 6279
1998, the dollar amount of administrative fees that would have 6280
been collected in the county in calendar year 1998 if the tangible 6281
personal property of an electric company and a rural electric 6282
company were assessed at the rate required by section 5727.111 of 6283
the Revised Code, as amended by Bill No. of the 123rd 6284
general assembly. 6285

(b) For purposes of the determination under division (B) of 6286

this section in years 2007 through 2011, the Administrative fee 6287
loss shall be determined by subtracting from the dollar amount of 6288
administrative fees collected in the county in calendar year 1998, 6289
the dollar amount of administrative fees collected in the county 6290
in the current calendar year. 6291

(B) Not later than June 1, 2002 through 2011, the county 6292
auditor shall determine the administrative fee loss for the county 6293
and certify it to the county budget commission. Notwithstanding 6294
divisions (F) and (G) of section 5727.85 and division (E) of 6295
section 5727.86 of the Revised Code, prior to distribution by the 6296
county treasurer of the payments provided under those divisions, 6297
the county budget commission shall deduct from those payments the 6298
amount of the administrative fee loss certified by the county 6299
auditor, as follows: 6300

(1) Seventy per cent of the administrative fee loss shall be 6301
deducted from the payments provided under divisions (F) and (G) of 6302
section 5727.85 of the Revised Code; 6303

(2) Thirty per cent of the administrative fee loss shall be 6304
deducted from the payments provided under division (E) of section 6305
5727.86 of the Revised Code. 6306

(C) On or before each of the days prescribed for the 6307
settlements under divisions (A) and (C) of section 321.24 of the 6308
Revised Code in years 2002 through 2011, the county budget 6309
commission shall pay one-half of the amount of the administrative 6310
fee loss to the county auditor, county treasurer, or real estate 6311
assessment fund as if the amount had been allowed as 6312
administrative fees, and shall deposit the amount in the same 6313
funds as if allowed as administrative fees. 6314

After payment of the administrative fee loss on or before 6315
August 10, 2011, all payments under this section shall cease. 6316

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 6347
authorized agent having knowledge of the facts, the assessment is 6348
final and the amount of the assessment is due and payable from the 6349
party assessed to the treasurer of state. The petition shall 6350
indicate the objections of the party assessed, but additional 6351
objections may be raised in writing prior to the date shown on the 6352
final determination of the tax commissioner. The commissioner 6353
shall grant the petitioner a hearing on the petition, unless 6354
waived by the petitioner. 6355

(C) The commissioner may make any correction to the 6356
assessment that the commissioner finds proper and shall issue a 6357
final determination thereon. The commissioner shall serve a copy 6358
of the final determination on the petitioner either by personal 6359
service or by certified mail, and the commissioner's decision in 6360
the matter is final, subject to appeal under section 5717.02 of 6361
the Revised Code. 6362

(D) After an assessment becomes final, if any portion of the 6363
assessment, including accrued interest, remains unpaid, a 6364
certified copy of the commissioner's entry making the assessment 6365
final may be filed in the office of the clerk of the court of 6366
common pleas in the county in which the party assessed resides or 6367
in which the party's business is conducted. If the party assessed 6368
maintains no place of business in this state and is not a resident 6369
of this state, the certified copy of the entry may be filed in the 6370
office of the clerk of the court of common pleas of Franklin 6371
county. 6372

The clerk, immediately upon the filing of the entry, shall 6373
enter a judgment for the state against the person assessed in the 6374
amount shown on the entry. The judgment may be filed by the clerk 6375
in a loose-leaf book entitled "special judgments for the 6376
kilowatt-hour tax," and shall have the same effect as other 6377
judgments. Execution shall issue upon the judgment upon request of 6378

the tax commissioner, and all laws applicable to sales on 6379
execution shall apply to sales made under the judgment. 6380

The portion of the assessment not paid within thirty days 6381
after the day the assessment was issued shall bear interest at the 6382
rate per annum prescribed by section 5703.47 of the Revised Code 6383
from the day the tax commissioner issues the assessment until the 6384
day the assessment is paid. Interest shall be paid in the same 6385
manner as the tax and may be collected by the issuance of an 6386
assessment under this section. 6387

(E) If the tax commissioner believes that collection of the 6388
tax imposed by section 5727.81 of the Revised Code will be 6389
jeopardized unless proceedings to collect or secure collection of 6390
the tax are instituted without delay, the commissioner may issue a 6391
jeopardy assessment against the electric distribution company 6392
liable for the tax. Upon issuance of the jeopardy assessment, the 6393
commissioner immediately shall file an entry with the clerk of the 6394
court of common pleas in the manner prescribed by division (D) of 6395
this section. Notice of the jeopardy assessment shall be served on 6396
the party assessed or the party's legal representative within five 6397
days of the filing of the entry with the clerk. The total amount 6398
assessed is immediately due and payable, unless the party assessed 6399
files a petition for reassessment in accordance with division (B) 6400
of this section and provides security in a form satisfactory to 6401
the commissioner and in an amount sufficient to satisfy the unpaid 6402
balance of the assessment. Full or partial payment of the 6403
assessment does not prejudice the commissioner's consideration of 6404
the petition for reassessment. 6405

(F) All money collected by the tax commissioner under this 6406
section shall be paid to the treasurer of state, and when paid 6407
shall be considered as revenue arising from the tax imposed by 6408
section 5727.81 of the Revised Code. 6409

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 6440
state or any charge, penalty, or interest arising from such a tax 6441
or fee, the amount refundable may be applied in satisfaction of 6442
the debt. If the amount refundable is less than the amount of the 6443
debt, it may be applied in partial satisfaction of the debt. If 6444
the amount refundable is greater than the amount of the debt, the 6445
amount remaining after satisfaction of the debt shall be refunded. 6446
If the electric distribution company has more than one such debt, 6447
any debt subject to section 5739.33 or division (G) of section 6448
5747.07 of the Revised Code shall be satisfied first. This section 6449
applies only to debts that have become final. 6450

(C) Any electric distribution company that can substantiate 6451
to the tax commissioner that the tax imposed by section 5727.81 of 6452
the Revised Code was paid on electricity ultimately consumed at a 6453
location outside of this state may claim a refund in the manner 6454
and within the time period prescribed in division (A) of this 6455
section. 6456

Sec. 5727.92. Every electric distribution company liable for 6457
the tax imposed by section 5727.81 of the Revised Code shall keep 6458
complete and accurate records of all electric distributions and 6459
other records as required by rule of the tax commissioner. The 6460
records shall be preserved for four years after the return for the 6461
taxes to which the records pertain is due or filed, whichever is 6462
later. The company shall make the records available for inspection 6463
by the tax commissioner or the commissioner's authorized agent, 6464
upon request of the commissioner or such agent. 6465

Sec. 5727.93. (A) No person shall distribute electricity to a 6466
meter of an end user in this state who is not registered with the 6467
tax commissioner as an electric distribution company. 6468

(B) Each person required to register under division (A) of 6469

this section shall register prior to distributing electricity to a 6470
meter of an end user in this state. The tax commissioner shall 6471
prescribe the form of the registration application. The 6472
commissioner shall assign an identification number to each 6473
registration and notify the registrant of that number. The 6474
registration shall remain in effect until canceled in writing by 6475
the registrant upon the cessation of distributing electricity to a 6476
meter of an end user in this state or until such registration is 6477
denied, revoked, or canceled by the commissioner. A registration 6478
may be revoked or canceled by the tax commissioner as provided by 6479
Chapter 119. of the Revised Code, for failure of an electric 6480
distribution company to pay the tax imposed by section 5727.81 of 6481
the Revised Code or to comply with sections 5727.80 to 5727.95 of 6482
the Revised Code. An electric distribution company whose 6483
registration is denied may petition for a hearing, in accordance 6484
with the procedures set forth in divisions (B) and (C) of section 6485
5727.89 of the Revised Code, not later than thirty days after 6486
receiving the denial, and the final determination is subject to 6487
appeal under section 5717.02 of the Revised Code. 6488

(C) The tax commissioner shall maintain a list of the 6489
electric distribution companies registered under this section. The 6490
list shall contain the name and address of each company registered 6491
by the commissioner. The list and subsequent updates of it may be 6492
furnished to companies on the list and shall be open to public 6493
inspection in the office of the tax commissioner. 6494

Sec. 5727.94. Each electric distribution company required to 6495
pay the tax imposed by section 5727.81 of the Revised Code shall 6496
provide to its customers in this state the statement required by 6497
section 4933.33 of the Revised Code. 6498

Sec. 5727.95. (A) No electric distribution company shall fail 6499
to file any return or report required to be filed pursuant to 6500

section 5727.82 of the Revised Code, or file or cause to be filed 6501
any incomplete, false, or fraudulent return, report, or statement, 6502
or aid or abet another in the filing of any false or fraudulent 6503
return, report, or statement. 6504

(B) No person shall distribute electricity to a meter of an 6505
end user in this state without holding a valid registration issued 6506
under section 5727.93 of the Revised Code. 6507

Sec. 5727.99. (A) Whoever violates section 5727.55 of the 6508
Revised Code shall be ~~fines~~ fined not less than one hundred nor 6509
more than one thousand dollars. 6510

(B) Whoever violates section 5727.71 of the Revised Code 6511
shall be fined not more than five hundred dollars and imprisoned 6512
not more than thirty days. 6513

(C) Whoever violates section 5727.72 or 5727.73 of the 6514
Revised Code shall be fined not more than five hundred dollars or 6515
imprisoned not more than thirty days, or both. 6516

(D) Whoever violates sections 5727.80 to 5727.83, or sections 6517
5727.88 to 5727.95 of the Revised Code or any rule adopted by the 6518
tax commissioner under those sections, is guilty of a misdemeanor 6519
of the first degree on the first offense; on each subsequent 6520
offense, the person is guilty of a felony of the fourth degree. 6521
6522

Sec. 5733.04. As used in this chapter: 6523

(A) "Issued and outstanding shares of stock" applies to 6524
nonprofit corporations, as provided in section 5733.01 of the 6525
Revised Code, and includes, but is not limited to, membership 6526
certificates and other instruments evidencing ownership of an 6527
interest in such nonprofit corporations, and with respect to a 6528
financial institution ~~which~~ that does not have capital stock, 6529

"issued and outstanding shares of stock" includes, but is not 6530
limited to, ownership interests of depositors in the capital 6531
employed in such an institution. 6532

(B) "Taxpayer" means a corporation subject to the tax imposed 6533
by section 5733.06 of the Revised Code. 6534

(C) "Resident" means a corporation organized under the laws 6535
of this state. 6536

(D) "Commercial domicile" means the principal place from 6537
which the trade or business of the taxpayer is directed or 6538
managed. 6539

(E) "Taxable year" means the period prescribed by division 6540
(A) of section 5733.031 of the Revised Code upon the net income of 6541
which the value of the taxpayer's issued and outstanding shares of 6542
stock is determined under division (B) of section 5733.05 of the 6543
Revised Code or the period prescribed by division (A) of section 6544
5733.031 of the Revised Code that immediately precedes the date as 6545
of which the total value of the corporation is determined under 6546
division (A) or (C) of section 5733.05 of the Revised Code. 6547

(F) "Tax year" means the calendar year in and for which the 6548
tax imposed by section 5733.06 of the Revised Code is required to 6549
be paid. 6550

(G) "Internal Revenue Code" means the "Internal Revenue Code 6551
of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 6552

(H) "Federal income tax" means the income tax imposed by the 6553
Internal Revenue Code. 6554

(I) Except as provided in section 5733.058 of the Revised 6555
Code, "net income" means the taxpayer's taxable income before 6556
operating loss deduction and special deductions, as required to be 6557
reported for the taxpayer's taxable year under the Internal 6558
Revenue Code, subject to the following adjustments: 6559

(1)(a) Deduct any net operating loss incurred in any taxable 6560
years ending in 1971 or thereafter but exclusive of any net 6561
operating loss incurred in taxable years ending prior to January 6562
1, 1971. This deduction shall not be allowed in any tax year 6563
commencing before December 31, 1973, but shall be carried over and 6564
allowed in tax years commencing after December 31, 1973, until 6565
fully utilized in the next succeeding taxable year or years in 6566
which the taxpayer has net income, but in no case for more than 6567
the designated carryover period as described in division (I)(1)(b) 6568
of this section. The amount of such net operating loss, as 6569
determined under the allocation and apportionment provisions of 6570
section 5733.051 and division (B) of section 5733.05 of the 6571
Revised Code for the year in which the net operating loss occurs, 6572
shall be deducted from net income, as determined under the 6573
allocation and apportionment provisions of section 5733.051 and 6574
division (B) of section 5733.05 of the Revised Code, to the extent 6575
necessary to reduce net income to zero with the remaining unused 6576
portion of the deduction, if any, carried forward to the remaining 6577
years of the designated carryover period as described in division 6578
(I)(1)(b) of this section, or until fully utilized, whichever 6579
occurs first. 6580

(b) For losses incurred in taxable years ending on or before 6581
December 31, 1981, the designated carryover period shall be the 6582
five consecutive taxable years after the taxable year in which the 6583
net operating loss occurred. For losses incurred in taxable years 6584
ending on or after January 1, 1982, the designated carryover 6585
period shall be the fifteen consecutive taxable years after the 6586
taxable year in which the net operating loss occurs. 6587

(c) The tax commissioner may require a taxpayer to furnish 6588
any information necessary to support a claim for deduction under 6589
division (I)(1)(a) of this section and no deduction shall be 6590
allowed unless the information is furnished. 6591

(2) Deduct any amount included in net income by application 6592
of section 78 or 951 of the Internal Revenue Code, amounts 6593
received for royalties, technical or other services derived from 6594
sources outside the United States, and dividends received from a 6595
subsidiary, associate, or affiliated corporation that neither 6596
transacts any substantial portion of its business nor regularly 6597
maintains any substantial portion of its assets within the United 6598
States. For purposes of determining net foreign source income 6599
deductible under division (I)(2) of this section, the amount of 6600
gross income from all such sources other than income derived by 6601
application of section 78 or 951 of the Internal Revenue Code 6602
shall be reduced by: 6603

(a) The amount of any reimbursed expenses for personal 6604
services performed by employees of the taxpayer for the 6605
subsidiary, associate, or affiliated corporation; 6606

(b) Ten per cent of the amount of royalty income and 6607
technical assistance fees; 6608

(c) Fifteen per cent of the amount of dividends and all other 6609
income. 6610

The amounts described in divisions (I)(2)(a) to (c) of this 6611
section are deemed to be the expenses attributable to the 6612
production of deductible foreign source income unless the taxpayer 6613
shows, by clear and convincing evidence, less actual expenses, or 6614
the tax commissioner shows, by clear and convincing evidence, more 6615
actual expenses. 6616

(3) Add any loss or deduct any gain resulting from the sale, 6617
exchange, or other disposition of a capital asset, or an asset 6618
described in section 1231 of the Internal Revenue Code, to the 6619
extent that such loss or gain occurred prior to the first taxable 6620
year on which the tax provided for in section 5733.06 of the 6621
Revised Code is computed on the corporation's net income. For 6622

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, 6654
whether or not the utility is doing business in the state. 6655

(8) To the extent not otherwise allowed, deduct any dividends 6656
received by a taxpayer from an insurance company, if the taxpayer 6657
owns at least eighty per cent of the issued and outstanding common 6658
stock of the insurance company. As used in division (I)(8) of this 6659
section, "insurance company" means an insurance company ~~which~~ that 6660
is taxable under Chapter 5725. or 5729. of the Revised Code. 6661
6662

(9) Deduct expenditures for modifying existing buildings or 6663
structures to meet American national standards institute standard 6664
A-117.1-1961 (R-1971), as amended; provided, that no deduction 6665
shall be allowed to the extent that such deduction is not 6666
permitted under federal law or under rules of the tax 6667
commissioner. Those deductions as are allowed may be taken over a 6668
period of five years. The tax commissioner shall adopt rules under 6669
Chapter 119. of the Revised Code establishing reasonable 6670
limitations on the extent that expenditures for modifying existing 6671
buildings or structures are attributable to the purpose of making 6672
the buildings or structures accessible to and usable by physically 6673
handicapped persons. 6674

(10) Deduct the amount of wages and salaries, if any, not 6675
otherwise allowable as a deduction but that would have been 6676
allowable as a deduction in computing federal taxable income 6677
before operating loss deduction and special deductions for the 6678
taxable year, had the targeted jobs credit allowed and determined 6679
under sections 38, 51, and 52 of the Internal Revenue Code not 6680
been in effect. 6681

(11) Deduct net interest income on obligations of the United 6682
States and its territories and possessions or of any authority, 6683
commission, or instrumentality of the United States to the extent 6684

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, 6717
exchange, or disposition by either the taxpayer or by a related 6718
entity that was a taxpayer at any time during the related entity's 6719
ownership or use of such property, unless the gain or loss has 6720
been included in computing the federal taxable income before 6721
operating loss deduction and special deductions of another 6722
taxpayer with a more closely related ownership or use of such 6723
intangible property. The amount of gain added or loss deducted 6724
shall not exceed the product obtained by multiplying such gain or 6725
loss by the taxpayer's proportionate share, directly, indirectly, 6726
beneficially, or constructively, of the outstanding stock of the 6727
related entity immediately prior to the direct or indirect sale, 6728
exchange, or other disposition. 6729

(c) As used in division (I)(12) of this section, "related 6730
entity" means those entities described in divisions (I)(12)(c)(i) 6731
to (iii) of this section: 6732

(i) An individual stockholder, or a member of the 6733
stockholder's family enumerated in section 318 of the Internal 6734
Revenue Code, if the stockholder and the members of the 6735
stockholder's family own, directly, indirectly, beneficially, or 6736
constructively, in the aggregate, at least fifty per cent of the 6737
value of the taxpayer's outstanding stock; 6738

(ii) A stockholder, or a stockholder's partnership, estate, 6739
trust, or corporation, if the stockholder and the stockholder's 6740
partnerships, estates, trusts, and corporations own directly, 6741
indirectly, beneficially, or constructively, in the aggregate, at 6742
least fifty per cent of the value of the taxpayer's outstanding 6743
stock; 6744

(iii) A corporation, or a party related to the corporation in 6745
a manner that would require an attribution of stock from the 6746
corporation to the party or from the party to the corporation 6747

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	6839
this section;	6840
(ii) The collection and distribution of income from such	6841
property.	6842
(c) The corporation is not a financial institution on the	6843
last day of the taxable year ending prior to the first day of the	6844
tax year;	6845
(d) The corporation's related members make a good faith and	6846
reasonable effort to make timely and fully the adjustments	6847
required by division (C)(2) of section 5733.05 of the Revised Code	6848
and to pay timely and fully all uncontested taxes, interest,	6849
penalties, and other fees and charges imposed under this chapter;	6850
(e) Subject to division (L)(4) of this section, the	6851
corporation elects to be treated as a qualifying holding company	6852
for the tax year.	6853
A corporation otherwise satisfying divisions (L)(1)(a) to (e)	6854
of this section that does not elect to be a qualifying holding	6855
company is not a qualifying holding company for the purposes of	6856
this chapter.	6857
(2)(a)(i) For purposes of making the ninety per cent	6858
computation under division (L)(1)(a) of this section, the net book	6859
value of the corporation's assets shall not include the net book	6860
value of aircraft or real property described in division	6861
(L)(1)(b)(i) of this section.	6862
(ii) For purposes of making the fifty per cent computation	6863
under division (L)(1)(a) of this section, the net book value of	6864
assets shall include the net book value of aircraft or real	6865
property described in division (L)(1)(b)(i) of this section.	6866
(b)(i) As used in division (L) of this section, "intangible	6867
asset" includes, but is not limited to, the corporation's direct	6868

interest in each pass-through entity only if at all times during 6869
the corporation's taxable year ending prior to the first day of 6870
the tax year the corporation's and the corporation's related 6871
members' combined direct and indirect interests in the capital or 6872
profits of such pass-through entity do not exceed fifty per cent. 6873
If the corporation's interest in the pass-through entity is an 6874
intangible asset for that taxable year, then the distributive 6875
share of any income from the pass-through entity shall be income 6876
from an intangible asset for that taxable year. 6877

(ii) If a corporation's and the corporation's related 6878
members' combined direct and indirect interests in the capital or 6879
profits of a pass-through entity exceed fifty per cent at any time 6880
during the corporation's taxable year ending prior to the first 6881
day of the tax year, "intangible asset" does not include the 6882
corporation's direct interest in the pass-through entity, and the 6883
corporation shall include in its assets its proportionate share of 6884
the assets of any such pass-through entity and shall include in 6885
its gross income its distributive share of the gross income of 6886
such pass-through entity in the same form as was earned by the 6887
pass-through entity. 6888

(iii) A pass-through entity's direct or indirect 6889
proportionate share of any other pass-through entity's assets 6890
shall be included for the purpose of computing the corporation's 6891
proportionate share of the pass-through entity's assets under 6892
division (L)(2)(b)(ii) of this section, and such pass-through 6893
entity's distributive share of any other pass-through entity's 6894
gross income shall be included for purposes of computing the 6895
corporation's distributive share of the pass-through entity's 6896
gross income under division (L)(2)(b)(ii) of this section. 6897

(c) For the purposes of divisions (L)(1)(b)(i), (1)(b)(ii), 6898
(2)(a)(i), and (2)(a)(ii) of this section, real property is 6899
described in division (L)(2)(c) of this section only if all of the 6900

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 6931
the corporation; 6932

(e) The corporation's related members comply with division 6933
(L)(1)(d) of this section. 6934

Nothing in division (L)(4) of this section shall be construed 6935
to extend any statute of limitations set forth in this chapter. 6936

(M) "Qualifying controlled group" means two or more 6937
corporations that satisfy the ownership and control requirements 6938
of division (A) of section 5733.052 of the Revised Code. 6939

(N) "Limited liability company" means any limited liability 6940
company formed under Chapter 1705. of the Revised Code or under 6941
the laws of any other state. 6942

(O) "Pass-through entity" means a corporation that has made 6943
an election under subchapter S of Chapter 1 of Subtitle A of the 6944
Internal Revenue Code for its taxable year under that code, or a 6945
partnership, limited liability company, or any other person, other 6946
than an individual, trust, or estate, if the partnership, limited 6947
liability company, or other person is not classified for federal 6948
income tax purposes as an association taxed as a corporation. 6949

(P) "Electric company" has the same meaning as in section 6950
5727.01 of the Revised Code. 6951

Sec. 5733.05. As used in this section, "qualified research" 6952
means laboratory research, experimental research, and other 6953
similar types of research; research in developing or improving a 6954
product; or research in developing or improving the means of 6955
producing a product. It does not include market research, consumer 6956
surveys, efficiency surveys, management studies, ordinary testing 6957
or inspection of materials or products for quality control, 6958
historical research, or literary research. "Product" as used in 6959
this paragraph does not include services or intangible property. 6960

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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.

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(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.

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(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:

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(1) The net income allocated to this state as provided by
section 5733.051 of the Revised Code.

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(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

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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. 7054

(c) The sales factor is a fraction the numerator of which is 7055
the total sales in this state by the corporation during the 7056
taxable year, and the denominator of which is the total sales by 7057
the corporation everywhere during such year. In determining the 7058
numerator and denominator of the sales factor, receipts from the 7059
sale or other disposal of a capital asset or an asset described in 7060
section 1231 of the Internal Revenue Code shall be eliminated. 7061
Also, in determining the numerator and denominator of the sales 7062
factor, in the case of a reporting corporation owning at least 7063
eighty per cent of the issued and outstanding common stock of one 7064
or more ~~public utilities or insurance companies or public~~ 7065
utilities, except an electric company, or owning at least 7066
twenty-five per cent of the issued and outstanding common stock of 7067
one or more financial institutions, receipts received by the 7068
reporting corporation from such utilities, insurance companies, 7069
and financial institutions shall be eliminated. 7070

For the purpose of this section and section 5733.03 of the 7071
Revised Code, sales of tangible personal property are in this 7072
state where such property is received in this state by the 7073
purchaser. In the case of delivery of tangible personal property 7074
by common carrier or by other means of transportation, the place 7075
at which such property is ultimately received after all 7076
transportation has been completed shall be considered as the place 7077
at which such property is received by the purchaser. Direct 7078
delivery in this state, other than for purposes of transportation, 7079
to a person or firm designated by a purchaser constitutes delivery 7080
to the purchaser in this state, and direct delivery outside this 7081
state to a person or firm designated by a purchaser does not 7082
constitute delivery to the purchaser in this state, regardless of 7083
where title passes or other conditions of sale. 7084

For the purposes of this section and section 5733.03 of the 7085

Revised Code, sales of electricity and the transmission and 7086
distribution of electricity by an electric company shall be 7087
treated as a sale of service and not as a sale of tangible 7088
personal property. 7089

Sales, other than sales of tangible personal property, are in 7090
this state if either: 7091

(i) The income-producing activity is performed solely in this 7092
state; 7093

(ii) The income-producing activity is performed both within 7094
and without this state and a greater proportion of the 7095
income-producing activity is performed within this state than in 7096
any other state, based on costs of performance. 7097

(d) If the allocation and apportionment provisions of 7098
division (B) of this section do not fairly represent the extent of 7099
the taxpayer's business activity in this state, the taxpayer may 7100
request, which request must be in writing and must accompany the 7101
report, timely filed petition for reassessment, or timely filed 7102
amended report, or the tax commissioner may require, in respect to 7103
all or any part of the taxpayer's allocated or apportioned base, 7104
if reasonable, any one or more of the following: 7105

(i) Separate accounting; 7106

(ii) The exclusion of any one or more of the factors; 7107

(iii) The inclusion of one or more additional factors ~~which~~ 7108
that will fairly represent the taxpayer's allocated or apportioned 7109
base in this state. 7110

An alternative method will be effective only with approval by 7111
the tax commissioner. 7112

Nothing in this section shall be construed to extend any 7113
statute of limitations set forth in this chapter. 7114

(C)(1) Subject to divisions (C)(2) and (3) of this section, 7115

the total value, as shown on the books of each corporation that is 7116
not a qualified holding company, of the net book value of a 7117
corporation's assets less the net carrying value of its 7118
liabilities. For the purposes of determining that total value, any 7119
reserves shown on the corporation's books shall be considered 7120
liabilities or contra assets, except for any reserves that are 7121
deemed appropriations of retained earnings under generally 7122
accepted accounting principles. 7123

(2)(a) If, on the last day of the taxpayer's taxable year 7124
preceding the tax year, the taxpayer is a related member to a 7125
corporation that elects to be a qualifying holding company for the 7126
tax year beginning after the last day of the taxpayer's taxable 7127
year, or if, on the last day of the taxpayer's taxable year 7128
preceding the tax year, a corporation that elects to be a 7129
qualifying holding company for the tax year beginning after the 7130
last day of the taxpayer's taxable year is a related member to the 7131
taxpayer, then the taxpayer's total value shall be adjusted by the 7132
qualifying amount. Except as otherwise provided under division 7133
(C)(2)(b) of this section, "qualifying amount" means the amount 7134
that, when added to the taxpayer's total value, and when 7135
subtracted from the net carrying value of the taxpayer's 7136
liabilities computed without regard to division (C)(2) of this 7137
section, or when subtracted from the taxpayer's total value and 7138
when added to the net carrying value of the taxpayer's liabilities 7139
computed without regard to division (C)(2) of this section, 7140
results in the taxpayer's debt-to-equity ratio equaling the 7141
debt-to-equity ratio of the qualifying controlled group on the 7142
last day of the taxable year ending prior to the first day of the 7143
tax year computed on a consolidated basis in accordance with 7144
general accepted accounting principles. For the purposes of 7145
division (C)(2)(a) of this section, the corporation's total value, 7146
after the adjustment required by that division, shall not exceed 7147

the net book value of the corporation's assets. 7148

(b)(i) The amount added to the taxpayer's total value and 7149
subtracted from the net carrying value of the taxpayer's 7150
liabilities shall not exceed the amount of the net carrying value 7151
of the taxpayer's liabilities owed to the taxpayer's related 7152
members. 7153

(ii) A liability owed to the taxpayer's related members 7154
includes, but is not limited to, any amount that the corporation 7155
owes to a person that is not a related member if the corporation's 7156
related member or related members in whole or in part guarantee 7157
any portion or all of that amount, or pledge, hypothecate, 7158
mortgage, or carry out any similar transactions to secure any 7159
portion or all of that amount. 7160

(3) The base upon which the tax is levied under division (C) 7161
of section 5733.06 of the Revised Code shall be computed by 7162
multiplying the amount determined under divisions (C)(1) and (2) 7163
of this section by the fraction determined under divisions 7164
(B)(2)(a) to (c) of this section and, if applicable, divisions 7165
(B)(2)(d)(ii) to (iv) of this section but without regard to 7166
section 5733.052 of the Revised Code. 7167

(4) For purposes of division (C) of this section, "related 7168
member" has the same meaning as in division (A)(6) of section 7169
5733.042 of the Revised Code without regard to division (B) of 7170
that section. 7171

Sec. 5733.06. The tax hereby charged each corporation subject 7172
to this chapter shall be the greater of the sum of divisions (A) 7173
and (B) of this section, after the reduction, if any, provided by 7174
division (J) of this section, or division (C) of this section, 7175
~~whichever is greater~~ after the reduction, if any, provided by 7176
division (J) of this section, except that the tax hereby charged 7177

each financial institution subject to this chapter shall be the 7178
amount computed under division (D) of this section: 7179

(A) Except as set forth in division (F) of this section, five 7180
and one-tenth per cent upon the first fifty thousand dollars of 7181
the value of the taxpayer's issued and outstanding shares of stock 7182
as determined under division (B) of section 5733.05 of the Revised 7183
Code; 7184

(B) Except as set forth in division (F) of this section, 7185
eight and one-half per cent upon the value so determined in excess 7186
of fifty thousand dollars; or 7187

(C) Except as otherwise provided under division (G) of this 7188
section, four mills times that portion of the value of the issued 7189
and outstanding shares of stock as determined under division (C) 7190
of section 5733.05 of the Revised Code. For the purposes of 7191
division (C) of this section, division (C)(2) of section 5733.065, 7192
and division (C) of section 5733.066 of the Revised Code, the 7193
value of the issued and outstanding shares of stock of a qualified 7194
holding company is zero. 7195

(D) The tax charged each financial institution subject to 7196
this chapter shall be that portion of the value of the issued and 7197
outstanding shares of stock as determined under division (A) of 7198
section 5733.05 of the Revised Code, multiplied by the following 7199
amounts: 7200

(1) For tax years prior to the 1999 tax year, fifteen mills; 7201

(2) For the 1999 tax year, fourteen mills; 7202

(3) For tax year 2000 and thereafter, thirteen mills. 7203

(E) No tax shall be charged from any corporation ~~which~~ that 7204
has been adjudicated bankrupt, or for which a receiver has been 7205
appointed, or ~~which~~ that has made a general assignment for the 7206
benefit of creditors, except for the portion of the then current 7207

tax year during which the tax commissioner finds such corporation 7208
had the power to exercise its corporate franchise unimpaired by 7209
such proceedings or act. The minimum payment for all corporations 7210
shall be fifty dollars. 7211

The tax charged to corporations under this chapter for the 7212
privilege of engaging in business in this state, which is an 7213
excise tax levied on the value of the issued and outstanding 7214
shares of stock, shall in no manner be construed as prohibiting or 7215
otherwise limiting the powers of municipal corporations, joint 7216
economic development zones created under section 715.691 of the 7217
Revised Code, and joint economic development districts created 7218
under section 715.70 or 715.71 or sections 715.72 to 715.81 of the 7219
Revised Code in this state to impose an income tax on the income 7220
of such corporations. 7221

(F) If two or more taxpayers satisfy the ownership or control 7222
requirements of division (A) of section 5733.052 of the Revised 7223
Code, each such taxpayer shall substitute "the taxpayer's pro-rata 7224
amount" for "fifty thousand dollars" in divisions (A) and (B) of 7225
this section. For purposes of this division, "the taxpayer's 7226
pro-rata amount" is an amount that, when added to the other such 7227
taxpayers' pro-rata amounts, does not exceed fifty thousand 7228
dollars. For the purpose of making that computation, the 7229
taxpayer's pro-rata amount shall not be less than zero. Nothing in 7230
this division derogates from or eliminates the requirement to make 7231
the alternative computation of tax under division (C) of this 7232
section. 7233

(G) The tax liability of any corporation under division (C) 7234
of this section shall not exceed one hundred fifty thousand 7235
dollars. 7236

(H)(1) For the purposes of division (H) of this section, 7237
"exiting corporation" means a corporation that satisfies all of 7238
the following conditions: 7239

(a) The corporation had nexus with or in this state under the Constitution of the United States during any portion of a calendar year; 7240
7241
7242

(b) The corporation was not a taxpayer on the first day of January immediately following that calendar year; 7243
7244

(c) The corporation was not a financial institution on the first day of January immediately following that calendar year; 7245
7246

(d) The corporation was not a transferor as defined in section 5733.053 of the Revised Code during any portion of that calendar year; 7247
7248
7249

(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; 7250
7251
7252
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(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. 7255
7256
7257
7258
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7260

(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. 7261
7262
7263
7264
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(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 7267
7268
7269

5733.051 and, if applicable, section 5733.052 of the Revised Code. 7270
The exiting corporation then shall compute the tax due on its 7271
unreported net income allocated and apportioned to this state by 7272
applying divisions (A), (B), and (F) of this section to that 7273
income. 7274

(4) Divisions (C) and (G) of this section, division (D)(2) of 7275
section 5733.065, and division (C) of section 5733.066 of the 7276
Revised Code do not apply to an exiting corporation, but exiting 7277
corporations are subject to every other provision of this chapter. 7278

(5) Notwithstanding sections 5733.02, 5733.021, and 5733.03 7279
of the Revised Code to the contrary, each exiting corporation 7280
shall report and pay the tax due under division (H) of this 7281
section on or before the thirty-first day of May immediately 7282
following the calendar year referred to in division (H)(1)(a) of 7283
this section. The exiting corporation shall file that report on 7284
the form most recently prescribed by the tax commissioner for the 7285
purposes of complying with sections 5733.02 and 5733.03 of the 7286
Revised Code. Upon request by the corporation, the tax 7287
commissioner may extend the date for filing the report. 7288

(6) The tax commissioner may adopt rules governing division 7289
(H) of this section. 7290

(I) Any reference in the Revised Code to "the tax imposed by 7291
section 5733.06 of the Revised Code" or "the tax due under section 7292
5733.06 of the Revised Code" includes the taxes imposed under 7293
sections 5733.065 and 5733.066 of the Revised Code. 7294

(J)(1) Division (J) of this section applies solely to a 7295
corporation directly or indirectly providing public utility 7296
services as a heating company or a natural gas company, or both, 7297
for its tax year immediately following the year upon which its 7298
taxable gross receipts are subject to the excise tax imposed by 7299
section 5727.30 of the Revised Code. Section 5733.057 of the 7300

Revised Code shall apply when calculating the adjustments required 7301
by division (J) of this section. 7302

(2) Subject to division (J)(4) of this section, the total tax 7303
calculated in divisions (A) and (B) of this section shall be 7304
reduced by an amount calculated by multiplying such tax by a 7305
fraction, the numerator of which is the total taxable gross 7306
receipts attributed to providing public utility service as a 7307
heating company or natural gas company, or both, under section 7308
5727.03 of the Revised Code for the year upon which the taxable 7309
gross receipts are measured immediately preceding the tax year, 7310
and the denominator of which is the total gross receipts from all 7311
sources for the year upon which the taxable gross receipts are 7312
measured immediately preceding the tax year. Nothing herein shall 7313
be construed to exclude from the denominator any item of income 7314
described in section 5733.051 of the Revised Code. 7315

(3) Subject to division (J)(4) of this section, the total tax 7316
calculated in division (C) of this section shall be reduced by an 7317
amount calculated by multiplying such tax by the fraction 7318
described in division (J)(2) of this section. 7319

(4) In no event shall the reduction provided by division 7320
(J)(2) or (J)(3) of this section exceed the amount of the excise 7321
tax paid in accordance with section 5727.38 of the Revised Code, 7322
for the year upon which the taxable gross receipts are measured 7323
immediately preceding the tax year. 7324

Sec. 5733.09. (A) An incorporated company, whether foreign or 7325
domestic, owning and operating a public utility in this state, and 7326
~~as such~~ required by law to file reports with the tax commissioner 7327
and to pay an excise tax upon its gross receipts, and insurance, 7328
fraternal, beneficial, bond investment, and other corporations 7329
required by law to file annual reports with the superintendent of 7330
insurance and dealers in intangibles, the shares of which are, or 7331

the capital or ownership in capital employed by such dealer is, 7332
subject to the taxes imposed by section 5707.03 of the Revised 7333
Code, shall not be subject to this chapter, except for sections 7334
5733.031, 5733.042, 5733.05, 5733.052, 5733.053, 5733.069, 7335
5733.0611, 5733.40, 5733.41, and sections 5747.40 to 5747.453 of 7336
the Revised Code. An electric company subject to the filing 7337
requirements of section 5727.08 of the Revised Code or otherwise 7338
having nexus with or in this state under the Constitution of the 7339
United States, or any other corporation having any gross receipts 7340
directly attributable to providing public utility service as an 7341
electric company or having any property directly attributable to 7342
providing public utility service as an electric company, is 7343
subject to this chapter. 7344

(B) A corporation that has made an election under subchapter 7345
S, chapter one, subtitle A, of the Internal Revenue Code for its 7346
taxable year under such code is exempt from the tax imposed by 7347
section 5733.06 of the Revised Code that is based on that taxable 7348
year. 7349

A corporation that makes such an election shall file a notice 7350
of such election with the tax commissioner between the first day 7351
of January and the thirty-first day of March of each tax year that 7352
the election is in effect. 7353

(C) An entity defined to be a "real estate investment trust" 7354
by section 856 of the Internal Revenue Code, a "regulated 7355
investment company" by section 851 of the Internal Revenue Code, 7356
or a "real estate mortgage investment conduit" by section 860D of 7357
the Internal Revenue Code, is exempt from taxation for a tax year 7358
as a corporation under this chapter and is exempt from taxation 7359
for a return year as a dealer in intangibles under Chapter 5725. 7360
of the Revised Code if it provides the report required by this 7361
division. By the last day of March of the tax or return year the 7362

entity shall submit to the tax commissioner the name of the entity 7363
with a list of the names, addresses, and social security or 7364
federal identification numbers of all investors, shareholders, and 7365
other similar investors who owned any interest or invested in the 7366
entity during the preceding calendar year. The commissioner may 7367
extend the date by which the report must be submitted for 7368
reasonable cause shown by the entity. The commissioner may 7369
prescribe the form of the report required for exemption under this 7370
division. 7371

(D)(1) As used in this division: 7372

(a) "Commercial printer" means a person primarily engaged in 7373
the business of commercial printing. However, "commercial printer" 7374
does not include a person primarily engaged in the business of 7375
providing duplicating services using photocopy machines or other 7376
xerographic processes. 7377

(b) "Commercial printing" means printing by one or more 7378
common processes such as letterpress, lithography, gravure, 7379
screen, or digital imaging, and includes related activities such 7380
as binding, platemaking, prepress operation, cartographic 7381
composition, and typesetting. 7382

(c) "Contract for printing" means an oral or written 7383
agreement for the purchase of printed materials produced by a 7384
commercial printer. 7385

(d) "Intangible property located at the premises of a 7386
commercial printer" means intangible property of any kind owned or 7387
licensed by a customer of the commercial printer and furnished to 7388
the commercial printer for use in commercial printing. 7389

(e) "Printed material" means any tangible personal property 7390
produced or processed by a commercial printer pursuant to a 7391
contract for printing. 7392

(f) "Related member" has the same meaning as in division 7393
(A)(6) of section 5733.042 of the Revised Code without regard to 7394
division (B) of that section. 7395

(2) Except as provided in divisions (D)(3) and (4) of this 7396
section, a corporation not otherwise subject to the tax imposed by 7397
section 5733.06 of the Revised Code for a tax year does not become 7398
subject to that tax for the tax year solely by reason of any one 7399
or more of the following occurring in this state during the 7400
taxable year that ends immediately prior to the tax year: 7401

(a) Ownership by the corporation or a related member of the 7402
corporation of tangible personal property or intangible property 7403
located during all or any portion of the taxable year or on the 7404
first day of the tax year at the premises of a commercial printer 7405
with which the corporation or the corporation's related member has 7406
a contract for printing with respect to such property or the 7407
premises of a commercial printer's related member with which the 7408
corporation or the corporation's related member has a contract for 7409
printing with respect to such property; 7410

(b) Sales by the corporation or a related member of the 7411
corporation of property produced at and shipped or distributed 7412
from the premises of a commercial printer with which the 7413
corporation or the corporation's related member has a contract for 7414
printing with respect to such property or the premises of a 7415
commercial printer's related member with which the corporation or 7416
the corporation's related member has a contract for printing with 7417
respect to such property; 7418

(c) Activities of employees, officers, agents, or contractors 7419
of the corporation or a related member of the corporation on the 7420
premises of a commercial printer with which the corporation or the 7421
corporation's related member has a contract for printing or the 7422
premises of a commercial printer's related member with which the 7423

corporation or the corporation's related member has a contract for 7424
printing, where the activities are directly and solely related to 7425
quality control, distribution, or printing services, or any 7426
combination thereof, performed by or at the direction of the 7427
commercial printer or the commercial printer's related member. 7428
7429

(3) The exemption under this division does not apply for a 7430
taxable year to any corporation having on the first day of January 7431
of the tax year or at any time during the taxable year ending 7432
immediately preceding the first day of January of the tax year a 7433
related member which, on the first day of January of the tax year 7434
or during any portion of such taxable year of the corporation, has 7435
nexus in or with this state under the Constitution of the United 7436
States or holds a certificate of compliance with the laws of this 7437
state authorizing it to do business in this state. 7438

(4) With respect to allowing the exemption under this 7439
division, the tax commissioner shall be guided by the doctrines of 7440
"economic reality," "sham transaction," "step transaction," and 7441
"substance over form." A corporation shall bear the burden of 7442
establishing by a preponderance of the evidence that any 7443
transaction giving rise to an exemption claimed under this 7444
division did not have as a principal purpose the avoidance of any 7445
portion of the tax imposed by section 5733.06 of the Revised Code. 7446

Application of the doctrines listed in division (D)(4) of 7447
this section is not limited to this division. 7448

Sec. 5733.39. (A) As used in this section: 7449

(1) "Compliance facility" means property that is designed, 7450
constructed, or installed, and used, at a coal-fired electric 7451
generating facility for the primary purpose of complying with 7452
Phase I acid rain control requirements under Title IV of the 7453
"Clean Air Act Amendments of 1990," 104 Stat. 2584, 42 U.S.C.A. 7454

7651, and that controls or limits emissions of sulfur or nitrogen 7455
compounds resulting from the combustion of coal through the 7456
removal or reduction of those compounds before, during, or after 7457
the combustion of the coal, but before the combustion products are 7458
emitted into the atmosphere. "Compliance facility" also includes 7459
any of the following: 7460

(a) A facility that removes sulfur compounds from coal before 7461
the combustion of the coal and that is located off the premises of 7462
the electric generating facility where the coal processed by the 7463
compliance facility is burned; 7464

(b) Modifications to the electric generating facility where 7465
the compliance facility is constructed or installed that are 7466
necessary to accommodate the construction or installation, and 7467
operation, of the compliance facility; 7468

(c) A byproduct disposal facility, as defined in section 7469
3734.051 of the Revised Code, that exclusively disposes of wastes 7470
produced by the compliance facility and other coal combustion 7471
byproducts produced by the generating unit in or to which the 7472
compliance facility is incorporated or connected regardless of 7473
whether the byproduct disposal facility is located on the same 7474
premises as the compliance facility or generating unit that 7475
produces the wastes disposed of at the facility; 7476

(d) Facilities or equipment that is acquired, constructed, or 7477
installed, and used, at a coal-fired electric generating facility 7478
exclusively for the purpose of handling the byproducts produced by 7479
the compliance facility or other coal combustion byproducts 7480
produced by the generating unit in or to which the compliance 7481
facility is incorporated or connected; 7482

(e) A flue gas desulfurization system that is connected to a 7483
coal-fired electric generating unit and that either was placed in 7484
service prior to July 10, 1991, or construction of which was 7485

commenced prior to that date; 7486

(f) Facilities or equipment acquired, constructed, or 7487
installed, and used, at a coal-fired electric generating unit 7488
primarily for the purpose of handling the byproducts produced by a 7489
compliance facility or other coal combustion byproducts produced 7490
by the generating unit in or to which the compliance facility is 7491
incorporated or connected. 7492

(2) "Ohio coal" has the same meaning as in section 4913.01 of 7493
the Revised Code. 7494

(3) "Sale and leaseback transaction" has the same meaning as 7495
in section 5727.01 of the Revised Code. 7496

(B) Beginning in tax year 2002, an electric company shall be 7497
allowed a nonrefundable credit against the tax imposed by section 7498
5733.06 of the Revised Code for using Ohio coal in any of its 7499
coal-fired electric generating units. Section 5733.057 of the 7500
Revised Code shall apply when calculating the credit allowed by 7501
this section. The credit shall be claimed at the rate of one 7502
dollar per ton of Ohio coal burned in a coal-fired electric 7503
generating unit during the taxable year ending immediately 7504
preceding the tax year. The credit is allowed only if all of the 7505
following conditions are met during such taxable year: 7506

(1) The coal-fired electric generating unit is owned and used 7507
by the company claiming the credit or leased and used by that 7508
company under a sale and leaseback transaction. 7509

(2) A compliance facility is attached to, incorporated in, or 7510
used in conjunction with the coal-fired generating unit. 7511

(3) Either of the following applies: 7512

(a) In the case of a coal-fired electric generating unit that 7513
burns coal in combination with another fuel for the purpose of 7514
complying with Phase I acid rain control requirements under Title 7515

IV of the "Clean Air Act Amendments of 1990," 104 Stat. 2584, 42 7516
U.S.C.A. 7651, at least eighty per cent of the heat input during 7517
the taxable year is from Ohio coal. 7518

(b) In the case of any other coal-fired electric generating 7519
unit, at least ninety per cent of the heat input during the 7520
taxable year is from Ohio coal. 7521

(C) The credit shall be claimed in the order required under 7522
section 5733.98 of the Revised Code. If the credit exceeds the tax 7523
imposed by section 5733.06 of the Revised Code after all other 7524
nonrefundable credits for the tax year as set forth in section 7525
5733.98 of the Revised Code, the excess shall not be allowed as a 7526
credit either against the taxes due for any other year or against 7527
any other tax or fee. Nothing herein shall be construed to provide 7528
for any carryover or carryback of any unused credit provided by 7529
any other section of the Revised Code or for any application of 7530
any unused credit provided by any other section of the Revised 7531
Code against any other tax or fee if such section does not 7532
expressly provide either for a carryover or carryback of any 7533
unused credit or for any application of an unused credit against 7534
any other tax or fee. 7535

(D) The sum of the credits allowed for all years under 7536
section 5727.391 of the Revised Code for coal burned in each 7537
coal-fired electric generating unit and the sum of the credits 7538
allowed for all tax years under this section shall not exceed 7539
twenty per cent of the cost of the compliance facility attached 7540
to, incorporated in, or used in conjunction with the unit. If a 7541
compliance facility is used in conjunction with more than one 7542
generating unit, the tax commissioner shall prorate its cost among 7543
the units. 7544

(E) The director of environmental protection, upon the 7545
request of the tax commissioner, shall certify whether a facility 7546
is a compliance facility. In the case of a compliance facility 7547

owned by an electric company, the public utilities commission 7548
shall certify to the tax commissioner the cost of the facility as 7549
of the date it was placed in service. In the case of a compliance 7550
facility owned by a person other than an electric company, the tax 7551
commissioner shall determine the cost of the facility as of the 7552
date it was placed in service. If the owner of such a facility 7553
fails to furnish the information necessary to make that 7554
determination, no credit shall be allowed. 7555

Sec. 5733.98. (A) To provide a uniform procedure for 7556
calculating the amount of tax imposed by section 5733.06 of the 7557
Revised Code that is due under this chapter, a taxpayer shall 7558
claim any credits to which it is entitled in the following order, 7559
except as otherwise provided in section 5733.058 of the Revised 7560
Code: 7561

(1) The credit for taxes paid by a qualifying pass-through 7562
entity allowed under section 5733.0611 of the Revised Code; 7563

(2) The credit for qualifying affiliated groups under section 7564
5733.068 of the Revised Code; 7565

(3) The subsidiary corporation credit under section 5733.067 7566
of the Revised Code; 7567

(4) The savings and loan assessment credit under section 7568
5733.063 of the Revised Code; 7569

(5) The credit for recycling and litter prevention donations 7570
under section 5733.064 of the Revised Code; 7571

(6) The credit for employers that enter into agreements with 7572
child day-care centers under section 5733.36 of the Revised Code; 7573

(7) The credit for employers that reimburse employee child 7574
day-care expenses under section 5733.38 of the Revised Code; 7575

(8) The credit for manufacturing investments under section 7576
5733.061 of the Revised Code; 7577

(9) The credit for purchases of new manufacturing machinery and equipment under section 5733.31 or section 5733.311 of the Revised Code;	7578 7579 7580
(10) The second credit for purchases of new manufacturing machinery and equipment under section 5733.33 of the Revised Code;	7581 7582
(11) The enterprise zone credit under section 5709.66 of the Revised Code;	7583 7584
(12) The credit for the eligible costs associated with a voluntary action under section 5733.34 of the Revised Code;	7585 7586
(13) The credit for employers that establish on-site child day-care under section 5733.37 of the Revised Code;	7587 7588
(14) The credit for purchases of qualifying grape production property under section 5733.32 of the Revised Code;	7589 7590
(15) The export sales credit under section 5733.069 of the Revised Code;	7591 7592
(16) The credit for research and development and technology transfer investors under section 5733.35 of the Revised Code;	7593 7594
(17) The enterprise zone credits under section 5709.65 of the Revised Code;	7595 7596
(18) <u>The credit for using Ohio coal under section 5733.39 of the Revised Code;</u>	7597 7598
(19) The refundable jobs creation credit under section 5733.0610 of the Revised Code.	7599 7600
(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.	7601 7602 7603 7604 7605 7606

Sec. 5739.011. (A) As used in this section: 7607

(1) "Manufacturer" means a person who is engaged in 7608
manufacturing, processing, assembling, or refining a product for 7609
sale. 7610

(2) "Manufacturing facility" means a single location where a 7611
manufacturing operation is conducted, including locations 7612
consisting of one or more buildings or structures in a contiguous 7613
area owned or controlled by the manufacturer. 7614

(3) "Materials handling" means the movement of the product 7615
being or to be manufactured, during which movement the product is 7616
not undergoing any substantial change or alteration in its state 7617
or form. 7618

(4) "Testing" means a process or procedure to identify the 7619
properties or assure the quality of a material or product. 7620

(5) "Completed product" means a manufactured item that is in 7621
the form and condition as it will be sold by the manufacturer. An 7622
item is completed when all processes that change or alter its 7623
state or form or enhance its value are finished, even though the 7624
item subsequently will be tested to ensure its quality or be 7625
packaged for storage or shipment. 7626

(6) "Continuous manufacturing operation" means the process in 7627
which raw materials or components are moved through the steps 7628
whereby manufacturing occurs. Materials handling of raw materials 7629
or parts from the point of receipt or ~~pre-production~~ preproduction 7630
storage or of a completed product, to or from storage, to or from 7631
packaging, or to the place from which the completed product will 7632
be shipped, is not a part of a continuous manufacturing operation. 7633

(B) For purposes of division (E)(9) of section 5739.01 of the 7634
Revised Code, the "thing transferred" includes, but is not limited 7635
to, any of the following: 7636

- (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 7667
equipment used for, and fuel consumed in, producing or extracting 7668
those substances; ~~and~~ machinery, equipment, and other tangible 7669
personal property used to treat, filter, pump, ~~alter voltage,~~ or 7670
otherwise make the substance suitable for use in the manufacturing 7671
operation; and machinery and equipment used to produce electricity 7672
for use in the manufacturing operation; 7673

(9) Machinery, equipment, and other tangible personal 7674
property used to transport or transmit electricity, coke, gas, 7675
water, steam, or similar substances used in the manufacturing 7676
operation from the point of generation, if produced by the 7677
manufacturer, or from the point where the substance enters the 7678
manufacturing facility, if purchased by the manufacturer, to the 7679
manufacturing operation; 7680

(10) Machinery, equipment, and other tangible personal 7681
property that treats, filters, cools, refines, or otherwise 7682
renders water, steam, acid, oil, solvents, or similar substances 7683
used in the manufacturing operation reusable, provided that the 7684
substances are intended for reuse and not for disposal, sale, or 7685
transportation from the manufacturing facility; 7686

(11) Parts, components, and repair and installation services 7687
for items described in division (B) of this section. 7688

(C) For purposes of division (E)(9) of section 5739.01 of the 7689
Revised Code, the "thing transferred" does not include any of the 7690
following: 7691

(1) Tangible personal property used in administrative, 7692
personnel, security, inventory control, record-keeping, ordering, 7693
billing, or similar functions; 7694

(2) Tangible personal property used in storing raw materials 7695
or parts prior to the commencement of the manufacturing operation 7696
or used to handle or store a completed product, including storage 7697

that actively maintains a completed product in a marketable state	7698
or form;	7699
(3) Tangible personal property used to handle or store scrap	7700
or waste intended for disposal, sale, or other disposition, other	7701
than reuse in the manufacturing operation at the same	7702
manufacturing facility;	7703
(4) Tangible personal property that is or is to be	7704
incorporated into realty;	7705
(5) Machinery, equipment, and other tangible personal	7706
property used for ventilation, dust, or gas collection, humidity	7707
or temperature regulation, or similar environmental control,	7708
except machinery, equipment, and other tangible personal property	7709
that totally regulates the environment in a special and limited	7710
area of the manufacturing facility where the regulation is	7711
essential for production to occur;	7712
(6) Tangible personal property used for the protection and	7713
safety of workers, unless the property is attached to or	7714
incorporated into machinery and equipment used in a continuous	7715
manufacturing operation;	7716
(7) Tangible personal property used to store fuel, water,	7717
solvents, acid, oil, or similar items consumed in the	7718
manufacturing operation;	7719
(8) Machinery, equipment, and other tangible personal	7720
property used for research and development;	7721
(9) Machinery, equipment, and other tangible personal	7722
property used to clean, repair, or maintain real or personal	7723
property in the manufacturing facility;	7724
(10) Motor vehicles registered for operation on the public	7725
highways.	7726
(D) For purposes of division (E)(9) of section 5739.01 of the	7727

Revised Code, if the "thing transferred" is a machine used by a 7728
manufacturer in both a taxable and an exempt manner, it shall be 7729
totally taxable or totally exempt from taxation based upon its 7730
quantified primary use. If the "things transferred" are fungibles, 7731
they shall be taxed based upon the proportion of the fungibles 7732
used in a taxable manner. 7733

Sec. 5739.02. For the purpose of providing revenue with which 7734
to meet the needs of the state, for the use of the general revenue 7735
fund of the state, for the purpose of securing a thorough and 7736
efficient system of common schools throughout the state, for the 7737
purpose of affording revenues, in addition to those from general 7738
property taxes, permitted under constitutional limitations, and 7739
from other sources, for the support of local governmental 7740
functions, and for the purpose of reimbursing the state for the 7741
expense of administering this chapter, an excise tax is hereby 7742
levied on each retail sale made in this state. 7743

(A) The tax shall be collected pursuant to the schedules in 7744
section 5739.025 of the Revised Code. 7745

The tax applies and is collectible when the sale is made, 7746
regardless of the time when the price is paid or delivered. 7747

In the case of a sale, the price of which consists in whole 7748
or in part of rentals for the use of the thing transferred, the 7749
tax, as regards such rentals, shall be measured by the 7750
installments thereof. 7751

In the case of a sale of a service defined under division 7752
(MM) or (NN) of section 5739.01 of the Revised Code, the price of 7753
which consists in whole or in part of a membership for the receipt 7754
of the benefit of the service, the tax applicable to the sale 7755
shall be measured by the installments thereof. 7756

(B) The tax does not apply to the following: 7757

- (1) Sales to the state or any of its political subdivisions, 7758
or to any other state or its political subdivisions if the laws of 7759
that state exempt from taxation sales made to this state and its 7760
political subdivisions; 7761
- (2) Sales of food for human consumption off the premises 7762
where sold; 7763
- (3) Sales of food sold to students only in a cafeteria, 7764
dormitory, fraternity, or sorority maintained in a private, 7765
public, or parochial school, college, or university; 7766
- (4) Sales of newspapers, and of magazine subscriptions 7767
shipped by second class mail, and sales or transfers of magazines 7768
distributed as controlled circulation publications; 7769
- (5) The furnishing, preparing, or serving of meals without 7770
charge by an employer to an employee provided the employer records 7771
the meals as part compensation for services performed or work 7772
done; 7773
- (6) Sales of motor fuel upon receipt, use, distribution, or 7774
sale of which in this state a tax is imposed by the law of this 7775
state, but this exemption shall not apply to the sale of motor 7776
fuel on which a refund of the tax is allowable under section 7777
5735.14 of the Revised Code; and the tax commissioner may deduct 7778
the amount of tax levied by this section applicable to the price 7779
of motor fuel when granting a refund of motor fuel tax pursuant to 7780
section 5735.14 of the Revised Code and shall cause the amount 7781
deducted to be paid into the general revenue fund of this state; 7782
- (7) Sales of natural gas by a natural gas company, ~~of~~ 7783
~~electricity by an electric company,~~ of water by a water-works 7784
company, or of steam by a heating company, if in each case the 7785
thing sold is delivered to consumers through ~~wires,~~ pipes, or 7786
conduits, and all sales of communications services by a telephone 7787
or telegraph company, all terms as defined in section 5727.01 of 7788

the Revised Code; 7789

(8) Casual sales by a person, or auctioneer employed directly 7790
by the person to conduct such sales, except as to such sales of 7791
motor vehicles, watercraft or outboard motors required to be 7792
titled under section 1548.06 of the Revised Code, watercraft 7793
documented with the United States coast guard, snowmobiles, and 7794
all-purpose vehicles as defined in section 4519.01 of the Revised 7795
Code; 7796

(9) Sales of services or tangible personal property, other 7797
than motor vehicles, mobile homes, and manufactured homes, by 7798
churches or by nonprofit organizations operated exclusively for 7799
charitable purposes as defined in division (B)(12) of this 7800
section, provided that the number of days on which such tangible 7801
personal property or services, other than items never subject to 7802
the tax, are sold does not exceed six in any calendar year. If the 7803
number of days on which such sales are made exceeds six in any 7804
calendar year, the church or organization shall be considered to 7805
be engaged in business and all subsequent sales by it shall be 7806
subject to the tax. In counting the number of days, all sales by 7807
groups within a church or within an organization shall be 7808
considered to be sales of that church or organization, except that 7809
sales made by separate student clubs and other groups of students 7810
of a primary or secondary school, and sales made by a 7811
parent-teacher association, booster group, or similar organization 7812
that raises money to support or fund curricular or extracurricular 7813
activities of a primary or secondary school, shall not be 7814
considered to be sales of such school, and sales by each such 7815
club, group, association, or organization shall be counted 7816
separately for purposes of the six-day limitation. This division 7817
does not apply to sales by a noncommercial educational radio or 7818
television broadcasting station. 7819

(10) Sales not within the taxing power of this state under 7820

the Constitution of the United States; 7821

(11) The transportation of persons or property, unless the 7822
transportation is by a private investigation and security service; 7823

(12) Sales of tangible personal property or services to 7824
churches, to organizations exempt from taxation under section 7825
501(c)(3) of the Internal Revenue Code of 1986, and to any other 7826
nonprofit organizations operated exclusively for charitable 7827
purposes in this state, no part of the net income of which inures 7828
to the benefit of any private shareholder or individual, and no 7829
substantial part of the activities of which consists of carrying 7830
on propaganda or otherwise attempting to influence legislation; 7831
sales to offices administering one or more homes for the aged or 7832
one or more hospital facilities exempt under section 140.08 of the 7833
Revised Code; and sales to organizations described in division (D) 7834
of section 5709.12 of the Revised Code. 7835

"Charitable purposes" means the relief of poverty; the 7836
improvement of health through the alleviation of illness, disease, 7837
or injury; the operation of an organization exclusively for the 7838
provision of professional, laundry, printing, and purchasing 7839
services to hospitals or charitable institutions; the operation of 7840
a home for the aged, as defined in section 5701.13 of the Revised 7841
Code; the operation of a radio or television broadcasting station 7842
that is licensed by the federal communications commission as a 7843
noncommercial educational radio or television station; the 7844
operation of a nonprofit animal adoption service or a county 7845
humane society; the promotion of education by an institution of 7846
learning that maintains a faculty of qualified instructors, 7847
teaches regular continuous courses of study, and confers a 7848
recognized diploma upon completion of a specific curriculum; the 7849
operation of a parent-teacher association, booster group, or 7850
similar organization primarily engaged in the promotion and 7851
support of the curricular or extracurricular activities of a 7852

primary or secondary school; the operation of a community or area 7853
center in which presentations in music, dramatics, the arts, and 7854
related fields are made in order to foster public interest and 7855
education therein; the production of performances in music, 7856
dramatics, and the arts; or the promotion of education by an 7857
organization engaged in carrying on research in, or the 7858
dissemination of, scientific and technological knowledge and 7859
information primarily for the public. 7860

Nothing in this division shall be deemed to exempt sales to 7861
any organization for use in the operation or carrying on of a 7862
trade or business, or sales to a home for the aged for use in the 7863
operation of independent living facilities as defined in division 7864
(A) of section 5709.12 of the Revised Code. 7865

(13) Building and construction materials and services sold to 7866
construction contractors for incorporation into a structure or 7867
improvement to real property under a construction contract with 7868
this state or a political subdivision thereof, or with the United 7869
States government or any of its agencies; building and 7870
construction materials and services sold to construction 7871
contractors for incorporation into a structure or improvement to 7872
real property that are accepted for ownership by this state or any 7873
of its political subdivisions, or by the United States government 7874
or any of its agencies at the time of completion of such 7875
structures or improvements; building and construction materials 7876
sold to construction contractors for incorporation into a 7877
horticulture structure or livestock structure for a person engaged 7878
in the business of horticulture or producing livestock; building 7879
materials and services sold to a construction contractor for 7880
incorporation into a house of public worship or religious 7881
education, or a building used exclusively for charitable purposes 7882
under a construction contract with an organization whose purpose 7883
is as described in division (B)(12) of this section; building and 7884

construction materials sold for incorporation into the original 7885
construction of a sports facility under section 307.696 of the 7886
Revised Code; and building and construction materials and services 7887
sold to a construction contractor for incorporation into real 7888
property outside this state if such materials and services, when 7889
sold to a construction contractor in the state in which the real 7890
property is located for incorporation into real property in that 7891
state, would be exempt from a tax on sales levied by that state; 7892

(14) Sales of ships or vessels or rail rolling stock used or 7893
to be used principally in interstate or foreign commerce, and 7894
repairs, alterations, fuel, and lubricants for such ships or 7895
vessels or rail rolling stock; 7896

(15) Sales to persons engaged in any of the activities 7897
mentioned in division (E)(2) or (9) of section 5739.01 of the 7898
Revised Code, to persons engaged in making retail sales, or to 7899
persons who purchase for sale from a manufacturer tangible 7900
personal property that was produced by the manufacturer in 7901
accordance with specific designs provided by the purchaser, of 7902
packages, including material and parts for packages, and of 7903
machinery, equipment, and material for use primarily in packaging 7904
tangible personal property produced for sale by or on the order of 7905
the person doing the packaging, or sold at retail. "Packages" 7906
includes bags, baskets, cartons, crates, boxes, cans, bottles, 7907
bindings, wrappings, and other similar devices and containers, and 7908
"packaging" means placing therein. 7909

(16) Sales of food to persons using food stamp coupons to 7910
purchase the food. As used in division (B)(16) of this section, 7911
"food" has the same meaning as in the "Food Stamp Act of 1977," 91 7912
Stat. 958, 7 U.S.C. 2012, as amended, and federal regulations 7913
adopted pursuant to that act. 7914

(17) Sales to persons engaged in farming, agriculture, 7915

horticulture, or floriculture, of tangible personal property for 7916
use or consumption directly in the production by farming, 7917
agriculture, horticulture, or floriculture of other tangible 7918
personal property for use or consumption directly in the 7919
production of tangible personal property for sale by farming, 7920
agriculture, horticulture, or floriculture; or material and parts 7921
for incorporation into any such tangible personal property for use 7922
or consumption in production; and of tangible personal property 7923
for such use or consumption in the conditioning or holding of 7924
products produced by and for such use, consumption, or sale by 7925
persons engaged in farming, agriculture, horticulture, or 7926
floriculture, except where such property is incorporated into real 7927
property; 7928

(18) Sales of drugs dispensed by a licensed pharmacist upon 7929
the order of a licensed health professional authorized to 7930
prescribe drugs to a human being, as the term "licensed health 7931
professional authorized to prescribe drugs" is defined in section 7932
4729.01 of the Revised Code; insulin as recognized in the official 7933
United States pharmacopoeia; urine and blood testing materials 7934
when used by diabetics or persons with hypoglycemia to test for 7935
glucose or acetone; hypodermic syringes and needles when used by 7936
diabetics for insulin injections; epoetin alfa when purchased for 7937
use in the treatment of persons with end-stage renal disease; 7938
hospital beds when purchased for use by persons with medical 7939
problems for medical purposes; and oxygen and oxygen-dispensing 7940
equipment when purchased for use by persons with medical problems 7941
for medical purposes; 7942

(19) Sales of artificial limbs or portion thereof, breast 7943
prostheses, and other prosthetic devices for humans; braces or 7944
other devices for supporting weakened or nonfunctioning parts of 7945
the human body; wheelchairs; devices used to lift wheelchairs into 7946
motor vehicles and parts and accessories to such devices; crutches 7947

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 7979
will not be used in this state; 7980

(24) Sales to persons engaged in the preparation of eggs for 7981
sale of tangible personal property used or consumed directly in 7982
such preparation, including such tangible personal property used 7983
for cleaning, sanitizing, preserving, grading, sorting, and 7984
classifying by size; packages, including material and parts for 7985
packages, and machinery, equipment, and material for use in 7986
packaging eggs for sale; and handling and transportation equipment 7987
and parts therefor, except motor vehicles licensed to operate on 7988
public highways, used in intraplant or interplant transfers or 7989
shipment of eggs in the process of preparation for sale, when the 7990
plant or plants within or between which such transfers or 7991
shipments occur are operated by the same person. "Packages" 7992
includes containers, cases, baskets, flats, fillers, filler flats, 7993
cartons, closure materials, labels, and labeling materials, and 7994
"packaging" means placing therein. 7995

(25)(a) Sales of water to a consumer for residential use, 7996
except the sale of bottled water, distilled water, mineral water, 7997
carbonated water, or ice; 7998

(b) Sales of water by a nonprofit corporation engaged 7999
exclusively in the treatment, distribution, and sale of water to 8000
consumers, if such water is delivered to consumers through pipes 8001
or tubing. 8002

(26) Fees charged for inspection or reinspection of motor 8003
vehicles under section 3704.14 of the Revised Code; 8004

(27) Sales of solar, wind, or hydrothermal energy systems 8005
that meet the guidelines established under division (B) of section 8006
1551.20 of the Revised Code, components of such systems that are 8007
identified under division (B) or (D) of that section, or charges 8008
for the installation of such systems or components, made during 8009

the period from August 14, 1979, through December 31, 1985;	8010
(28) Sales to persons licensed to conduct a food service	8011
operation pursuant to section 3732.03 of the Revised Code, of	8012
tangible personal property primarily used directly for the	8013
following:	8014
(a) To prepare food for human consumption for sale;	8015
(b) To preserve food that has been or will be prepared for	8016
human consumption for sale by the food service operator, not	8017
including tangible personal property used to display food for	8018
selection by the consumer;	8019
(c) To clean tangible personal property used to prepare or	8020
serve food for human consumption for sale.	8021
(29) Sales of animals by nonprofit animal adoption services	8022
or county humane societies;	8023
(30) Sales of services to a corporation described in division	8024
(A) of section 5709.72 of the Revised Code, and sales of tangible	8025
personal property that qualifies for exemption from taxation under	8026
section 5709.72 of the Revised Code;	8027
(31) Sales and installation of agricultural land tile, as	8028
defined in division (B)(5)(a) of section 5739.01 of the Revised	8029
Code;	8030
(32) Sales and erection or installation of portable grain	8031
bins, as defined in division (B)(5)(b) of section 5739.01 of the	8032
Revised Code;	8033
(33) The sale, lease, repair, and maintenance of the parts	8034
for the or items attached to or incorporated in the motor vehicles that	8035
are primarily used for transporting tangible personal property by	8036
a person engaged in highway transportation for hire;	8037
(34) Sales to the state headquarters of any veterans'	8038
organization in Ohio that is either incorporated and issued a	8039

charter by the congress of the United States or is recognized by 8040
the United States veterans administration, for use by the 8041
headquarters; 8042

(35) Sales to a telecommunications service vendor of tangible 8043
personal property and services used directly and primarily in 8044
transmitting, receiving, switching, or recording any interactive, 8045
two-way electromagnetic communications, including voice, image, 8046
data, and information, through the use of any medium, including, 8047
but not limited to, poles, wires, cables, switching equipment, 8048
computers, and record storage devices and media, and component 8049
parts for the tangible personal property. The exemption provided 8050
in division (B)(35) of this section shall be in lieu of all other 8051
exceptions under division (E)(2) of section 5739.01 of the Revised 8052
Code to which a telecommunications service vendor may otherwise be 8053
entitled based upon the use of the thing purchased in providing 8054
the telecommunications service. 8055

(36) Sales of investment metal bullion and investment coins. 8056
"Investment metal bullion" means any elementary precious metal 8057
that has been put through a process of smelting or refining, 8058
including, but not limited to, gold, silver, platinum, and 8059
palladium, and which is in such state or condition that its value 8060
depends upon its content and not upon its form. "Investment metal 8061
bullion" does not include fabricated precious metal that has been 8062
processed or manufactured for one or more specific and customary 8063
industrial, professional, or artistic uses. "Investment coins" 8064
means numismatic coins or other forms of money and legal tender 8065
manufactured of gold, silver, platinum, palladium, or other metal 8066
under the laws of the United States or any foreign nation with a 8067
fair market value greater than any statutory or nominal value of 8068
such coins. 8069

(37)(a) Sales where the purpose of the consumer is to use or 8070
consume the things transferred in making retail sales and 8071

consisting of newspaper inserts, catalogues, coupons, flyers, gift 8072
certificates, or other advertising material that prices and 8073
describes tangible personal property offered for retail sale. 8074

(b) Sales to direct marketing vendors of preliminary 8075
materials such as photographs, artwork, and typesetting that will 8076
be used in printing advertising material; of printed matter that 8077
offers free merchandise or chances to win sweepstake prizes and 8078
that is mailed to potential customers with advertising material 8079
described in division (B)(37)(a) of this section; and of equipment 8080
such as telephones, computers, facsimile machines, and similar 8081
tangible personal property primarily used to accept orders for 8082
direct marketing retail sales. 8083

(c) Sales of automatic food vending machines that preserve 8084
food with a shelf life of forty-five days or less by refrigeration 8085
and dispense it to the consumer. 8086

For purposes of division (B)(37) of this section, "direct 8087
marketing" means the method of selling where consumers order 8088
tangible personal property by United States mail, delivery 8089
service, or telecommunication and the vendor delivers or ships the 8090
tangible personal property sold to the consumer from a warehouse, 8091
catalogue distribution center, or similar fulfillment facility by 8092
means of the United States mail, delivery service, or common 8093
carrier. 8094

(38) Sales to a person engaged in the business of 8095
horticulture or producing livestock of materials to be 8096
incorporated into a horticulture structure or livestock structure; 8097

(39) The sale of a motor vehicle that is used exclusively for 8098
a vanpool ridesharing arrangement to persons participating in the 8099
vanpool ridesharing arrangement when the vendor is selling the 8100
vehicle pursuant to a contract between the vendor and the 8101
department of transportation; 8102

(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;	8103 8104 8105 8106 8107 8108
(41) Sales to a professional racing team of any of the following:	8109 8110
(a) Motor racing vehicles;	8111
(b) Repair services for motor racing vehicles;	8112
(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.	8113 8114 8115 8116 8117 8118 8119 8120
(42) Sales of used manufactured homes and used mobile homes, as defined in section 5739.0210 of the Revised Code;	8121 8122
<u>(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</u>	8123 8124 8125 8126 8127 8128 8129 8130 8131 8132 8133

designed and equipped for such use. The exemption provided in this 8134
division shall be in lieu of all other exceptions in division 8135
(E)(2) of section 5739.01 of the Revised Code to which a provider 8136
of electricity may otherwise be entitled based on the use of the 8137
tangible personal property or service purchased in generating, 8138
transmitting, or distributing electricity. 8139

For the purpose of the proper administration of this chapter, 8140
and to prevent the evasion of the tax, it is presumed that all 8141
sales made in this state are subject to the tax until the contrary 8142
is established. 8143

As used in this section, except in division (B)(16) of this 8144
section, "food" includes cereals and cereal products, milk and 8145
milk products including ice cream, meat and meat products, fish 8146
and fish products, eggs and egg products, vegetables and vegetable 8147
products, fruits, fruit products, and pure fruit juices, 8148
condiments, sugar and sugar products, coffee and coffee 8149
substitutes, tea, and cocoa and cocoa products. It does not 8150
include: spirituous or malt liquors; soft drinks; sodas and 8151
beverages that are ordinarily dispensed at bars and soda fountains 8152
or in connection therewith, other than coffee, tea, and cocoa; 8153
root beer and root beer extracts; malt and malt extracts; mineral 8154
oils, cod liver oils, and halibut liver oil; medicines, including 8155
tonics, vitamin preparations, and other products sold primarily 8156
for their medicinal properties; and water, including mineral, 8157
bottled, and carbonated waters, and ice. 8158

(C) The levy of an excise tax on transactions by which 8159
lodging by a hotel is or is to be furnished to transient guests 8160
pursuant to this section and division (B) of section 5739.01 of 8161
the Revised Code does not prevent any of the following: 8162

(1) A municipal corporation or township from levying an 8163
excise tax for any lawful purpose not to exceed three per cent on 8164

transactions by which lodging by a hotel is or is to be furnished 8165
to transient guests in addition to the tax levied by this section. 8166
If a municipal corporation or township repeals a tax imposed under 8167
division (C)(1) of this section and a county in which the 8168
municipal corporation or township has territory has a tax imposed 8169
under division (C) of section 5739.024 of the Revised Code in 8170
effect, the municipal corporation or township may not reimpose its 8171
tax as long as that county tax remains in effect. A municipal 8172
corporation or township in which a tax is levied under division 8173
(B)(2) of section 351.021 of the Revised Code may not increase the 8174
rate of its tax levied under division (C)(1) of this section to 8175
any rate that would cause the total taxes levied under both of 8176
those divisions to exceed three per cent on any lodging 8177
transaction within the municipal corporation or township. 8178

(2) A municipal corporation or a township from levying an 8179
additional excise tax not to exceed three per cent on such 8180
transactions pursuant to division (B) of section 5739.024 of the 8181
Revised Code. Such tax is in addition to any tax imposed under 8182
division (C)(1) of this section. 8183

(3) A county from levying an excise tax pursuant to division 8184
(A) of section 5739.024 of the Revised Code. 8185

(4) A county from levying an excise tax not to exceed three 8186
per cent of such transactions pursuant to division (C) of section 8187
5739.024 of the Revised Code. Such a tax is in addition to any tax 8188
imposed under division (C)(3) of this section. 8189

(5) A convention facilities authority, as defined in division 8190
(A) of section 351.01 of the Revised Code, from levying the excise 8191
taxes provided for in division (B) of section 351.021 of the 8192
Revised Code. 8193

(6) A county from levying an excise tax not to exceed one and 8194
one-half per cent of such transactions pursuant to division (D) of 8195

section 5739.024 of the Revised Code. Such tax is in addition to 8196
any tax imposed under division (C)(3) or (4) of this section. 8197
8198

(7) A county from levying an excise tax not to exceed one and 8199
one-half per cent of such transactions pursuant to division (E) of 8200
section 5739.024 of the Revised Code. Such a tax is in addition to 8201
any tax imposed under division (C)(3), (4), or (6) of this 8202
section. 8203

(D) The levy of this tax on retail sales of recreation and 8204
sports club service shall not prevent a municipal corporation from 8205
levying any tax on recreation and sports club dues or on any 8206
income generated by recreation and sports club dues. 8207

Section 2. That existing sections 113.061, 133.04, 715.013, 8208
718.01, 1551.33, 1551.35, 3317.028, 4905.01, 4905.03, 4905.10, 8209
4905.34, 4905.402, 4905.42, 4905.70, 4906.10, 4909.01, 4909.05, 8210
4909.15, 4909.161, 4911.18, 4933.33, 4933.81, 4935.04, 5117.01, 8211
5117.02, 5117.03, 5117.04, 5117.05, 5117.07, 5117.08, 5117.09, 8212
5117.10, 5117.12, 5701.03, 5703.052, 5703.053, 5703.14, 5705.34, 8213
5727.01, 5727.05, 5727.06, 5727.11, 5727.111, 5727.15, 5727.30, 8214
5727.31, 5727.311, 5727.32, 5727.33, 5727.38, 5727.42, 5727.45, 8215
5727.47, 5727.53, 5727.60, 5727.61, 5727.72, 5727.99, 5733.04, 8216
5733.05, 5733.06, 5733.09, 5733.98, 5739.011, and 5739.02 and 8217
sections 4905.301, 4905.66, 4905.67, 4905.68, 4905.69, 4909.157, 8218
4909.158, 4909.159, 4909.191, 4909.192, 4909.193, 4913.01, 8219
4913.02, 4913.03, 4913.04, 4913.05, 4913.06, 4913.07, 4933.27, 8220
4933.34, 5727.231, and 5727.73 of the Revised Code are hereby 8221
repealed. 8222

Section 3. Sections 718.01, 5701.03, 5727.06, 5727.111, and 8223
5727.15 of the Revised Code, as amended by this act, shall take 8224
effect January 1, 2001. 8225

Section 4. Sections 113.061, 4933.33, 5703.052, 5703.053, 8226
5727.05, 5727.30, 5727.31, 5727.311, 5727.32, 5727.33, 5727.38, 8227
5727.42, 5727.45, 5727.53, 5727.60, 5727.61, 5727.72, 5739.011, 8228
and 5739.02 of the Revised Code, as amended by this act, and 8229
section 5727.03 of the Revised Code, as enacted by this act, shall 8230
take effect May 1, 2001. 8231

Section 5. Sections 1551.33, 1551.35, 4905.01, 4905.03, 8232
4905.34, 4905.402, 4905.42, 4905.70, 4906.10, 4909.01, 4909.05, 8233
4909.15, 4909.161, 4935.04, 5117.01, 5117.02, 5117.03, 5117.04, 8234
5117.05, 5117.07, 5117.08, 5117.09, 5117.10, and 5703.14 of the 8235
Revised Code, as amended by this act, shall take effect on January 8236
1, 2001, but if the Public Utilities Commission issues an order 8237
under division (C) of section 4928.01 of the Revised Code, as 8238
enacted by this act, the amendments to such sections shall be 8239
applied accordingly. In addition, the amendment of division 8240
(A)(4)(b) of section 4909.15 of the Revised Code, as amended by 8241
this act, shall be not applied until January 1, 2002. 8242

Section 6. Sections 133.04, 5705.34, 5733.04, 5733.05, 8243
5733.06, 5733.09, and 5733.98 of the Revised Code, as amended by 8244
this act, and section 5733.39 of the Revised Code, as enacted by 8245
this act, shall take effect January 1, 2002. 8246

Section 7. Section 5727.391 of the Revised Code is hereby 8247
repealed effective January 1, 2002. 8248

Section 8. Sections 4905.301, 4905.66, 4905.67, 4905.68, 8249
4905.69, 4909.157, 4909.158, 4909.159, 4909.191, 4909.192, 8250
4909.193, 4913.01, 4913.02, 4913.03, 4913.04, 4913.05, 4913.06, 8251
4913.07, 4933.27, and 4933.34 of the Revised Code are hereby 8252
repealed effective on January 1, 2001, but if the Public Utilities 8253

Commission issues an order under division (C) of section 4928.01 8254
of the Revised Code, as enacted by this act, the repeal of such 8255
sections shall be applied accordingly. 8256

Section 9. The Public Utilities Commission, Consumers' 8257
Counsel, and the Attorney General shall develop a memorandum of 8258
understanding not later than January 1, 2000, to establish a 8259
system to respond effectively and efficiently to residential 8260
consumer inquiries and complaints and shall provide a joint report 8261
to the General Assembly on the efforts of the three agencies not 8262
later than June 30, 2002. 8263

Section 10. (A) As used in this section: 8264

(1) "Electric company" and "rural electric company" have the 8265
same meanings as in section 5727.01 of the Revised Code. 8266

(2) "Gross receipts" means gross receipts determined in 8267
accordance with section 5727.33 of the Revised Code. 8268

(B) Each electric company and rural electric company shall 8269
pay the public utility excise tax imposed by section 5727.30 of 8270
the Revised Code on the company's gross receipts received during 8271
the period of April 30, 2000, through April 30, 2001. 8272
Notwithstanding section 5727.31 of the Revised Code, each electric 8273
company and rural electric company shall make tax payments toward 8274
that liability. The first payment must be made on or before 8275
October 15, 2000, and shall equal one-third of the estimated 8276
liability shown in the report filed on or before August 1, 2000. 8277
The second payment must be made on or before March 1, 2001, and 8278
shall equal one-third of the tax assessed by the Tax Commissioner 8279
on or before the first Monday in November, 2000. The last payment 8280
must be made on or before June 1, 2001, and shall equal one-fourth 8281
of the tax assessed by the Commissioner. The final report for the 8282
period of April 30, 2000, through April 30, 2001, shall be filed 8283

by an electric company or a rural electric company on or before 8284
August 1, 2001, in accordance with division (A) of section 5727.31 8285
and section 5727.32 of the Revised Code. 8286

On or before the first Monday of November 2001, the Tax 8287
Commissioner shall assess an excise tax equal to four and 8288
three-quarters per cent of the gross receipts received by electric 8289
companies and rural electric companies during the period of April 8290
30, 2000, through April 30, 2001. Except as provided in section 8291
5727.03 of the Revised Code, as enacted by this act, after payment 8292
of this assessment, electric companies and rural electric 8293
companies are not subject to the excise tax on gross receipts 8294
imposed by section 5727.30 of the Revised Code. 8295

Section 11. Electric companies, as defined in section 5727.01 8296
of the Revised Code, shall first be subject to the corporation 8297
franchise tax under Chapter 5733. of the Revised Code for tax year 8298
2001, as "tax year" is defined in section 5733.04 of the Revised 8299
Code. The amendments in this act to sections 4909.15, 5733.04, 8300
5733.05, 5733.06, 5733.09, and 5733.98 of the Revised Code, and 8301
the enactment in this act of section 5733.39 of the Revised Code, 8302
first apply for tax year 2001. 8303

Section 12. An electric company that is entitled to carry 8304
forward a credit against its public utility excise tax liability 8305
under section 5727.391 of the Revised Code before the repeal of 8306
that section under this act, is not entitled to carry forward any 8307
amount remaining after its last public utility excise tax payment 8308
and claim that amount as a credit against its corporation 8309
franchise tax liability under section 5733.39 of the Revised Code, 8310
as enacted by this act. 8311

Section 13. The tax levied under section 5727.81 of the 8312
Revised Code first applies on and after May 1, 2001. Before that 8313

date, any electric distribution company shall register with the 8314
Tax Commissioner in accordance with section 5727.93 of the Revised 8315
Code, as enacted by this act. 8316

Section 14. Section 5727.47 of the Revised Code is presented 8317
in this act as a composite of the section as amended by both Am. 8318
Sub. H.B. 904 and Am. S.B. 358 of the 119th General Assembly, with 8319
the new language of neither of the acts shown in capital letters. 8320
This is in recognition of the principle stated in division (B) of 8321
section 1.52 of the Revised Code that such amendments are to be 8322
harmonized where not substantively irreconcilable and constitutes 8323
a legislative finding that such is the resulting version in effect 8324
prior to the effective date of this act. 8325