

As Reported by the Senate Ways and Means Committee

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Senators Johnson, Finan, Blessing, Herington

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, 4905.02,	2
4905.03, 4905.10, 4905.14, 4905.34, 4905.40,	3
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5727.72, 5727.99, 5733.04, 5733.05, 5733.06,	13
5733.09, 5733.98, 5739.011, and 5739.02; to enact	14
sections 4928.01 to 4928.20, 4928.31 to 4928.45,	15
4928.51 to 4928.58, 4928.61 to 4928.63, 5727.03,	16
5727.80 to 5727.95, and 5733.39; and to repeal	17
sections 4905.301, 4905.66, 4905.67, 4905.68,	18
4905.69, 4909.157, 4909.158, 4909.159, 4909.191,	19
4909.192, 4909.193, 4913.01, 4913.02, 4913.03,	20
4913.04, 4913.05, 4913.06, 4913.07, 4933.27,	21
4933.34, 5727.231, 5727.391, and 5727.73 of the	22
Revised Code to provide for competition in retail	23
electric service, including provisions regarding	24
market structure, consumer protection, competitive	25

auctioning, and transition revenues; to levy a	26
kilowatt-hour excise tax on electric distribution	27
companies; to revise taxes for electric companies	28
and rural electric companies; and to reduce tax	29
assessment rates on certain electric company and	30
rural electric company 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, 4905.02, 4905.03, 4905.10,	33
4905.14, 4905.34, 4905.40, 4905.42, 4905.70, 4906.10, 4909.01,	34
4909.05, 4909.15, 4909.161, 4911.18, 4933.33, 4933.81, 4935.04,	35
5117.01, 5117.02, 5117.03, 5117.04, 5117.05, 5117.07, 5117.08,	36
5117.09, 5117.10, 5117.12, 5701.03, 5703.052, 5703.053, 5703.14,	37
5705.34, 5727.01, 5727.02, 5727.05, 5727.06, 5727.11, 5727.111,	38
5727.15, 5727.30, 5727.31, 5727.311, 5727.32, 5727.33, 5727.38,	39
5727.42, 5727.45, 5727.47, 5727.53, 5727.60, 5727.61, 5727.72,	40
5727.99, 5733.04, 5733.05, 5733.06, 5733.09, 5733.98, 5739.011,	41
and 5739.02 be amended and sections 4928.01, 4928.02, 4928.03,	42
4928.04, 4928.05, 4928.06, 4928.07, 4928.08, 4928.09, 4928.10,	43
4928.11, 4928.12, 4928.13, 4928.14, 4928.15, 4928.16, 4928.17,	44
4928.18, 4928.19, 4928.20, 4928.31, 4928.32, 4928.33, 4928.34,	45
4928.35, 4928.36, 4928.37, 4928.38, 4928.39, 4928.40, 4928.41,	46
4928.42, 4928.43, 4928.44, 4928.45, 4928.51, 4928.52, 4928.53,	47
4928.54, 4928.55, 4928.56, 4928.57, 4928.58, 4928.61, 4928.62,	48
4928.63, 5727.03, 5727.80, 5727.81, 5727.82, 5727.83, 5727.84,	49
5727.85, 5727.86, 5727.87, 5727.88, 5727.89, 5727.90, 5727.91,	50
5727.92, 5727.93, 5727.94, 5727.95, and 5733.39 of the Revised	51
Code be enacted to read as 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
5727.83, 5733.022, 5735.062, 5739.032, 5739.122, 5741.121, or 72
5747.072 of the Revised Code and rules adopted under this section, 73
the treasurer of state shall notify the tax commissioner of such 74
failure if the treasurer of state determines that such failure was 75
not due to reasonable cause or was due to willful neglect, and 76
shall provide the tax commissioner with any information used in 77
making that determination. The tax commissioner may assess an 78
additional charge as specified in the respective section of the 79
Revised Code governing the requirement to remit taxes by 80
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, 2002, 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 that public utility
is subject to the tax levied under section 5727.30 of the Revised
Code, except starting January 1, 2002, the income of an electric
company or combined company, as defined in section 5727.01 of the
Revised Code, may be taxed by a municipal corporation. For a
combined company, only the income attributed from the activity of
an electric company shall be subject to taxation by a municipal
corporation.

(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.	269
(B) The director of the office shall do all of the following:	270
	271
(1) Biennially prepare and maintain the Ohio coal development	272
agenda required under section 1551.34 of the Revised Code;	273
	274
(2) Propose and support policies for the office consistent	275
with the Ohio coal development agenda and develop means to	276
implement the agenda;	277
(3) Apportion for the office's administrative costs no more	278
than ten per cent of the moneys credited to the Ohio coal	279
development fund created under section 1551.36 of the Revised	280
Code;	281
(4) Initiate, undertake, and support projects to carry out	282
the office's purposes and ensure that the projects are consistent	283
with and meet the selection criteria established by the Ohio coal	284
development agenda;	285
(5) Actively encourage joint participation in and, when	286
feasible, joint funding of the office's projects with governmental	287
agencies, electric utilities, universities and colleges, other	288
public or private interests, or any other person;	289
(6) Establish a table of organization for and employ such	290
employees and agents as are necessary for the administration and	291
operation of the office;	292
(7) Appoint specified members of and convene the technical	293
advisory committee established under section 1551.35 of the	294
Revised Code;	295
(8) Review, with the assistance of the technical advisory	296
committee, proposed coal research and development projects as	297
defined in section 1555.01 of the Revised Code, and coal	298

development projects, submitted to the office by public utilities 299
for the ~~purposes~~ purpose of ~~sections 4905.301,~~ section 4905.304, 300
~~and 4909.191~~ of the Revised Code. If the director and the advisory 301
committee determine that any such facility or project has as its 302
purpose the enhanced use of Ohio coal in an environmentally 303
acceptable, cost effective manner, promotes energy conservation, 304
is cost effective, and is environmentally sound, the director 305
shall submit to the public utilities commission a report 306
recommending that the commission allow the recovery of costs 307
associated with the facility or project under section ~~4905.301,~~ 308
4905.304, ~~or 4909.191~~ of the Revised Code and including the 309
reasons for the recommendation; 310

(9) Establish such policies, procedures, and guidelines as 311
are necessary to achieve the office's purposes. 312

(C) With the approval of the director of development, the 313
director of the office may exercise any of the powers and duties 314
of the director of development as the directors consider 315
appropriate or desirable to achieve the office's purposes, 316
including, but not limited to, the powers and duties enumerated in 317
sections 1551.11, 1551.12, 1551.13, and 1551.15 of the Revised 318
Code. 319

Additionally, the director of the office may make loans to 320
governmental agencies or persons for projects to carry out the 321
office's purposes. Fees, charges, rates of interest, times of 322
payment of interest and principal, and other terms, conditions, 323
and provisions of the loans shall be such as the director of the 324
office determines to be appropriate and in furtherance of the 325
purposes for which the loans are made. The mortgage lien securing 326
any moneys lent by the director of the office may be subordinate 327
to the mortgage lien securing any moneys lent or invested by a 328
financial institution, but shall be superior to that securing any 329
moneys lent or expended by any other person. The moneys used in 330

making the loans shall be disbursed upon order of the director of 331
the office. 332

Sec. 1551.35. (A) There is hereby established a technical 333
advisory committee to assist the director of the Ohio coal 334
development office established under section 1551.32 of the 335
Revised Code in achieving the office's purposes. The director 336
shall appoint to the committee one member of the public utilities 337
commission ~~of Ohio~~ and one representative each of coal production 338
companies, the united mine workers of America, electric utilities, 339
manufacturers that use Ohio coal, and environmental organizations, 340
as well as two people with a background in coal research and 341
development technology, one of whom is employed at the time of the 342
member's appointment by a state university, as defined in section 343
3345.011 of the Revised Code. In addition, the committee shall 344
include four legislative members. The speaker and minority leader 345
of the house of representatives each shall appoint one member of 346
the house of representatives, and the president and minority 347
leader of the senate each shall appoint one member of the senate, 348
to the committee. The director of environmental protection, 349
representing the environmental protection agency, the Ohio air 350
quality development authority, and the Ohio water development 351
authority, shall serve on the committee as members ex officio. Any 352
member of the committee may designate in writing a substitute to 353
serve in the member's absence on the committee. The director of 354
environmental protection may designate in writing the chief of the 355
air pollution control division of the agency to represent the 356
agency. Members shall serve on the committee at the pleasure of 357
their appointing authority. Members of the committee appointed by 358
the director of the office and, notwithstanding section 101.26 of 359
the Revised Code, legislative members of the committee, when 360
engaged in their official duties as members of the committee, 361
shall be compensated on a per diem basis in accordance with 362

division (J) of section 124.15 of the Revised Code, except that 363
the member of the public utilities commission ~~of Ohio~~ and, while 364
employed by a state university, the member with a background in 365
coal research, shall not be so compensated. Members shall receive 366
their actual and necessary expenses incurred in the performance of 367
their duties. 368

(B) The technical advisory committee shall review and make 369
recommendations concerning the Ohio coal development agenda 370
required under section 1551.34 of the Revised Code, project 371
proposals, research and development projects submitted to the 372
office by public utilities for the ~~purposes~~ purpose of ~~sections~~ 373
~~4905.301~~, section 4905.304, ~~and 4909.191~~ of the Revised Code, 374
proposals for grants, loans, and loan guarantees for purposes of 375
sections 1555.01 to 1555.06 of the Revised Code, and such other 376
topics as the director of the office considers appropriate. 377

(C) The technical advisory committee may hold an executive 378
session at any regular or special meeting for the purpose of 379
considering research and development project proposals or 380
applications for assistance submitted to the Ohio coal development 381
office under section 1551.33, or sections 1555.01 to 1555.06, of 382
the Revised Code, to the extent that such proposals or 383
applications consist of trade secrets or other proprietary 384
information. 385

Any materials or data submitted to, made available to, or 386
received by the director of development or the director of the 387
Ohio coal development office in connection with agreements for 388
assistance entered into under this chapter or Chapter 1555. of the 389
Revised Code, or any information taken from such materials or data 390
for any purpose, to the extent that the materials or data consist 391
of trade secrets or other proprietary information, are not public 392
records for the purposes of section 149.43 of the Revised Code. 393

As used in this division, "trade secrets" has the same 394
meaning as in section 1333.61 of the Revised Code. 395

Sec. 3317.028. (A) On or before the fifteenth day of May in 396
each calendar year, the tax commissioner shall determine for each 397
school district whether the taxable value of all tangible personal 398
property, including utility tangible personal property, subject to 399
taxation by the district in the preceding tax year was less or 400
greater than the taxable value of such property during the second 401
preceding tax year. If any such decrease exceeds five per cent of 402
the district's tangible personal property taxable value included 403
in the total taxable value used in the district's state aid 404
computation for the fiscal year that ends in the current calendar 405
year, or if any such increase exceeds five per cent of the 406
district's total taxable value used in the district's state aid 407
computation for the fiscal year that ends in the current calendar 408
year, the tax commissioner shall certify both of the following to 409
the department of education: 410

~~(A)(1)~~ The taxable value of the tangible personal property 411
increase or decrease, including utility tangible personal property 412
increase or decrease, which shall be considered a change in 413
valuation; ~~and~~ 414

~~(B)(2)~~ The decrease or increase in taxes charged and payable 415
on such change in taxable value calculated in the same manner as 416
in division (A)(3) of section 3317.021 of the Revised Code. 417

(B) Notwithstanding division (A) of this section, when 418
determining under that division in calendar year 2002 whether the 419
taxable value of tangible personal property subject to taxation by 420
each school district in the preceding tax year was less or greater 421
than the taxable value of such property during the second 422
preceding tax year, the Tax Commissioner shall exclude from the 423
taxable value for both years the tax value loss, as defined in 424

section 5727.84 of the Revised Code. 425

(C) Upon receipt of such certification, the department of 426
education shall reduce or increase by the respective amounts 427
certified, the taxable value and the taxes charged and payable 428
that were used in the district's state aid computation under 429
section 3317.022 of the Revised Code for the fiscal year that ends 430
in the current calendar year and shall recompute the state aid for 431
such fiscal year. During the last six months of the fiscal year, 432
the department shall pay the district a sum equal to one-half of 433
the recomputed payments in lieu of the payments otherwise required 434
under such sections. 435

Sec. 4905.01. As used in this chapter: 436

(A) "Railroad" has the meaning set forth in section 4907.02 437
of the Revised Code. 438

(B) "Motor transportation company" has the meaning set forth 439
in sections 4905.03 and 4921.02 of the Revised Code. 440

(C) "Trailer," "public highway," "fixed termini," "regular 441
route," and "irregular route" have the meanings set forth in 442
section 4921.02 of the Revised Code. 443

(D) "Private motor carrier," "contract carrier by motor 444
vehicle," "motor vehicle," and "charter party trip" have the 445
meanings set forth in section 4923.02 of the Revised Code. 446

(E) ~~"Delivery cost" means the cost of delivery of fuel, to be 447
used for the generation of electricity, from the site of 448
production directly to the site of an electric generating 449
facility. 450~~

(F) ~~"Acquisition cost" means the cost to an electric light 451
company of acquiring fuel for generation of electricity. In the 452
case of a fuel supply owned by the company, such term shall also 453
include the cost of legally extracting the fuel and its handling 454~~

~~prior to its shipment to the company. In the case of a coal supply~~ 455
~~owned or controlled in whole or in part by the company, such term~~ 456
~~shall not exceed a price that is, in the judgment of the public~~ 457
~~utilities commission, reasonable when compared to the average cost~~ 458
~~per million British thermal units of similar quality coal~~ 459
~~purchased from all independent like mining operations under~~ 460
~~similar term contracts during the same period. In determining a~~ 461
~~reasonable price for coal from a coal supply owned or controlled~~ 462
~~in whole or in part by the company, the public utilities~~ 463
~~commission shall consider the use of:~~ 464

~~(1) Capital by the developer of the mining operation in a~~ 465
~~manner that did not:~~ 466

~~(a) Take into account intermediate or long-term trends in the~~ 467
~~coal mining industry; or~~ 468

~~(b) Incorporate a design consistent with long-term~~ 469
~~dependability; and~~ 470

~~(c) Take into account the intermediate or long-term cost and~~ 471
~~reliable energy supply interests of the company's customers; or~~ 472

~~(2) Ineffective operating techniques. Such term does not~~ 473
~~embrace any associated cost, including, but not limited to,~~ 474
~~delivery cost, the cost of handling the fuel after its delivery to~~ 475
~~such facility, the cost of such processing, readying, or~~ 476
~~refinement of the fuel as may be necessary in order to use the~~ 477
~~fuel to generate electricity, or the cost of disposing of any~~ 478
~~residue of such fuel after it has been so used. To the extent the~~ 479
~~washing of coal is required, by law or rule, to remove or reduce~~ 480
~~sulfur compounds or any other impurity, "acquisition cost"~~ 481
~~includes the cost of such washing.~~ 482

~~(G) "Fuel component" means acquisition and delivery costs of~~ 483
~~fuel for the generation of electricity, including the allowable~~ 484
~~costs of purchased power as defined in section 4909.159 of the~~ 485

~~Revised Code, divided by the corresponding number of net kilowatt
hours generated and purchased.~~ 486
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~~(H) "Base period" means the most recent six-month period for
which the public utilities commission has determined either the
amount of the fuel component or the fuel cost per kilowatt hour
included in the base rates of an electric light company, whichever
is last determined.~~ 488
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~~(I) "Current period" means the six-month period immediately
succeeding the base period for which the public utilities
commission has determined the amount of the fuel component in the
base rate of an electric light company.~~ 493
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~~(J) "Ohio coal research and development costs" means all
reasonable costs associated with a facility or project undertaken
by a public utility for which a recommendation to allow the
recovery of costs associated therewith has been made under
division (B)(8) of section 1551.33 of the Revised Code, including,
but not limited to, capital costs, such as costs of debt and
equity; construction and operation costs; termination and
retirement costs; costs of feasibility and marketing studies
associated with the project; and the acquisition and delivery
costs of Ohio coal used in the project, less any expenditures of
grant moneys.~~ 497
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~~(K) "Compliance facility" means property that is designed,
constructed, or installed, and used, at a coal-fired electric
generating facility for the primary purpose of complying with
Phase I acid rain control requirements under Title IV of the
"Clean Air Act Amendments of 1990," 104 Stat. 2584, 42 U.S.C.A.
7651, and that controls or limits emissions of sulfur or nitrogen
compounds resulting from the combustion of coal through the
removal or reduction of those compounds before, during, or after
the combustion of the coal, but before the combustion products are~~ 508
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emitted into the atmosphere. ~~"Compliance facility" also includes~~ 517
~~any of the following:~~ 518

~~(1) A facility that removes sulfur compounds from coal before~~ 519
~~the combustion of the coal and that is located off the premises of~~ 520
~~the electric generating facility where the coal processed by the~~ 521
~~compliance facility is burned;~~ 522

~~(2) Modifications to the electric generating facility where~~ 523
~~the compliance facility is constructed or installed that are~~ 524
~~necessary to accommodate the construction or installation, and~~ 525
~~operation, of the compliance facility;~~ 526

~~(3) A byproduct disposal facility, as defined in section~~ 527
~~3734.051 of the Revised Code, that exclusively disposes of wastes~~ 528
~~produced by the compliance facility and other coal combustion~~ 529
~~byproducts produced by the generating unit in or to which the~~ 530
~~compliance facility is incorporated or connected regardless of~~ 531
~~whether the byproduct disposal facility is located on the same~~ 532
~~premises as the compliance facility or generating unit that~~ 533
~~produces the wastes disposed of at the facility;~~ 534

~~(4) Facilities or equipment that is acquired, constructed, or~~ 535
~~installed, and used, at a coal-fired electric generating facility~~ 536
~~exclusively for the purpose of handling the byproducts produced by~~ 537
~~the compliance facility or other coal combustion byproducts~~ 538
~~produced by the generating unit in or to which the compliance~~ 539
~~facility is incorporated or connected.~~ 540

Sec. 4905.02. As used in this chapter, "public utility" 541
includes every corporation, company, copartnership, person, or 542
association, their lessees, trustees, or receivers, defined in 543
section 4905.03 of the Revised Code, including all public 544
utilities that operate their utilities not for profit, except the 545
following: 546

(A) Electric light companies that operate their utilities not 547
for profit; 548

(B) Public utilities, other than telephone companies, that 549
are owned and operated exclusively by and solely for the 550
utilities' customers, including any consumer or group of consumers 551
purchasing, delivering, storing, or transporting, or seeking to 552
purchase, deliver, store, or transport, natural gas exclusively by 553
and solely for the consumer's or consumers' own intended use as 554
the end user or end users and not for profit; 555

(C) Public utilities that are owned or operated by any 556
municipal corporation; 557

(D) Railroads as defined in sections 4907.02 and 4907.03 of 558
the Revised Code; 559

(E) Electric light companies that supply only competitive 560
retail electric service as defined in section 4928.01 of the 561
Revised Code and that do not supply noncompetitive retail electric 562
service as defined in that section. 563

Sec. 4905.03. As used in this chapter: 564

(A) Any person, firm, copartnership, voluntary association, 565
joint-stock association, company, or corporation, wherever 566
organized or incorporated, is: 567

(1) A telegraph company, when engaged in the business of 568
transmitting telegraphic messages to, from, through, or in this 569
state; 570

(2) A telephone company, when engaged in the business of 571
transmitting telephonic messages to, from, through, or in this 572
state and as such is a common carrier; 573

(3) A motor transportation company, when engaged in the 574
business of carrying and transporting persons or property or the 575

business of providing or furnishing such transportation service, 576
for hire, in or by motor-propelled vehicles of any kind, including 577
trailers, for the public in general, over any public street, road, 578
or highway in this state, except as provided in section 4921.02 of 579
the Revised Code; 580

(4) An electric light company, when engaged in the business 581
of supplying electricity for light, heat, or power purposes to 582
consumers within this state, including supplying electric 583
transmission service for electricity delivered to consumers in 584
this state; 585

(5) A gas company, when engaged in the business of supplying 586
artificial gas for lighting, power, or heating purposes to 587
consumers within this state or when engaged in the business of 588
supplying artificial gas to gas companies or to natural gas 589
companies within this state, but a producer engaged in supplying 590
to one or more gas or natural gas companies, only such artificial 591
gas as is manufactured by that producer as a by-product of some 592
other process in which the producer is primarily engaged within 593
this state is not thereby a gas company. All rates, rentals, 594
tolls, schedules, charges of any kind, or agreements between any 595
gas company and any other gas company or any natural gas company 596
providing for the supplying of artificial gas and for compensation 597
for the same are subject to the jurisdiction of the public 598
utilities commission. 599

(6) A natural gas company, when engaged in the business of 600
supplying natural gas for lighting, power, or heating purposes to 601
consumers within this state. Notwithstanding the above, neither 602
the delivery nor sale of Ohio-produced natural gas by a producer 603
or gatherer under a public utilities commission-ordered exemption, 604
adopted before, as to producers, or after, as to producers or 605
gatherers, January 1, 1996, or the delivery or sale of 606
Ohio-produced natural gas by a producer or gatherer of 607

Ohio-produced natural gas, either to a lessor under an oil and gas 608
lease of the land on which the producer's drilling unit is 609
located, or the grantor incident to a right-of-way or easement to 610
the producer or gatherer, shall cause the producer or gatherer to 611
be a natural gas company for the purposes of this section. 612

All rates, rentals, tolls, schedules, charges of any kind, or 613
agreements between a natural gas company and other natural gas 614
companies or gas companies providing for the supply of natural gas 615
and for compensation for the same are subject to the jurisdiction 616
of the public utilities commission. The commission, upon 617
application made to it, may relieve any producer or gatherer of 618
natural gas, defined in this section as a gas company or a natural 619
gas company, of compliance with the obligations imposed by this 620
chapter and Chapters 4901., 4903., 4907., 4909., 4921., and 4923. 621
of the Revised Code, so long as the producer or gatherer is not 622
affiliated with or under the control of a gas company or a natural 623
gas company engaged in the transportation or distribution of 624
natural gas, or so long as the producer or gatherer does not 625
engage in the distribution of natural gas to consumers. 626

Nothing in division (A)(6) of this section limits the 627
authority of the commission to enforce sections 4905.90 to 4905.96 628
of the Revised Code. 629

(7) A pipe-line company, when engaged in the business of 630
transporting natural gas, oil, or coal or its derivatives through 631
pipes or tubing, either wholly or partly within this state; 632

(8) A water-works company, when engaged in the business of 633
supplying water through pipes or tubing, or in a similar manner, 634
to consumers within this state; 635

(9) A heating or cooling company, when engaged in the 636
business of supplying water, steam, or air through pipes or tubing 637
to consumers within this state for heating or cooling purposes; 638

(10) A messenger company, when engaged in the business of 639
supplying messengers for any purpose; 640

(11) A street railway company, when engaged in the business 641
of operating as a common carrier, a railway, wholly or partly 642
within this state, with one or more tracks upon, along, above, or 643
below any public road, street, alleyway, or ground, within any 644
municipal corporation, operated by any motive power other than 645
steam and not a part of an interurban railroad, whether the 646
railway is termed street, inclined-plane, elevated, or underground 647
railway; 648

(12) A suburban railroad company, when engaged in the 649
business of operating as a common carrier, whether wholly or 650
partially within this state, a part of a street railway 651
constructed or extended beyond the limits of a municipal 652
corporation, and not a part of an interurban railroad; 653

(13) An interurban railroad company, when engaged in the 654
business of operating a railroad, wholly or partially within this 655
state, with one or more tracks from one municipal corporation or 656
point in this state to another municipal corporation or point in 657
this state, whether constructed upon the public highways or upon 658
private rights-of-way, outside of municipal corporations, using 659
electricity or other motive power than steam power for the 660
transportation of passengers, packages, express matter, United 661
States mail, baggage, and freight. Such an interurban railroad 662
company is included in the term "railroad" as used in section 663
4907.02 of the Revised Code. 664

(14) A sewage disposal system company, when engaged in the 665
business of sewage disposal services through pipes or tubing, and 666
treatment works, or in a similar manner, within this state. 667

(B) "Motor-propelled vehicle" means any automobile, 668
automobile truck, motor bus, or any other self-propelled vehicle 669

not operated or driven upon fixed rails or tracks.

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~~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.~~

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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 division (A) of section 1343.01 of the Revised Code. the commission shall deposit any interest so collected into the public utilities fund.

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The final computation of the assessment shall consist of imposing upon each railroad and public utility whose assessment

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under the first computation would have been fifty dollars or less 701
an assessment of fifty dollars and recomputing the assessment 702
assessments of the remaining railroads and public utilities by 703
apportioning an amount equal to the appropriation to the public 704
utilities commission for administration of the utilities division 705
in each fiscal year less the total amount to be recovered from 706
those paying the minimum assessment, in proportion to the 707
intrastate gross earnings or receipts of the remaining railroads 708
and public utilities for the calendar year next preceding that in 709
which the assessments are made. 710

In the case of an assessment based on intrastate gross 711
receipts under this section against a public utility that is an 712
electric utility as defined in section 4928.01 of the Revised 713
Code, or an electric services company, electric cooperative, or 714
governmental aggregator subject to certification under section 715
4928.08 of the Revised Code, such receipts shall be those 716
specified in the utility's, company's, COOPERATIVE'S, OR 717
aggregator's most recent report of intrastate gross receipts and 718
sales of kilowatt hours of electricity, filed with the commission 719
pursuant to division (F) of section 4928.06 of the Revised Code, 720
AND VERIFIED BY THE COMMISSION. 721

(B) On or before the first day of October in each year, the 722
commission shall notify each such railroad and public utility of 723
the sum assessed against it, whereupon payment shall be made to 724
the commission, which shall deposit it into the state treasury to 725
the credit of the public utilities fund, which is hereby created. 726
Any such amounts paid into the fund but not expended by the 727
commission shall be credited ratably, after first deducting any 728
deficits accumulated from prior years, by the commission to 729
railroads and public utilities that pay more than the minimum 730
assessment, according to the respective portions of such sum 731
assessable against them for the ensuing calendar year. The 732

assessments for such calendar year shall be reduced 733
correspondingly. 734

(C) Within five days after the beginning of each fiscal year, 735
the director of budget and management shall transfer from the 736
general revenue fund to the public utilities fund an amount 737
sufficient for maintaining and administering the public utilities 738
commission and exercising its supervision and jurisdiction over 739
the railroads and public utilities of the state during the first 740
four months of the fiscal year. The director shall transfer the 741
same amount back to the general revenue fund from the public 742
utilities fund at such time as the director determines that the 743
balance of the public utilities fund is sufficient to support the 744
appropriations from the fund for the fiscal year. The director may 745
transfer less than that amount if the director determines that the 746
revenues of the public utilities fund during the fiscal year will 747
be insufficient to support the appropriations from the fund for 748
the fiscal year, in which case the amount not paid back to the 749
general revenue fund shall be payable to the general revenue fund 750
in future fiscal years. 751

~~(C)~~(D) For the purpose of this section only, "public utility" 752
includes, in addition to an electric utility as defined in section 753
4928.01 of the Revised Code, an electric services company, an 754
electric cooperative, or a governmental aggregator subject to 755
certification under section 4928.08 of the Revised Code, to the 756
extent of the company's, cooperative's, or aggregator's engagement 757
in the business of supplying or arranging for the supply in this 758
state of any retail electric service for which it must be so 759
certified. 760

(E) Each public utilities commissioner shall receive a salary 761
fixed at the level set by pay range 49 under schedule E-2 of 762
section 124.152 of the Revised Code. 763

Sec. 4905.14. (A) Every public utility shall file an annual
report with the public utilities commission. The report shall be
filed at the time and in the form prescribed by the commission,
shall be duly verified, and shall cover the yearly period fixed by
the commission. The commission shall prescribe the character of
the information to be embodied in the annual report, and shall
furnish to each public utility a blank form for it. Every public
utility also shall file a copy of the annual report with the
office of consumers' counsel; the copy shall be filed at the same
time that the original is filed with the commission. If any annual
report filed with the commission is defective or erroneous, the
commission may order that it be amended within a prescribed time.
Any amendments made pursuant to such an order shall be filed with
the commission and with the office of consumers' counsel. Each
annual report filed with the commission shall be preserved in the
office of the commission. The commission may, at any time, require
specific answers to questions upon which it desires information.

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(B) On the first day of July and the first day of November of
each year, each gas company, and natural gas company, ~~and electric
light company~~ shall file with the commission a report in
quintuplicate stating:

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(1) The total demand, stated in terms of ~~kilowatt hours or~~
cubic feet, that the company projects will be expected of the
company for the following twelve months;

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~~(2) With respect to electric light companies, the supply of
fuel for the generation of electricity that they will possess as
of the first day of July and the first day of November;~~

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~~(3) With respect to gas companies and natural gas companies,~~
the The pertinent details of supply contracts with pipeline
companies and producers for the following twelve months that they

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have executed and the quantity of the gas that they will possess 795
in storage and will be available for delivery as of the first day 796
of July and the first day of November; 797

~~(4)~~(3) Where it appears from a comparison of the information 798
reported in division (B)(1) of this section with that reported in 799
division (B)(2) ~~or (3)~~ of this section that the total demand 800
projected by the company for the twelve months following the date 801
of the report will exceed the ability of the company to furnish 802
it, the means which the company intends to employ in order to 803
prevent any interruption or curtailment of service. 804

(C) The public utilities commission may require any telephone 805
company to file with its annual report, supplementary reports of 806
each exchange area owned or operated by it, in such detail as the 807
commission may prescribe. Upon request of fifteen per cent of the 808
subscribers of any telephone exchange, the public utilities 809
commission shall require the report for such exchange area. 810
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Sec. 4905.34. Except as provided in sections 4905.33 and 812
4905.35 and Chapter 4928. of the Revised Code, Chapters 4901., 813
4903., 4905., 4907., 4909., 4921., and 4923. of the Revised Code 814
do not prevent any public utility or railroad from granting any of 815
its property for any public purpose, or granting reduced rates or 816
free service of any kind to the United States, to the state or any 817
political subdivision of the state, for charitable purposes, for 818
fairs or expositions, to a law enforcement officer residing in 819
free housing provided pursuant to section 3735.43 of the Revised 820
Code, or to any officer or employee of such public utility or 821
railroad or the officer's or employee's family. All contracts and 822
agreements made or entered into by such public utility or railroad 823
for such use, reduced rates, or free service are valid and 824
enforcible at law. As used in this section, "employee" includes 825

furloughed, pensioned, and superannuated employees. 826

Sec. 4905.40. (A) A public utility or a railroad may, when 827
authorized by order of the public utilities commission, issue 828
stocks, bonds, notes, and other evidences of indebtedness, payable 829
at periods of more than twelve months after their date of 830
issuance, when necessary: 831

(1) For the acquisition of property, the construction, 832
completion, extension, renewal, or improvement of its facilities, 833
or the improvement of its service; or 834

(2) For reorganization or readjustment of its indebtedness 835
and capitalization, for the discharge or lawful refunding of its 836
obligation, or for the reimbursement of moneys actually expended 837
for such purposes from income or from any other moneys in the 838
treasury of the public utility or railroad not secured or obtained 839
from the issue of stocks, bonds, notes, or other evidences of 840
indebtedness of such public utility or railroad. No reimbursement 841
of moneys expended for such purposes from income or other moneys 842
in the treasury shall be authorized unless the applicant has kept 843
its accounts and vouchers of such expenditures in such manner as 844
to enable the commission to ascertain the amount and purposes of 845
such expenditures. 846

(B) Any public utility, subject to the jurisdiction of the 847
commission, may, when authorized by the commission, issue shares 848
of common capital stock to acquire or pay for shares of common 849
capital stock of a public utility of this or an adjoining state 850
whose property is so located as to permit the operation of the 851
properties of such utilities as an integrated system if the 852
applicant owns, or by this issue will acquire, not less than 853
sixty-five per cent of the issued and outstanding common capital 854
shares of the company whose shares are to be acquired, and if the 855

consideration to be capitalized by the acquiring company does not 856
exceed the par or stated value at which the shares so acquired 857
were issued. 858

(C) Any bonds, notes, or other evidences of indebtedness 859
payable at periods of more than twelve months after their date may 860
be issued as provided in sections 4905.40 to 4905.43 of the 861
Revised Code, regardless of the amount of the capital stock of the 862
public utility or railroad, subject to the approval of the 863
commission of the excess of such bonds, notes, or other evidences 864
of indebtedness above the amount of the capital stock of such 865
public utility or railroad. 866

(D) The commission shall authorize on the best terms 867
obtainable such issues of stocks, bonds, and other evidences of 868
indebtedness as are necessary to enable any public utility to 869
comply with any contract made between such public utility and any 870
municipal corporation prior to June 30, 1911. 871

(E) The commission may authorize a public utility that is an 872
electric light company to issue equity securities, or debt 873
securities having a term of more than twelve months from the date 874
of issuance, for the purpose of yielding to the company the 875
capacity to acquire a facility that produces fuel for the 876
generation of electricity. 877

(F) In any proceeding under division (A)(1) of this section 878
initiated by a public utility, the commission shall determine and 879
set forth in its order: 880

(1) Whether the purpose to which the issue or any proceeds of 881
it shall be applied was or is reasonably required by the utility 882
to meet its present and prospective obligations to provide utility 883
service; 884

(2) Whether the amount of the issue and the probable cost of 885
such stocks, bonds, notes, or other evidences of indebtedness is 886

just and reasonable; 887

(3) What effect, if any, the issuance of such stocks, bonds, 888
notes, or other evidences of indebtedness and the cost thereof 889
will have upon the present and prospective revenue requirements of 890
the utility. 891

(G) Sections 4905.40 to 4905.42 of the Revised Code do not 892
apply to stocks, bonds, notes, or other evidence of indebtedness 893
issued for the purpose of financing oil or natural gas drilling, 894
producing, gathering, and associated activities and facilities by 895
a producer which supplies to no more than twenty purchasers only 896
such gas as is produced, gathered, or purchased by such producer 897
within this state. 898

(H) Each public utility seeking authorization from the 899
commission for the issuance of securities to finance the 900
installation, construction, extension, or improvement of an air 901
quality facility, as defined in section 3706.01 of the Revised 902
Code, shall consider the availability of financing therefor from 903
the Ohio air quality development authority and shall demonstrate 904
to the commission that the proposed financing will be obtained on 905
the best terms obtainable. 906

Sec. 4905.42. To determine whether it should issue the order 907
referred to in section 4905.40 of the Revised Code, the public 908
utilities commission shall hold such hearings, make such inquiries 909
or investigations, and examine such witnesses, books, papers, 910
documents, and contracts as it deems proper. ~~Within forty-five~~ 911
~~days after an electric light company submits an application under~~ 912
~~that section pertaining to the issuance of stocks, bonds, notes,~~ 913
~~or other evidence of indebtedness to acquire, construct, or~~ 914
~~install a compliance facility, the commission shall complete its~~ 915
~~review and shall render a decision on the application.~~ 916

An order issued under this section shall fix the amount, 917
character, and terms of any issue of stocks, bonds, notes, or 918
other evidence of indebtedness, and the purposes to which the 919
issue or any proceeds of it shall be applied, shall recite that 920
the money, property, consideration, or labor procured or to be 921
procured or paid for by such issue was or is reasonably required 922
for the purposes specified in the order, and shall recite the 923
value of any property, consideration, or service, as found by the 924
commission, for which in whole or in part such issue is proposed 925
to be made. 926

No public utility or railroad shall, without the consent of 927
the commission, apply any such issue or its proceeds to any 928
purpose not specified in the order. Such public utilities or 929
railroads may issue notes for proper corporate purposes, payable 930
at periods of not more than twelve months, without the consent of 931
the commission, but no such notes shall, in whole or in part, 932
directly or indirectly, be refunded by any issue of stocks or 933
bonds, or by any evidence of indebtedness, running for more than 934
twelve months, without the consent of the commission. 935

All stocks, bonds, notes, or other evidence of indebtedness 936
issued by any public utility or railroad without the permission of 937
the commission are void. No interstate railroad or public utility 938
shall be required to apply to the commission for authority to 939
issue stocks, bonds, notes, or other evidence of indebtedness for 940
the acquisition of property, the construction, completion, 941
extension, or improvement of its facilities, or the improvement or 942
maintenance of its service outside this state, or for authority 943
for the discharge or refunding of obligations issued or incurred 944
for such purposes or the reimbursement of moneys actually expended 945
for such purposes outside this state. 946

No pipe_line company--when engaged in the business of 947
transporting oil through pipes or tubing, either wholly or 948

partly--within this state, shall be required to apply to the 949
commission for authority to issue stocks, bonds, notes, or other 950
evidence of indebtedness for the purpose of acquiring or paying 951
for stocks, bonds, notes, or other evidence of indebtedness of any 952
other corporation organized under the laws of this state, any 953
other state, the District of Columbia, the United States, any 954
territory of the United States, any foreign country, or otherwise. 955

No company that is both a pipe_line company engaged as such 956
in the business of transporting natural gas through pipes or 957
tubing in interstate commerce, wholly or partly within this state, 958
and a natural gas company engaged as such in this state solely in 959
the business of supplying natural gas to gas companies or to 960
natural gas companies shall be required to apply to the commission 961
for authority to issue stocks, bonds, notes, or other evidence of 962
indebtedness. 963

Sec. 4905.70. The public utilities commission shall initiate 964
programs that will promote and encourage conservation of energy 965
and a reduction in the growth rate of energy consumption, promote 966
economic efficiencies, and take into account long-run incremental 967
costs. Notwithstanding sections 4905.31, 4905.33, 4905.35, and 968
4909.151 of the Revised Code, the ~~public utilities~~ commission 969
shall examine and issue written findings on the declining block 970
rate structure, lifeline rates, long-run incremental pricing, peak 971
load and off-peak pricing, time of day and seasonal pricing, 972
interruptible load pricing, and single rate pricing where rates do 973
not vary because of classification of customers or amount of 974
usage. ~~The public utilities commission shall establish criteria~~ 975
~~for the investigation, identification, and remedy of the existence~~ 976
~~of any excess capacity, exclusive of capacity used primarily for~~ 977
~~Ohio coal research and development, as defined in section 1555.01~~ 978
~~of the Revised Code, the costs of which have been allowed for~~ 979
~~recovery under section 4905.301 or 4909.15 of the Revised Code, in~~ 980

~~the generating systems of electric light companies.~~ The public 981
utilities commission, by a rule adopted no later than October 1, 982
1977, and effective and applicable no later than November 1, 1977, 983
shall require each electric light company to offer to such of 984
their residential customers whose residences are primarily heated 985
by electricity the option of their usage being metered by a demand 986
or load meter. A under the rule, a customer who selects such 987
option may, ~~under the rule,~~ be required by the company, where no 988
such meter is already installed, to pay for such meter and its 989
installation. The rule shall require each company to bill such of 990
its customers who select such option for those kilowatt hours in 991
excess of a prescribed number of kilowatt hours per kilowatt of 992
billing demand, at a rate per kilowatt hour that reflects the 993
lower cost of providing service during off-peak periods. 994

Sec. 4906.10. (A) The power siting board shall render a 995
decision upon the record either granting or denying the 996
application as filed, or granting it upon such terms, conditions, 997
or modifications of the construction, operation, or maintenance of 998
the major utility facility as the board considers appropriate. The 999
certificate shall be conditioned upon the facility being in 1000
compliance with standards and rules adopted under sections 1001
1501.33, 1501.34, and 4561.32 and Chapters 3704., 3734., and 6111. 1002
of the Revised Code. The period of initial operation under a 1003
certificate shall expire two years after the date on which 1004
electric power is first generated by the facility. During the 1005
period of initial operation, the facility shall be subject to the 1006
enforcement and monitoring powers of the director of environmental 1007
protection under Chapters 3704., 3734., and 6111. of the Revised 1008
Code and to the emergency provisions under those chapters. If a 1009
major utility facility constructed in accordance with the terms 1010
and conditions of its certificate is unable to operate in 1011

compliance with all applicable requirements of state laws, rules, 1012
and standards pertaining to air pollution, the facility may apply 1013
to the director of environmental protection for a conditional 1014
operating permit under division (G) of section 3704.03 of the 1015
Revised Code and the rules adopted thereunder. The operation of a 1016
major utility facility in compliance with a conditional operating 1017
permit is not in violation of its certificate. After the 1018
expiration of the period of initial operation of a major utility 1019
facility, the facility shall be under the jurisdiction of the 1020
environmental protection agency and shall comply with all laws, 1021
rules, and standards pertaining to air pollution, water pollution, 1022
and solid and hazardous waste disposal. 1023

The board shall not grant a certificate for the construction, 1024
operation, and maintenance of a major utility facility, either as 1025
proposed or as modified by the board, unless it finds and 1026
determines all of the following: 1027

(1) The basis of the need for the facility⁷. In the case of a 1028
major utility facility described in division (B)(1) of section 1029
4906.01 of the Revised Code to be constructed on or after the 1030
starting date of competitive retail electric service as defined in 1031
section 4928.01 of the Revised Code, the board shall presume the 1032
need for the facility as that need is stated in an application 1033
pursuant to division (A)(3) of section 4906.06 of the Revised 1034
Code. 1035

(2) The nature of the probable environmental impact; 1036

(3) That the facility represents the minimum adverse 1037
environmental impact, considering the state of available 1038
technology and the nature and economics of the various 1039
alternatives, and other pertinent considerations; 1040

(4) In the case of an electric transmission line, that the 1041
facility is consistent with regional plans for expansion of the 1042

electric power grid of the electric systems serving this state and 1043
interconnected utility systems and that the facility will serve 1044
the interests of electric system economy and reliability; 1045

(5) That the facility will comply with Chapters 3704., 3734., 1046
and 6111. of the Revised Code and all rules and standards adopted 1047
under those chapters and under sections 1501.33, 1501.34, and 1048
4561.32 of the Revised Code. In determining whether the facility 1049
will comply with all rules and standards adopted under section 1050
4561.32 of the Revised Code, the board shall consult with the 1051
office of aviation of the division of multi-modal planning and 1052
programs of the department of transportation under section 1053
4561.341 of the Revised Code. 1054

(6) That the facility will serve the public interest, 1055
convenience, and necessity; 1056

(7) In addition to the provisions contained in divisions 1057
(A)(1) to (6) of this section and rules adopted under those 1058
divisions, what its impact will be on the viability as 1059
agricultural land of any land in an existing agricultural district 1060
established under Chapter 929. of the Revised Code that is located 1061
within the site and alternative site of the proposed major utility 1062
facility. Rules adopted to evaluate impact under division (A)(7) 1063
of this section shall not require the compilation, creation, 1064
submission, or production of any information, document, or other 1065
data pertaining to land not located within the site and 1066
alternative site. 1067

(8) That the facility incorporates maximum feasible water 1068
conservation practices as determined by the board, considering 1069
available technology and the nature and economics of the various 1070
alternatives. 1071

(B) If the board determines that the location of all or a 1072
part of the proposed facility should be modified, it may condition 1073

its certificate upon that modification, provided that the
municipal corporations and counties, and persons residing therein,
affected by the modification shall have been given reasonable
notice thereof.

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

Sec. 4909.01. As used in this chapter:

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

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

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

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

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

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

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

~~(H) "Compliance facility" has the meaning set forth in~~

~~section 4905.01 of the Revised Code.~~ 1103

~~Nothing in this section shall be construed to mean that an 1104
electric light company operated not for profit or one that is 1105
owned or operated by a municipal corporation is subject to section 1106
4909.191 of the Revised Code. 1107~~

Sec. 4909.05. As used in this section: 1108

(A) A "lease purchase agreement" is an agreement pursuant to 1109
which a public utility leasing property is required to make rental 1110
payments for the term of the agreement and either the utility is 1111
granted the right to purchase the property upon the completion of 1112
the term of the agreement and upon the payment of an additional 1113
fixed sum of money or title to the property vests in the utility 1114
upon the making of the final rental payment. 1115

(B) A "leaseback" is the sale or transfer of property by a 1116
public utility to another person contemporaneously followed by the 1117
leasing of the property to the public utility on a long-term 1118
basis. 1119

The public utilities commission shall prescribe the form and 1120
details of the valuation report of the property of each public 1121
utility or railroad in the state. Such report shall include all 1122
the kinds and classes of property, with the value of each, owned 1123
or held by each public utility or railroad used and useful for the 1124
service and convenience of the public. Such report shall contain 1125
the following facts in detail: 1126

(C) The original cost of each parcel of land owned in fee and 1127
in use at the date certain determined by the commission; and also 1128
a statement of the conditions of acquisition, whether by direct 1129
purchase, by donation, by exercise of the power of eminent domain, 1130
or otherwise; 1131

(D) The actual acquisition cost, not including periodic 1132

rental fees, of rights-of-way, trailways, or other land rights 1133
held by virtue of easements, leases, or other forms of grants of 1134
rights as to usage; 1135

(E) The original cost of all other kinds and classes of 1136
property used and useful in the rendition of service to the 1137
public. Such original costs of property, other than land owned in 1138
fee, shall be the cost, as determined to be reasonable by the 1139
commission, to the person that first dedicated the property to the 1140
public use and shall be set forth in property accounts and 1141
subaccounts as prescribed by the commission. To the extent that 1142
the costs of property comprising a coal research and development 1143
facility, as defined in section 1555.01 of the Revised Code, or a 1144
coal development project, as defined in section 1551.30 of the 1145
Revised Code, have been allowed for recovery as Ohio coal research 1146
and development costs under section ~~4905.301~~, 4905.304, ~~or~~ 1147
~~4909.191~~ of the Revised Code, none of those costs shall be 1148
included as a cost of property under this division. 1149

(F) The cost of property constituting all or part of a 1150
project leased to or used by the utility under Chapter 165., 1151
3706., 6121., or 6123. of the Revised Code and not included under 1152
division (E) of this section exclusive of any interest directly or 1153
indirectly paid by the utility with respect thereto whether or not 1154
capitalized; 1155

(G) In the discretion of the commission, the cost to a 1156
utility, in an amount determined to be reasonable by the 1157
commission, of property constituting all or part of a project 1158
leased to the utility under a lease purchase agreement or a 1159
leaseback and not included under division (E) of this section 1160
exclusive of any interest directly or indirectly paid by the 1161
utility with respect thereto whether or not capitalized; 1162

(H) The proper and adequate reserve for depreciation, as 1163

determined to be reasonable by the commission; 1164

(I) Any sums of money or property that the company may have 1165
received as total or partial defrayal of the cost of its property; 1166

(J) The valuation of the property of the company, which shall 1167
be the sum of the amounts contained in the report pursuant to 1168
divisions (C), (D), (E), (F), and (G) of this section, less the 1169
sum of the amounts contained in the report pursuant to divisions 1170
(H) and (I) of this section. 1171

The report shall show separately the property used and useful 1172
to such public utility or railroad in the furnishing of the 1173
service to the public, and the property held by such public 1174
utility or railroad for other purposes, and such other items as 1175
the commission considers proper. The commission may require an 1176
additional report showing the extent to which the property is used 1177
and useful. Such reports shall be filed in the office of the 1178
commission for the information of the governor and the general 1179
assembly. 1180

Sec. 4909.15. (A) The public utilities commission, when 1181
fixing and determining just and reasonable rates, fares, tolls, 1182
rentals, and charges, shall determine: 1183

(1) The valuation as of the date certain of the property of 1184
the public utility used and useful in rendering the public utility 1185
service for which rates are to be fixed and determined. The 1186
valuation so determined shall be the total value as set forth in 1187
division (J) of section 4909.05 of the Revised Code, and a 1188
reasonable allowance for materials and supplies and cash working 1189
capital, as determined by the ~~public utilities~~ commission. 1190

The commission ~~may~~, in its discretion, may include in the 1191
valuation a reasonable allowance for construction work in progress 1192
but, in no event, may such an allowance be made by the commission 1193

until it has determined that the particular construction project 1194
is at least seventy-five per cent complete. 1195

~~In the case of a construction project involving the 1196
installation, renovation, or maintenance of pollution control 1197
equipment, the commission may include the project in the valuation 1198
as construction work in progress as of the date that the 1199
particular construction project is at least seventy-five per cent 1200
complete. 1201~~

~~As used in this division, "pollution control equipment" means 1202
any construction project undertaken, in whole or in part, to 1203
reduce sulfur or nitrous oxide emissions to levels established by 1204
federal, state, or local statute, law, ordinance, regulation, or 1205
order. The commission shall determine by rule what projects 1206
qualify as pollution control equipment. 1207~~

In determining the percentage completion of a particular 1208
construction project, the commission shall consider, among other 1209
relevant criteria, the per cent of time elapsed in construction; 1210
the per cent of construction funds, excluding allowance for funds 1211
used during construction, expended, or obligated to such 1212
construction funds budgeted where all such funds are adjusted to 1213
reflect current purchasing power; and any physical inspection 1214
performed by or on behalf of any party, including the commission's 1215
staff. 1216

A reasonable allowance for construction work in progress 1217
~~other than for construction projects involving the installation, 1218
renovation, or maintenance of pollution control equipment shall 1219
not exceed ten per cent of the total valuation as stated in this 1220
division, not including such allowance for construction work in 1221
progress. 1222~~

~~The allowance for construction work in progress for 1223
construction projects involving the installation, renovation, or 1224~~

~~maintenance of pollution control equipment shall be the dollar 1225~~
~~value of the project and shall not exceed, together with any other 1226~~
~~allowance for construction work in progress granted under this 1227~~
~~division, twenty per cent of the total valuation as stated in this 1228~~
~~division, not including such allowance for construction work in 1229~~
~~progress. 1230~~

Where the commission permits an allowance for construction 1231
work in progress, the dollar value of the project or portion 1232
thereof included in the valuation as construction work in progress 1233
shall not be included in the valuation as plant in service until 1234
such time as the total revenue effect of the construction work in 1235
progress allowance is offset by the total revenue effect of the 1236
plant in service exclusion. Carrying charges calculated in a 1237
manner similar to allowance for funds used during construction 1238
shall accrue on that portion of the project in service but not 1239
reflected in rates as plant in service, and such accrued carrying 1240
charges shall be included in the valuation of the property at the 1241
conclusion of the offset period for purposes of division (J) of 1242
section 4909.05 of the Revised Code. 1243

From and after April 10, 1985, no allowance for construction 1244
work in progress as it relates to a particular construction 1245
project shall be reflected in rates for a period exceeding 1246
forty-eight consecutive months commencing on the date the initial 1247
rates reflecting such allowance become effective, except as 1248
otherwise provided in this division. 1249

~~In the case of a nuclear generating facility that has not 1250~~
~~been granted a full construction permit by the nuclear regulatory 1251~~
~~commission on or before April 10, 1985, the utility, within six 1252~~
~~months after the granting of such permit, shall submit to the 1253~~
~~public utilities commission a projected in service date for such 1254~~
~~facility. Thereafter, no allowance for construction work in 1255~~
~~progress as it relates to such nuclear generating facility shall 1256~~

~~be reflected in rates for a period exceeding forty-eight~~ 1257
~~consecutive months commencing on the date the initial rates~~ 1258
~~reflecting such allowance become effective, or for a period~~ 1259
~~commencing on the date the initial rates reflecting such allowance~~ 1260
~~become effective and ending on the projected in service date~~ 1261
~~previously submitted to the commission, whichever period expires~~ 1262
~~first.~~ 1263

The applicable maximum period in rates for an allowance for 1264
construction work in progress as it relates to a particular 1265
construction project shall be tolled if, and to the extent, a 1266
delay in the in-service date of the project is caused by the 1267
action or inaction of any federal, state, county, or municipal 1268
agency having jurisdiction, where such action or inaction relates 1269
to a change in a rule, standard, or approval of such agency, and 1270
where such action or inaction is not the result of the failure of 1271
the utility to reasonably endeavor to comply with any rule, 1272
standard, or approval prior to such change. 1273

In the event that such period expires before the project goes 1274
~~in~~ into service, the commission shall exclude, from the date of 1275
expiration, ~~exclude~~ the allowance for the project as construction 1276
work in progress from rates, except that the commission may extend 1277
the expiration date up to twelve months for good cause shown. 1278

In the event that a utility has permanently canceled, 1279
abandoned, or terminated construction of a project for which it 1280
was previously permitted a construction work in progress 1281
allowance, the commission ~~shall~~ immediately shall exclude the 1282
allowance for the project from the valuation. 1283

In the event that a construction work in progress project 1284
previously included in the valuation is removed from the valuation 1285
pursuant to this division, any revenues collected by the utility 1286
from its customers after April 10, 1985, ~~which~~ that resulted from 1287

such prior inclusion shall be offset against future revenues over 1288
the same period of time as the project was included in the 1289
valuation as construction work in progress. The total revenue 1290
effect of such offset shall not exceed the total revenues 1291
previously collected. 1292

In no event shall the total revenue effect of any offset or 1293
offsets provided ~~herein~~ under division (A)(1) of this section 1294
exceed the total revenue effect of any construction work in 1295
progress allowance. 1296

(2) A fair and reasonable rate of return to the utility on 1297
the valuation as determined in division (A)(1) of this section; 1298

(3) The dollar annual return to which the utility is entitled 1299
by applying the fair and reasonable rate of return as determined 1300
under division (A)(2) of this section to the valuation of the 1301
utility determined under division (A)(1) of this section; 1302

(4) The cost to the utility of rendering the public utility 1303
service for the test period less the total of any interest on cash 1304
or credit refunds paid, pursuant to section 4909.42 of the Revised 1305
Code, by the utility during the test period. 1306

~~(a) Any depreciation expense of a compliance facility shall 1307
be calculated under division (A)(4) of this section on the basis 1308
of the useful service life of the compliance facility or the 1309
remaining useful life of the electric generating unit in 1310
connection with which the compliance facility was acquired, 1311
constructed, or installed, whichever is the shorter time. Division 1312
(A)(4)(a) of this section applies only to depreciation expense of 1313
a compliance facility contained in the environmental compliance 1314
plan of the electric light company approved under Chapter 4913. of 1315
the Revised Code or in its compliance strategy examined under 1316
section 4909.158 of the Revised Code. 1317~~

~~(b) Federal, state, and local taxes imposed on or measured by 1318~~

net income may, in the discretion of the commission, be computed 1319
by the normalization method of accounting, provided the utility 1320
maintains accounting reserves that reflect differences between 1321
taxes actually payable and taxes on a normalized basis, provided 1322
that no determination as to the treatment in the rate-making 1323
process of such taxes shall be made that will result in loss of 1324
any tax depreciation or other tax benefit to which the utility 1325
would otherwise be entitled, and further provided that such tax 1326
benefit as redounds to the utility as a result of such a 1327
computation may not be retained by the company, used to fund any 1328
dividend or distribution, or utilized for any purpose other than 1329
the defrayal of the operating expenses of the utility and the 1330
defrayal of the expenses of the utility in connection with 1331
construction work. 1332

~~(c)~~(b) The amount of any tax credits granted to an electric 1333
light company under section ~~5727.391~~ 5733.39 of the Revised Code 1334
shall not be retained by the company, used to fund any dividend or 1335
distribution, or utilized for any purposes other than the defrayal 1336
of the allowable operating expenses of the company and the 1337
defrayal of the allowable expenses of the company in connection 1338
with the installation, acquisition, construction, or use of a 1339
compliance facility. The amount of the tax credits granted to an 1340
electric light company under that section shall be returned to its 1341
customers within three years after initially claiming the credit 1342
through an offset to the company's rates or fuel component, as 1343
determined by the commission, as set forth in schedules filed by 1344
the company under section 4905.30 of the Revised Code. As used in 1345
division (A)(4)(c) of this section, "compliance facility" has the 1346
same meaning as in section ~~5727.391~~ 5733.39 of the Revised Code. 1347

(B) The ~~public utilities~~ commission shall compute the gross 1348
annual revenues to which the utility is entitled by adding the 1349
dollar amount of return under division (A)(3) of this section to 1350

the cost of rendering the public utility service for the test 1351
period under division (A)(4) of this section. 1352

(C) The test period, unless otherwise ordered by the ~~public~~ 1353
~~utilities~~ commission, shall be the twelve-month period beginning 1354
six months prior to the date the application is filed and ending 1355
six months subsequent to that date. In no event shall the test 1356
period end more than nine months subsequent to the date the 1357
application is filed. The revenues and expenses of the utility 1358
shall be determined during the test period. The date certain shall 1359
be not later than the date of filing. 1360

(D) When the ~~public-utilities~~ commission is of the opinion, 1361
after hearing and after making the determinations under divisions 1362
(A) and (B) of this section, that any rate, fare, charge, toll, 1363
rental, schedule, classification, or service, or any joint rate, 1364
fare, charge, toll, rental, schedule, classification, or service 1365
rendered, charged, demanded, exacted, or proposed to be rendered, 1366
charged, demanded, or exacted, is, or will be, unjust, 1367
unreasonable, unjustly discriminatory, unjustly preferential, or 1368
in violation of law, that the service is, or will be, inadequate, 1369
or that the maximum rates, charges, tolls, or rentals chargeable 1370
by any such public utility are insufficient to yield reasonable 1371
compensation for the service rendered, and are unjust and 1372
unreasonable, the commission shall: 1373

(1) With due regard among other things to the value of all 1374
property of the public utility actually used and useful for the 1375
convenience of the public as determined under division (A)(1) of 1376
this section, excluding from such value the value of any franchise 1377
or right to own, operate, or enjoy the same in excess of the 1378
amount, exclusive of any tax or annual charge, actually paid to 1379
any political subdivision of the state or county, as the 1380
consideration for the grant of such franchise or right, and 1381
excluding any value added to such property by reason of a monopoly 1382

or merger, with due regard in determining the dollar annual return 1383
under division (A)(3) of this section to the necessity of making 1384
reservation out of the income for surplus, depreciation, and 1385
contingencies, and; 1386

(2) With due regard to all such other matters as are proper, 1387
according to the facts in each case, 1388

(a) Including a fair and reasonable rate of return determined 1389
by the commission with reference to a cost of debt equal to the 1390
actual embedded cost of debt of such public utility, 1391

(b) But not including the portion of any periodic rental or 1392
use payments representing that cost of property ~~which~~ that is 1393
included in the valuation report under divisions (F) and (G) of 1394
section 4909.05 of the Revised Code, fix and determine the just 1395
and reasonable rate, fare, charge, toll, rental, or service to be 1396
rendered, charged, demanded, exacted, or collected for the 1397
performance or rendition of the service that will provide the 1398
public utility the allowable gross annual revenues under division 1399
(B) of this section, and order such just and reasonable rate, 1400
fare, charge, toll, rental, or service to be substituted for the 1401
existing one. After such determination and order no change in the 1402
rate, fare, toll, charge, rental, schedule, classification, or 1403
service shall be made, rendered, charged, demanded, exacted, or 1404
changed by such public utility without the order of the 1405
commission, and any other rate, fare, toll, charge, rental, 1406
classification, or service is prohibited. 1407

(E) Upon application of any person or any public utility, and 1408
after notice to the parties in interest and opportunity to be 1409
heard as provided in Chapters 4901., 4903., 4905., 4907., 4909., 1410
4921., and 4923. of the Revised Code for other hearings, has been 1411
given, the commission may rescind, alter, or amend an order fixing 1412
any rate, fare, toll, charge, rental, classification, or service, 1413

or any other order made by the commission. Certified copies of
such orders shall be served and take effect as provided for
original orders.

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

(B) Notwithstanding Chapters 4905. and 4909. of the Revised
Code, the payment of the kilowatt-hour tax imposed by section
5727.81 of the Revised Code shall be considered a normal expense
incurred by an electric distribution utility, as defined in
section 4928.01 of the Revised Code, in the course of rendering
service to the public, and may be recovered as such in accordance
with an order of the commission. An electric distribution utility
required to pay the kilowatt-hour tax may file with the commission
revised rate schedules that will permit full recovery on a
permanent basis in its rates, of the amount of any resultant tax
payments, and the commission shall act promptly to approve those
schedules. in approving the schedules, the commission shall
provide that the rate effect of the kilowatt-hour tax does not
vary by customer and is equal for each customer based solely on
kilowatt hours of electricity distributed. As used in this
division, "kilowatt hour" means one thousand watt-hours of

electricity. 1445

Sec. 4911.18. (A) For the sole purpose of maintaining and 1446
administering the office of the consumers' counsel and exercising 1447
the powers of the consumers' counsel under this chapter, an amount 1448
equal to the appropriation to the office of the consumers' counsel 1449
in each fiscal year shall be apportioned among and assessed 1450
against ~~the each~~ public ~~utilities~~ utility within the state, as 1451
defined in section 4911.01 of the Revised Code, by first computing 1452
an assessment as though it were to be made in proportion to the 1453
intrastate gross earnings or receipts of the public ~~utilities~~ 1454
~~companies~~ utility for the calendar year next preceding that in 1455
which the ~~assessments are~~ assessment is made, excluding earnings 1456
or receipts from sales to other public utilities for resale. The 1457
office may include in that first computation any amount of a 1458
railroad's or public utility's intrastate gross earnings or 1459
receipts underreported in a prior year. in addition to whatever 1460
penalties apply under the Revised Code to such underreporting, the 1461
office shall assess the railroad or public utility interest at the 1462
rate stated in division (A) of section 1343.01 of the Revised 1463
Code. the office shall deposit any interest so collected into the 1464
consumers' counsel operating fund. 1465

The final computation of the assessment shall consist of 1466
imposing upon each ~~company~~ public utility whose assessment under 1467
the first computation would have been fifty dollars or less an 1468
assessment of fifty dollars and recomputing the assessment of the 1469
remaining companies by apportioning an amount equal to the 1470
appropriation to the office of consumers' counsel in each fiscal 1471
year less the total amount to be recovered from those paying the 1472
minimum assessment, in proportion to the intrastate gross earnings 1473
or receipts of the remaining companies for the calendar year next 1474
preceding that in which the assessments are made, excluding 1475
earnings or receipts from sales to other public utilities for 1476

resale. 1477

In the case of an assessment based on intrastate gross 1478
receipts under this section against a public utility that is an 1479
electric utility as defined in section 4928.01 of the Revised 1480
Code, or an electric services company, electric cooperative, or 1481
governmental aggregator subject to certification under section 1482
4928.08 of the Revised Code, such receipts shall be those 1483
specified in the utility's, company's, COOPERATIVE'S, OR 1484
aggregator's most recent report of intrastate gross receipts and 1485
sales of kilowatt hours of electricity, filed with the public 1486
utilities commission pursuant to division (F) of section 4928.06 1487
of the Revised Code, AND VERIFIED BY THE COMMISSION. 1488

(B) On or before the first day of October in each year, the 1489
office of consumers' counsel shall notify each public utility 1490
~~company~~ of the sum assessed against it, whereupon payment shall be 1491
made to the counsel, who shall deposit it into the state treasury 1492
to the credit of the consumers' counsel operating fund, which is 1493
hereby created. Any such amounts paid into the fund but not 1494
expended by the ~~counsel~~ office shall be credited ratably by the 1495
~~counsel office~~ to the public utility ~~companies which~~ utilities 1496
that pay more than the minimum assessment, according to the 1497
respective portions of such sum assessable against them for the 1498
ensuing calendar year, after first deducting any deficits 1499
accumulated from prior years. The assessments for such calendar 1500
year shall be reduced correspondingly. 1501

(C) Within five days after the beginning of each fiscal year, 1502
the director of budget and management shall transfer from the 1503
general revenue fund to the consumers' counsel operating fund an 1504
amount sufficient for maintaining and administering the office of 1505
the consumers' counsel and exercising the powers of the consumers' 1506
counsel under this chapter during the first four months of the 1507
fiscal year. Not later than the thirty-first day of December of 1508

the fiscal year, the same amount shall be transferred back to the
general revenue fund from the consumers' counsel operating fund.

(D) As used in this section, "public utility" includes, in addition to an electric utility as defined in section 4928.01 of the Revised Code, an electric services company, an electric cooperative, or a governmental aggregator subject to certification under section 4928.08 of the Revised Code, to the extent of the company's, cooperative's, or aggregator's engagement in the business of supplying or arranging for the supply in this state of any retail electric service for which it must be so certified.

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

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

(2) "Auction customer" means a customer of an electric utility that has never made an affirmative choice to be supplied retail electric generation service by its electric distribution utility or has never contracted with another generation supplier, or a customer that elects to opt into the competitive auction process provided by section 4928.44 of the revised Code.

(3) "Billing and collection agent" means a fully independent agent, not affiliated with or otherwise controlled by an electric

utility, electric services company, electric cooperative, or 1540
governmental aggregator subject to certification under section 1541
4928.08 of the Revised Code, to the extent that the agent is under 1542
contract with such utility, company, cooperative, or aggregator 1543
solely to provide billing and collection for retail electric 1544
service on behalf of the utility company, cooperative, or 1545
aggregator. 1546

(4) "Certified territory" means the certified territory 1547
established for an electric supplier under sections 4933.81 to 1548
4933.90 of the Revised Code as amended by Sub. S.B. No. 3 of the 1549
123rd general assembly. 1550

(5) "Competitive auction period" for a particular electric 1551
utility means the period of time beginning the day after the 1552
expiration date of the market development period for that utility 1553
and ending upon such date as is determined by the public utilities 1554
COMMISSION pursuant to section 4928.44 of the Revised Code. 1555

(6) "Competitive retail electric service" means a component 1556
of retail electric service that is competitive as provided under 1557
division (B) of this section. 1558

(7) "Electric cooperative" means a not-for-profit electric 1559
light company that both is or has been financed in whole or in 1560
part under the "Rural Electrification Act of 1936," 49 Stat. 1363, 1561
7 U.S.C. 901 and owns or operates facilities IN THIS STATE to 1562
generate, transmit, or DISTRIBUTE electricity, or a successor of 1563
such company. 1564

(8) "ELECTRIC DISTRIBUTION UTILITY" MEANS AN ELECTRIC UTILITY 1565
THAT SUPPLIES AT LEAST retail ELECTRIC DISTRIBUTION SERVICE. 1566
1567

(9) "Electric light company" has the same meaning as in 1568
section 4905.03 of the Revised Code and includes an electric 1569
services company. 1570

(10) "Electric load center" has the same meaning as in 1571
section 4933.81 of the Revised Code. 1572

(11) "Electric services company" means an electric light 1573
company that is engaged on a for-profit or not-for-profit basis in 1574
the business of supplying or arranging for the supply of only a 1575
competitive retail electric service in this state. "Electric 1576
services company" includes a power marketer, power broker, 1577
aggregator, or independent power producer but excludes an electric 1578
cooperative, municipal electric utility, governmental AGGREGATOR, 1579
or billing and collection agent. 1580

(12) "Electric supplier" has the same meaning as in section 1581
4933.81 of the Revised Code. 1582

(13) "Electric utility" means an electric light company that 1583
is engaged on a for-profit basis in the business of supplying a 1584
noncompetitive retail electric service in this state or in the 1585
businesses of supplying both a noncompetitive and a competitive 1586
retail electric service in this state. "Electric utility" excludes 1587
municipal electric utility or a billing and collection agent. 1588
1589

(14) "FIRM ELECTRIC SERVICE" MEANS ELECTRIC SERVICE OTHER 1590
THAN NONFIRM ELECTRIC SERVICE. 1591

(15) "Governmental aggregator" means a legislative AUTHORITY 1592
of a municipal corporation, a board of township trustees, or a 1593
board of county commissioners acting as an aggregator for the 1594
provision of a competitive retail electric service under AUTHORITY 1595
conferred under section 4928.20 of the Revised Code. 1596

(16) A PERSON ACTS "KNOWINGLY," REGARDLESS OF THE PERSON'S 1597
PURPOSE, WHEN THE PERSON IS AWARE THAT THE PERSON'S CONDUCT WILL 1598
PROBABLY CAUSE A CERTAIN RESULT OR WILL PROBABLY BE OF A CERTAIN 1599
NATURE. A PERSON HAS KNOWLEDGE OF CIRCUMSTANCES WHEN THE PERSON IS 1600
AWARE THAT SUCH CIRCUMSTANCES PROBABLY EXIST. 1601

(17) "LEVEL OF FUNDING FOR LOW-INCOME CUSTOMER ENERGY EFFICIENCY PROGRAMS PROVIDED THROUGH ELECTRIC UTILITY RATES" MEANS THE LEVEL OF FUNDS COMMITTED BY AN ELECTRIC UTILITY PURSUANT TO AN ORDER OF THE PUBLIC UTILITIES COMMISSION ISSUED UNDER CHAPTER 4905. OR 4909. OF THE REVISED CODE AND IN EFFECT ON THE DAY BEFORE THE EFFECTIVE DATE OF THIS SECTION, FOR THE PURPOSE OF IMPROVING THE ENERGY EFFICIENCY OF HOUSING FOR THE UTILITY'S LOW-INCOME CUSTOMERS. THE TERM EXCLUDES THE LEVEL OF ANY SUCH FUNDS COMMITTED TO A SPECIFIC NONPROFIT ORGANIZATION OR ORGANIZATIONS PURSUANT TO A STIPULATION OR CONTRACT.

(18) "Low-income customer assistance programs" means the percentage of income payment plan program as PRESCRIBED IN RULES 4901:1-18-02(B) TO (G) and 4901:1-18-04(B) OF THE OHIO ADMINISTRATIVE CODE IN EFFECT on the effective date of this section or, if modified pursuant to AUTHORITY under section 4928.53 of the Revised Code, THE PROGRAM AS MODIFIED; the home energy assistance program AS PRESCRIBED IN section 5117.21 of the Revised Code and IN EXECUTIVE ORDER 97-1023-V or, if modified pursuant to AUTHORITY under section 4928.53 of the Revised Code, THE PROGRAM AS MODIFIED; the home weatherization assistance program AS PRESCRIBED in division (A)(6) of section 122.011 and in section 122.02 of the Revised Code or, if modified pursuant to AUTHORITY under section 4928.53 of the Revised Code, THE PROGRAM AS MODIFIED; THE OHIO ENERGY CREDIT PROGRAM AS PRESCRIBED IN sections 5117.01 to 5117.05, 5117.07 to 5117.12, and 5117.99 OF THE REVISED CODE or, if modified pursuant to AUTHORITY under section 4928.53 of the Revised Code, THE PROGRAM AS MODIFIED; and the TARGETED energy EFFICIENCY and WEATHERIZATION PROGRAM established under section 4928.55 of the Revised Code.

(19) "Market development period" for an electric utility means the period of time beginning on the starting date of competitive retail electric service and ending on the applicable

date for that utility as specified in section 4928.40 of the 1634
Revised Code, irrespective of whether the utility applies to 1635
receive transition revenues under this chapter. 1636

(20) "Market power" means the ability to impose on customers 1637
a sustained price for a product or service ABOVE the price that 1638
would prevail in a COMPETITIVE market. 1639

(21) "Municipal electric utility" means a municipal 1640
corporation that owns or operates facilities to generate, 1641
transmit, or distribute electricity. 1642

(22) "Noncompetitive retail electric service" means a 1643
component of retail electric service that is noncompetitive as 1644
provided under division (B) of this section. 1645

(23) "NONFIRM ELECTRIC SERVICE" MEANS ELECTRIC SERVICE 1646
PROVIDED PURSUANT TO A SCHEDULE FILED UNDER SECTION 4905.30 OF THE 1647
REVISED CODE OR PURSUANT TO AN ARRANGEMENT UNDER SECTION 4905.31 1648
OF THE REVISED CODE, WHICH SCHEDULE OR ARRANGEMENT INCLUDES 1649
CONDITIONS THAT MAY REQUIRE THE CUSTOMER TO CURTAIL OR INTERRUPT 1650
ELECTRIC USAGE DURING NONEMERGENCY CIRCUMSTANCES UPON NOTIFICATION 1651
BY AN ELECTRIC UTILITY. 1652

(24) "Person" has the same meaning as in section 1.59 of the 1653
Revised Code. 1654

(25) "Project" means any real or personal property connected 1655
with all or part of an industrial, distribution, commercial, or 1656
research facility, not-for-profit facility, or residence that is 1657
to be acquired, constructed, RECONSTRUCTED, enlarged, improved, 1658
furnished, or equipped, or any combination of those activities, 1659
with aid furnished pursuant to sections 4928.61 to 4928.63 of the 1660
Revised Code for the purposes of not-for-profit, industrial, 1661
commercial, distribution, residential, and research development in 1662
this state. "Project" includes, but is not limited to, any 1663
small-scale renewables project. 1664

(26) "REGULATORY ASSETS" MEANS THE UNAMORTIZED NET REGULATORY ASSETS THAT ARE CAPITALIZED OR DEFERRED ON THE REGULATORY BOOKS OF THE ELECTRIC UTILITY, PURSUANT TO AN ORDER OR PRACTICE OF THE PUBLIC UTILITIES COMMISSION OR PURSUANT TO GENERALLY ACCEPTED ACCOUNTING PRINCIPLES AS A RESULT OF A PRIOR COMMISSION RATE-MAKING DECISION, AND THAT WOULD OTHERWISE HAVE BEEN CHARGED TO EXPENSE AS INCURRED OR WOULD NOT HAVE BEEN CAPITALIZED OR OTHERWISE DEFERRED FOR FUTURE REGULATORY CONSIDERATION ABSENT COMMISSION ACTION. "REGULATORY ASSETS" INCLUDES, BUT IS NOT LIMITED TO, ALL DEFERRED DEMAND-SIDE MANAGEMENT COSTS; ALL DEFERRED PERCENTAGE OF INCOME PAYMENT PLAN AMOUNTS; POST-IN-SERVICE CAPITALIZED CHARGES AND ASSETS RECOGNIZED IN CONNECTION WITH STATEMENT OF FINANCIAL ACCOUNTING STANDARDS NO. 109 (RECEIVABLES FROM CUSTOMERS FOR INCOME TAXES); FUTURE NUCLEAR DECOMMISSIONING COSTS AND FUEL DISPOSAL COSTS AS THOSE COSTS HAVE BEEN DETERMINED BY THE COMMISSION IN THE ELECTRIC UTILITY'S MOST RECENT RATE OR ACCOUNTING APPLICATION PROCEEDING ADDRESSING SUCH COSTS; THE UNDERPRECIATED COSTS OF SAFETY AND RADIATION CONTROL EQUIPMENT ON NUCLEAR GENERATING PLANTS OWNED OR LEASED BY AN ELECTRIC UTILITY; AND FUEL COSTS CURRENTLY DEFERRED PURSUANT TO THE TERMS OF ONE OR MORE SETTLEMENT AGREEMENTS APPROVED BY THE COMMISSION.

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

(28) "Starting date of competitive retail electric service"

means January 1, 2001, except as provided in division (C) of this 1697
section. 1698

(B) For the purposes of this chapter, a retail electric 1699
service component shall be deemed a competitive retail electric 1700
service if the service component is competitive pursuant to a 1701
declaration by a provision of the Revised Code or pursuant to an 1702
order of the public utilities commission authorized under division 1703
(A) of section 4928.04 of the Revised Code. Otherwise, the service 1704
component shall be deemed a noncompetitive retail electric 1705
service. 1706

(C) Prior to January 1, 2001, the public utilities commission 1707
may issue an order delaying the January 1, 2001, starting date of 1708
competitive retail electric service by a specified number of days 1709
not to exceed six months, but only for extreme technical 1710
conditions precluding the start of competitive retail electric 1711
service on January 1, 2001. 1712

Sec. 4928.02. It is the policy of this state to do the 1713
following throughout this state beginning on the starting date of 1714
competitive retail electric service: 1715

(A) Ensure the availability to consumers of adequate, 1716
reliable, safe, efficient, nondiscriminatory, and reasonably 1717
priced retail electric service; 1718

(B) Ensure the availability of unbundled and comparable 1719
retail electric service that provides consumers with the supplier, 1720
price, terms, conditions, and quality options they elect to meet 1721
their respective needs; 1722

(C) Ensure diversity of electricity supplies and suppliers, 1723
by giving consumers effective choices over the selection of those 1724
supplies and suppliers and by encouraging the development of 1725
distributed and small generation facilities; 1726

(D) <u>Encourage innovation and market access for cost-effective supply- and demand-side retail electric service;</u>	1727 1728
(E) <u>Encourage cost-effective and efficient access to information regarding the operation of the transmission and distribution systems of electric utilities in order to promote effective customer choice of retail electric service;</u>	1729 1730 1731 1732
(F) <u>Recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment;</u>	1733 1734 1735
(G) <u>Ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa;</u>	1736 1737 1738 1739 1740
(H) <u>Ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power;</u>	1741 1742 1743
(I) <u>Facilitate the state's effectiveness in the global economy.</u>	1744 1745
 Sec. 4928.03. <u>Beginning on The starting date of competitive retail electric service, retail electric generation, aggregation, power marketing, and power brokerage services supplied to consumers within the certified territory of an electric utility are competitive retail electric services that the consumers may obtain subject to this chapter from any supplier or suppliers. In accordance with a filing under division (F) of section 4933.81 of the Revised Code, retail electric generation, aggregation, power marketing, or power brokerage services supplied to consumers within the certified territory of an electric cooperative that has made the filing are competitive retail electric services that the</u>	1746 1747 1748 1749 1750 1751 1752 1753 1754 1755 1756

consumers may obtain subject to this chapter from any supplier or 1757
suppliers. 1758

Beginning on The starting date of competitive retail electric 1759
service and Notwithstanding any other provision of law, each 1760
consumer in this state and the suppliers to a consumer shall have 1761
comparable and nondiscriminatory access to noncompetitive retail 1762
electric services of an electric utility in this state within its 1763
certified territory for the purpose of satisfying the consumer's 1764
electricity requirements in keeping with the policy specified in 1765
section 4928.02 of the Revised Code. 1766

Sec. 4928.04. (A) The public utilities commission by order 1767
may declare that retail ancillary, metering, or billing and 1768
collection service supplied to consumers within the certified 1769
territory of an electric utility on or after the starting date of 1770
competitive retail electric service is a competitive retail 1771
electric service that the consumers may obtain from any supplier 1772
or suppliers subject to this chapter. The commission may issue 1773
such order, after investigation and public hearing, only if it 1774
first determines either of the following: 1775

(1) There will be effective competition with respect to the 1776
service. 1777

(2) The customers of the service have reasonably available 1778
alternatives. 1779

The commission shall initiate a proceeding on or before march 1780
31, 2003, on the question of the desirability, feasibility, and 1781
timing of any such competition. 1782

(B) In carrying out division (A) of this section, the 1783
commission may prescribe different classifications, procedures, 1784
terms, or conditions for different electric utilities and for the 1785
retail electric services they provide that are declared 1786

competitive pursuant to that division, provided the 1787
classifications, procedures, terms, or conditions are reasonable 1788
and do not confer any undue economic, competitive, or market 1789
advantage or preference upon any electric utility. 1790

Sec. 4928.05. (A)(1) On and after the starting date of 1791
competitive retail electric service, a competitive retail electric 1792
service supplied by an electric utility shall not be subject to 1793
supervision and regulation by the public utilities commission 1794
under Chapters 4901. to 4909., 4933., 4935., or 4963. of the 1795
Revised Code, except sections 4905.10, 4905.33, 4905.35, and 1796
4933.81 to 4933.90; except sections 4905.06, 4935.03, 4963.40, and 1797
4963.41 of the Revised Code regarding service reliability and 1798
public safety; and except as otherwise provided in this chapter. 1799
The commission's AUTHORITY to enforce those excepted provisions 1800
with respect to a COMPETITIVE retail electric service shall be 1801
such AUTHORITY as is provided for their enforcement under Chapters 1802
4901. to 4909., 4933., 4935., and 4963. of the Revised Code and 1803
this chapter. 1804

On and after the starting date of competitive retail electric 1805
service, a competitive retail electric service supplied by an 1806
electric cooperative shall not be subject to supervision and 1807
regulation by the commission under Chapters 4901. to 4909., 4933., 1808
4935., or 4963. of the Revised Code, except as otherwise expressly 1809
provided in sections 4928.01 to 4928.10 and 4928.16 of the Revised 1810
Code. 1811

(2) On and after the starting date of competitive retail 1812
electric service, a noncompetitive retail electric service 1813
supplied by an electric utility shall be subject to supervision 1814
and regulation by the commission under Chapters 4901. to 4909., 1815
4933., 4935., and 4963. of the Revised Code and this chapter, to 1816
the extent that AUTHORITY is not preempted by federal law. The 1817

commission's AUTHORITY to enforce those provisions with respect to 1818
a noncompetitive retail electric service shall be the AUTHORITY 1819
provided under those chapters and this chapter, to the extent the 1820
AUTHORITY is not preempted by federal law. 1821

The commission shall exercise its jurisdiction with respect 1822
to the delivery of electricity by an electric utility in this 1823
state on or after The starting date of competitive retail electric 1824
service so as to ensure that no aspect of the delivery of 1825
electricity by the utility to consumers in this state that 1826
consists of a noncompetitive retail electric service is 1827
unregulated. 1828

On and after that starting date, a noncompetitive retail 1829
electric service supplied by an electric cooperative shall not be 1830
subject to supervision and regulation by the commission under 1831
Chapters 4901. to 4909., 4933., 4935., and 4963. of the Revised 1832
Code, except sections 4933.81 to 4933.90 and 4935.03 of the 1833
Revised Code. The commission's authority to enforce those excepted 1834
sections with respect to a noncompetitive retail electric service 1835
of an electric cooperative shall be such authority as is provided 1836
for their enforcement under Chapters 4933. and 4935. of the 1837
Revised Code. 1838

(B) Nothing in this chapter affects the authority of the 1839
commission under Title XLIX of the Revised Code to regulate an 1840
electric light company in this state or an electric service 1841
supplied in this state prior to the starting date of COMPETITIVE 1842
retail electric SERVICE. 1843

Sec. 4928.06. (A) Beginning on the starting date of 1844
competitive retail electric service, the public utilities 1845
commission shall ensure that the policy specified in section 1846
4928.02 of the Revised Code is effectuated. To the extent 1847
necessary, the commission shall adopt rules to carry out this 1848

chapter. Initial rules necessary for the commencement of the 1849
competitive retail electric service under this chapter shall be 1850
adopted within one hundred eighty days after the effective date of 1851
this section. Except as otherwise provided in this chapter, the 1852
proceedings and orders of the commission under the chapter shall 1853
be subject to and governed by Chapter 4903. of the Revised Code. 1854

(B) If the commission determines, on or after The starting 1855
date of competitive retail electric service, that there is a 1856
decline or loss of effective competition with respect to a 1857
competitive retail electric service of an electric utility, which 1858
service was declared competitive by commission order issued 1859
pursuant to division (A) of section 4928.04 of the Revised Code, 1860
the commission shall ensure that that service is provided at 1861
compensatory, fair, and nondiscriminatory prices and terms and 1862
conditions. 1863

(C) In addition to its authority under section 4928.04 of the 1864
Revised Code and divisions (A) and (B) of this section, the 1865
commission, on an ongoing basis, shall monitor and evaluate the 1866
provision of retail electric service in this state for the purpose 1867
of discerning any noncompetitive retail electric service that 1868
should be available on a competitive basis on or after The 1869
starting date of competitive retail electric service pursuant to a 1870
declaration in the revised code, and for the purpose of discerning 1871
any competitive retail electric service that is no longer subject 1872
to effective competition on or after that date. Upon such 1873
evaluation, the commission periodically shall report its findings 1874
and any recommendations for legislation to the standing committees 1875
of both houses of the general assembly that have primary 1876
jurisdiction regarding public utility legislation. Until 2008, the 1877
commission and the consumer's counsel also shall provide BIENNIAL 1878
reports to those standing committees, regarding the effectiveness 1879
of competition in the supply of competitive retail electric 1880

services in this state. In addition, until the end of all market 1881
development periods as determined or extended by the commission 1882
under section 4928.40 of the Revised Code, those standing 1883
committees shall meet at least biennially to consider the effect 1884
on this state of electric service restructuring and to receive 1885
reports from the commission, consumers' counsel, and director of 1886
development. 1887

(D) In determining, for purposes of division (B) or (C) of 1888
this section or division (b) of section 4928.44 of the Revised 1889
Code, whether there is effective competition in the provision of a 1890
retail electric service or reasonably available alternatives for 1891
that service, the commission shall consider factors including, but 1892
not limited to, all of the following: 1893

(1) The number and size of alternative providers of that 1894
service; 1895

(2) The extent to which the service is available from 1896
alternative suppliers in the relevant market; 1897

(3) The ability of alternative suppliers to make functionally 1898
equivalent or substitute services readily available at competitive 1899
prices, terms, and conditions; 1900

(4) Other indicators of market power, which may include 1901
market share, growth in market share, ease of entry, and the 1902
affiliation of suppliers of services. 1903

the burden of proof shall be on Any entity requesting, under 1904
division (b) or (c) of this section, a determination by the 1905
commission of the existence of or a lack of effective competition 1906
or reasonably available alternatives. 1907

(E)(1) beginning on The starting date of competitive retail 1908
electric service, The commission has authority under Chapters 1909
4901. to 4909. of the Revised Code, and shall exercise that 1910
authority, to resolve abuses of market power by any electric 1911

utility that interfere with effective competition in the provision 1912
of retail electric service. 1913

(2) In addition to the commission's AUTHORITY under division 1914
(E)(1) of this section, THE COMMISSION, BEGINNING THE FIRST YEAR 1915
AFTER THE MARKET DEVELOPMENT PERIOD OF A PARTICULAR ELECTRIC 1916
UTILITY AND AFTER REASONABLE NOTICE AND OPPORTUNITY FOR HEARING, 1917
MAY TAKE SUCH MEASURES WITHIN A TRANSMISSION CONSTRAINED AREA IN 1918
THE UTILITY'S CERTIFIED TERRITORY as are necessary TO ENSURE THAT 1919
RETAIL ELECTRIC GENERATION SERVICE IS PROVIDED AT REASONABLE RATES 1920
within that area. THE COMMISSION MAY EXERCISE THIS AUTHORITY ONLY 1921
UPON FINDINGS THAT an electric UTILITY is or has engaged in the 1922
abuse of MARKET POWER AND That that abuse IS NOT ADEQUATELY 1923
MITIGATED BY RULES AND PRACTICES OF ANY INDEPENDENT TRANSMISSION 1924
ENTITY CONTROLLING THE TRANSMISSION FACILITIES. ANY SUCH MEASURE 1925
SHALL BE TAKEN ONLY TO THE EXTENT NECESSARY TO PROTECT CUSTOMERS 1926
IN THE AREA FROM THE particular abuse of MARKET POWER AND TO THE 1927
EXTENT the COMMISSION'S AUTHORITY IS NOT PREEMPTED BY FEDERAL LAW. 1928
THE measure SHALL REMAIN in effect UNTIL THE COMMISSION, AFTER 1929
reasonable NOTICE AND OPPORTUNITY FOR HEARING, DETERMINES THAT THE 1930
particular abuse of MARKET POWER HAS BEEN MITIGATED. 1931

(E) An electric utility, electric services company, electric 1932
cooperative, or governmental aggregator subject to certification 1933
under section 4928.08 of the Revised code shall provide the 1934
commission with such information, regarding a competitive retail 1935
electric service for which it is subject to certifications, as the 1936
commission considers necessary to carry out this chapter. An 1937
electric utility shall provide the commission with such 1938
information as the commission considers necessary to carry out 1939
divisions (B) to (E) of this section. The commission shall take 1940
such measures as it considers necessary to protect the 1941
confidentiality of any such information. 1942

The commission shall require each electric utility to file 1943

with the commission on and after the starting date of competitive 1944
retail electric service an annual report of its intrastate gross 1945
receipts and sales of kilowatt hours of electricity, and shall 1946
require each electric services company, electric cooperative, and 1947
governmental aggregator subject to certification to file an annual 1948
report on and after that starting date of such receipts and sales 1949
from the provision of those retail electric services for which it 1950
is subject to certification. for the purpose of the reports, sales 1951
of kilowatt hours of electricity are deemed to occur at the meter 1952
of the retail customer. 1953

Sec. 4928.07. To the maximum extent practicable on or after 1954
The starting date of competitive retail electric service, an 1955
electric utility, electric services company, electric cooperative, 1956
or governmental aggregator subject to certification under section 1957
4928.08 of the Revised Code shall separately price competitive 1958
retail electric services, and the PRICES SHALL BE ITEMIZED on the 1959
bill of a customer or otherwise disclosed to the customer. 1960
Although a competitive retail electric service shall be supplied 1961
to any consumer on such a basis, such an electric utility, 1962
electric services company, electric cooperative, or governmental 1963
AGGREGATOR may repackage the service on or after The starting date 1964
and offer it on a bundled basis with other retail electric 1965
services to meet consumer preferences. Such repackaging by an 1966
electric utility shall be subject to sections 4905.33 to 4905.35 1967
of the Revised Code. repackaging by such an electric services 1968
company, electric cooperative, or governmental aggregator shall be 1969
subject to the limitation that no such entity, as to a competitive 1970
retail electric service for which the utility, company, 1971
cooperative, or aggregator is subject to certification, shall 1972
furnish free service or service for less than actual cost for the 1973
purpose of destroying competition. 1974

Sec. 4928.08. (A) This section applies to an electric 1975
cooperative, or to a governmental AGGREGATOR that is a municipal 1976
electric utility, only to the extent of a competitive retail 1977
electric service it provides to a customer to whom it does not 1978
provide a noncompetitive retail electric service through 1979
transmission or distribution facilities it singly or jointly owns 1980
or operates. 1981

(B) No electric utility, electric services company, electric 1982
cooperative, or governmental aggregator shall provide a 1983
competitive retail electric service to a consumer in this state on 1984
and after the starting date of competitive retail electric service 1985
without first being certified by the public utilities commission 1986
regarding its managerial, technical, and financial capability to 1987
provide that service. Certification shall be granted pursuant to 1988
procedures and standards the commission shall prescribe in 1989
accordance with division (C) of this section, except that 1990
certification or certification renewal shall be deemed approved 1991
thirty days after the filing of an application with the commission 1992
unless the commission suspends that approval for good cause shown. 1993
In the case of such a suspension, the commission shall act to 1994
approve or deny certification or certification renewal to the 1995
applicant not later than ninety days after the date of the 1996
suspension 1997

(C) Capability standards adopted in rules under division (B) 1998
of this section shall be sufficient to ensure compliance with the 1999
minimum service requirements established under section 4928.10 of 2000
the Revised Code and with section 4928.09 of the Revised Code. The 2001
standards shall allow flexibility for voluntary aggregation, to 2002
encourage market creativity in responding to consumer needs and 2003
demands. The rules shall include procedures for biennially 2004
renewing certification. 2005

(d) The commission may suspend, rescind, or conditionally 2006
rescind the certification of any electric utility, electric 2007
services company, electric cooperative, or governmental aggregator 2008
issued under this section if the commission determines, after 2009
reasonable notice and opportunity for hearing, that the utility, 2010
company, cooperative, or AGGREGATOR has failed to comply with any 2011
applicable certification standards or has engaged in 2012
anticompetitive or unfair, deceptive, or unconscionable acts or 2013
practices in this state. 2014

(e) no electric distribution utility on and after the 2015
starting date of competitive retail electric service shall 2016
knowingly distribute electricity, to a retail consumer in this 2017
state, for any supplier of electricity that has not been certified 2018
by the commission pursuant to this section. 2019

Sec. 4928.09. (A)(1) No person shall operate in this state as 2020
an electric utility, an electric services company, or a billing 2021
and collection agent on and after the starting date of competitive 2022
retail electric service unless that person first does both of the 2023
following: 2024

(a) Consents irrevocably to the jurisdiction of the courts of 2025
this state and service of process in this state, including, 2026
without limitation, service of summonses and subpoenas, for any 2027
civil or criminal proceeding arising out of or relating to such 2028
operation, by providing that irrevocable consent in ACCORDANCE 2029
with division (A)(4) of this section; 2030

(b) Designates an agent authorized to receive that service of 2031
process in this state, by filing with the commission a document 2032
designating that agent. 2033

(2) No person shall continue to operate as such an electric 2034
utility, electric services company, or billing and collection 2035

agent unless that person continues to consent to such jurisdiction 2036
and service of process in this state and continues to designate an 2037
agent as provided under this division, by refiling in accordance 2038
with division (A)(4) of this section the appropriate documents 2039
filed under division (A)(1) of this section or, as applicable, the 2040
appropriate amended documents filed under division (A)(3) of this 2041
section. Such refiling shall occur during the month of December of 2042
every fourth year after the initial filing of a document under 2043
division (A)(1) of this section. 2044

(3) If the address of the person filing a document under 2045
division (A)(1) or (2) of this section changes, or if a person's 2046
agent or the address of the agent changes, from that listed on the 2047
most recently filed of such documents, the person shall file an 2048
amended document containing the new information. 2049

(4) The consent and designation required by divisions (A)(1) 2050
to (3) of this section shall be in writing, on forms prescribed by 2051
the public utilities commission. The original of each such 2052
document or amended document shall be legible and shall be filed 2053
with the commission, with a copy filed with the office of the 2054
consumers' counsel and with the attorney general's office. 2055

(B) A person who enters this state pursuant to a summons, 2056
subpoena, or other form of process authorized by this section is 2057
not subject to arrest or service of process, whether civil or 2058
criminal, in connection with other matters that arose before the 2059
person's entrance into this state pursuant to such summons, 2060
subpoena, or other form of process. 2061

(C) Divisions (A) and (B) of this section do not apply to any 2062
of the following: 2063

(1) A corporation incorporated under the laws of this state 2064
that has appointed a statutory agent pursuant to section 1701.07 2065
or 1702.06 of the Revised Code; 2066

(2) A foreign corporation licensed to transact business in 2067
this state that has appointed a designated agent pursuant to 2068
section 1703.041 of the Revised Code; 2069

(3) Any OTHER person that is a resident of this state or that 2070
files consent to service of process and designates a statutory 2071
agent pursuant to other laws of this state. 2072

Sec. 4928.10. For the protection of consumers in this state, 2073
the public utilities commission shall adopt rules under division 2074
(A) of section 4928.06 of the Revised Code specifying the 2075
necessary minimum service requirements, on or after The starting 2076
date of competitive retail electric service, of an electric 2077
utility, electric services company, electric cooperative, or 2078
governmental aggregator subject to certification under section 2079
4928.08 of the Revised Code regarding the provision directly or 2080
through its billing and collection agent of competitive retail 2081
electric services for which it is subject to certification. Rules 2082
adopted under this section shall include a prohibition against 2083
unfair, deceptive, and unconscionable acts and practices in the 2084
marketing, solicitation, and sale of such a competitive retail 2085
electric service and in the administration of any contract for 2086
service, and also shall include additional consumer protections 2087
concerning all of the following: 2088

(A) Contract disclosure. The rules shall include requirements 2089
that an electric utility, electric services company, electric 2090
cooperative, or governmental aggregator subject to certification 2091
under section 4928.08 of the Revised Code do both of the 2092
following: 2093

(1) Provide consumers with adequate, accurate, and 2094
understandable pricing and terms and conditions of service, 2095
including any switching fees, and with a document containing the 2096
terms and conditions of pricing and service before the consumer 2097

<u>enters into the contract for service;</u>	2098
(2) <u>Disclose the conditions under which a customer may</u>	2099
<u>rescind a contract without penalty.</u>	2100
(B) <u>Service termination. The rules shall include disclosure</u>	2101
<u>of the terms identifying how customers may switch or terminate</u>	2102
<u>service, including any required notice and any penalties.</u>	2103
(C) <u>Minimum content of customer bills. The rules shall</u>	2104
<u>include all of the following requirements:</u>	2105
(1) <u>uniform price disclosure and Disclosures of total billing</u>	2106
<u>units for the billing period and historical annual usage;</u>	2107
(2) <u>To the maximum extent practicable, separate listing of</u>	2108
<u>each service component to enable a customer to recalculate its</u>	2109
<u>bill for accuracy;</u>	2110
(3) <u>Identification of the supplier of each service;</u>	2111
(4) <u>Statement of where and how payment may be made and</u>	2112
<u>provision of a toll-free or local customer assistance and</u>	2113
<u>complaint number for the electric utility, electric services</u>	2114
<u>company, electric cooperative, or governmental aggregator, as well</u>	2115
<u>as a consumer assistance telephone number or numbers for state</u>	2116
<u>agencies, such as the commission, the office of the consumers'</u>	2117
<u>counsel, and the attorney general's office, with the available</u>	2118
<u>hours noted.</u>	2119
(D) <u>Disconnection and service termination, including</u>	2120
<u>requirements with respect to master-metered buildings. The rules</u>	2121
<u>shall include policies and procedures that are consistent with</u>	2122
<u>sections 4933.121 and 4933.122 of the Revised Code and the</u>	2123
<u>commission's rules adopted under those sections, and that provide</u>	2124
<u>for all of the following:</u>	2125
(1) <u>Coordination between suppliers for the purpose of</u>	2126
<u>maintaining service;</u>	2127

(2) <u>The allocation of partial payments between suppliers when</u>	2128
<u>service components are jointly billed;</u>	2129
(3) <u>A prohibition against blocking, or authorizing the</u>	2130
<u>blocking of, customer access to a noncompetitive retail electric</u>	2131
<u>service when a customer is delinquent in payments to the electric</u>	2132
<u>utility or electric services company for a competitive retail</u>	2133
<u>electric service;</u>	2134
(4) <u>A prohibition against switching, or authorizing the</u>	2135
<u>switching of, a customer's supplier of competitive retail electric</u>	2136
<u>service without the prior consent of the customer in accordance</u>	2137
<u>with appropriate confirmation practices, which may include</u>	2138
<u>independent, third-party verification procedures.</u>	2139
(5) <u>A requirement of disclosure of the conditions under which</u>	2140
<u>a customer may rescind a decision to switch its supplier without</u>	2141
<u>penalty;</u>	2142
(6) <u>Specification of any required notice and any penalty for</u>	2143
<u>early termination of contract.</u>	2144
(E) <u>Minimum service quality, safety, and reliability.</u>	2145
<u>However, service quality, SAFETY, and reliability requirements for</u>	2146
<u>electric generation service shall be determined primarily through</u>	2147
<u>market expectations and contractual relationships.</u>	2148
(f) <u>Generation resource mix and environmental characteristics</u>	2149
<u>of power supplies. the rules shall include requirements for</u>	2150
<u>determination of the approximate generation resource mix and</u>	2151
<u>environmental characteristics of the power supplies and disclosure</u>	2152
<u>to the customer prior to the customer entering into a contract to</u>	2153
<u>purchase and four times per year under the contract. The rules</u>	2154
<u>also shall require that the electric utility, electric services</u>	2155
<u>company, electric cooperative, or governmental AGGREGATOR provide,</u>	2156
<u>or cause its billing and collection agent to provide, a customer</u>	2157
<u>with information comparing the projected, with the actual and</u>	2158

verifiable, resource mix and environmental characteristics. This 2159
disclosure shall occur not less than annually or not less than 2160
once during the contract period if the contract period is less 2161
than one year, and prior to any renewal of a contract. 2162

2163

(g) Customer information. The rules shall include 2164
requirements that the electric utility, electric services company, 2165
electric cooperative, or governmental aggregator make generic 2166
customer load pattern information available to other electric 2167
light companies on a comparable and nondiscriminatory basis, and 2168
make customer-specific information available to other electric 2169
light companies on a comparable and nondiscriminatory basis 2170
unless, as to customer-specific information, the customer objects. 2171
The rules shall ensure that each such utility, company, 2172
cooperative, or aggregator provide clear and frequent notice to 2173
its customers of the right to object and of applicable procedures. 2174
The rules shall establish the exact language that shall be used in 2175
all such notices. 2176

Sec. 4928.11. (A) For the protection of consumers in this 2177
state, the public utilities commission shall adopt rules under 2178
division (A) of section 4928.06 of the Revised Code that specify 2179
minimum service quality, safety, and reliability requirements for 2180
NONCOMPETITIVE retail electric services supplied by an electric 2181
utility in this state, to the extent such AUTHORITY is not 2182
preempted by federal law. The rules shall include prescriptive 2183
standards for inspection, maintenance, repair, and replacement of 2184
the transmission and distribution systems of electric utilities; 2185
shall apply to each substantial type of transmission or 2186
distribution equipment or facility; shall establish uniform 2187
interconnection standards to ensure transmission and distribution 2188
system safety and reliability and shall otherwise provide for high 2189
quality, safe, and reliable electric service; and shall include 2190

standards for operation, reliability, and SAFETY during periods of 2191
emergency and disaster. The rules regarding interconnection shall 2192
seek to prevent barriers to new technology and shall not make 2193
compliance unduly burdensome or expensive. when questions arise 2194
about specific equipment to meet interconnection standards, the 2195
commission shall initiate proceedings open to the public to 2196
solicit comments from all interested parties. additionally, rules 2197
under this division shall include nondiscriminatory metering 2198
standards. 2199

(B) The commission shall require each electric utility to 2200
report annually to the commission on and after the starting date 2201
of competitive retail electric service, regarding its compliance 2202
with the rules required under division (A) of this section. the 2203
commission shall make the filed reports available to the public. 2204
Periodically as determined by commission rule under division (A) 2205
of section 4928.06 of the Revised Code and in a proceeding 2206
initiated under division (B) of section 4928.16 of the Revised 2207
Code, the commission shall review a utility's report to determine 2208
the utility's compliance and may act pursuant to DIVISION (B) of 2209
section 4928.16 of the Revised Code to enforce compliance. 2210

Sec. 4928.12. (A) Except as otherwise provided in sections 2211
4928.31 to 4928.40 of the Revised Code, no entity shall own or 2212
control transmission facilities as defined under federal law and 2213
located in this state on or after the starting date of competitive 2214
retail electric service unless that entity is a member of, and 2215
transfers control of those facilities to, one or more qualifying 2216
transmission entities, as described in division (B) of this 2217
section, that are operational. 2218

(B) An entity that owns or controls TRANSMISSION FACILITIES 2219
LOCATED IN THIS STATE complies with division (A) of this section 2220
if each transmission entity of which it is a member meets all of 2221

<u>the following specifications:</u>	2222
(1) <u>The transmission entity is APPROVED BY THE FEDERAL ENERGY REGULATORY COMMISSION.</u>	2223 2224
(2) <u>the transmission entity effects SEPARATE CONTROL OF TRANSMISSION FACILITIES FROM CONTROL OF GENERATION FACILITIES.</u>	2225 2226
(3) <u>The transmission entity prohibits or otherwise precludes PANCAKED TRANSMISSION RATES.</u>	2227 2228
(4) <u>The transmission entity IMPROVES SERVICE RELIABILITY WITHIN THIS STATE.</u>	2229 2230
(5) <u>the transmission entity achieves the objectives of an open and competitive electric generation marketplace, elimination of barriers to market entry, and preclusion of control of bottleneck electric transmission facilities in the provision of retail electric service.</u>	2231 2232 2233 2234 2235
(6) <u>The TRANSMISSION entity is of sufficient scope or otherwise operates to substantially increase economical supply options for consumers.</u>	2236 2237 2238
(7) <u>the governance structure or control of the transmission entity is independent of the owners and users of the TRANSMISSION facilities, and no member of its board of directors has an affiliation, with such an owner or user or with an affiliate of an owner or user during the member's tenure on the board, such as to unduly affect the transmission entity's performance.</u>	2239 2240 2241 2242 2243 2244
(8) <u>The transmission entity operates under policies that promote positive performance designed to satisfy the electricity requirements of customers.</u>	2245 2246 2247
(9) <u>The transmission entity is capable of maintaining real-time reliability of the electric transmission system, ensuring comparable and nondiscriminatory transmission access and necessary services, minimizing system congestion, and further</u>	2248 2249 2250 2251

addressing real or potential transmission constraints. 2252

(C) to the extent that a transmission entity under division 2253
(A) of this section is authorized to build transmission 2254
facilities, that TRANSMISSION entity has the powers provided in 2255
and is subject to sections 1723.01 to 1723.08 of the Revised Code. 2256

(D) For the purpose of forming or participating in a regional 2257
regulatory oversight body or mechanism developed for any 2258
transmission entity under division (A) of this section that is of 2259
regional scope and operates within this state: 2260

(1) The commission may make joint investigations, hold joint 2261
hearings, within or outside this state, and issue joint or 2262
concurrent orders in conjunction or concurrence with any official 2263
or agency of any state or of the United States, whether in the 2264
holding of those investigations or hearings, or in the making of 2265
those orders, the commission is functioning under agreements or 2266
compacts between states, under the concurrent power of states to 2267
regulate interstate commerce, as an agency of the United States, 2268
or otherwise. 2269

(2) The commission may negotiate and enter into agreements or 2270
compacts with agencies of other states for cooperative regulatory 2271
efforts and for the enforcement of the respective state laws 2272
regarding the transmission entity. 2273

(E) If a qualifying transmission entity is not operational as 2274
contemplated in division (A)(2) of this section, division (A)(9) 2275
of section 4928.34 of the Revised Code, or division (G) of section 2276
4928.35 of the Revised Code, the commission by rule or order shall 2277
take such measures or impose such requirements on all for-profit 2278
entities that own or control electric transmission FACILITIES 2279
located in this state as the commission determines necessary and 2280
proper to achieve independent, nondiscriminatory operation of, and 2281
separate ownership and control of, such electric transmission 2282

facilities on or after the starting date of competitive retail 2283
electric service. 2284

Sec. 4928.13. through a periodic filing with the public 2285
utilities commission in such form as the commission shall 2286
prescribe by rule under division (A) of section 4928.06 of the 2287
Revised Code, each electric utility that owns nuclear generation 2288
facilities located in this state shall demonstrate compliance with 2289
DECOMMISSIONING requirements of the nuclear regulatory commission 2290
and public utilities commission and shall demonstrate adequate 2291
financing mechanisms to fund facility DECOMMISSIONING. 2292

Sec. 4928.14. (A) After its competitive auction period, an 2293
ELECTRIC DISTRIBUTION utility in this state shall provide 2294
consumers, on a comparable and nondiscriminatory basis within its 2295
certified territory, a standard service offer of all competitive 2296
retail electric services necessary to maintain essential electric 2297
service to consumers, including a firm supply of electric 2298
generation service. such offer shall be filed with the public 2299
utilities commission under section 4909.18 of the Revised Code. 2300

(B) After that competitive auction period, the failure of a 2301
supplier to provide retail electric generation service to 2302
customers within the certified territory of the electric 2303
distribution utility shall result in the supplier's customers, 2304
after reasonable notice, defaulting to the utility's standard 2305
service offer filed under division (A) of this section until the 2306
customer chooses an alternative supplier. A supplier is deemed 2307
under this section to have failed to provide such service if the 2308
commission finds, after reasonable notice and opportunity for 2309
hearing, that any of the following conditions are MET: 2310

(1) the supplier has defaulted on its contracts with 2311
customers, is in receivership, or has filed for bankruptcy. 2312

(2) the supplier is no longer capable of providing the 2313
service. 2314

(3) the supplier is unable to provide delivery to 2315
transmission or distribution facilities for such period of time as 2316
may be reasonably specified by commission rule adopted under 2317
division (A) of section 4928.06 of the Revised Code. 2318

(4) The supplier's certification has been suspended, 2319
conditionally rescinded, or rescinded under division (D) of 2320
section 4928.08 of the Revised Code. 2321

Sec. 4928.15. (A) Except as otherwise provided in sections 2322
4928.31 to 4928.40 of the Revised Code, no electric utility shall 2323
supply noncompetitive retail electric DISTRIBUTION service in this 2324
state on or after The starting date of competitive retail electric 2325
service except pursuant to a schedule for that service that is 2326
consistent with the state policy specified in section 4928.02 of 2327
the Revised Code and filed with the public utilities COMMISSION 2328
under section 4909.18 of the Revised Code. the schedule shall 2329
provide that electric distribution service under the schedule is 2330
available to all consumers within the utility's certified 2331
territory and to any supplier to those consumers on a 2332
nondiscriminatory and comparable basis. distribution service rates 2333
and charges under the schedule shall be established in accordance 2334
with Chapters 4905. and 4909. of the Revised Code. The schedule 2335
shall include an obligation to build distribution facilities when 2336
necessary to provide adequate distribution service, provided that 2337
a customer requesting that service may be required to pay all or 2338
part of the reasonable incremental cost of the new facilities, in 2339
accordance with rules, policy, precedents, or orders of the 2340
commission. 2341

(B) Except as otherwise provided in sections 4928.31 to 2342
4928.40 of the Revised Code and except as preempted by federal 2343

law, no electric utility shall supply the transmission service or 2344
ancillary service component of noncompetitive retail electric 2345
service in this state on or after The starting date of competitive 2346
retail electric service except pursuant to a schedule for that 2347
service component that is consistent with the state policy 2348
specified in section 4928.02 of the Revised Code and filed with 2349
the COMMISSION under section 4909.18 of the Revised Code. The 2350
schedule shall provide that transmission or ancillary service 2351
under the schedule is available to all consumers and to any 2352
supplier to those consumers on a nondiscriminatory and comparable 2353
basis. Service rates and charges under the schedule shall be 2354
established in accordance with Chapters 4905. and 4909. of the 2355
Revised Code. 2356

Sec. 4928.16. (A)(1) The public utilities commission has 2357
jurisdiction under section 4905.26 of the Revised Code, upon 2358
complaint of any person or upon complaint or initiative of the 2359
commission on or after the starting date of competitive retail 2360
electric service, regarding the provision by an electric utility, 2361
electric services company, electric cooperative, or governmental 2362
aggregator subject to certification under section 4928.08 of the 2363
Revised Code of any service for which it is subject to 2364
certification, or regarding the provision of retail electric 2365
generation service by a winning bidder under section 4928.44 of 2366
the Revised Code. 2367

(2) The commission also has jurisdiction under section 2368
4905.26 of the Revised Code, upon complaint of any person or upon 2369
complaint or initiative of the commission on or after the starting 2370
date of competitive retail electric service, to determine whether 2371
an electric utility has violated or failed to comply with any 2372
provision of sections 4928.01 to 4928.15, any provision of 2373
divisions (A) to (D) of section 4928.35, or division (G) of 2374
section 4928.44 of the Revised Code, or with any rule or order 2375

adopted or issued under those sections; whether an electric 2376
services company, electric cooperative, or governmental aggregator 2377
subject to certification under section 4928.08 of the Revised Code 2378
has violated or failed to comply with any provision of sections 2379
4928.01 to 4928.10 of the Revised Code regarding a competitive 2380
retail electric service for which it is subject to certification 2381
or any rule or order adopted or issued under those sections; or 2382
whether a winning bidder under section 4928.44 of the Revised Code 2383
has violated or failed to comply with any provision of that 2384
section or any rule or order adopted under the section. 2385

(B) In addition to its authority under division (C) of 2386
section 4928.08 of the Revised Code and to any other remedies 2387
provided by law, the commission, after reasonable notice and 2388
opportunity for hearing in accordance with section 4905.26 of the 2389
Revised Code, may do any of the following: 2390

(1) Order rescission of a contract or restitution to 2391
customers in any complaint brought pursuant to division (A)(1) or 2392
(2) of this section; 2393

(2) Order any remedy or forfeiture provided under sections 2394
4905.54 to 4905.60 and 4905.64 of the Revised Code upon a finding 2395
under division (A)(2) of this section that the electric utility 2396
has violated or failed to comply with any provision of sections 2397
4928.01 to 4928.15, or any provision of divisions (A) to (D) of 2398
section 4928.35, division (G) of section 4928.44 of the Revised 2399
Code, or with any rule or order adopted or issued under those 2400
sections. in addition, the commission may order any remedy 2401
provided under section 4905.22, 4905.37, or 4905.38 of the Revised 2402
Code if the violation or failure to comply by an electric utility 2403
related to the provision of a noncompetitive retail electric 2404
service. 2405

(3) Order any remedy or forfeiture provided under sections 2406
4905.54 to 4905.60 and 4905.64 of the Revised Code upon a finding 2407

under division (A)(2) of this section that the electric services 2408
company, electric cooperative, or governmental aggregator subject 2409
to certification under section 4928.08 of the Revised Code has 2410
violated or failed to comply, regarding a competitive retail 2411
electric service for which it is subject to certification, with 2412
any provision of sections 4928.01 to 4928.10 of the Revised Code 2413
or any rule or order adopted or issued under those sections; or 2414
upon a finding that the winning bidder under section 4928.44 of 2415
the Revised Code has violated or failed to comply with any 2416
provision of that section or any rule or order adopted under the 2417
section. 2418

(C)(1) In addition to the authority conferred under section 2419
4911.15 of the Revised Code, the consumers' counsel may file a 2420
complaint under division (A)(1) or (2) of this section on behalf 2421
of residential consumers in this state or appear before the 2422
commission as a representative of those consumers pursuant to any 2423
complaint filed under division (A)(1) or (2) of this section. 2424

(2) In addition to the authority conferred under section 2425
4911.19 of the Revised Code, the consumers' counsel, upon 2426
reasonable grounds on and after the starting date of competitive 2427
retail electric service, may file with the commission under 2428
section 4905.26 of the Revised Code a complaint for discovery if 2429
the recipient of an inquiry under section 4911.19 of the Revised 2430
Code fails to provide a response within the time specified in that 2431
section. 2432

(D) Section 4905.61 of the Revised Code applies to a 2433
violation by an electric utility of, or to a failure of an 2434
electric utility to comply with, any provision of sections 4928.01 2435
to 4928.15, any provision of divisions (A) to (D) of section 2436
4928.35, or division (G) of section 4928.44 of the Revised Code, 2437
or with any rule or order adopted or issued under those sections. 2438

Sec. 4928.17. (A) except as otherwise provided in sections 2439
4928.31 to 4928.40 of the Revised Code and beginning on The 2440
starting date of competitive retail electric service, no electric 2441
utility shall engage in this state, either directly or through an 2442
affiliate, in the businesses of supplying a noncompetitive retail 2443
electric service and supplying a competitive retail electric 2444
service, or in the businesses of supplying a noncompetitive retail 2445
electric service and supplying a product or service other than 2446
retail electric service, unless the utility implements and 2447
operates under a corporate separation plan that is approved by the 2448
public utilities commission under this section, is consistent with 2449
the policy specified in section 4928.02 of the Revised Code, and 2450
achieves all of the following: 2451

(1) The plan provides, at minimum, for the provision of the 2452
competitive retail electric service or the nonelectric product or 2453
service through a fully separated affiliate of the utility, and 2454
the plan includes separate accounting requirements, the code of 2455
conduct as ordered by the commission pursuant to a rule it shall 2456
adopt under division (A) of section 4928.06 of the Revised Code, 2457
and such other measures as are necessary to effectuate the policy 2458
specified in section 4928.02 of the Revised Code. 2459

(2) The plan satisfies the public interest in preventing 2460
unfair competitive advantage and preventing the abuse of market 2461
power. 2462

(3) The plan is sufficient to ensure that the utility will 2463
not extend any undue preference or advantage to any affiliate, 2464
division, or part of its own business engaged in the business of 2465
supplying the competitive retail electric service or NONELECTRIC 2466
product or service, and to ensure that any such affiliate, 2467
division, or part will not receive undue preference or advantage 2468
from any affiliate, division, or part of the business engaged in 2469

business of supplying the noncompetitive retail electric service. 2470
No such utility, affiliate, division, or part shall extend such 2471
undue preference. 2472

(B) The commission may approve, modify and approve, or 2473
disapprove a corporate separation plan filed with the commission 2474
under division (A) of this section. As part of the code of conduct 2475
required under division (A)(1) of this section, the commission 2476
shall adopt rules pursuant to division (A) of section 4928.06 of 2477
the Revised Code regarding corporate separation AND procedures for 2478
plan filing and approval. The rules shall include limitations on 2479
affiliate practices solely for the purpose of maintaining a 2480
separation of the affiliate's business from the business of the 2481
utility to prevent unfair competitive advantage by VIRTUE of that 2482
relationship. The rules also shall include an opportunity for any 2483
person having a real and substantial interest in the corporate 2484
separation plan to file specific objections to the plan and 2485
propose specific responses to issues raised in the objections, 2486
which objections and responses the commission shall address in its 2487
final order. Prior to commission approval of the plan, the 2488
commission shall afford a hearing upon those aspects of the plan 2489
that the commission determines reasonably require a hearing. the 2490
commission may reject and require refiling of a substantially 2491
inadequate plan under this section. 2492

(C) The commission shall issue an order approving or 2493
modifying and approving a corporate separation plan under this 2494
section, to be effective on the date specified in the order, only 2495
upon findings that the plan reasonably complies with the 2496
requirements of division (A) of this section and will provide for 2497
ongoing compliance with the policy specified in section 4928.02 of 2498
the Revised Code. 2499

(D) Any party may seek an amendment to a CORPORATE separation 2500
plan approved under this section, and the commission, pursuant to 2501

a request from any party or on its own initiative, may order as it 2502
considers necessary the filing of an amended CORPORATE separation 2503
plan to reflect changed circumstances. 2504

(E) Notwithstanding section 4905.20, 4905.21, 4905.46, or 2505
4905.48 of the Revised Code, an electric utility may divest itself 2506
of any generating asset at any time without commission approval, 2507
subject to the provisions of Title XLIX of the Revised Code 2508
relating to the transfer of transmission, distribution, or 2509
ancillary service provided by such generating asset. 2510

Sec. 4928.18. (A) Notwithstanding division (D)(2)(a) of 2511
section 4909.15 of the Revised Code, nothing in this chapter 2512
prevents the public utilities commission from exercising its 2513
AUTHORITY under Title XLIX of the Revised Code to protect 2514
customers of retail electric service supplied by an electric 2515
utility FROM any adverse effect of the utility's provision of a 2516
product or service other than retail electric service. 2517

(B) The commission has jurisdiction under section 4905.26 of 2518
the Revised Code, upon complaint of any person or upon complaint 2519
or initiative of the commission on or after the starting date of 2520
competitive retail electric service, to determine whether an 2521
electric utility or its affiliate has violated any provision of 2522
section 4928.17 of the Revised Code or an order issued or rule 2523
adopted under that section. for this purpose, the commission may 2524
examine such books, accounts, or other records kept by an electric 2525
utility or its affiliate as may relate to the businesses for which 2526
corporate separation is required under section 4928.17 of the 2527
Revised Code, and may investigate such utility or affiliate 2528
operations as may relate to those businesses and investigate the 2529
interrelationship of those operations. any such examination or 2530
investigation by the commission shall be governed by chapter 4903. 2531
OF the revised code. 2532

<u>(C) In addition to any remedies otherwise provided by law,</u>	2533
<u>the commission, regarding a determination of a violation pursuant</u>	2534
<u>to division (B) of this section, may do any of the following:</u>	2535
<u>(1) Issue an order directing the utility or affiliate to</u>	2536
<u>comply;</u>	2537
<u>(2) Modify an order as the commission finds reasonable and</u>	2538
<u>appropriate and order the utility or affiliate to comply with the</u>	2539
<u>modified order;</u>	2540
<u>(3) Suspend or abrogate an order, in whole or in part;</u>	2541
<u>(4) Issue an order that the utility or affiliate pay</u>	2542
<u>restitution to any person injured by the violation or failure to</u>	2543
<u>comply;</u>	2544
<u>(5) impose a forfeiture on the utility or affiliate of up to</u>	2545
<u>twenty-five thousand dollars per day per violation. The recovery</u>	2546
<u>and deposit of any such forfeiture shall be subject to sections</u>	2547
<u>4905.57 and 4905.59 of the Revised Code.</u>	2548
<u>(D) In addition to any other remedies AUTHORIZED by law, the</u>	2549
<u>commission, regarding a violation by an electric utility relating</u>	2550
<u>to a corporate separation plan involving competitive retail</u>	2551
<u>electric service, may do either of the following:</u>	2552
<u>(1) Suspend or abrogate an order, to the extent it is in</u>	2553
<u>effect, authorizing an opportunity for the utility to receive</u>	2554
<u>transition revenues under a transition plan approved by the</u>	2555
<u>commission under section 4928.33 of the Revised Code;</u>	2556
<u>(2) Notwithstanding any provision of sections 4933.81 to</u>	2557
<u>4933.90 of the Revised Code to the contrary, issue an order</u>	2558
<u>authorizing another electric light company to furnish</u>	2559
<u>noncompetitive retail electric service to all electric load</u>	2560
<u>centers within the certified territory of the electric utility</u>	2561
<u>without a finding of physically inadequate service under section</u>	2562

4933.83 of the Revised Code. 2563

(E) Section 4905.61 of the Revised Code applies in the CASE 2564
OF any violation of section 4928.17 of the Revised Code or of any 2565
rule adopted or order issued under that section. 2566

Sec. 4928.19. As part of their ongoing consumer education 2567
efforts, the public utilities commission and the office of the 2568
consumers' counsel shall ENGAGE in cooperative agency efforts to 2569
educate consumers in this state regarding electric industry 2570
restructuring under this chapter. 2571

Sec. 4928.20. (A) the legislative AUTHORITY of a municipal 2572
corporation through the adoption of an ORDINANCE, or the board of 2573
township trustees of a township or the board of county 2574
commissioners of a county through the adoption of a resolution, 2575
may provide through aggregation for the supply, on or after the 2576
starting date of competitive retail electric service, of any 2577
competitive retail electric service to electric load centers 2578
located respectively, within the municipal corporation, township, 2579
or unincorporated area of the county, except to the extent such 2580
aggregation is otherwise prohibited by sections 4933.81 to 4933.90 2581
of the Revised Code or other law of this state. but no such 2582
aggregation shall occur unless the person owning, occupying, 2583
controlling, or using the electric load centers provides prior 2584
written consent. 2585

(B) a governmental aggregator under division (A) of this 2586
section is not a public utility engaging in the WHOLESale purchase 2587
and resale of electricity, and provision of the AGGREGATED service 2588
is not a wholesale utility transaction. a governmental aggregator 2589
shall be subject to supervision and regulation by the public 2590
utilities commission only to the extent of any competitive retail 2591
electric service it provides and commission authority under this 2592

chapter. 2593

(C) This section does not apply in the case of a municipal 2594
corporation that supplies such aggregated service to electric load 2595
centers to which its municipal electric utility also supplies a 2596
noncompetitive retail electric service through transmission or 2597
distribution facilities the utility singly or jointly owns or 2598
operates. 2599

Sec. 4928.31. (A) Not later than ninety days after the 2600
effective date of this section, an electric utility supplying 2601
retail electric service in this state on that date shall file with 2602
the public utilities commission a plan for the utility's provision 2603
of retail electric service in this state during the market 2604
development period. this transition plan shall be in such form as 2605
the commission shall prescribe by rule adopted under division (A) 2606
of section 4928.06 of the Revised Code and shall include all of 2607
the following: 2608

(1) A RATE UNBUNDLING PLAN that specifies, consistent with 2609
divisions (A)(1) to (7) of section 4928.34 of the Revised Code and 2610
any rules adopted by the commission under division (A) of section 2611
4928.06 of the Revised Code, THE UNBUNDLED COMPONENTS FOR ELECTRIC 2612
GENERATION, TRANSMISSION, AND DISTRIBUTION SERVICE AND SUCH OTHER 2613
UNBUNDLED service COMPONENTS AS THE COMMISSION requires, to BE 2614
CHARGED BY THE UTILITY beginning on THE STARTING DATE OF 2615
COMPETITIVE RETAIL ELECTRIC SERVICE and that includes information 2616
the commission requires to fix and determine those components; 2617

(2) A corporate separation plan consistent with section 2618
4928.17 of the Revised Code and any rules adopted by the 2619
commission under division (A) of section 4928.06 of the Revised 2620
Code; 2621

(3) Such plan or plans as the commission requires to address 2622

operational support systems and any other technical implementation 2623
issues pertaining to COMPETITIVE retail electric service 2624
consistent with any rules adopted by the commission under division 2625
(A) of section 4928.06 of the Revised Code; 2626

(4) An employee assistance plan for providing severance, 2627
retraining, early retirement, retention, outplacement, and other 2628
assistance for the utility's employees whose employment is 2629
affected by electric industry restructuring under this chapter; 2630

(5) A consumer education plan consistent with section 4928.42 2631
of the Revised Code and any rules adopted by the commission under 2632
division (A) of section 4928.06 of the Revised Code. 2633

2634

Additionally, a transition plan under this SECTION MAY 2635
include An application for the opportunity to receive transition 2636
revenues as authorized under sections 4928.31 to 4928.40 of the 2637
Revised Code, which application shall be consistent with those 2638
sections and any rules adopted by the commission under division 2639
(A) of section 4928.06 of the Revised Code. The transition plan 2640
also may include a plan for the independent operation of THE 2641
UTILITY'S transmission facilities consistent with section 4928.12 2642
of the Revised Code, division (A)(13) of section 4928.34 of the 2643
Revised Code, and any rules adopted by the commission under 2644
division (A) of section 4928.06 of the Revised Code. 2645

The commission may reject and require refiling, in whole or 2646
in part, of any substantially inadequate transition plan. 2647

(B) The electric utility shall provide public notice of its 2648
filing under division (A) of this section, in a form and manner 2649
that the commission shall prescribe by rule adopted under division 2650
(A) of section 4928.06 of the Revised Code. however, the adoption 2651
of rules regarding the public notice under this division, 2652
regarding the form of the transition plan under division (A) of 2653

this section, and regarding procedures for expedited discovery 2654
under division (A) of section 4928.32 of the Revised Code are not 2655
subject to division (D) of section 111.15 of the Revised Code. 2656

Sec. 4928.32. (A) the public utilities commission shall 2657
establish reasonable procedures for expedited discovery in any 2658
proceeding initiated to consider a transition plan filed under 2659
section 4928.31 of the Revised Code. 2660

(B) Not later than forty-five days after the date on which an 2661
electric utility files a transition plan under section 4928.31 of 2662
the Revised Code, any person having a real and substantial 2663
interest in the transition plan may file with the commission 2664
preliminary objections to the transition plan, which shall 2665
identify with specificity issues pertaining to any aspect of the 2666
transition plan, and any such person may propose specific 2667
responses to those issues. The commission shall address THOSE 2668
OBJECTIONS and RESPONSES in its final order. 2669

In addition, not later than ninety days after the plan's 2670
filing, the commission staff shall file with the commission a 2671
report of its recommendations with respect to the plan. Prior to 2672
commission approval of the plan, the commission shall afford a 2673
hearing upon those aspects of the plan that the commission 2674
determines reasonably require a hearing. 2675

(C) The commission shall maintain a complete record of all 2676
proceedings relative to a transition plan filed under section 2677
4928.31 of the Revised Code and shall issue and file with the 2678
record of the case findings of fact and written opinions setting 2679
forth the reasons for any modification to or its approval of a 2680
transition plan. 2681

Sec. 4928.33. (A) Not later than two hundred seventy-five 2682
days after the date an electric utility files a transition plan 2683

under section 4928.31 of the Revised Code, but, in any event, not 2684
later THAN october 31, 2000, the public utilities commission shall 2685
issue a final order approving the transition plan as filed under 2686
section 4928.31 of the Revised Code or an order modifying and 2687
approving that plan. The order is subject to section 4903.15 of 2688
the Revised Code and is subject to review and appeal under chapter 2689
4903. of the Revised Code. 2690

(B) If the COMMISSION fails to issue, by october 31, 2000, a 2691
final order approving a transition plan, or such a final order has 2692
been enjoined in whole or in part pending appeal to a court, the 2693
commission shall issue an interim order prescribing a transition 2694
plan, to have effect on an interim basis only, and containing the 2695
plan components required by division (A) of section 4928.31 of the 2696
Revised Code and providing for the opportunity for transition 2697
revenue receipt if such an application were included in the plan 2698
filed by the utility under that section. the interim order is 2699
subject to section 4903.15 of the Revised Code but is not subject 2700
to review and appeal under Chapter 4903. of the Revised Code. 2701

An interim plan prescribed under the interim order shall be 2702
effective for the electric utility beginning on the starting date 2703
of competitive retail electric service and shall continue in 2704
effect until such time as any other replacement transition plan 2705
takes effect pursuant to a final commission order or resolution of 2706
an appeal. any interim plan so prescribed shall comply with THE 2707
aPPlicable provisions of section 4928.34 of the revised Code. A 2708
final commission order shall provide for a reconciliation of those 2709
amounts determined in the final order relative to division (A) of 2710
section 4928.31 of the Revised Code as compared to the interim 2711
amounts as determined under this division. 2712

(C) No electric utility required to file a transition plan 2713
under section 4928.31 of the Revised Code shall fail to implement 2714

a transition plan approved or prescribed for the utility by a 2715
commission order issued under division (a) or (b) of this section. 2716
No electric utility shall provide retail electric service in this 2717
state during the market development period except pursuant to such 2718
an approved or prescribed transition plan. 2719

Sec. 4928.34. (A) The public utilities commission shall not 2720
approve or prescribe a transition plan under division (A) or (B) 2721
of section 4928.33 of the Revised Code unless the commission first 2722
makes all of the following determinations: 2723

(1) The unbundled components for the electric transmission 2724
component of retail electric service, as specified in the 2725
utility's rate unbundling plan required by division (A)(1) of 2726
section 4928.31 of the Revised Code, equal the tariff rates 2727
determined by the federal energy regulatory commission that are in 2728
effect on the date of the approval of the transition plan under 2729
sections 4928.31 to 4928.40 of the Revised Code, as each such rate 2730
is determined applicable to each particular customer class by the 2731
commission. 2732

(2) the unbundled components for retail electric distribution 2733
service in the rate unbundling plan equal the difference between 2734
the costs ATTRIBUTABLE to the utility's transmission and 2735
distribution rates and charges under its schedule of rates and 2736
charges in effect on the effective date of this section, based 2737
upon the record in the most recent rate proceeding of the utility 2738
for which the utility's schedule was established, and the tariff 2739
rates for electric transmission service determined by the federal 2740
energy regulatory commission as described in division (A)(1) of 2741
this section. 2742

(3) all other unbundled components required by the commission 2743
in the rate unbundling plan equal the costs attributable to the 2744
particular service as reflected in the utility's schedule of rates 2745

and charges in effect on the effective date of this section. 2746
2747

(4) the unbundled components for retail electric generation 2748
service in the rate unbundling plan equal the residual amount 2749
remaining after the determination of the transmission, 2750
distribution, and other unbundled components. 2751

(5) all unbundled components in the rate unbundling plan have 2752
been adjusted to reflect any rate reductions under rate 2753
settlements in effect on the effective date of this section. 2754
however, all earnings obligations, RESTRICTIONS, or caps imposed 2755
on an electric utility in a commission order prior to the 2756
effective date of this section are void. 2757

(6) Subject to division (A)(5) of this section, the total of 2758
all unbundled components in the rate UNBUNDLING plan are capped 2759
and do not exceed the total of all rates and charges in effect 2760
under the applicable bundled schedule of the electric utility 2761
PURSUANT TO SECTION 4905.30 OF THE REVISED CODE in effect on the 2762
day before the effective date of this section, including the 2763
transition charge determined under section 4928.40 of the Revised 2764
Code, any changes in the taxation of electric UTILITIES and retail 2765
electric service under Sub. S.B. No. 3 of the 123rd General 2766
Assembly, the universal service rider authorized by section 2767
4928.51 of the Revised Code, and the temporary rider authorized by 2768
section 4928.61 of the Revised Code. for the purpose of this 2769
division, the rate cap applicable to a customer receiving electric 2770
service pursuant to an arrangement approved by the commission 2771
under section 4905.31 of the Revised Code is the total of all 2772
rates and charges in effect under the contract. 2773

(7) The rate unbundling plan complies with any rules adopted 2774
by the commission under division (A) of section 4928.06 of the 2775
Revised Code. 2776

<u>(8) The corporate separation plan required by division (a)(2)</u>	2777
<u>of section 4928.31 of the Revised Code complies with section</u>	2778
<u>4928.17 of the Revised Code and any rules adopted by the</u>	2779
<u>commission under division (A) of section 4928.06 of the Revised</u>	2780
<u>Code.</u>	2781
<u>(9) any plan or plans the commission requires to address</u>	2782
<u>operational support systems and any other technical implementation</u>	2783
<u>issues pertaining to COMPETITIVE retail electric service COMPLY</u>	2784
<u>WITH any rules adopted by the commission under division (A) of</u>	2785
<u>section 4928.06 of the Revised Code.</u>	2786
<u>(10) The employee assistance plan required by division (A)(4)</u>	2787
<u>of section 4928.31 of the Revised Code sufficiently provides</u>	2788
<u>severance, retraining, early retirement, retention, outplacement,</u>	2789
<u>and other assistance for the utility's employees whose employment</u>	2790
<u>is affected by electric industry restructuring under this chapter.</u>	2791
	2792
<u>(11) The consumer education plan required under division</u>	2793
<u>(A)(5) of section 4928.31 of the Revised Code complies with</u>	2794
<u>section 4928.42 of the Revised Code and any rules adopted by the</u>	2795
<u>commission under division (A) of section 4928.06 of the Revised</u>	2796
<u>Code.</u>	2797
<u>(12) The TRANSITION REVENUES FOR WHICH AN ELECTRIC UTILITY IS</u>	2798
<u>AUTHORIZED A REVENUE OPPORTUNITY UNDER SECTIONS 4928.31 TO 4928.40</u>	2799
<u>OF THE REVISED CODE ARE THE ALLOWABLE TRANSITION COSTS OF THE</u>	2800
<u>UTILITY AS SUCH COSTS ARE DETERMINED BY THE COMMISSION PURSUANT TO</u>	2801
<u>SECTION 4928.39 OF THE REVISED CODE, AND THE transition charges</u>	2802
<u>for the customer classes of the utility are the charges determined</u>	2803
<u>pursuant to section 4928.40 of the Revised Code.</u>	2804
	2805
<u>(13) Any independent transmission plan included in the</u>	2806
<u>transition plan filed under section 4928.31 of the Revised Code</u>	2807

reasonably complies with section 4928.12 of the Revised Code and 2808
any rules adopted by the commission under division (A) of section 2809
4928.06 of the Revised Code, unless the commission, for good cause 2810
shown, authorizes the utility to defer compliance until an order 2811
is issued under division (G) of section 4928.35 of the Revised 2812
Code. 2813

(14) The utility is in compliance with sections 4928.01 to 2814
4928.11 of the Revised Code and any rules or orders of the 2815
commission adopted or issued under those sections. 2816

In addition, a transition plan approved by the commission 2817
under section 4928.33 of the Revised Code but not containing an 2818
approved independent transmission plan shall contain the express 2819
conditions that the utility will comply with an order issued under 2820
division (G) of section 4928.35 of the Revised Code. 2821

(b) Subject to division (E) of section 4928.17 of the Revised 2822
Code, if the commission finds that any part of the transition plan 2823
would constitute an abandonment under sections 4905.20 and 4905.21 2824
of the Revised Code, the commission shall not approve that part of 2825
the transition plan unless it makes the finding required for 2826
approval of an abandonment application under section 4905.21 of 2827
the Revised Code. sections 4905.20 and 4905.21 of the Revised Code 2828
otherwise shall not apply to a transition plan under sections 2829
4928.31 to 4928.40 of the Revised Code. 2830

Sec. 4928.35. (A) Upon approval of its transition plan under 2831
sections 4928.31 to 4928.40 of the Revised Code, an electric 2832
utility shall file in accordance with section 4905.30 of the 2833
Revised Code schedules containing the unbundled rate components 2834
set in the approved plan in accordance with section 4928.34 of the 2835
Revised Code. the schedules shall be in effect for the duration of 2836
the utility's market development period, shall be subject to the 2837
cap specified in division (A)(6) of section 4928.34 of the Revised 2838

Code, and shall not be adjusted during that period by the public 2839
UTILITIES commission except as otherwise AUTHORIZED by division 2840
(B) of this section or as otherwise AUTHORIZED by federal law. 2841

2842

(B) Efforts shall be made to reach agreements with electric 2843
UTILITIES in matters of LITIGATION regarding property valuation 2844
issues. Irrespective of those efforts, the unbundled components 2845
for an electric utility's retail electric generation service and 2846
distribution service, as provided in division (A) of this section, 2847
are not subject to adjustment for the utility's market development 2848
period, except that the commission shall order an equitable 2849
reduction in those components for all customer classes to reflect 2850
any refund a utility receives as a result of the resolution of 2851
utility personal property tax valuation litigation that is 2852
resolved on or after the effective date of this section and prior 2853
to the end of the market development period. immediately upon the 2854
issuance of that order, the electric utility shall file revised 2855
rate schedules under section 4909.18 of the Revised Code to effect 2856
the order. 2857

(C) The schedule under division (A) of this section 2858
containing the unbundled distribution components shall provide 2859
that electric distribution service under the schedule will be 2860
available to all retail electric service customers in the electric 2861
utility's certified territory and their suppliers on a 2862
nondiscriminatory and comparable basis on and after the starting 2863
date of competitive retail electric service. The schedule also 2864
shall include an obligation to build distribution facilities when 2865
necessary to provide adequate distribution service, provided that 2866
a customer requesting that service may be required to pay all or 2867
part of the reasonable incremental cost of the new facilities, in 2868
accordance with rules, policy, precedents, or orders of the 2869
commission. 2870

(D) during the market development period, an electric 2871
distribution utility shall provide consumers on a comparable and 2872
nondiscriminatory basis within its certified territory a standard 2873
service offer of all competitive retail electric services 2874
necessary to maintain essential electric service to CONSUMERS, 2875
including a firm supply of electric generation service priced in 2876
accordance with the schedule containing the utility's UNBUNDLED 2877
generation service component. IMMEDIATELY upon approval of its 2878
transition plan, the utility shall file the standard service offer 2879
with the commission under section 4909.18 of the Revised Code. 2880
during the market development period, the failure of a supplier to 2881
deliver retail electric generation service shall result in the 2882
supplier's customers, after reasonable notice, defaulting to the 2883
utility's standard service offer filed under this division until 2884
the customer chooses an alternative supplier. a supplier is deemed 2885
under this section to have failed to deliver such service if any 2886
of the conditions specified in divisions (b)(1) to (4) of section 2887
4928.14 of the Revised Code is met. 2888

(E) An amendment of a corporate separation plan contained in 2889
a transition plan approved by the commission under section 4928.33 2890
of the Revised Code shall be filed and approved as a corporate 2891
separation plan pursuant to section 4928.17 of the Revised Code. 2892

(F) Any change to an electric utility's opportunity to 2893
receive transition revenues under a transition plan approved in 2894
accordance with section 4928.33 of the Revised Code shall be 2895
authorized only as provided in sections 4928.31 to 4928.40 of the 2896
Revised Code. 2897

(G) The commission, by order, shall require each electric 2898
utility whose approved transition plan did not include an 2899
independent transmission plan as described in division (A)(13) of 2900
section 4928.34 of the Revised Code to be a member of, and 2901
transfer control of transmission facilities it owns or controls in 2902

this state to, one or more qualifying transmission entities, as 2903
described in division (B) of section 4928.12 of the Revised Code, 2904
that are planned to be operational on and after december 31, 2005. 2905
the commission's order may specify an earlier date on which the 2906
transmission entity or entities are planned to be operational if 2907
the commission considers it necessary to carry out the policy 2908
specified in section 4928.02 of the Revised Code or to encourage 2909
effective competition in retail electric service in this state. 2910

Upon the issuance of the order, each such utility shall file 2911
with the commission a plan for such independent operation of the 2912
utility's transmission facilities consistent with this division. 2913
the commission may reject and require refiling of any 2914
substantially inadequate plan submitted under this division. 2915

after REASONable notice and opportunity for hearing, the 2916
commission shall approve the plan upon a finding that the plan 2917
will result in the utility's COMPLIANCE with the order, this 2918
division, and any rules adopted under division (A) of section 2919
4928.06 of the Revised Code. the approved independent transmission 2920
plan shall be deemed a part of the utility's transition plan for 2921
purposes of sections 4928.31 to 4928.40 of the Revised Code. 2922
2923

Sec. 4928.36. The public utilities commission has 2924
jurisdiction under section 4905.26 of the Revised Code, upon 2925
complaint by any person or upon complaint or initiative of the 2926
commission on or after the starting date of competitive retail 2927
electric service, to determine whether an electric utility has 2928
failed to implement, in conformance with an order under section 2929
4928.33 of the Revised Code or in ongoing compliance with 2930
applicable provisions of the policy specified in section 4928.02 2931
of the Revised Code, a transition plan approved under section 2932
4928.33 of the Revised Code. If, after reasonable notice and 2933

opportunity for hearing as provided in section 4905.26 of the 2934
Revised Code, the commission determines that the utility has 2935
failed to so comply, the commission, in addition to any other 2936
remedies provided by law, may use the remedies specified in 2937
divisions (C)(1) to (3) and (D)(1) and (2) of section 4928.18 of 2938
the Revised Code to enforce compliance. 2939

Sec. 4928.37. (A)(1) Sections 4928.31 to 4928.40 of the 2940
Revised Code provide an electric utility the opportunity to 2941
receive transition revenues that may assist it in making the 2942
transition to a fully competitive retail electric generation 2943
market. An electric Utility for which transition revenues are 2944
approved pursuant to sections 4928.31 to 4928.40 of the Revised 2945
Code shall receive those revenues through both of the following 2946
mechanisms beginning on the starting date of competitive retail 2947
electric service and ending on the expiration date of its market 2948
development period as determined under section 4928.40 of the 2949
Revised Code: 2950

(a) payment of unbundled rates for retail electric services 2951
by each customer that is supplied retail electric generation 2952
service during the market development period by the customer's 2953
electric distribution utility, which rates shall be specified in 2954
schedules filed under section 4928.35 of the Revised Code; 2955

(b) Payment of a nonbypassable and competitively neutral 2956
transition charge by each customer that is supplied retail 2957
electric generation service during the market development period 2958
by an entity other than the customer's electric distribution 2959
utility, as such transition charge is determined under section 2960
4928.40 of the Revised Code. the transition charge shall be 2961
payable by each such retail electric distribution service customer 2962
in the certified territory of the electric utility for which the 2963
transition revenues are approved and shall be billed on each 2964

kilowatt hour of electricity delivered to the customer by the 2965
electric distribution utility as registered on the customer's 2966
meter during the utility's market development period as kilowatt 2967
hour is defined in section 4909.161 of the Revised Code. the 2968
transition charge for each customer class shall reflect the cost 2969
allocation to that class as provided under bundled rates and 2970
charges in effect on the day before the effective date of this 2971
section. Additionally, as reflected in section 4928.39 or 4928.40 2972
of the Revised Code, the transition charges shall be structured to 2973
provide shopping incentives to customers sufficient to encourage 2974
the development of effective competition in the supply of retail 2975
electric generation service. TO THE EXTENT POSSIBLE, THE LEVEL AND 2976
STRUCTURE OF THE TRANSITION CHARGE SHALL BE DESIGNED TO AVOID 2977
REVENUE RESPONSIBILITY SHIFTS AMONG THE UTILITY'S CUSTOMER CLASSES 2978
AND RATE SCHEDULES. 2979

(2)(a) Notwithstanding division (A)(1)(b) of this section, 2980
the transition charge shall not be payable on electricity supplied 2981
by a municipal electric utility to a retail electric distribution 2982
service customer in the certified territory of the electric 2983
utility for which the transition revenues are approved, if the 2984
municipal electric utility provides electric transmission or 2985
distribution service, or both services, through transmission or 2986
distribution facilities singly or jointly owned or operated by the 2987
municipal electric utility. 2988

(b) The transition charge shall not be payable on electricity 2989
supplied or consumed in this state except such electricity as is 2990
delivered to a retail customer by an electric distribution utility 2991
and is registered on the customer's meter during the utility's 2992
market development period. 2993

(3) the transition charge shall not be discounted by any 2994
party unless there is a determination by the Department of 2995
Development that such a discount is part of an approved economic 2996

development package involving state or local funding and is 2997
necessary for economic development to occur within this state 2998
instead of another state. 2999

(4) Nothing prevents payment of all or part of the transition 3000
charge by another party on a customer's behalf if that payment 3001
does not contravene sections 4905.33 to 4905.35 of the Revised 3002
Code or this chapter. 3003

(B) The electric utility shall separately itemize and 3004
disclose, or cause its billing and collection agent to separately 3005
itemize and disclose, the transition charge on the customer's bill 3006
in accordance with reasonable SPECIFICATIONS the commission shall 3007
prescribe by rule under division (A) of section 4928.06 of the 3008
Revised Code. 3009

Sec. 4928.38. Pursuant to a transition plan approved under 3010
section 4928.33 of the Revised Code, An electric utility in this 3011
state may receive transition revenues under sections 4928.31 to 3012
4928.40 of the Revised Code, beginning on The starting date of 3013
competitive retail electric service. Except as provided in 3014
sections 4905.33 to 4905.35 of the Revised Code and this Chapter, 3015
an electric utility that receives such transition revenues shall 3016
be wholly responsible for how to use those revenues and wholly 3017
responsible for whether it is in a competitive position after the 3018
market development period. The utility's receipt of transition 3019
revenues shall terminate at the end of the market development 3020
period. With the termination of that approved revenue source, the 3021
utility shall be fully on its own in the competitive market. The 3022
commission shall not authorize the receipt of transition revenues 3023
or any equivalent revenues by an electric utility except as 3024
expressly authorized in sections 4928.31 to 4928.40 of the Revised 3025
Code. 3026

Sec. 4928.39. Upon the filing of an application by an 3027
electric utility under section 4928.31 of the Revised Code for the 3028
opportunity to receive transition revenues under sections 4928.31 3029
to 4928.40 of the Revised Code, the public utilities commission, 3030
by order under section 4928.33 of the Revised Code, shall 3031
determine the total allowable amount of the transition costs of 3032
the utility to be received as transition revenues under those 3033
sectionS. such amount shall be the just and reasonable transition 3034
COSTS of the utility, which costs the commission finds meet all of 3035
the following criteria: 3036

(A) The costs were prudently incurred. 3037

(B) The costs are a legitimate and verifiable result of 3038
electric restructuring under this chapter. 3039

(C) The costs are unrecoverable in a competitive market. 3040

(D) The costs are directly assignable or allocable to retail 3041
electric generation service provided to consumers in this state. 3042

Transition costs under this section shall not include the 3043
costs of employee assistance under the employee assistance plan 3044
included in the utility's approved transition plan under section 3045
4928.33 of the Revised Code. 3046

Further, if requested in the application, the commission's 3047
order under this section shall separately identify regulatory 3048
assets of the utility that are a part of the total allowable 3049
amount of transition costs determined under this section and 3050
separately identify that portion of a transition charge determined 3051
under section 4928.40 of the Revised Code that is allocable to 3052
those assets WHICH PORTION OF A TRANSITION CHARGE SHALL NOT BE 3053
SUBJECT TO ADJUSTMENT BEFORE THE MIDPOINT OF THE MARKET 3054
DEVELOPMENT PERIOD. 3055

The electric utility shall have the burden of demonstrating 3056

allowable transition costs as AUTHORIZED under this section. the 3057
commission may impose reasonable commitments upon the utility's 3058
collection of the transition revenues to ensure that those 3059
revenues are used to eliminate the allowable transition costs of 3060
the utility during the market development period and are not 3061
available for use by the utility to achieve an undue competitive 3062
advantage, or to impose an undue disadvantage, in the provision by 3063
the utility of regulated or unregulated products or services. 3064

Sec. 4928.40. (A) UPON determining under section 4928.39 of 3065
the Revised Code the allowable transition costs of an electric 3066
utility AUTHORIZED for collection as transition revenues under 3067
sections 4928.31 to 4928.40 of the Revised Code, the public 3068
utilities commission, by order under section 4928.33 of the 3069
Revised Code, shall establish the transition charge for each 3070
customer class of the electric utility and, to the extent 3071
possible, each rate schedule within each such customer class, with 3072
all such transition charges being collected as provided in 3073
division (A)(1)(b) of section 4928.37 of the Revised Code during a 3074
market development period for the utility, ending on such date as 3075
the commission shall reasonably prescribe. no such market 3076
development period shall end after december 31, 2005, unless the 3077
commission extends the utility's market development period for up 3078
to five years, to the extent the commission determines necessary 3079
to reduce the level of the transition charges applicable to any 3080
rate schedule in order to encourage effective competition. 3081

factors the commission shall consider in prescribing the 3082
expiration date of the utility's market development period and the 3083
transition charge for each customer class and rate schedule of the 3084
utility include, but are not limited to, the total allowable 3085
amount of transition costs of the electric utility as determined 3086
under section 4928.39 of the Revised Code; the relevant market 3087

price for the delivered supply of electricity to customers in that 3088
customer class and, to the extent possible, in each rate schedule 3089
as determined by the commission; and such shopping incentives by 3090
customer class as are considered necessary to induce, at the 3091
minimum, a twenty per cent load switching rate by customer class 3092
halfway through the utility's market development period but not 3093
later than December 31, 2003. In no case shall the commission 3094
establish a shopping incentive in an amount exceeding the 3095
unbundled component for retail electric generation service set in 3096
the utility's approved transition plan under section 4928.33 of 3097
the Revised Code, and in no case shall the commission establish a 3098
transition charge in an amount less than zero. 3099

(B) THE COMMISSION may CONDUCT A PERIODIC REVIEW no more 3100
often than annually AND, AS IT DETERMINES NECESSARY, ADJUST THE 3101
TRANSITION CHARGES OF THE ELECTRIC UTILITY as INITIALLY 3102
established under division (A) of this section or subsequently 3103
adjusted under this division. any such adjustment shall be in 3104
accordance with division (A) of this section and may reflect 3105
changes in the relevant market. 3106

(C) Notwithstanding any provision of this chapter, the 3107
commission shall issue an order under section 4928.33 of the 3108
Revised Code approving a transition plan for an electric utility 3109
that contains a rate reduction for residential customers of that 3110
utility, provided that the rate reduction shall not increase the 3111
rates or transition cost RESPONSIBILITY of any other customer 3112
class of the utility. the rate reduction shall be in effect only 3113
for such portion of the UTILITY'S market development period as the 3114
commission shall specify AND shall be applied to the unbundled 3115
generation component for retail electric generation service as set 3116
in the utility's approved transition plan under section 4928.33 of 3117
the Revised Code subject to the price cap for residential 3118
customers required under division (A)(6) of section 4928.34 of the 3119

Revised Code. The amount of the rate reduction shall be FIVE PER 3120
CENT OF THE AMOUNT OF THAT UNBUNDLED GENERATION COMPONENT, but 3121
shall not unduly discourage market entry by alternative suppliers 3122
seeking to serve the residential market in this state. THE 3123
COMMISSION, AFTER REASONABLE NOTICE AND OPPORTUNITY FOR HEARING, 3124
may terminate the rate reduction by order UPON A FINDING THAT THE 3125
RATE REDUCTION IS UNDULY DISCOURAGING MARKET ENTRY BY SUCH 3126
ALTERNATIVE SUPPLIERS. 3127

(D) Beginning on the starting date of competitive retail 3128
electric service, no electric utility in this state SHALL prohibit 3129
the resale of electric generation service OR impose unreasonable 3130
or discriminatory conditions or limitations on the resale of 3131
electric generation service. 3132

Sec. 4928.41. The transition revenue authority provided under 3133
sections 4928.31 to 4928.40 of the Revised Code for electric 3134
utilities does not affect the authority of an electric cooperative 3135
in this state to receive transition revenues. 3136

Sec. 4928.42. PRIOR TO THE STARTING DATE OF COMPETITIVE 3137
RETAIL ELECTRIC SERVICE, THE public utilities COMMISSION, IN 3138
CONSULTATION WITH THE CONSUMERS' COUNSEL AND WITH OTHER STATE 3139
AGENCIES AS CONSIDERED NECESSARY, SHALL PRESCRIBE AND ADOPT BY 3140
ORDER A GENERAL PLAN BY WHICH EACH ELECTRIC UTILITY shall PROVIDE 3141
DURING ITS MARKET DEVELOPMENT PERIOD CONSUMER EDUCATION ON 3142
ELECTRIC RESTRUCTURING UNDER this chapter. THE GENERAL PLAN SHALL 3143
REQUIRE the UTILITIES TO SPEND ON SUCH CONSUMER EDUCATION WITHIN 3144
their respective CERTIFIED SERVICE TERRITORIES IN THE AGGREGATE UP 3145
TO SIXTEEN MILLION DOLLARS IN THE FIRST YEAR OF THAT PERIOD AND AN 3146
ADDITIONAL SEVENTEEN MILLION DOLLARS IN THE AGGREGATE IN 3147
DECREASING AMOUNTS OVER THE REMAINING YEARS OF each utility's 3148
MARKET DEVELOPMENT PERIOD, WITH THE AGGREGATE AMOUNTS DIVIDED 3149

AMONG THE UTILITIES BASED ON THEIR RESPECTIVE NUMBER OF CUSTOMERS 3150
AS OF DECEMBER 31, 1997. THE GENERAL PLAN SHALL PROHIBIT SUCH 3151
CONSUMER EDUCATION FROM OCCURRING IN COMBINATION WITH MARKETING 3152
FOR THE UTILITY'S OR ITS AFFILIATE'S RETAIL ELECTRIC SERVICES. 3153

Sec. 4928.43. Each state agency that provides employment 3154
assistance and job training programs, including the bureau of 3155
employment services and the department of development, shall 3156
provide concentrated attention through those programs to assisting 3157
employees whose employment in electric generation-related 3158
activities and other related areas is affected by electric 3159
industry restructuring under this chapter. 3160

Sec. 4928.44. (A) This section does not apply to an electric 3161
utility if neither it nor any of its affiliates owns or controls 3162
any electric generation facilities in this state. 3163

(B) a competitive auction of retail electric generation 3164
service shall be held for the auction customers of an electric 3165
utility for the twelve-month period beginning on the first day of 3166
the competitive auction period. thereafter, such yearly 3167
competitive auctioning of the utility's auction customers shall 3168
continue until the public utilities commission by order declares 3169
the auctioning terminated, upon a commission finding that neither 3170
the utility nor any of its affiliates owns or controls any 3171
generating facilities in this state or that there is effective 3172
competition in the utility's certified territory. the burden of 3173
proof in either instance shall lie with the utility. upon issuance 3174
of a termination order under this division, competitive auctioning 3175
of such retail electric service is terminated and shall not be 3176
renewed by the commission. 3177

(C) At the end of competitive auctioning for a particular 3178
electric utility, auction customers, after reasonable notice, 3179

shall default to the utility's standard service offer under 3180
DIVISION (A) of section 4928.15 of the Revised Code until the 3181
customer chooses an alternative supplier. 3182

(D) an auction under this section shall be ACCOMPLISHED 3183
through an open, real-time auction conducted by an independent 3184
party selected by the commission. bid documents shall address such 3185
minimum standards of managerial, financial, and technical 3186
capability of the supplier to deliver power under the bid as the 3187
commission shall prescribe by rule under division (A) of section 3188
4928.06 of the Revised Code. The auction customers of the electric 3189
utility shall be auctioned in ten blocks, each representing ten 3190
per cent of the aggregated load of those customers. 3191

3192

(E) The commission shall select the winning bidders based on 3193
the bids submitted by qualified bidders in the auction process 3194
conducted by the independent party. The sole selection criterion 3195
shall be lowest price. The price charged an auction customer shall 3196
be the average price that results from the ten winning bids. the 3197
price received by the winning bidder shall be the bidder's bid 3198
price, and the commission shall develop a procedure providing for 3199
prompt and fair disbursement of revenues to winning bidders based 3200
on such bid prices. 3201

(F) an auction customer's bill shall disclose the price to be 3202
paid by the customer and state that the price for the generation 3203
service was derived through competitive auction. The bill also 3204
shall disclose fuel mix and environmental characteristics of the 3205
fuel supply as required under division (F) of section 4928.10 of 3206
the Revised Code. 3207

(G) Until the commission determines an acceptable bid in the 3208
case of a technical flaw in any part of an auction proposal for 3209
the ten blocks of load, the electric distribution utility shall 3210
supply generation for the auction customers whose service is 3211

affected by the technical flaw. the price for that generation 3212
SERVICE shall be the UNBUNDLED generation service component 3213
specified in the utility's schedule filed under section 4928.34 of 3214
the Revised Code, and such schedule shall be in effect for that 3215
temporary service. such price shall be included in the calculation 3216
of the average price under DIVISION (E) of this section until such 3217
time as a bid is accepted and the average price RECALCULATED 3218
accordingly. If the electric distribution utility incurs a loss 3219
due to providing the temporary service at the price specified in 3220
the schedule, the commission shall authorize the electric 3221
distribution utility, through the filing of revised DISTRIBUTION 3222
service schedules under section 4909.18 of the Revised Code, to 3223
recover up to such amount of the loss as the commission considers 3224
reasonable upon a determination that the utility supplied the 3225
service at the least cost given market conditions at the time. 3226

(H) the commission shall adopt rules under division (A) of 3228
section 4928.06 of the Revised Code ensuring fairness in the 3229
auction process and the performance of a winning bidder, and 3230
providing for default service if a winning bidder fails to perform 3231
under the terms and conditions applicable to its provision of 3232
service. 3233

(I) an auction customer may opt out of an auction pool under 3234
this section at any time upon payment of any APPLICABLE SWITCHING 3235
fee, which fee shall be a nominal amount based on the winning 3236
bidder's administrative costs. the switching fee shall be 3237
DISCLOSED in any bid submitted under this section. 3238

(J) Competitive auctioning under this section is within the 3239
authority of this state under section 722(g) of the "energy policy 3240
act of 1992," 106 Stat. 2776, 16 U.S.C. 824k(g). 3241

Sec. 4928.45. (A) Notwithstanding sections 4933.81 to 4933.90 3242

of the Revised Code, the public utilities commission may 3243
determine, by order and after reasonable notice and opportunity 3244
for hearing, that CUSTOMERS THAT ARE NONFIRM ELECTRIC SERVICE 3245
customers of electric UTILITIES ON THE EFFECTIVE DATE OF THIS 3246
SECTION would be assisted by the implementation by each such 3247
utility of a service schedule that complies with division (C) of 3248
this section. in the order, the commission shall specify the 3249
period of time, ending not later than december 31, 2005, during 3250
which the service OFFERING would be available to ANY SUCH NONFIRM 3251
ELECTRIC SERVICE customers or A group of such customers. upon the 3252
issuance of the order, ANY SUCH NONFIRM ELECTRIC SERVICE customer 3253
or A group of SUCH customers shall be, for the purposes of this 3254
section, eligible customers in each electric utility's 3255
transmission tariff subject to the JURISDICTION of the federal 3256
energy regulatory commission FOR THE PERIOD SPECIFIED IN THE 3257
ORDER, and each electric UTILITY with nonfirm customers shall file 3258
a service schedule pursuant to section 4909.18 of the Revised Code 3259
to effectuate this service offering. 3260

(b) the service schedule AUTHORIZED under division (A) of 3261
this section, FOR THE PERIOD ENDING NOT LATER THAN DECEMBER 31, 3262
2005, AS SPECIFIED IN THE COMMISSION'S ORDER UNDER THAT DIVISION, 3263
shall PROVIDE FOR BOTH OF THE FOLLOWING: 3264

(1) for service and billing purposes, conjunctive metering 3265
for a group of CUSTOMERS THAT ARE NONFIRM CUSTOMERS ON THE 3266
EFFECTIVE DATE OF THIS SECTION; 3267

(2) direct, comparable and nondiscriminatory access to the 3268
transmission and distribution services, capacities, functions, and 3269
facilities of the electric UTILITY BY any CUSTOMER THAT IS A 3270
nonFIRM ELECTRIC SERVICE customer ON THE EFFECTIVE DATE OF THIS 3271
SECTION or BY A group of ANY SUCH customers, for the purpose of 3272
securing from a supplier or suppliers of the customer's or group's 3273

choice all or a portion of the customer's or group's electric 3274
power and energy requirements in excess of any requirements 3275
supplied by an electric UTILITY on a firm basis. 3276

the failure of an electric UTILITY to file such schedule 3277
constitutes inadequate service under title XLIX of the Revised 3278
Code. 3279

(c) the service offering authorized pursuant to this section 3280
shall be in addition to any service options otherwise available to 3281
A NONFIRM ELECTRIC SERVICE customer or group of NONFIRM ELECTRIC 3282
SERVICE customers. if a CUSTOMER THAT IS A NONFIRM ELECTRIC 3283
SERVICE customer ON THE EFFECTIVE DATE OF THIS SECTION or A group 3284
of SUCH customers elects to meet all or a portion of the 3285
customer's or group's electric power and energy requirements in 3286
excess of any requirements supplied by an electric UTILITY on a 3287
firm basis, by purchasing electricity and related services from a 3288
supplier or suppliers other than that electric utility, any 3289
existing service arrangement under section 4905.31 of the Revised 3290
Code or any existing schedule under section 4905.30 of the Revised 3291
Code shall be modified to permit this election to occur without 3292
economic penalty and to facilitate the customer's or group's 3293
access to the electric market for the purpose of managing supply 3294
and price volatility risks. 3295

(d) NOTHING IN DIVISIONS (a) TO (c) OF THIS SECTION AFFECTS 3296
ANY OBLIGATION OF an electric utility TO curtail or interrupt 3297
electric transmission or distribution service to the extent 3298
required to protect the interests of firm ELECTRIC SERVICE 3299
customers from an injury that is otherwise unavoidable but for the 3300
curtailment or interruption. Nothing in those divisions shall be 3301
construed or applied to increase rates and charges for firm 3302
electric service customers including residential firm electric 3303
service customers. 3304

Sec. 4928.51. (A) There is hereby established in the state 3305
treasury a universal service fund, into which shall be deposited 3306
all universal service revenues remitted to the director of 3307
development under this section, for the exclusive purposes of 3308
providing funding for the low-income customer assistance programs 3309
and for the consumer education program authorized under section 3310
4928.56 of the Revised Code, and paying the administrative costs 3311
of the low-income customer assistance programs and the consumer 3312
education program. Interest on the fund shall be credited to the 3313
fund. disbursements from the fund shall be made to any supplier 3314
that provides a competitive retail electric service to a customer 3315
who is approved to receive assistance under a specified low-income 3316
customer assistance program and to any authorized provider of 3317
weatherization or energy efficiency service to a customer approved 3318
to receive such assistance under a specified low-income customer 3319
ASSISTANCE program. 3320

(B) universal service revenues shall include all of the 3321
following: 3322

(1) Revenues remitted to the director after collection by an 3323
electric distribution utility beginning July 1, 2000, attributable 3324
to the collection from customers of the universal service rider 3325
prescribed under section 4928.52 of the Revised Code; 3326

(2) Revenues remitted to the director that have been 3327
collected by an electric distribution utility beginning July 1, 3328
2000, as customer payments under the percentage of income payment 3329
plan program, including revenues remitted under division (c) of 3330
this section; 3331

(3) adequate revenues remitted to the director after 3332
collection by a MUNICIPAL electric utility or electric cooperative 3333
in this state not earlier than July 1, 2000, upon the utility's or 3334
cooperative's decision to participate in the low-income customer 3335

assistance programs. 3336

(C) beginning July 1, 2000, an electric distribution utility 3337
shall transfer to the director the right to collect all arrearage 3338
payments of a customer for percentage of income payment plan 3339
program debt owed to the utility on the day before that date or 3340
retain the right to collect that debt but remit to the director 3341
all program revenues received by the utility for that customer. 3342

(D) THE PUBLIC UTILITIES COMMISSION SHALL COMPLETE AN AUDIT 3343
OF EACH ELECTRIC UTILITY BY JULY 1, 2000, FOR THE PURPOSE OF 3344
ESTABLISHING A BASELINE FOR THE PERCENTAGE OF INCOME PAYMENT PLAN 3345
PROGRAM COMPONENT OF THE LOW-INCOME ASSISTANCE PROGRAMS. 3346

Sec. 4928.52. (A) Beginning July 1,2000, the universal 3347
service rider shall replace the percentage of income payment plan 3348
rider in existence on the effective date of this section and ANY 3349
AMOUNT IN THE RATES OF AN ELECTRIC UTILITY FOR THE FUNDING OF 3350
LOW-INCOME ENERGY EFFICIENCY PROGRAMS. THE UNIVERSAL SERVICE RIDER 3351
shall be a rider on retail electric distribution service rates as 3352
such rates are determined by the public utilities commission 3353
pursuant to this chapter. the universal service rider for the 3354
first five years after the starting date of competitive retail 3355
electric service shall be the sum of all of the following: 3356

(1) the level of the percentage of income payment plan 3357
program rider in existence on the effective date of this section; 3358

(2) an amount equal to the level of funding for low-income 3359
customer energy efficiency programs provided through electric 3360
utility rates in effect on the effective date of this section; 3361

(3) any additional amount necessary and SUFFICIENT to fund 3362
through the universal service rider the ADMINISTRATIVE costs of 3363
the low-income customer AssISTANCE programs and the consumer 3364
education program created in section 4928.56 of the Revised Code. 3365

(B) If, during or after the five-year period specified in 3366
division (a) of this section, the director of development, after 3367
CONSULTATION with the public benefits advisory board created under 3368
section 4928.58 of the Revised Code, determines that revenues in 3369
the universal service fund and revenues from federal or other 3370
sources of funding for those programs, including general revenue 3371
fund appropriations for the ohio energy credit program, will be 3372
insufficient to cover the administrative costs of the low-income 3373
customer AssISTANCE programs and the consumer education program 3374
and provide adequate funding for THOSE PROGRAMS, the director 3375
shall file a petition with the commission for an increase in the 3376
universal service rider. the commission, after reasonable notice 3377
and OPPORTUNITY for hearing, may adjust the universal service 3378
rider by the minimum amount necessary to provide the additional 3379
revenues. the commission shall not decrease the universal service 3380
rider without the approval of the director, after consultation by 3381
the director with the advisory board. 3382

(c) the universal service rider established under DIVISION 3383
(A) or (B) of this section shall be set in such a manner so as not 3384
to shift among the customer classes of electric distribution 3385
utilities the costs of funding low-income customer ASSISTANCE 3386
programs. 3387

Sec. 4928.53. (A) Beginning July 1, 2000, the director of 3388
development is hereby authorized to administer the low-income 3389
customer assistance programs. for that purpose, the tax 3390
commissioner and the public utilities commission shall cooperate 3391
with and provide such assistance as the director REQUIRES FOR 3392
ADMINISTRATION of the low-income customer assistance programs. The 3393
director shall consolidate the administration of and redesign and 3394
coordinate the operations of those programs within the department 3395
to provide, to the maximum extent possible, for efficient program 3396

administration and a one-stop application and ELIGIBILITY 3397
determination process at the local level for consumers. 3398

3399

(B)(1) not later than March 1, 2000, the director, in 3400
accordance with chapter 119. of the Revised Code, shall adopt 3401
rules to carry out sections 4928.51 to 4928.58 of the Revised Code 3402
and ensure the effective and EFFICIENT ADMINISTRATION and 3403
operation of the low-income customer assistance programs. the 3404
rules shall take effect on the July 1, 2000. 3405

(2) the director's authority to adopt rules under this 3406
division for the Ohio energy credit program shall be subject to 3407
such rule-making AUTHORITY as is conferred on the director by 3408
sections 5117.01 to 5117.12 of the Revised Code, as amended by 3409
Sub. S.B. No. 3 of the 123rd general assembly, except that rules 3410
initially adopted by the director for the Ohio energy credit 3411
program shall incorporate the substance of those sections as they 3412
exist on the effective date of this section. 3413

(3) the director's AUTHORITY to adopt rules under this 3414
division for the percentage of income payment plan program shall 3415
include authority to adopt rules prescribing criteria for customer 3416
eligibility and policies REGARDING payment and crediting 3417
arrangements and responsibilities, procedures for verifying 3418
customer eligibility, procedures for disbursing public funds to 3419
suppliers and otherwise administering funds under the director's 3420
jurisdiction, and requirements as to timely remittances of 3421
revenues described in division (B) of section 4928.51 of the 3422
Revised Code. The director's authority in division (B)(3) of this 3423
section excludes authority to prescribe service disconnection and 3424
customer billing policies and procedures and to address complaints 3425
against suppliers under the percentage of payment plan program, 3426
which excluded authority shall be exercised by the public 3427

utilities commission, in coordination with the director. Rules 3428
initially adopted by the director for the percentage of income 3429
payment plan program shall incorporate the eligibility criteria 3430
and payment arrangement and responsibility policies set forth in 3431
rule 4901:1-18-04(B) of the Ohio Administrative Code in effect on 3432
the effective date of this section. 3433

Sec. 4928.54. Beginning on the starting date of competitive 3434
retail electric service, the director of development may aggregate 3435
percentage of income payment plan program customers for the 3436
purpose of competitively auctioning the supply of competitive 3437
retail electric generation service to bidders certified under 3438
section 4928.08 of the Revised Code and further qualified under 3439
ELIGIBILITY criteria the director prescribes by rule under 3440
division (b) of section 4928.53 of the Revised Code after 3441
consultation with the commission and electric light companies 3442
regarding any such rule. the objectives of the auction shall be to 3443
provide reliable retail electric generation service to customers, 3444
based on selection criteria that the winning bid provide the 3445
lowest cost and best value to customers. The rules adopted by the 3446
director under division (b) of section 4928.53 of the Revised Code 3447
shall ensure a fair and unbiased auction process and the 3448
performance of any winning bidder. 3449

Sec. 4928.55. The director of development shall establish an 3450
energy efficiency and weatherization program targeted to 3451
high-cost, high-volume use structures occupied by customers 3452
eligible for the percentage of income PAYMENT plan program, with 3453
the goal to reducing the energy bills of the occupants. Acceptance 3454
of energy efficiency and WEATHERIZATION services provided by the 3455
program shall be a condition for the eligibility of any such 3456
customer to participate in the percentage of income payment plan 3457
program. Any difference between universal service fund revenues 3458

under section 4928.51 of the Revised Code and any savings in 3459
percentage of income payment plan program costs as a result of 3460
competitive auctioning under section 4928.54 of the Revised Code 3461
shall be reinvested in the targeted energy EFFICIENCY and 3462
WEATHERIZATION program. 3463

Sec. 4928.56. The director of development may adopt rules in 3464
accordance with Chapter 119. of the Revised Code establishing an 3465
education program for consumers eligible to participate in the 3466
low-income customer assistance programs. the education program 3467
shall provide information to consumers regarding energy efficiency 3468
and energy conservation. 3469

Sec. 4928.57. On and after the starting date of competitive 3470
retail electric service, the director of development shall provide 3471
a report every two years until 2008 to the standing committees of 3472
the general assembly that deal with public utility matters, 3473
regarding the effectiveness of the low-income customer assistance 3474
programs and the consumer education program, and the effectiveness 3475
of the energy EFFICIENCY revolving loan program created under 3476
sections 4928.61 to 4928.63 of the Revised Code. 3477

Sec. 4928.58. (A) there is hereby created the public benefits 3478
ADVISORY board, WHICH HAS THE PURPOSE OF ENSURING THAT ENERGY 3479
SERVICES BE PROVIDED TO LOW-INCOME CONSUMERS IN THIS STATE IN AN 3480
AFFORDABLE MANNER CONSISTENT WITH THE POLICY SPECIFIED IN SECTION 3481
4928.02 OF THE REVISED CODE. THE ADVISORY BOARD SHALL CONSIST of 3482
twenty-one members as follows: the director of development, the 3483
CHAIRPERSON of the public utilities commission, the consumers' 3484
counsel, and the director of the air quality development 3485
authority, each serving ex officio and represented by a designee 3486
at the official's discretion; two members of the house of 3487
representatives appointed by the speaker of the house of 3488

representatives, NEITHER of the SAME POLITICAL party, and two 3489
members of the senate appointed by the president of the senate, 3490
neither of the same political party; and thirteen members 3491
appointed by the governor with the advice and consent of the 3492
senate, consisting of one representative of suppliers of 3493
competitive retail electric service; one representative of the 3494
residential class of electric utility customers; one 3495
representative of the industrial class of electric utility 3496
customers; one representative of the commercial class of electric 3497
utility customers; one representative of agricultural or rural 3498
customers of an electric utility; two customers RECEIVING 3499
assistance under one or more of the low-income customer assistance 3500
programs, to represent customers eligible for any such assistance, 3501
including senior citizens; one representative of the general 3502
public; one representative of local intake agencies; one 3503
representative of a community-based organization serving 3504
low-income customers; one representative of environmental 3505
protection interests; one representative of lending institutions; 3506
and one person considered an expert in energy efficiency or 3507
renewables technology. Initial appointments shall be made not 3508
later than November 1, 1999. 3509

(B) Initial terms of six of the appointed members shall end 3510
on June 30, 2003, and initial terms of the remaining seven 3511
appointed MEMBERS shall end on june 30, 2004. thereafter, terms of 3512
appointed members shall be for three years, with each term ending 3513
on the same day of the same month as the term it succeeds. each 3514
member shall hold office from the date of the member's appointment 3515
until the end of the term for which the member was appointed. 3516
members may be reappointed. 3517

Vacancies shall be filled in the manner provided for original 3518
appointments. Any member APPOINTED to fill a vacancy occurring 3519
prior to the expiration date of the term for which the member's 3520

predecessor was appointed shall hold office as a member for the 3521
REMAINDER of that term. a member shall continue in office after 3522
the expiration date of the member's term until the member's 3523
successor takes office or until a period of sixty days has 3524
elapsed, whichever occurs first. 3525

(C) Board members shall be reimbursed for their actual and 3526
necessary expenses incurred in the performance of board duties. 3527
such REIMBURSEMENTS constitute, as applicable, administrative 3528
costs of the low-income customer assistance programs for the 3529
purpose of division (A) of section 4928.51 of the Revised Code or 3530
administrative costs of the energy efficiency revolving loan 3531
program for the purpose of division (A) of section 4528.61 of the 3532
Revised Code. 3533

(D) The advisory board shall select a chairperson from among 3534
its members. only board members appointed by the governor with THE 3535
advice and consent of the senate shall be voting members of the 3536
board; each shall have one vote in all deliberations of the board. 3537
a majority of the voting members constitute a quorum. 3538

(E) The duties of the advisory board shall be as follows: 3539

(1) Advise the director in the administration of the 3540
UNIVERSAL service fund and the low-income customer assistance 3541
programs and advise the director on the director's recommendation 3542
to the commission regarding the appropriate level of the universal 3543
service rider; 3544

(2) Advise the director on the administration of the energy 3545
efficiency revolving loan program and the energy efficiency 3546
revolving loan program fund under sections 4928.61 to 4928.63 of 3547
the Revised Code. 3548

(F) the advisory board is not an agency, as defined in 3549
section 101.82 of the Revised Code, for purposes of divisions (A) 3550
and (B) of section 101.84 of the Revised Code. 3551

Sec. 4928.61. (A) There is hereby established in the state 3552
treasury an energy efficiency revolving loan fund, into which 3553
shall be deposited all energy EFFICIENCY revenues remitted to the 3554
director of development under division (B) of this section, for 3555
the exclusive purposes of funding the energy efficiency revolving 3556
loan program created under section 4928.62 of the Revised Code and 3557
paying the program's administrative costs. Interest on the fund 3558
shall be credited to the fund. 3559

(B) energy efficiency revenues shall include all of the 3560
following: 3561

(1) Revenues remitted to the director after collection by 3562
each electric DISTRIBUTION utility in this state of a temporary 3563
rider on retail electric distribution service rates as such rates 3564
are determined by the public utilities commission pursuant to this 3565
chapter. The rider shall be a uniform amount statewide, determined 3566
by the director of development, after consultation with the public 3567
benefits advisory board created by section 4928.58 of the Revised 3568
Code. The amount shall be determined by dividing an aggregate 3569
revenue target for a given year as determined by the director, 3570
after consultation with the advisory board, by the number of 3571
customers of electric distribution utilities in this state in the 3572
prior year. Such aggregate revenue target shall not exceed more 3573
than fifteen million dollars in any year through 2005 and shall 3574
not exceed more than five million dollars in any year after 2005. 3575
The rider shall be imposed beginning on the starting date of 3576
competitive retail electric service and shall terminate at the end 3577
of ten years following that starting date or until the energy 3578
efficiency revolving loan fund, including interest, reaches one 3579
hundred million dollars, whichever is first. 3580

(2) Revenues from energy efficiency revolving loan program 3581
loan repayments and payments from energy efficiency revolving loan 3582

program loan collections pursuant to section 4928.62 of the 3583
Revised Code; 3584

(3) Adequate revenues remitted to the director after 3585
collection by a MUNICIPAL electric utility or electric cooperative 3586
in this state not earlier than the starting date of competitive 3587
retail electric service upon the utility's or cooperative's 3588
decision to participate in the energy efficiency revolving loan 3589
PROGRAM. 3590

(C)(1) Each electric distribution utility in this state shall 3591
remit to the director on a quarterly basis the revenues described 3592
in divisions (B)(1) and (2) of this section. Such remittances 3593
shall begin with the first quarter following the starting date of 3594
competitive RETAIL ELECTRIC service. 3595

(2) Each participating electric cooperative and participating 3596
municipal electric utility shall remit to the director on a 3597
quarterly basis the revenues described in division (B)(3) of this 3598
section. such remittances shall begin with the first quarter 3599
following the participating cooperative's or utility's decision to 3600
participate. 3601

(3) All remittances under divisions (C)(1) and (2) of this 3602
section shall continue only until the end of ten years following 3603
that starting date or until the energy efficiency revolving loan 3604
fund, including interest, reaches one hundred million dollars, 3605
whichever is first. 3606

Sec. 4928.62. (A) Beginning on the starting date of 3607
competitive retail electric service, there is hereby created the 3608
energy EFFICIENCY revolving loan program, which shall be 3609
administered by the director of development. Under the program, 3610
the director may AUTHORIZE the use of moneys in the energy 3611
efficiency revolving loan fund for financial assistance for 3612

projects in this state. To the extent feasible given approved 3613
applications for assistance, the assistance shall be distributed 3614
among the certified territories of electric distribution utilities 3615
and participating electric cooperatives, and among the service 3616
areas of participating municipal electric utilities, in amounts 3617
proportionate to the remittances of each utility and cooperative 3618
under divisions (B)(1) and (3) of section 4928.61 of the Revised 3619
Code. The assistance shall be made or provided through approved 3620
lending institutions in the form of loans at below market rates, 3621
loan GUARANTEES for such loans, and linked deposits for such 3622
loans. the director shall not AUTHORIZE financial assistance under 3623
the program unless the director first DETERMINES all of the 3624
following: 3625

(1) the project will include an investment in products, 3626
technologies, or services, including energy efficiency for 3627
low-income housing, for residential, small commercial and small 3628
industrial business, local government, educational institution, 3629
nonprofit ENTITY, or agricultural customers of an electric 3630
distribution utility in this state or a participating MUNICIPAL 3631
electric utility or electric cooperative in this state. 3632

(2) the project will IMPROVE energy efficiency in a 3633
cost-efficient manner by using both the most appropriate national, 3634
federal, or other standards for products as determined by the 3635
director, and the best practices for use of technology, products, 3636
or services in the context of the total facility or building. 3637

(3) the project will benefit the economic and environmental 3638
welfare of the citizens of this state. 3639

(4) the receipt of financial assistance is a major factor in 3640
the applicant's decision to proceed with or invest in the project. 3641

(B) In carrying out sections 4928.61 to 4928.63 of the 3642
Revised Code, the director may do all of the following for THE 3643

<u>PURPOSE of the energy efficiency revolving loan program:</u>	3644
<u>(1) acquire in the name of the director any property of any</u>	3645
<u>kind or character in accordance with this section, by purchase,</u>	3646
<u>purchase at foreclosure, or EXCHANGE, on such terms and in such</u>	3647
<u>manner as the director considers proper;</u>	3648
<u>(2) make and enter into all contracts and agreements</u>	3649
<u>necessary or incidental to the performance of the director's</u>	3650
<u>duties and the exercise of the director's powers under those</u>	3651
<u>sections;</u>	3652
<u>(3) employ or enter into contracts with financial</u>	3653
<u>consultants, marketing consultants, consulting engineers,</u>	3654
<u>architects, managers, construction experts, attorneys, technical</u>	3655
<u>MONITORS, energy evaluators, OR OTHER EMPLOYEES or agents as the</u>	3656
<u>director considers necessary, and shall fix their compensation;</u>	3657
<u>(4) adopt rules prescribing the application procedures for</u>	3658
<u>financial assistance under the program; the terms and conditions</u>	3659
<u>of any loans, loan guarantees, linked deposits, and contracts;</u>	3660
<u>criteria pertaining to the eligibility of participating lending</u>	3661
<u>institutions; and any OTHER MATTERS necessary for the</u>	3662
<u>implementation of the program;</u>	3663
<u>(5) do all things necessary and appropriate for the operation</u>	3664
<u>of the program.</u>	3665
<u>(C) financial statements, financial data, and trade secrets</u>	3666
<u>submitted to or received by the director from an applicant or</u>	3667
<u>recipient of financial assistance under sections 4928.61 to</u>	3668
<u>4928.63 of the Revised Code, or any INFORMATION taken from those</u>	3669
<u>statements, data, or trade secrets for any purpose, are not public</u>	3670
<u>records for the purpose of section 149.43 of the Revised Code.</u>	3671
<u>Sec. 4928.63. The director of development and the public</u>	3672
<u>benefits advisory board have the powers and duties provided in</u>	3673

sections 4928.61 and 4928.62 of the Revised Code, in order to 3674
promote the welfare of the people of this state, to stabilize the 3675
economy, to ASSIST in the improvement and development within this 3676
state of not-for-profit entity, industrial, commercial, 3677
DISTRIBUTION, residential, and research buildings and activities 3678
required for the people of this state, to improve the ECONOMIC 3679
welfare of the people of this state, and also to ASSIST in the 3680
improvement of air, water, or thermal POLLUTION control facilities 3681
and SOLid waste disposal facilities. it is hereby determined that 3682
the accomplishment of those purposes is essential so that the 3683
people of this state may maintain their present high standards in 3684
comparison with the people of other states and so that 3685
opportunities for improving the economic welfare of the people of 3686
this state, for improving the housing of residents of this state, 3687
and for favorable markets for the products of this state's natural 3688
resources, agriculture, and manufacturing shall be improved; and 3689
that it is necessary for this state to establish the program 3690
authorized pursuant to sections 4928.61 and 4928.62 of the Revised 3691
Code, to establish the energy efficiency revolving loan program 3692
and program fund and the energy efficiency REVOLVING loan program 3693
advisory board, and to vest the director and the board with the 3694
powers and duties PROVIDED in sections 4928.61 and 4928.62 of the 3695
Revised Code. 3696

Sec. 4933.33. Annually, each electric light distribution 3697
company as defined in section 5727.80 of the Revised Code shall 3698
cause to appear on each customer bill, or shall distribute to each 3699
of its customers, the following statement: 3700

"Under state law, the amount you are being billed includes: 3701

(1) ~~Gross receipts~~ Kilowatt-hour taxes that have been in 3702
effect since ~~1969~~ 2001 and are currently at \$. % (The 3703
current ~~total percentage~~ dollar figure of the ~~total gross receipts~~ 3704

~~kilowatt-hour taxes levied in Chapter 5727. by section 5727.81 of~~ 3705
the Revised Code ~~and any other section of law~~ shall be placed in 3706
the blank); and 3707

(2) Assessments to assist in the support of the operations of 3708
the PUCO and the office of the consumers' counsel that have been 3709
in effect since 1912 and 1977, respectively." 3710

Nothing in this section shall be construed to mean ~~either~~ 3711
that an electric light distribution company ~~operated not for~~ 3712
~~profit or one that is owned or operated by a municipal corporation~~ 3713
~~is subject to this section or that an electric light company~~ 3714
subject to this section may not cause such appearance or 3715
distribute such statement on a more frequent basis. 3716

Sec. 4933.81. As used in sections 4933.81 to 4933.90 of the 3717
Revised Code: 3718

(A) "Electric supplier" means any electric light company as 3719
defined in section 4905.03 of the Revised Code, including electric 3720
light companies organized as nonprofit corporations, but not 3721
including a municipal ~~corporation~~ corporations or other ~~unit~~ units 3722
of local government that ~~provides~~ provide electric service. 3723

(B) "Adequate facilities" means distribution lines or 3724
facilities having sufficient capacity to meet the maximum 3725
estimated electric service requirements of its existing customers 3726
and of any new customer occurring during the year following the 3727
commencement of permanent electric service, and to assure all such 3728
customers of reasonable continuity and quality of service. 3729
Distribution facilities and lines of an electric supplier shall be 3730
considered "adequate facilities" if such supplier offers to 3731
undertake to make its distribution facilities and lines meet such 3732
service requirements and ~~can~~, in the determination of the public 3733
utilities commission, can do so within a reasonable time. 3734

(C) "Distribution line" means any electric line ~~having a~~ 3735
~~design voltage below thirty-five thousand volts phase to phase~~ 3736
~~which~~ that is being or has been used primarily to provide electric 3737
service directly to electric load centers by the owner of such 3738
line. 3739

(D) "Existing distribution line" means any distribution line 3740
of an electric supplier which was in existence on January 1, 1977, 3741
or under ~~construction~~ CONSTRUCTION on such that date. 3742

(E) "Electric load center" means all the electric-consuming 3743
facilities of any type or character owned, occupied, controlled, 3744
or used by a person at a single location, which facilities have 3745
been, are, or will be connected to and served at a metered point 3746
of delivery and to which electric service has been, is, or will be 3747
rendered. 3748

(F) "Electric service" means retail electric service 3749
furnished to an electric load center for ultimate consumption ~~and~~ 3750
~~does not include, but excludes~~ furnishing electric power or energy 3751
at wholesale for resale. In the case of a for-profit electric 3752
supplier and beginning on the starting date of competitive retail 3753
electric service as defined in section 4928.01 of the Revised 3754
Code, "electric service" also excludes a competitive retail 3755
electric service. In the case of a not-for-profit electric 3756
supplier and beginning on that starting date, "electric service" 3757
also excludes any service component of a competitive retail 3758
electric service that is specified in an irrevocable filing the 3759
electric supplier makes with the public utilities commission for 3760
informational purposes only to eliminate permanently its certified 3761
territory under sections 4933.81 to 4933.90 of the Revised Code as 3762
to that service component. the filing shall specify the date on 3763
which such territory is so eliminated. notwithstanding division 3764
(B) of section 4928.01 of the Revised Code, such a service 3765
component may include retail ancillary, metering, or billing and 3766

collection service irrespective of whether that service component 3767
has or has not been declared competitive under section 4928.04 of 3768
the Revised Code. upon receipt of the filing by the commission, 3769
the not-for-profit electric supplier's certified territory shall 3770
be eliminated permanently as to the service component specified in 3771
the filing as of the date specified in the filing. As used in this 3772
division, "competitive retail electric service" and "retail 3773
electric service" have the same meanings as in section 4928.01 of 3774
the Revised Code. 3775

(G) "Certified territory" means a geographical area the 3776
boundaries of which have been established pursuant to sections 3777
4933.81 to 4933.90 of the Revised Code within which an electric 3778
supplier is authorized and required to provide electric service. 3779

(H) "Other unit of local government" means any governmental 3780
unit or body that may come into existence after ~~the effective date~~ 3781
~~of this section~~ July 12, 1978, with powers and authority similar 3782
to those of a municipal corporation, or ~~which~~ that is created to 3783
replace or exercise the relevant powers of any one or more 3784
municipal corporations. 3785

Sec. 4935.04. (A) As used in this chapter: 3786

(1) "Major utility facility" means: 3787

(a) ~~An electric generating plant and associated facilities~~ 3788
~~designed for, or capable of, operation at a capacity of fifty~~ 3789
~~megawatts or more;~~ 3790

~~(b)~~ An electric transmission line and associated facilities 3791
of a design capacity of one hundred twenty-five kilovolts or more; 3792

~~(c)~~(b) A gas or natural gas transmission line and associated 3793
facilities designed for, or capable of, transporting gas or 3794
natural gas at pressures in excess of one hundred twenty-five 3795
pounds per square inch. 3796

"Major utility facility" does not include electric, gas, or 3797
natural gas distributing lines and gas or natural gas gathering 3798
lines and associated facilities as defined by the public utilities 3799
commission; facilities owned or operated by industrial firms, 3800
persons, or institutions that produce or transmit gas, or natural 3801
gas, or electricity primarily for their own use or as a byproduct 3802
of their operations; gas or natural gas transmission lines and 3803
associated facilities over which an agency of the United States 3804
has certificate jurisdiction; facilities owned or operated by a 3805
person furnishing gas or natural gas directly to fifteen thousand 3806
or fewer customers within this state. 3807

(2) "Person" has the meaning set forth in section 4906.01 of 3808
the Revised Code. 3809

(B) Each person owning or operating a gas or natural gas 3810
transmission line and associated facilities within this state over 3811
which an agency of the United States has certificate jurisdiction 3812
shall furnish to the commission a copy of the energy information 3813
filed by the person with that agency of the United States. 3814

(C) Each person owning or operating a major utility facility 3815
within this state, or furnishing gas, natural gas, or electricity 3816
directly to more than fifteen thousand customers within this state 3817
annually shall furnish a report to the commission for its review. 3818
The report shall be termed the long-term forecast report and shall 3819
contain: 3820

(1) A year-by-year, ten-year forecast of annual energy 3821
demand, peak load, reserves, and a general description of the 3822
resource plan to meet demand; 3823

(2) A range of projected loads during the period; 3824

(3) A description of major utility facilities planned to be 3825
added or taken out of service in the next ten years, including 3826
~~prospective sites for generating plants and~~, to the extent the 3827

information is available, prospective sites for transmission line 3828
locations; 3829

(4) For gas and natural gas, a projection of anticipated 3830
supply, supply prices, and sources of supply over the forecast 3831
period; 3832

~~(5) For electricity, a range of projected loads and a 3833
projection of annual energy demand, anticipated generating 3834
capacity, and system seasonal peak demand for a twenty-year 3835
period; 3836~~

~~(6)~~ A description of proposed changes in the transmission 3837
system planned for the next five years; 3838

~~(7)~~(6) A month-by-month forecast of both energy demand and 3839
peak load for electric utilities, and gas sendout for gas and 3840
natural gas utilities, for the next two years. The report shall 3841
describe the major utility facilities that, in the judgment of 3842
such person, will be required to supply system demands during the 3843
forecast period. The report from a gas or natural gas utility 3844
shall cover the ten- and five-year periods next succeeding the 3845
date of the report, and the report from an electric utility shall 3846
cover the twenty-, ten-, and five-year periods next succeeding the 3847
date of the report. Each report shall be made available to the 3848
public and furnished upon request to municipal corporations and 3849
governmental agencies charged with the duty of protecting the 3850
environment or of planning land use. The report shall be in such 3851
form and shall contain such information as may be prescribed by 3852
the commission. 3853

Each person not owning or operating a major utility facility 3854
within this state and serving fifteen thousand or fewer gas, or 3855
natural gas, or electric customers within this state shall furnish 3856
such information as the commission ~~may require~~ requires. 3857

(D) The commission shall: 3858

(1) Review and comment on the reports filed under division 3859
(C) of this section, and make the information contained ~~therein~~ in 3860
the reports readily available to the public and other interested 3861
government agencies; 3862

(2) Compile and publish each year the ~~general locations of~~ 3863
~~the proposed power plant sites and~~ general locations of proposed 3864
and existing transmission line routes within its jurisdiction as 3865
identified in the reports filed under division (C) of this 3866
section, identifying the general location of such sites and routes 3867
and the approximate year when construction is expected to 3868
commence, and to make such information readily available to the 3869
public, to each newspaper of daily or weekly circulation within 3870
the area affected by the proposed site and route, and to 3871
interested federal, state, and local agencies; 3872

(3) Hold a public hearing: 3873

(a) On the first long-term forecast report filed after 3874
January 11, 1983; 3875

(b) At least once in every five years, on the latest report 3876
furnished by any person subject to this section; 3877

(c) On the latest report furnished by any person subject to 3878
this section if the report contains a substantial change from the 3879
preceding report furnished by that person. "Substantial change" 3880
includes, but is not limited to: 3881

(i) ~~The addition or cancellation of a generating facility of~~ 3882
~~fifty megawatts or more in the report furnished pursuant to~~ 3883
~~division (C) of this section;~~ 3884

~~(ii)~~ A change in forecasted peak loads or energy consumption 3885
over the forecast period of greater than an average of one-half of 3886
one per cent per year; 3887

~~(iii)~~(ii) Demonstration of good cause to the commission by an 3888

interested party. 3889

The commission shall fix a time for the hearing, which shall 3890
be not later than ninety days after the report is filed, and 3891
publish notice of the date, time of day, and location of the 3892
hearing in a newspaper of general circulation in each county in 3893
which the person furnishing the report has or intends to locate a 3894
major utility facility and will provide service during the period 3895
covered by the report. The notice shall be published not less than 3896
fifteen nor more than thirty days before the hearing and shall 3897
state the matters to be considered. 3898

Absent a showing of good cause, the commission shall not hold 3899
hearings under division (D)(3) of this section with respect to 3900
persons who, as the primary purpose of their business, furnish 3901
gas, or natural gas, or electricity directly to fifteen thousand 3902
or fewer customers within this state solely for direct consumption 3903
by those customers. 3904

(4) Require such information from persons subject to its 3905
jurisdiction as necessary to assist in the conduct of hearings and 3906
any investigation or studies it may undertake; 3907

(5) Conduct any studies or investigations that are necessary 3908
or appropriate to carry out its responsibilities under this 3909
section. 3910

(E)(1) The scope of the hearing held under division (D)(3) of 3911
this section shall be limited to issues relating to forecasting. 3912
The power siting board, the office of consumers' counsel, and all 3913
other persons having an interest in the proceedings shall be 3914
afforded the opportunity to be heard and to be represented by 3915
counsel. The commission may adjourn the hearing from time to time. 3916
3917

(2) The hearing shall include, but not be limited to, a 3918
review of: 3919

(a) The projected loads and energy requirements for each year of the period; 3920
3921

(b) The estimated installed capacity and supplies to meet the projected load requirements. 3922
3923

(F) Based upon the report furnished pursuant to division (C) of this section and the hearing record, the commission, within ninety days from the close of the record in the hearing, shall determine if: 3924
3925
3926
3927

(1) All information relating to current activities, facilities agreements, and published energy policies of the state has been completely and accurately represented; 3928
3929
3930

(2) The load requirements are based on substantially accurate historical information and adequate methodology; 3931
3932

(3) The forecasting methods consider the relationships between price and energy consumption; 3933
3934

(4) The report identifies and projects reductions in energy demands due to energy conservation measures in the industrial, commercial, residential, transportation, and energy production sectors in the service area; 3935
3936
3937
3938

(5) Utility company forecasts of loads and resources are reasonable in relation to population growth estimates made by state and federal agencies, transportation, and economic development plans and forecasts, and make recommendations where possible for necessary and reasonable alternatives to meet forecasted electric power demand; 3939
3940
3941
3942
3943
3944

(6) The report considers plans for expansion of the regional power grid and the planned facilities of other utilities in the state; 3945
3946
3947

(7) All assumptions made in the forecast are reasonable and adequately documented. 3948
3949

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

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

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

(2) A final determination made by the commission shall be reversed, vacated, or modified by the supreme court on appeal, if,

upon consideration of the record, such court is of the opinion 3982
that such determination was unreasonable or unlawful. 3983

The proceeding to obtain such reversal, vacation, or 3984
modification shall be by notice of appeal, filed with the 3985
commission by any party to the proceeding before it, against the 3986
commission, setting forth the determination appealed from and 3987
errors complained of. The notice of appeal shall be served, unless 3988
waived, upon the commission by leaving a copy at the office of the 3989
~~chairman~~ chairperson of the commission at Columbus. The court may 3990
permit an interested party to intervene by cross-appeal. 3991

(3) No proceeding to reverse, vacate, or modify a 3992
determination of the commission is commenced unless the notice of 3993
appeal is filed within sixty days after the date of the 3994
determination. 3995

Sec. 5117.01. ~~(A)~~ As used in ~~this chapter~~ sections 5117.01 to 3996
5117.12 of the Revised Code: 3997

~~(1)~~(A) "Credit" means the credit on utility heating bills 3998
granted under division (A) of section 5117.09 of the Revised Code. 3999

~~(2)~~(B) "Current monthly bill" means the amount charged for 4000
energy consumed in the most recent monthly billing period and does 4001
not include any past due balance. 4002

~~(3)~~(C) "Current total income" means the adjusted gross income 4003
of the head of household and the person's spouse for the six-month 4004
period beginning the first day of January and ending the thirtieth 4005
day of June of the year in which an application is made, as 4006
determined under the "Internal Revenue Code of 1954," 68A Stat. 3, 4007
26 U.S.C. 1, as amended, minus the amount of disability benefits 4008
included in adjusted gross income but not to exceed twenty-six 4009
hundred dollars, plus old age and survivors benefits received 4010
pursuant to the "Social Security Act," retirement, pension, 4011

annuity, or other retirement payments or benefits not included in 4012
federal adjusted gross income; payments received pursuant to the 4013
"Railroad Retirement Act," 50 Stat. 307, 45 U.S.C. 228, and 4014
interest on federal, state, and local government obligations. 4015
Disability benefits paid by the veterans administration or a 4016
branch of the armed forces of the United States on account of an 4017
injury or disability are not included in current total income. 4018

4019

~~(4)~~(D) "Energy company" means every retail propane dealer 4020
that distributes propane by pipeline, and every electric light, 4021
rural electric, gas, or natural gas company. 4022

~~(5)~~(E) "Energy dealer" means every retail dealer of fuel oil, 4023
propane, coal, wood, and kerosene. 4024

~~(6)~~(F) "Head of household" means a person who occupies a 4025
household as the person's homestead and who is financially 4026
responsible for its other occupants, if any, or the spouse of such 4027
a person if both occupy the same household. No person is a head of 4028
household if the person occupies a household for the taxable year 4029
prior to the year in which an application is filed and was claimed 4030
as a dependent on the federal income tax return of another 4031
occupant of the same household and was not the taxpayer's spouse 4032
or if the person could have been claimed if such a return had been 4033
filed for such year and was not the other occupant's spouse. 4034

~~(7)~~(G) "Household" means any dwelling unit, including a unit 4035
in a multiple unit dwelling, a manufactured home, or a mobile 4036
home, to which utility heating services or energy commodities are 4037
provided. 4038

~~(8)~~(H) "Payment" means the one hundred twenty-five-dollar 4039
payment provided under division (A) of section 5117.10 of the 4040
Revised Code. 4041

~~(9)~~(I) "Permanently and totally disabled" refers to a person 4042

who has, on the first day of July of the year an application is 4043
made, some impairment in body or mind that makes the person unfit 4044
to work at any substantially remunerative employment that the 4045
person would otherwise be reasonably able to perform and that 4046
will, with reasonable probability, continue for an indefinite 4047
period of at least twelve months without any present indication of 4048
recovery therefrom, or who has been certified as permanently and 4049
totally disabled by a state or federal agency having the function 4050
of so classifying persons. 4051

~~(10)~~(J) "Sixty-five years of age or older" refers to a person 4052
who has attained age sixty-four prior to the first day of January 4053
of the year of application for reduction in utility charges. 4054
4055

~~(11)~~(K) "Total income" means the adjusted gross income of the 4056
head of household and the person's spouse for the year preceding 4057
the year in which an application is made, as determined under the 4058
"Internal Revenue Code of 1954," 68A Stat. 3, 26 U.S.C. 1, as 4059
amended, minus the amount of disability benefits included in 4060
adjusted gross income but not to exceed fifty-two hundred dollars, 4061
plus old age and survivors benefits received pursuant to the 4062
"Social Security Act," retirement, pension, annuity, or other 4063
retirement payments or benefits not included in federal adjusted 4064
gross income; payments received pursuant to the "Railroad 4065
Retirement Act," 50 Stat. 307, 45 U.S.C. 228; and interest on 4066
federal, state, and local government obligations. Disability 4067
benefits paid by the ~~veteran's administration~~ department of
veterans affairs or a branch of the armed forces of the United 4068
States on account of an injury or disability shall not be included 4069
in total income. 4070
4071

~~(B) As used in sections 5117.01 to 5117.12 of the Revised~~ 4072
~~Code:~~ 4073

~~(1) "Applicant" means any person who has submitted an~~ 4074

~~application under division (C) of section 5117.03 of the Revised~~ 4075
~~Code.~~ 4076

~~(2) "Application" means the application in section 5117.03 of~~ 4077
~~the Revised Code.~~ 4078

~~(3) "Program" means the Ohio energy credit program~~ 4079
~~established under sections 5117.01 to 5117.12 of the Revised Code.~~ 4080

~~(4)(L)~~ "Purchased power costs" means charges for the costs of 4081
power purchased by an electric light company under Chapters 4905. 4082
and 4909. of the Revised Code and includes charges resulting from 4083
the exchange of electric power. 4084

Sec. 5117.02. (A) The director of development, to the extent 4085
necessary in consultation with the tax commissioner, shall adopt 4086
rules, or amendments and rescissions of rules, pursuant to section 4087
4928.52 of the Revised Code, for the administration of the Ohio 4088
energy credit program under sections 5117.01 to 5117.12 of the 4089
Revised Code. 4090

(B) As a means of efficiently administering the program 4091
~~established by sections 5117.01 to 5117.12 of the Revised Code,~~ 4092
the ~~tax commissioner~~ director may extend, by as much as a total of 4093
thirty days, any date specified in such sections for the 4094
performance of a particular action by an individual or an officer. 4095

(C)(1) Except as provided in division (C)(2) of this section, 4096
the director, to the extent necessary in consultation with the tax 4097
commissioner, shall adopt, in accordance with divisions (A), (B), 4098
(C), (D), (E), and (H) of section 119.03 and section 119.04 of the 4099
Revised Code, ~~adopt~~ whatever rules, or amendments or rescissions 4100
of rules are required by or are otherwise necessary to implement 4101
sections 5117.01 to 5117.12 of the Revised Code. A rule, 4102
amendment, or rescission adopted under this division is not exempt 4103
from the hearing requirements of section 119.03 of the Revised 4104

Code pursuant to division (G) of that section, or subject to 4105
section 111.15 or 5703.14 of the Revised Code. 4106

4107

(2) If an emergency necessitates the immediate adoption of a 4108
rule, or the immediate adoption of an amendment or rescission of a 4109
rule that is required by or otherwise necessary to implement 4110
sections 5117.01 to 5117.12 of the Revised Code, the director, to 4111
the extent necessary in consultation with the tax commissioner 4112
~~may,~~ immediately may adopt the emergency rule, amendment, or 4113
rescission without complying with division (A), (B), (C), (D), 4114
(E), or (H) of section 119.03 of the Revised Code so long as ~~he~~ 4115
the director states the reasons for the necessity in the emergency 4116
rule, amendment, or rescission. The emergency rule, amendment, or 4117
rescission is effective on the day copies of the emergency rule, 4118
amendment, or rescission, in final form and in compliance with 4119
division (A)(2) of section 119.04 of the Revised Code, are filed 4120
as follows: two certified copies of the emergency rule, amendment, 4121
or rescission shall be filed with both the secretary of state and 4122
the director of the legislative service commission, and one 4123
certified copy of the emergency rule, amendment, or rescission 4124
shall be filed with the joint committee on agency rule review. If 4125
all copies are not filed on the same day, the emergency rule, 4126
amendment, or rescission is effective on the day on which the 4127
latest filing is made. An emergency rule, amendment, or rescission 4128
adopted under this division is not subject to section 111.15, 4129
division (F) of section 119.03, or section 5703.14 of the Revised 4130
Code. An emergency rule, amendment, or rescission adopted under 4131
this division continues in effect until amended or rescinded by 4132
the director, to the extent necessary in consultation with the tax 4133
commissioner, in accordance with division (C)(1) or (2) of this 4134
section, except that the rescission of an emergency rescission 4135
does not revive the rule rescinded. 4136

(D) Except where otherwise provided, each form, application, 4137
notice, and the like used in fulfilling the requirements of 4138
sections 5117.01 to 5117.12 of the Revised Code shall be approved 4139
by the director, to the extent necessary in consultation with the 4140
tax commissioner. 4141

Sec. 5117.03. (A)(1) The director of development, to the 4142
extent necessary in consultation with the tax commissioner, shall 4143
prescribe the form of the application for assistance under the 4144
Ohio energy credit program. The application shall be in the form 4145
of a signed statement, shall require no more information than is 4146
necessary to establish an applicant's eligibility under section 4147
5117.07 of the Revised Code, and shall be clear and concise in its 4148
format, requirements, and instructions. The form shall request the 4149
following information: 4150

(a) The name and address of the applicant; 4151

(b) The type of energy or commodity that is the source of the 4152
heat produced by the primary heating system in the residence of 4153
the applicant; 4154

(c) The name of the energy company or energy dealer that 4155
supplies the energy or commodity that is the source of the heat 4156
produced by the primary heating system in the residence of the 4157
applicant and, if the applicant receives ~~his~~ the applicant's 4158
energy from a company, the applicant's account number; 4159

(d) The applicant's total income or current total income; 4160

(e) In the case of an application based upon physical 4161
disability, a certification signed by a physician, in the case of 4162
an application based upon mental disability, a certification 4163
signed by a physician or psychologist, or in the case of either 4164
such disability, a certification from a state or federal agency 4165
having the function of so classifying persons; 4166

(f) The age of the applicant; 4167

(g) Any other information required to make eligibility 4168
determinations under section 5117.07 of the Revised Code. 4169

Each form shall contain a statement that signing such 4170
application constitutes a delegation of authority by the applicant 4171
to the commissioner to examine any financial records that relate 4172
to income earned by the applicant as stated on the application for 4173
the purpose of determining eligibility under section 5117.07 of 4174
the Revised Code and possible violation of division (B) of section 4175
5117.11 of the Revised Code. 4176

(2) The tax commissioner shall mail or otherwise provide an 4177
application form to each person requesting such form. 4178

(B)(1) The director, to the extent necessary in consultation 4179
with the tax commissioner, shall devise and prescribe an 4180
application renewal form on which the head of household may 4181
indicate by check mark that ~~he~~ the head of household received a 4182
credit or payment for the preceding heating season. Application 4183
renewal forms shall seek from persons applying on such basis a 4184
certification by the applicant attesting to ~~his~~ the applicant's 4185
permanent and total disability and the name of a physician, 4186
psychologist, or government agency willing to provide an 4187
additional certification if so requested under division (D) of 4188
section 5117.07 of the Revised Code. Such forms shall also include 4189
such other information as the director, to the extent necessary in 4190
consultation with the tax commissioner, requires and shall be 4191
clear and concise in format, requirements, and instructions. 4192

(2) On or before the fifteenth day of June, the ~~tax~~ 4194
~~commissioner~~ director shall mail or otherwise provide an 4195
application renewal form to each head of household who received a 4196
credit or payment during the preceding heating season. 4197

(3) Application renewal forms shall be reviewed and disposed 4198
of in the same manner provided for application forms in section 4199
5117.07 of the Revised Code. 4200

(C) Applications and application renewal forms shall be 4201
returned to the ~~tax commissioner~~ director no later than the first 4202
day of September. If an applicant is determined eligible for a 4203
credit under division (A)(1) of section 5117.07 of the Revised 4204
Code and the applicant's account number is not provided on the 4205
application form pursuant to division (A)(1)(c) of this section, 4206
the ~~tax commissioner~~ director shall make a good faith effort to 4207
acquire such number before certifying the applicant's eligibility 4208
to an energy company under section 5117.08 of the Revised Code. 4209
The ~~tax commissioner~~ director may request an energy company to 4210
assist in efforts to acquire an applicant's account number and, if 4211
so requested, a company shall cooperate in such efforts. 4212

Sec. 5117.04. (A) Every energy company and energy dealer 4213
~~shall~~, at least once during June, and once during August, shall 4214
begin to distribute to each of its residential heating customers a 4215
plain and clear notice, printed in ten-point type on a sheet or 4216
card on which no other words appear on either the front or back, 4217
that states the right of qualified residential customers to 4218
receive a credit or payment under the Ohio energy credit program 4219
and that explains in detail, in a fashion reasonably calculated to 4220
inform, the relevant mechanisms established under sections 5117.01 4221
to 5117.12 of the Revised Code to effectuate that right. The 4222
notice shall also contain, in ten-point boldface type, the 4223
following statement: "The right of eligible customers to receive a 4224
credit against utility bills or a payment for energy bills is 4225
provided in legislation (House Bill 657) passed by the General 4226
Assembly and signed by the Governor." 4227

(B) The ~~tax commissioner~~ director of development shall cause 4228

to be printed notices of the type specified in division (A) of 4229
this section and application forms in sufficient quantity for 4230
distribution. The ~~tax-commissioner~~ director shall maintain a 4231
system for distributing application forms to appropriate public 4232
locations. The distribution system shall be designed to make 4233
application forms available to as many qualified persons as 4234
possible. 4235

(C) The ~~tax-commissioner~~ director shall arrange for the 4236
establishment of a toll-free telephone number to enable all 4237
persons in this state to make inquiries and obtain information 4238
concerning the credits or payments. 4239

Sec. 5117.05. The ~~tax-commissioner~~ director of development, 4240
in consultation with the commission on Hispanic-Latino affairs, 4241
shall develop an outreach program, including Spanish-speaking 4242
communication formats, designed to make all Spanish-speaking 4243
persons who meet the eligibility requirements for participation in 4244
the Ohio energy credit program aware of the nature and extent of 4245
available benefits and methods for acquiring and making 4246
applications. The program shall include assistance to such persons 4247
in making applications. The ~~commissioner~~ director shall implement 4248
the program in cooperation with the commission ~~on Hispanic-Latino~~ 4249
~~affairs~~. 4250

Sec. 5117.07. (A) On or before the first day of October, the 4251
~~tax-commissioner~~ director of development shall review all 4252
applications submitted under division (C) of section 5117.03 of 4253
the Revised Code and shall determine the eligibility of each 4254
applicant to receive a credit or payment. 4255

(1) An applicant is eligible for a credit of thirty per cent 4256
if the applicant is a head of household, has a total income of 4257
five thousand dollars or less or a current total income of two 4258

thousand five hundred dollars or less, owns and occupies or rents
and occupies a household receiving the source of energy for its
primary heating system from an energy company and such energy is
separately metered, and is either of the following:

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

(b) Permanently and totally disabled.

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

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

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

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

(4) In the case of a multiple unit dwelling for which

separate metering for the source of energy for its primary heating 4289
system is not provided, more than one applicant occupying such 4290
dwelling may be determined eligible for a payment under division 4291
(A)(3)(a) of this section. 4292

(B) Notwithstanding division (A) of this section: 4293

(1) No head of household who resides in public housing or 4294
receives a rent subsidy from a government agency is eligible for a 4295
credit or payment unless the person's rent subsidy does not 4296
reflect the costs of ~~his~~ that person's household receiving the 4297
source of energy for its primary heating system; 4298

(2) A resident of a nursing home, hospital, or other extended 4299
health care facility is not eligible for a credit or payment for 4300
the costs of providing the source of energy for the primary 4301
heating system of the facility. 4302

(C) The director, in consultation with the tax commissioner, 4303
shall establish a procedure whereby ~~he~~ the commissioner can verify 4304
total income and current total income for the calendar year in 4305
which an applicant is determined eligible for a payment or credit. 4306
If a person receives a credit or payment that ~~he~~ the person is 4307
ineligible to receive under division (A) of this section as 4308
determined by the commissioner, that person shall refund to the 4309
~~tax commissioner~~ director the credit or payment, or excess portion 4310
of a credit or payment, ~~he~~ that person received. The sum refunded 4311
shall be deposited in the state treasury to the credit of the 4312
~~general revenue fund~~ universal service fund created in section 4313
4928.51 of the Revised Code. 4314

(D) The ~~tax commissioner~~ director may request an additional 4315
certification of permanent and total disability for any applicant 4316
claiming such status on an application renewal form submitted 4317
under section 5117.03 of the Revised Code. Such certification 4318
shall be requested from the person or agency named on the form 4319

pursuant to division (B)(1) of section 5117.03 of the Revised Code. If such additional certification is refused due to a conclusion by the person or agency that the applicant is not permanently and totally disabled, the ~~commissioner~~ director shall determine the applicant ineligible for any credit or payment. If such additional certification is unavailable or refused for any other reason, the ~~tax commissioner~~ director may determine the applicant to be eligible for a credit or payment provided ~~he~~ the director has good cause to believe the applicant is permanently and totally disabled.

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

Sec. 5117.08. (A)(1) On or before the tenth day of October, the ~~tax commissioner~~ director of development shall begin to prepare and certify to each energy company that provides energy for home heating a list containing the name and account number of each head of household determined eligible for a credit under divisions (A) and (B) of section 5117.07 of the Revised Code and

served by that company, the address of the household, and the 4352
source of the heat produced by the primary heating system in the 4353
residence of the applicant. The ~~tax commissioner may~~ director, for 4354
good cause, may certify addenda to such lists, containing the 4355
names of any heads of household whose names were not included in 4356
the earlier lists but who, except for failure to meet the deadline 4357
requirements of sections 5117.01 to 5117.12 of the Revised Code, 4358
would have been certified in the original lists. Within thirty 4359
days of receipt of such list and in any month for which a credit 4360
is required under sections 5117.01 to 5117.12 of the Revised Code, 4361
the company may verify that each head of household on the 4362
~~commissioner's~~ director's list receives energy for home heating at 4363
the household address appearing on such list or that the source of 4364
heat produced by the primary heating system in the household is 4365
energy supplied by the company. If the company determines that a 4366
person listed does not receive energy for home heating at such 4367
address or that the source of the heat produced by the primary 4368
heating system in the residence of such person is not supplied by 4369
the company, it shall notify the ~~commissioner~~ director of such 4370
fact and may refuse to grant the credit provided under division 4371
(A) of section 5117.07 of the Revised Code. Upon receipt of such 4372
notice, the ~~commissioner~~ director shall determine the accuracy of 4373
the determination of the company and, should ~~he~~ the director not 4374
concur with the company, shall order the company to provide the 4375
credit. 4376

(2) The good faith exercise by any company of any power of 4377
refusal granted under division (A)(1) of this section does not 4378
subject such company to any penalty or liability provided under 4379
division (A) of section 5117.11 of the Revised Code. 4380

(B)(1) Nothing in sections 5117.01 to 5117.12 of the Revised 4381
Code shall be construed to abridge the right of an otherwise 4382
eligible applicant to receive a credit or payment because ~~he~~ the 4383

applicant has either changed the location of ~~his~~ the applicant's 4384
residence or the nature of the occupancy of ~~his~~ the applicant's 4385
residence, as between a tenant or an owner, at a time that could, 4386
as a result of the operation of sections 5117.01 to 5117.12 of the 4387
Revised Code, cause ~~him~~ the applicant to be disqualified from 4388
receiving, or continuing to receive, the credit or payment. 4389

(2) Where a person who submits a form or information required 4390
under sections 5117.01 to 5117.10 of the Revised Code does so in a 4391
timely fashion but, because of the occurrence of an error or 4392
omission with respect to such form or information, either on ~~his~~ 4393
the person's own part or on the part of those persons required by 4394
sections 5117.01 to 5117.12 of the Revised Code to take 4395
administrative, executive, or ministerial action regarding such 4396
form or information, the certification of eligibility by the ~~tax~~ 4397
~~commissioner~~ director to an energy company takes place after the 4398
expiration of a deadline imposed under sections 5117.01 to 5117.12 4399
of the Revised Code, the company shall grant the credit within 4400
thirty days and, whenever appropriate, grant the credit on a 4401
retroactive basis. 4402

(3) The ~~tax commissioner~~ director shall adopt a rule ensuring 4403
that the requirements of divisions (B)(1) and (2) of this section 4404
are effectuated. 4405

Sec. 5117.09. (A) With respect to each of its residential 4406
customers, every energy company shall, after receipt of a 4407
certification list provided under division (A) of section 5117.08 4408
of the Revised Code, cause the granting of a credit in accordance 4409
with this section against the monthly billing of each household 4410
appearing on the list except as provided in division (A) of 4411
section 5117.08 of the Revised Code. In the case of an applicant 4412
who has a total income of five thousand dollars or less or a 4413
current total income of two thousand five hundred dollars or less, 4414

the credit shall amount to thirty per cent of the current monthly 4415
bill rendered to such household by the company for the billing 4416
months of December, January, February, March, and April following 4417
the receipt of a list on which the household appears. In the case 4418
of an applicant who has a total income of more than five thousand 4419
dollars but not more than nine thousand dollars or a current total 4420
income of more than two thousand five hundred dollars but not more 4421
than four thousand five hundred dollars, the credit shall amount 4422
to twenty-five per cent of the current monthly bill rendered to 4423
such household by the company for the billing months of December, 4424
January, February, March, and April following the receipt of a 4425
list on which the household appears. If purchased power costs are 4426
incurred by an energy company during the billing month for which a 4427
credit is provided under this division, the credit shall also be 4428
applied to such costs, whether or not the costs are charged to a 4429
current ~~monthly~~ MONTHLY bill for such months. 4430

(B) Every energy company shall read the meter of each of its 4431
qualified residential customers who may receive a credit under 4432
division (A) of this section at least one time for the service 4433
period of November and at least one time in the service period for 4434
the current monthly bill rendered for the billing month of April. 4435
In the event a company is unable to read a meter because of 4436
failure to gain access after a good faith effort or because a 4437
certification list was supplied to the utility fewer than thirty 4438
days prior to the normal date of meter reading, the company may 4439
render a calculated bill. In such instances, the company shall 4440
make an adjustment to the amount of the credit granted to the 4441
customer based upon the next actual reading of the meter if the 4442
reading shows the previous calculation to have been in error and 4443
set forth the amount of such adjustments in the report required to 4444
be filed with the ~~tax commissioner~~ director of development under 4445
division (D) of this section. 4446

(C) On each billing that is subject to a credit under 4447
division (A) of this section, there shall appear in ten-point type 4448
both the amount of the credit and to the left of such amount "Ohio 4449
Energy Credit." 4450

(D) On or before the fifteenth day of each month following 4451
one in which credits were provided under division (A) of this 4452
section, each energy company shall, on a form prescribed by the 4453
~~tax commissioner~~ director and requesting information that ~~he~~ the 4454
director determines is necessary for the purpose of verifying the 4455
propriety of the payment of credits, certify to the ~~commissioner~~ 4456
director the total amount of all credits it granted pursuant to 4457
division (A) of this section during the preceding month. Not later 4458
than thirty days after ~~his~~ receipt of such certification, the 4459
~~commissioner~~ director shall pay the company the amount certified. 4460
If the ~~commissioner~~ director determines that a company previously 4461
received amounts greater than the amounts of credits properly 4462
granted, such company, upon notice from the ~~commissioner~~ director, 4463
shall reimburse the ~~commissioner~~ director in the amount of the 4464
overpayments. Such reimbursements shall be deposited in the 4465
general revenue fund. 4466

(E)(1) Any energy company that purposely fails to grant the 4467
credit provided under division (A) of this section is liable to 4468
each person entitled to the credit and certified to the company by 4469
the ~~tax commissioner~~ director pursuant to division (A) of section 4470
5117.08 of the Revised Code in treble the amount of the total 4471
credit not granted. The consumers' counsel ~~may~~, on behalf of any 4472
person or persons not granted the credit, may bring an action to 4473
recover such treble damages in the court of common pleas of the 4474
county in which is located the office of the company nearest the 4475
household of any such person or persons. The consumers' counsel 4476
~~may~~ also, on behalf of any persons not granted the credit, may 4477
bring a class action to recover such treble damages in the court 4478

of common pleas of any county in which is located an office of the 4479
company and, if feasible, in which is located a significant number 4480
of members of the class. Any treble damage recovery under this 4481
division does not, in any manner, diminish any other liability 4482
provided under sections 5117.01 to 5117.12 of the Revised Code. 4483
Clerical errors shall not be considered an offense or incur 4484
liability under this division. 4485

(2) An action shall be brought by the consumers' counsel 4486
under division (E)(1) of this section only after ~~he~~ the consumers' 4487
counsel has made a good faith attempt to dispose of the claim by 4488
settlement, including a good faith request for only such 4489
information in the possession of an energy company as is needed to 4490
determine the existence or extent of such a right of action. 4491

(3) Nothing in division (E)(1) of this section shall be 4492
construed to prevent persons acting without the assistance of the 4493
consumers' counsel from bringing an action or class action under 4494
such division. 4495

Sec. 5117.10. (A) On or before the fifteenth day of January, 4496
the ~~tax commissioner~~ director of development shall pay each 4497
applicant determined eligible for a payment under divisions (A) 4498
and (B) of section 5117.07 of the Revised Code one hundred 4499
twenty-five dollars. 4500

(B) The ~~tax commissioner~~ director may withhold from any 4501
payment to which a person would otherwise be entitled under 4502
division (A) of this section any amount that the ~~tax commissioner~~ 4503
director determines was erroneously received by such person in a 4504
preceding year under this or the program established under Am. 4505
Sub. H.B. 230, as amended by Am. H.B. 937, Am. Sub. H.B. 1073, Am. 4506
Sub. S.B. 493, and Am. Sub. S.B. 523 of the 112th general 4507
assembly, provided the ~~tax commissioner~~ director has employed all 4508
other legal methods reasonably available to obtain reimbursement 4509

for the erroneous payment or credit prior to the commencement of 4510
the current program year. 4511

(C) Payments made under this section and credits granted 4512
under section 5117.09 of the Revised Code shall not be considered 4513
income for the purpose of determining eligibility or the level of 4514
benefits or assistance under section 329.042 or Chapters 5107., 4515
5111., and 5115. of the Revised Code; supplemental security income 4516
payments under Title XVI of the "Social Security Act," 49 Stat. 4517
620 (1935), 42 U.S.C. 301, as amended; or any other program under 4518
which eligibility or the level of benefits or assistance is based 4519
upon need measured by income. 4520

Sec. 5117.12. (A) On or before the thirty-first day of August 4521
of each year, each energy company shall file a written report with 4522
the ~~tax commissioner~~ director of development regarding the impact, 4523
if any, of the requirements of division (E) of section 5117.11 of 4524
the Revised Code on the number of uncollectible and past due 4525
residential accounts for the twelve-month period ending on the 4526
preceding thirty-first day of July. The report shall include such 4527
information as is prescribed by the ~~tax commissioner~~ director. The 4528
information shall be based on actual reviews of residential 4529
customer accounts and shall be presented in verifiable form. The 4530
~~tax commissioner~~ director may consult with the public utilities 4531
commission and the consumers' counsel in prescribing the contents 4532
of such reports and complying with the requirements of division 4533
(C)(4) of this section. 4534

(B) Before the thirty-first day of January of each year, the 4535
~~tax commissioner~~ director shall prepare a written report including 4536
a final review of the Ohio energy credit program for which 4537
applications were required to be mailed or provided by the 4538
fifteenth day of June of the second preceding calendar year 4539
pursuant to section 5117.03 of the Revised Code and an interim 4540

review of the program for which applications were required to be 4541
mailed or provided by the fifteenth day of June of the preceding 4542
calendar year under such section. On or before the thirty-first 4543
day of January of each year, the ~~commissioner~~ director shall 4544
provide written copies of such report to the speaker of the house 4545
of representatives, president of the senate, minority leaders of 4546
the house of representatives and senate, chairpersons of the house 4547
finance and appropriations committee and senate finance committee, 4548
chairpersons of the committees of the house of representatives and 4549
senate customarily entrusted with matters concerning public 4550
utilities, clerk of the house of representatives, and clerk of the 4551
senate. 4552

(C) Each report prepared under division (B) of this section 4553
shall include a review of: 4554

(1) Program costs; 4555

(2) The number of persons receiving credits or payments under 4556
the program; 4557

(3) Progress in the implementation of any changes in the 4558
program made by the general assembly within the period covered by 4559
the report; 4560

(4) The impact, if any, of the requirements of division (E) 4561
of section 5117.11 of the Revised Code on the number of 4562
uncollectible and past due residential accounts of energy 4563
companies for the twelve-month period ending on the preceding 4564
thirty-first day of July; 4565

(5) The impact of any federal energy assistance programs 4566
available to the same groups of people as are eligible for the 4567
energy credit program under sections 5117.01 to 5117.12 of the 4568
Revised Code, together with any recommendations on modifications 4569
that may, because of the federal programs, be needed in the energy 4570
credit program; 4571

(6) Any suggestions for improving the program; 4572

(7) Any other matters considered appropriate by the 4573
~~commissioner~~ director. 4574

(D) The ~~tax commissioner~~ director shall consult with the 4575
auditor of state, energy companies, energy dealers, department of 4576
aging, and commission on Hispanic-Latino affairs in the 4577
preparation of any report under this section. The ~~commissioner~~ 4578
director may require information from such agencies for the 4579
purpose of preparing such report. 4580

Sec. 5701.03. As used in Title LVII of the Revised Code: 4581

(A) "Personal property" includes every tangible thing that is 4582
the subject of ownership, whether animate or inanimate, including 4583
a business fixture, and that does not constitute real property as 4584
defined in section 5701.02 of the Revised Code. "Personal 4585
property" also includes every share, portion, right, or interest, 4586
either legal or equitable, in and to every ship, vessel, or boat, 4587
used or designed to be used in business either exclusively or 4588
partially in navigating any of the waters within or bordering on 4589
this state, whether such ship, vessel, or boat is within the 4590
jurisdiction of this state or elsewhere. "Personal property" does 4591
not include money as defined in section 5701.04 of the Revised 4592
Code, motor vehicles registered by the owner thereof, electricity, 4593
or, for purposes of any tax levied on personal property, patterns, 4594
jigs, dies, or drawings that are held for use and not for sale in 4595
the ordinary course of business, except to the extent that the 4596
value of the electricity, patterns, jigs, dies, or drawings is 4597
included in the valuation of inventory produced for sale. 4598
4599

(B) "Business fixture" means an item of tangible personal 4600
property that has become permanently attached or affixed to the 4601

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

Sec. 5703.052. There is hereby created in the state treasury
the tax refund fund, from which refunds shall be paid for taxes
illegally or erroneously assessed or collected, or for any other
reason overpaid, that are levied by Chapter 4301., 4305., 5728.,
5729., 5733., 5735., 5739., 5741., 5743., 5747., 5748., 5749., or
5753., ~~and~~ sections 3737.71, 3905.35, 3905.36, 4303.33, 5707.03,
5725.18, 5727.38, and 5727.81, and former sections 5727.27 and
5727.40 of the Revised Code. Refunds for fees illegally or
erroneously assessed or collected, or for any other reason
overpaid, that are levied by sections 3734.90 to 3734.9014 of the
Revised Code also shall be paid from the fund. However, refunds
for taxes levied under section 5739.101 of the Revised Code shall
not be paid from the tax refund fund, but shall be paid as

provided in section 5739.104 of the Revised Code. 4634

Upon certification by the tax commissioner to the treasurer 4635
of state of a tax refund, fee refund, or tax credit due, or by the 4636
superintendent of insurance of a domestic or foreign insurance tax 4637
refund, the treasurer of state may place the amount certified to 4638
the credit of the fund. The certified amount transferred shall be 4639
derived from current receipts of the same tax or the fee for which 4640
the refund arose or, in the case of a tax credit refund, from the 4641
current receipts of the taxes levied by sections 5739.02 and 4642
5741.02 of the Revised Code. 4643

If the tax refund arises from a tax payable to the general 4644
revenue fund, and current receipts from that source are inadequate 4645
to make the transfer of the amount so certified, the treasurer of 4646
state may transfer such certified amount from current receipts of 4647
the sales tax levied by section 5739.02 of the Revised Code. 4648

Sec. 5703.053. As used in this section, "postal service" 4649
means the United States postal service. 4650

An application to the tax commissioner for a tax refund under 4651
sections 4307.05, 4307.07, 5727.91, 5728.061, 5735.122, 5735.13, 4652
5735.14, 5735.141, 5735.142, 5739.07, 5741.10, 5743.05, 5743.53, 4653
5749.08, and 5753.06 of the Revised Code or division (B) of 4654
section 5703.05 of the Revised Code, or a fee refunded under 4655
section 3734.905 of the Revised Code, that is received after the 4656
last day for filing under such section shall be considered to have 4657
been filed in a timely manner if: 4658

(A) The application is delivered by the postal service and 4659
the earliest postal service postmark on the cover in which the 4660
application is enclosed is not later than the last day for filing 4661
the application; 4662

(B) The application is delivered by the postal service, the 4663

only postmark on the cover in which the application is enclosed 4664
was affixed by a private postal meter, the date of that postmark 4665
is not later than the last day for filing the application, and the 4666
application is received within seven days of such last day; or 4667

(C) The application is delivered by the postal service, no 4668
postmark date was affixed to the cover in which the application is 4669
enclosed or the date of the postmark so affixed is not legible, 4670
and the application is received within seven days of the last day 4671
for making the application. 4672

Sec. 5703.14. (A) Any rule adopted by the board of tax 4673
appeals and any rule of the department of taxation adopted by the 4674
tax commissioner shall be effective on the tenth day after the day 4675
on which the rule in final form and in compliance with division 4676
(B) of this section is filed by the board or the commissioner as 4677
follows: 4678

(1) Two certified copies of the rule shall be filed with both 4679
the secretary of state and the director of the legislative service 4680
commission; 4681

(2) Two certified copies of the rule shall be filed with the 4682
joint committee on agency rule review. Division (A)(2) of this 4683
section does not apply to any rule to which division (H) of 4684
section 119.03 of the Revised Code does not apply. 4685

If all copies are not filed on the same day, the rule shall 4686
be effective on the tenth day after the day on which the latest 4687
filing is made. If the board or the commissioner in adopting a 4688
rule designates an effective date that is later than the effective 4689
date provided for by this division, the rule if filed as required 4690
by this division shall become effective on the later date 4691
designated by the board or commissioner. 4692

(B) The board and commissioner shall file the rule in 4693

compliance with the following standards and procedures: 4694

(1) The rule shall be numbered in accordance with the 4695
numbering system devised by the director for the Ohio 4696
administrative code. 4697

(2) The rule shall be prepared and submitted in compliance 4698
with the rules of the legislative service commission. 4699

(3) The rule shall clearly state the date on which it is to 4700
be effective and the date on which it will expire, if known. 4701

(4) Each rule that amends or rescinds another rule shall 4702
clearly refer to the rule that is amended or rescinded. Each 4703
amendment shall fully restate the rule as amended. 4704

If the director of the legislative service commission or ~~his~~ 4705
the director's designee gives the board or commissioner written 4706
notice pursuant to section 103.05 of the Revised Code that a rule 4707
filed by the board or commissioner is not in compliance with the 4708
rules of the legislative service commission, the board or 4709
commissioner shall within thirty days after receipt of the notice 4710
conform the rule to the rules of the legislative service 4711
commission as directed in the notice. 4712

All rules of the department and board filed pursuant to 4713
division (A)(1) of this section shall be recorded by the secretary 4714
of state and the director under the name of the department or 4715
board and shall be numbered in accordance with the numbering 4716
system devised by the director. The secretary of state and the 4717
director shall preserve the rules in an accessible manner. Each 4718
such rule shall be a public record open to public inspection and 4719
may be lent to any law publishing company that wishes to reproduce 4720
it. Each such rule shall also be made available to interested 4721
parties upon request directed to the department. 4722

(C) Applications for review of any rule adopted and 4723

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

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

(1) Two certified copies of the determination shall be filed
with both the secretary of state and the director of the
legislative service commission, who shall note the date of their
receipt of the certified copies conspicuously in their files of
the rules of the department;

(2) Two certified copies of the determination shall be filed

with the joint committee on agency rule review. Division (C)(2) of 4756
this section does not apply to any rule to which division (H) of 4757
section 119.03 of the Revised Code does not apply. 4758

On the tenth day after the copies of the determination have 4759
been received by the secretary of state, the director, and, if 4760
applicable, the joint committee, the rule referred to in the 4761
determination shall cease to be in effect. If all copies of the 4762
determination are not filed on the same day, the rule shall remain 4763
in effect until the tenth day after the day on which the latest 4764
filing is made. This section does not apply to licenses issued 4765
under sections 5735.02, 5739.17, and 5743.15 of the Revised Code, 4766
which shall be governed by sections 119.01 to 119.13 of the 4767
Revised Code. 4768

The board is not required to hear an application for the 4769
review of any rule where the grounds of the allegation that the 4770
rule is unreasonable have been previously contained in an 4771
application for review and have been previously heard and passed 4772
upon by the board. 4773

(D) This section does not apply to the adoption of any rule, 4774
or to the amendment or rescission of any rule by the director of 4775
development in consultation with the tax commissioner under 4776
division (C)(1) or (2) of section 5117.02 of the Revised Code. 4777

(E) As used in this section, "substantive revision" has the 4778
same meaning as in division (J) of section 119.01 of the Revised 4779
Code. 4780

Sec. 5705.34. When the budget commission has completed its 4781
work with respect to a tax budget, it shall certify its action to 4782
the taxing authority, together with an estimate by the county 4783
auditor of the rate of each tax necessary to be levied by the 4784
taxing authority within its subdivision or taxing unit, and what 4785

part thereof is in excess of, and what part within, the ten-mill 4786
tax limitation. The certification shall also indicate the date on 4787
which each tax levied by the taxing authority will expire. ~~Each~~ 4788

If a taxing authority levies a tax for a fixed sum of money 4789
or to pay debt charges for the tax year for which the tax budget 4790
is prepared, and the tax was levied in tax year 1998, the county 4791
auditor, when estimating the rate at which the tax shall be levied 4792
in the current year, shall estimate the rate necessary to raise 4793
the required sum less the estimated amount of any payments made 4794
for the tax year to a taxing unit under sections 5727.85 and 4795
5727.86 of the Revised Code. The estimated rate shall be the rate 4796
of the levy that the budget commission certifies with its action 4797
under this section. 4798

Each taxing authority, by ordinance or resolution, shall 4799
authorize the necessary tax levies and certify them to the county 4800
auditor before the first day of October in each year, or at such 4801
later date as is approved by the tax commissioner, except that the 4802
certification by a board of education shall be made by the first 4803
day of April or at such later date as is approved by the 4804
commissioner, and except that a township board of park 4805
commissioners that is appointed by the board of township trustees 4806
and oversees a township park district that contains only 4807
unincorporated territory shall authorize only those taxes approved 4808
by, and only at the rate approved by, the board of township 4809
trustees as required by division (C) of section 511.27 of the 4810
Revised Code. If the levying of a tax to be placed on the 4811
duplicate of the current year is approved by the electors of the 4812
subdivision under sections 5705.01 to 5705.47 of the Revised Code; 4813
if the rate of a school district tax is increased due to the 4814
repeal of a school district income tax and property tax rate 4815
reduction at an election held pursuant to section 5748.04 of the 4816
Revised Code; or if refunding bonds to refund all or a part of the 4817

principal of bonds payable from a tax levy for the ensuing fiscal 4818
year are issued or sold and in the process of delivery, the budget 4819
commission shall reconsider and revise its action on the budget of 4820
the subdivision or school library district for whose benefit the 4821
tax is to be levied after the returns of such election are fully 4822
canvassed, or after the issuance or sale of such refunding bonds 4823
is certified to it. 4824

Sec. 5727.01. As used in this chapter: 4825

(A) "Public utility" means each person referred to as a 4826
telephone company, telegraph company, electric company, natural 4827
gas company, pipe-line company, water-works company, water 4828
transportation company, heating company, rural electric company, 4829
or railroad company. 4830

(B) "Gross receipts" means the entire receipts for business 4831
done by any person from operation as a public utility, or 4832
incidental thereto, or in connection therewith, including any 4833
receipts received under Chapter 4928. of the Revised Code. The 4834
gross receipts for business done by an incorporated company 4835
engaged in operation as a public utility includes the entire 4836
receipts for business done by such company under the exercise of 4837
its corporate powers, whether from the operation as a public 4838
utility or from any other business. 4839

(C) "Rural electric company" means any nonprofit corporation, 4840
organization, association, or cooperative engaged in the business 4841
of supplying electricity to its members or persons owning an 4842
interest therein in an area the major portion of which is rural. 4843
4844

(D) Any person: 4845

(1) Is a telegraph company when engaged in the business of 4846
transmitting telegraphic messages to, from, through, or in this 4847

state; 4848

(2) Is a telephone company when primarily engaged in the 4849
business of providing local exchange telephone service, excluding 4850
cellular radio service, in this state; 4851

(3) Is an electric company when engaged in the business of 4852
generating, transmitting, or distributing electricity within this 4853
state for use by others, but excludes a rural electric company; 4854

(4) Is a natural gas company when engaged in the business of 4855
supplying natural gas for lighting, power, or heating purposes to 4856
consumers within this state; 4857

(5) Is a pipe-line company when engaged in the business of 4858
transporting natural gas, oil, or coal or its derivatives through 4859
pipes or tubing, either wholly or partially within this state; 4860

(6) Is a water-works company when engaged in the business of 4861
supplying water through pipes or tubing, or in a similar manner, 4862
to consumers within this state; 4863

(7) Is a water transportation company when engaged in the 4864
transportation of passengers or property, by boat or other 4865
watercraft, over any waterway, whether natural or artificial, from 4866
one point within this state to another point within this state, or 4867
between points within this state and points without this state; 4868

(8) Is a heating company when engaged in the business of 4869
supplying water, steam, or air through pipes or tubing to 4870
consumers within this state for heating purposes; 4871

(9) Is a railroad company when engaged in the business of 4872
owning or operating a railroad either wholly or partially within 4873
this state on rights-of-way acquired and held exclusively by such 4874
company, or otherwise, and includes a passenger, street, suburban, 4875
or interurban railroad company. 4876

As used in division (D)(2) of this section, "local exchange 4877

telephone service" means making available or furnishing access and 4878
a dial tone to all persons within a local calling area for use in 4879
originating and receiving voice grade communications over a 4880
switched network operated by the provider of the service within 4881
the area and for gaining access to other telecommunication 4882
services. 4883

(E) "Taxable property" means the property required by section 4884
5727.06 of the Revised Code to be assessed by the tax 4885
commissioner, but does not include either of the following: 4886

(1) An item of tangible personal property that for the period 4887
subsequent to the effective date of an air, water, or noise 4888
pollution control certificate and continuing so long as the 4889
certificate is in force, has been certified as part of the 4890
pollution control facility with respect to which the certificate 4891
has been issued; 4892

(2) An item of tangible personal property that during the 4893
construction of a plant or facility and until the item is first 4894
capable of operation, whether actually used in operation or not, 4895
is incorporated in or being held exclusively for incorporation in 4896
that plant or facility. 4897

(F) "Taxing district" means a municipal corporation or 4898
township, or part thereof, in which the aggregate rate of taxation 4899
is uniform. 4900

(G) "Telecommunications service" has the same meaning as in 4901
division (AA) of section 5739.01 of the Revised Code. 4902

(H) "Interexchange telecommunications company" means a person 4903
that is engaged in the business of transmitting telephonic 4904
messages to, from, through, or in this state, but that is not a 4905
telephone company. 4906

(I) "Sale and leaseback transaction" means a transaction in 4907

which a public utility or interexchange telecommunications company
sells any tangible personal property to a person other than a
public utility or interexchange telecommunications company and
~~within the same calendar year~~ leases that property back from the
buyer.

(J) "Production equipment" means all taxable steam, nuclear,
hydraulic, and other production plant equipment used to generate
electricity. For tax years prior to 2001, "production equipment"
includes taxable station equipment that is located at a production
plant.

(K) "Tax year" means the year for which property or gross
receipts are subject to assessment under this chapter. This
division does not limit the tax commissioner's ability to assess
and value property or gross receipts outside the tax year.

(L) "Combined company" means any person engaged in the
activity of an electric company or rural electric company that is
also engaged in the activity of a heating company or a natural gas
company, or any combination thereof.

Sec. 5727.02. As used in this chapter, "public utility,"
"electric company," "natural gas company," "pipe-line company,"
"water-works company," "water transportation company" or "heating
company" does not include any of the following:

(A) Any person that is engaged in some other primary business
to which the supplying of electricity, heat, natural gas, water,
water transportation, steam, or air to others is incidental; or,
As used in this division, "supplying of electricity" means
generating, transmitting, or distributing electricity.

(B) Any person that supplies electricity, natural gas, water,
water transportation, steam, or air to its tenants, whether for a

separate charge or otherwise; ~~or~~ 4938

(C) Any person whose primary business in this state consists 4939
of producing, refining, or marketing petroleum or its products. 4940

Sec. 5727.03. (A) A combined company shall file a separate 4941
report under section 5727.08 of the Revised Code for each listed 4942
activity of a combined company. The tax commissioner shall 4943
separately value, apportion, and assess the company's property. 4944
Divisions (B)(1), (2), and (3) of this section shall be used to 4945
determine the taxable property that cannot directly be attributed 4946
to providing one of the listed activities of a combined company. 4947
Beginning with the public utility excise tax assessed by the tax 4948
commissioner on or before the first Monday in November 2002, 4949
division (C) of this section shall be used by the tax commissioner 4950
to separate the gross receipts of a combined company attributed to 4951
the activity of an electric company or a rural electric company. 4952

(B)(1) The taxable property to attribute to an electric 4953
company or a rural electric company activity shall be the taxable 4954
cost of the property that cannot be directly attributed to a 4955
listed activity of a combined company multiplied by a numerator 4956
that is the taxable cost of property that can be directly 4957
attributed to the activity of an electric company or a rural 4958
electric company and a denominator that is the sum of the taxable 4959
cost that can be directly attributed to all the listed activities 4960
of a combined company. 4961

(2) The taxable property to attribute to a heating company 4962
shall be the taxable cost of the property that cannot be directly 4963
attributed to a listed activity of a combined company multiplied 4964
by a numerator that is the taxable cost of property that can be 4965
directly attributed to the activity of a heating company and a 4966
denominator that is the sum of the taxable cost that can be 4967
directly attributed to all listed activities of a combined 4968

company. 4969

(3) The taxable property to attribute to a natural gas 4970
company shall be the taxable cost of the property that cannot be 4971
directly attributed to a listed activity of a combined company 4972
multiplied by a numerator that is the taxable cost of property 4973
that can be directly attributed to the activity of a natural gas 4974
company and a denominator that is the sum of the taxable cost that 4975
can be directly attributed to all the listed activities of a 4976
combined company. 4977

(C) Notwithstanding any other provision of the Revised Code, 4978
a combined company shall continue to be subject to the excise tax 4979
imposed by section 5727.30 of the Revised Code. From the report 4980
filed by a combined company under section 5727.31 of the Revised 4981
Code, the tax commissioner shall exclude the taxable gross 4982
receipts directly ATTRIBUTABLE to the activity of an electric 4983
company or a rural electric company. In addition, the tax 4984
commissioner shall exclude the portion of taxable gross receipts 4985
that cannot be attributed to a listed combined public utility 4986
activity or another public utility activity subject to the excise 4987
tax imposed by section 5727.30 of the Revised Code by multiplying 4988
those taxable gross receipts by a numerator that is the taxable 4989
gross receipts that can be attributed to an electric company or a 4990
rural electric company activity, and a denominator that is the sum 4991
of the taxable GROSS receipts that can be directly attributed to a 4992
listed combined company activity or another public utility 4993
activity subject to the excise tax imposed by section 5727.30 of 4994
the Revised Code. For purposes of determining the taxable gross 4995
receipts for providing electric company or rural electric company 4996
service under this division, the taxable gross receipts as 4997
reported under section 5727.32 of the Revised Code and determined 4998
under section 5727.33 of the Revised Code, prior to the amendment 4999
of those sections by Substitute Senate Bill No. 3 of the 123rd 5000

general assembly, shall be used. 5001

Sec. 5727.05. ~~This chapter does~~ Sections 5727.01 to 5727.61 5002
of the Revised Code do not apply to either of the following: 5003

(A) Nonprofit corporations as defined in division (C) of 5004
section 1702.01 of the Revised Code that are engaged exclusively 5005
in the treatment, distribution, and sale of water to consumers; 5006

(B) Municipal corporations within this state. 5007

Sec. 5727.06. (A) Except as otherwise provided by law, the 5008
following constitutes the taxable property of a public utility or 5009
interexchange telecommunications company that shall be assessed by 5010
the tax commissioner: 5011

(1) In the case of a railroad company, all real property and 5012
tangible personal property owned or operated by the railroad 5013
company in this state on the thirty-first day of December of the 5014
preceding year; 5015

(2) In the case of a water transportation company, all 5016
tangible personal property, except watercraft, owned or operated 5017
by the water transportation company in this state on the 5018
thirty-first day of December of the preceding year and all 5019
watercraft owned or operated by the water transportation company 5020
in this state during the preceding calendar year; 5021

(3) In the case of all other public utilities and 5022
interexchange telecommunications companies, all tangible personal 5023
property that on the thirty-first day of December of the preceding 5024
year was both located in this state and: 5025

(a) Owned by the public utility or interexchange 5026
telecommunications company; or 5027

(b) Leased by the public utility or interexchange 5028
telecommunications company under a sale and leaseback transaction. 5029

(B) In the case of an interexchange telecommunications 5030
company, all taxable property shall be subject to the provisions 5031
of this chapter and shall be valued by the commissioner in 5032
accordance with division ~~(B)~~(A) of section 5727.11 of the Revised 5033
Code ~~and assessed by the commissioner in accordance with division~~ 5034
~~(G) of section 5727.111 of the Revised Code~~ A person described by 5035
this division shall file the report required by section 5727.08 of 5036
the Revised Code. Persons described in this division shall not be 5037
considered taxpayers, as defined in division (B) of section 5038
5711.01 of the Revised Code, and shall not be required to file a 5039
return and list their taxable property under any provision of 5040
Chapter 5711. of the Revised Code. 5041

(C) The lien of the state for taxes levied each year on the 5042
real and personal property of public utilities and interexchange 5043
telecommunications companies shall attach thereto on the 5044
thirty-first day of December of the preceding year. 5045

(D) Property that is required by division (A)(3)(b) of this 5046
section to be assessed by the tax commissioner under this chapter 5047
shall not be listed by the owner of the property under Chapter 5048
5711. of the Revised Code. 5049

(E) The tax commissioner may adopt rules governing the 5050
listing of the taxable property of public utilities and 5051
interexchange telecommunications companies and the determination 5052
of true value. 5053

Sec. 5727.11. (A) ~~As used in this section, section 5727.111,~~ 5054
~~and division (C) of section 5727.15 of the Revised Code,~~ 5055
~~"production equipment" means all taxable steam, nuclear,~~ 5056
~~hydraulic, and other production plant equipment, and all taxable~~ 5057
~~station equipment that is located at a production plant.~~ 5058

~~(B)~~ Except as provided in divisions ~~(B)~~, (C), (D), ~~(E)~~, and 5059

~~(G)(F)~~ of this section, the true value of all taxable property 5060
required by division (A)(2) or (3) of section 5727.06 of the 5061
Revised Code to be assessed by the tax commissioner shall be 5062
determined by a method of valuation using cost as capitalized on 5063
the public utility's books and records less composite annual 5064
allowances as prescribed by the commissioner. If the commissioner 5065
finds that application of this method will not result in the 5066
determination of true value of the public utility's taxable 5067
property, ~~he~~ the commissioner may use another method of valuation. 5068
~~The cost of property subject to a sale and leaseback transaction~~ 5069
~~is the cost of the property as capitalized on the books and~~ 5070
~~records of the public utility owning the property immediately~~ 5071
~~prior to the sale and leaseback transaction.~~ 5072

~~(C)(B)~~ The true value of current gas stored underground is 5073
the cost of that gas shown on the books and records of the public 5074
utility on the thirty-first day of December of the preceding year. 5075

~~(D)(C)~~ The true value of noncurrent gas stored underground is 5076
thirty-five per cent of the cost of that gas shown on the books 5077
and records of the public utility on the thirty-first day of 5078
December of the preceding year. 5079

~~(E)~~ The (D)(1) Except as provided in division (D)(2) of this 5080
section, the true value of the production equipment of an electric 5081
company and the true value of all taxable property of a rural 5082
electric company is the equipment's or property's cost as 5083
capitalized on the company's books and records less fifty per cent 5084
of that cost as an allowance for depreciation and obsolescence. 5085
~~The cost of equipment or property subject to a sale and leaseback~~ 5086
~~transaction is the cost of the property as capitalized on the~~ 5087
~~books and records of the public utility owning the equipment or~~ 5088
~~property immediately prior to the sale and leaseback transaction.~~ 5089

(2) The true value of the production equipment of an electric 5090
company or rural electric company purchased, transferred, or 5091

placed into service after the effective date of this amendment is 5092
the purchase price of the equipment as capitalized on the 5093
company's books and records less composite annual allowances as 5094
prescribed by the tax commissioner. 5095

~~(F)~~(E) The true value of taxable property described in 5096
division (A)(2) or (3) of section 5727.06 of the Revised Code 5097
shall not include the allowance for funds used during construction 5098
or interest during construction ~~which~~ that has been capitalized on 5099
the public utility's books and records as part of the total cost 5100
of the taxable property. This division shall not apply to the 5101
taxable property of an electric company or a rural electric 5102
company, excluding transmission and distribution property, first 5103
placed into service after December 31, 2000, or to the taxable 5104
property a person purchases, which includes transfers, if that 5105
property was used in business by the seller prior to the purchase. 5106

~~(G)~~(F) The true value of watercraft owned or operated by a 5107
water transportation company shall be determined by multiplying 5108
the true value of the watercraft as determined under division 5109
~~(B)~~(A) of this section by a fraction, the numerator of which is 5110
the number of revenue-earning miles traveled by the watercraft in 5111
the waters of this state and the denominator of which is the 5112
number of revenue-earning miles traveled by the watercraft in all 5113
waters. 5114

(G) The cost of property subject to a sale and leaseback 5115
transaction is the cost of the property as capitalized on the 5116
books and records of the public utility owning the property 5117
immediately prior to the sale and leaseback transaction. 5118

Sec. 5727.111. The taxable property of each public utility, 5119
except a railroad company, and of each interexchange 5120
telecommunications company shall be assessed at the following 5121
percentages of true value: 5122

(A) Fifty per cent in the case of the taxable transmission 5123
and distribution property of a rural electric company, and 5124
twenty-five per cent for all its other taxable property; 5125

(B) In the case of a telephone or telegraph company, ~~the~~ 5126
~~percentage provided under division (E) of section 5711.22 of the~~ 5127
~~Revised Code~~ twenty-five per cent for taxable property first 5128
subject to taxation in this state for tax year 1995 or thereafter, 5129
and eighty-eight per cent for all other taxable property; 5130

(C) Eighty-eight per cent in the case of a natural gas or 5131
pipe-line company; 5132

(D) Eighty-eight per cent in the case of a water-works or 5133
heating company; 5134

~~(E) One hundred per cent in the case of the taxable~~ 5135
~~production equipment of an electric company;~~ 5136

~~(F) Eighty-eight~~ (1) Except as provided in division (E)(2) of 5137
this section, eighty-eight per cent in the case of ~~all taxable~~ 5138
~~personal~~ the taxable transmission and distribution property of an 5139
electric company, ~~other than its production equipment and~~ 5140
twenty-five per cent for all its other taxable property; 5141

(2) Property listed and assessed under divisions (B)(1) and 5142
(2) of section 5711.22 of the Revised Code shall continue to be 5143
assessed at one hundred per cent for production equipment and 5144
eighty-eight per cent for all other taxable property until January 5145
1, 2002. 5146

~~(G) The percentage provided under division (E) of section~~ 5147
~~5711.22 of the Revised Code~~ (F) Twenty-five per cent in the case 5148
of an interexchange telecommunications company; 5149

~~(H)~~(G) Twenty-five per cent in the case of a water 5150
transportation company. 5151

Sec. 5727.15. When all the taxable property of a public 5152
utility is located in one taxing district, the tax commissioner 5153
shall apportion the total taxable value thereof to that taxing 5154
district. 5155

When taxable property of a public utility is located in more 5156
than one taxing district, the commissioner shall apportion the 5157
total taxable value thereof among the taxing districts as follows: 5158

(A)(1) In the case of a telegraph, interexchange 5159
telecommunications, or telephone company that owns miles of wire 5160
in this state, the value apportioned to each taxing district shall 5161
be the same percentage of the total value apportioned to all 5162
taxing districts as the miles of wire owned by the company within 5163
the taxing district are to the total miles of wire owned by the 5164
company within this state; 5165

(2) In the case of a telegraph, interexchange 5166
telecommunications, or telephone company that does not own miles 5167
of wire in this state, the value apportioned to each taxing 5168
district shall be the same percentage of the total value 5169
apportioned to all taxing districts as the cost of the taxable 5170
property physically located in the taxing district is of the total 5171
cost of all taxable property physically located in this state. 5172

(B) In the case of a railroad company: 5173

(1) The taxable value of real and personal property not used 5174
in railroad operations shall be apportioned according to its 5175
situation; 5176

(2) The taxable value of personal property used in railroad 5177
operations shall be apportioned to each taxing district in 5178
proportion to the miles of track and trackage rights, weighted to 5179
reflect the relative use of such personal property in each taxing 5180
district; 5181

(3) The taxable value of real property used in railroad 5182
operations shall be apportioned to each taxing district in 5183
proportion to its relative value in each taxing district. 5184

(C) In the case of an electric company: 5185

(1) ~~Seventy per cent of the~~ The taxable value of all 5186
production equipment ~~and of all station equipment that is not~~ 5187
~~production equipment~~ shall be apportioned to the taxing district 5188
in which such property is physically located; and 5189

(2) ~~The remaining value of such property, together with the~~ 5190
value of all other taxable personal property, shall be apportioned 5191
to each taxing district in the ~~per cent~~ proportion that the cost 5192
of ~~all transmission and distribution~~ the taxable personal property 5193
physically located in the each taxing district is of the total 5194
cost of all ~~transmission and distribution~~ taxable personal 5195
property physically located in this state. 5196

~~(3) If an electric company's taxable value for the current~~ 5197
~~year includes the value of any production equipment at a plant at~~ 5198
~~which the initial cost of the plant's production equipment~~ 5199
~~exceeded one billion dollars, then prior to making the~~ 5200
~~apportionments required for that company by divisions (C)(1) and~~ 5201
~~(2) of this section, the tax commissioner shall do the following:~~ 5202

~~(a) Subtract four hundred twenty million dollars from the~~ 5203
~~total taxable value of the production equipment at that plant for~~ 5204
~~the current tax year.~~ 5205

~~(b) Multiply the difference thus obtained by a fraction, the~~ 5206
~~numerator of which is the portion of the taxable value of that~~ 5207
~~plant's production equipment included in the company's total value~~ 5208
~~for the current tax year, and the denominator of which is the~~ 5209
~~total taxable value of such equipment included in the total~~ 5210
~~taxable value of all electric companies for such year.~~ 5211

~~(c) Apportion the product thus obtained to taxing districts~~ 5212
~~in the manner prescribed in division (C)(2) of this section.~~ 5213

~~(d) Deduct the amounts so apportioned from the taxable value~~ 5214
~~of the company's production equipment at the plant, prior to~~ 5215
~~making the apportionments required by divisions (C)(1) and (2) of~~ 5216
~~this section.~~ 5217

~~For purposes of division (C) of this section, "initial cost"~~ 5218
~~applies only to production equipment of plants placed in~~ 5219
~~commercial operation on or after January 1, 1987, and means the~~ 5220
~~cost of all production equipment at a plant for the first year the~~ 5221
~~plant's equipment was subject to taxation.~~ 5222

(D) In the case of all other public utilities, the value of 5223
the property to be apportioned shall be apportioned to each taxing 5224
district in proportion to the entire value of such property within 5225
this state. 5226

Sec. 5727.30. Each public utility, except electric companies, 5227
rural electric companies, and railroad companies, shall be subject 5228
to an annual excise tax, as provided by sections 5727.31 to 5229
5727.62 of the Revised Code, for the privilege of owning property 5230
in this state or doing business in this state during the 5231
twelve-month period next succeeding the period upon which the tax 5232
is based. The tax shall be imposed against each such public 5233
utility ~~which~~ that, on the first day of such twelve-month period, 5234
owns property in this state or is doing business in this state, 5235
and the lien for the tax, including any penalties and interest 5236
accruing thereon, shall attach on such day to the property of the 5237
public utility in this state. 5238

Sec. 5727.31. (A) Each public utility, ~~except railroad~~ 5239
~~companies, doing business or owning property in this state shall~~ 5240
subject to the tax imposed under section 5727.30 of the Revised 5241

Code, annually, on or before the first day of August, shall file 5242
with the tax commissioner a statement in such form as the 5243
commissioner prescribes. 5244

(B)(1) Annually, on or before the fifteenth day of October of 5245
the current year, each public utility ~~subject to the excise taxes~~ 5246
~~levied by this chapter~~ whose estimated excise taxes for the 5247
current year as based upon the statement required to be filed in 5248
that year by division (A) of this section are, in the case of a 5249
public utility other than a natural gas company, one thousand 5250
dollars or more, or are, in the case of a natural gas company, 5251
three hundred twenty-five thousand dollars or more, shall file 5252
with the treasurer of state a report, in such form as the tax 5253
commissioner prescribes, showing the amount of excise tax 5254
estimated to be charged or levied pursuant to law for the current 5255
year upon the basis of such annual statement, and shall remit a 5256
portion of the estimated excise taxes shown to be due by the 5257
report. The portion of the estimated excise taxes due at the time 5258
the report is filed shall be one-third of its total excise taxes 5259
estimated to be charged or levied for the current year based upon 5260
the annual statement filed under division (A) of this section. 5261

(2) Annually, on or before the first day of March and June, 5262
each public utility ~~subject to the excise taxes levied by this~~ 5263
~~chapter~~ whose excise taxes as based upon its last preceding annual 5264
statement filed under division (A) of this section prior to the 5265
first day of January were, in the case of a public utility other 5266
than a natural gas company, one thousand dollars or more, or were, 5267
in the case of a natural gas company, three hundred twenty-five 5268
thousand dollars or more, shall file with the treasurer of state a 5269
report, in such form as the tax commissioner prescribes, showing 5270
the amount of excise tax charged or levied pursuant to law upon 5271
the basis of such annual statement, and shall remit a portion of 5272
the excise taxes shown to be due by each such report. The portion 5273

of the excise taxes due at the time each such report is filed 5274
shall be one-third of its total excise taxes so charged or levied 5275
based upon such annual statement. 5276

(C) Any public utility subject to the excise taxes imposed by 5277
~~this chapter~~ section 5727.30 of the Revised Code whose tax as 5278
certified under section 5727.38 of the Revised Code in a year 5279
equals or exceeds the amount specified for that year in section 5280
5727.311 of the Revised Code shall make the payments required 5281
under this section in the second ensuing and each succeeding year 5282
in the manner prescribed by section 5727.311 of the Revised Code, 5283
except as otherwise prescribed by that section. 5284

(D)(1) For purposes of this section, a report required to be 5285
filed under division (B) of this section is considered filed when 5286
it is received by the treasurer of state. 5287

(2) For purposes of this section and sections 5727.311 and 5288
5727.42 of the Revised Code, remittance of an excise tax required 5289
to be made under this section is considered to be made when the 5290
remittance is received by the treasurer of state, or when credited 5291
to an account designated by the treasurer of state for the receipt 5292
of tax remittances. 5293

Sec. 5727.311. (A) Any public utility subject to an excise 5294
tax imposed by ~~this chapter~~ section 5727.30 of the Revised Code 5295
whose tax as certified by the tax commissioner under section 5296
5727.38 of the Revised Code ~~in the year indicated in the following~~ 5297
~~schedule~~ equals or exceeds ~~the amount indicated for that year in~~ 5298
~~the schedule~~ fifty thousand dollars shall make each payment 5299
required under division (B) of section 5727.31 of the Revised Code 5300
for the second ensuing and each succeeding year by electronic 5301
funds transfer as prescribed by division (B) of this section. 5302
~~Year for which~~ 5303
~~tax was certified~~ ~~1992~~ ~~1993 and thereafter~~ 5304

Amount of tax ~~\$100,000~~ ~~\$50,000~~ 5305
certified

 If the tax certified by the tax commissioner in each of two 5306
consecutive years ~~beginning with 1993~~ is less than fifty thousand 5307
dollars, the public utility is relieved of the requirement to 5308
remit taxes by electronic funds transfer for the year that next 5309
follows the second of the consecutive years in which the tax 5310
certified is less than fifty thousand dollars, and is relieved of 5311
that requirement for each succeeding year unless the tax certified 5312
in a subsequent year equals or exceeds fifty thousand dollars. The 5313
tax commissioner shall notify each public utility required to 5314
remit taxes by electronic funds transfer of the public utility's 5315
obligation to do so, shall maintain an updated list of those 5316
public utilities, and shall timely certify the list and any 5317
additions thereto or deletions therefrom to the treasurer of 5318
state. Failure by the tax commissioner to notify a public utility 5319
subject to this section to remit taxes by electronic funds 5320
transfer does not relieve the public utility of its obligation to 5321
remit taxes by electronic funds transfer. 5322

 (B) Public utilities required by this section to remit 5323
periodic payments by electronic funds transfer shall remit such 5324
payments to the treasurer of state in the manner prescribed by 5325
rules adopted by the treasurer of state under section 113.061 of 5326
the Revised Code. The payment of public utility excise taxes by 5327
electronic funds transfer does not affect a public utility's 5328
obligation to file the annual statement and periodic reports in 5329
the manner and at the times prescribed by section 5727.31 of the 5330
Revised Code. 5331

 A public utility required by this section to remit taxes by 5332
electronic funds transfer may apply to the treasurer of state in 5333
the manner prescribed by the treasurer of state to be excused from 5334
that requirement. The treasurer of state may excuse the public 5335

utility from remittance by electronic funds transfer for good 5336
cause shown for the period of time requested by the public utility 5337
or for a portion of that period. The treasurer of state shall 5338
notify the tax commissioner and the public utility of the 5339
~~treasurer's~~ treasurer of state's decision as soon as is 5340
practicable. 5341

(C) If a public utility required by this section to remit 5342
taxes by electronic funds transfer remits those taxes by some 5343
means other than by electronic funds transfer as prescribed by 5344
this section and the rules adopted by the treasurer of state, and 5345
the treasurer of state determines that the failure to remit taxes 5346
as required was not due to reasonable cause or was due to willful 5347
neglect, the treasurer of state may impose an additional charge on 5348
the public utility equal to five per cent of the amount of the 5349
taxes required to be paid by electronic funds transfer, but not to 5350
exceed five thousand dollars. Any additional charge imposed under 5351
this section is in addition to any other penalty or charge imposed 5352
under this chapter, and shall be considered as revenue arising 5353
from excise taxes imposed by this chapter. 5354

No additional charge shall be assessed under this division 5355
against a public utility that has been notified of its obligation 5356
to remit taxes under this section and that remits its first two 5357
tax payments after such notification by some means other than 5358
electronic funds transfer. The additional charge may be assessed 5359
upon the remittance of any subsequent tax payment that the public 5360
utility remits by some means other than electronic funds transfer. 5361

Sec. 5727.32. The statement required by section 5727.31 of 5362
the Revised Code for the purpose of the public utility excise tax 5363
shall contain: 5364

(A) The name of the company; 5365

(B) The nature of the company, whether a person, association, 5366

or corporation, and under the laws of what state or country 5367
organized; 5368

(C) The location of its principal office; 5369

(D) The name and post-office address of the president, 5370
secretary, auditor, treasurer, and superintendent or general 5371
manager; 5372

(E) The name and post-office address of the chief officer or 5373
managing agent of the company in this state; 5374

(F) The amount of the excise taxes paid or to be paid with 5375
the reports made during the current calendar year as provided by 5376
section 5727.31 of the Revised Code; 5377

(G) In the case of telegraph and telephone companies: 5378

(1) The gross receipts from all sources, whether messages, 5379
telephone tolls, rentals, or otherwise, for business done within 5380
this state, including all sums earned or charged, whether actually 5381
received or not, for the year ending on the thirtieth day of June, 5382
and the company's proportion of gross receipts for business done 5383
by it within this state in connection with other companies, firms, 5384
corporations, persons, or associations, but excluding all of the 5385
following: 5386

(a) All of the receipts derived wholly from interstate 5387
business or business done for or with the federal government; 5388

(b) The receipts of amounts billed on behalf of other 5389
entities; 5390

(c) The receipts from sales to other telephone companies for 5391
resale; 5392

(d) ~~For the year ending June 30, 1990, and each subsequent~~ 5393
~~year, receipts~~ Receipts from sales to providers of 5394
telecommunications service for resale, receipts from incoming or 5395
outgoing wide area transmission service or wide area transmission 5396

type service, including eight hundred or eight-hundred-type 5397
service, and receipts from private communications service. 5398

As used in this division, "receipts from sales to other 5399
telephone companies for resale" and "receipts from sales to 5400
providers of telecommunications service for resale" include, but 5401
are not limited to, receipts of carrier access charges. "Carrier 5402
access charges" means compensation paid to the taxpayer telephone 5403
company by another telephone company or by a provider of 5404
telecommunications service for the use of the taxpayer's 5405
facilities to originate or terminate telephone calls or 5406
telecommunications service. 5407

(2) The total gross receipts for such period from business 5408
done within this state. 5409

(H) In the case of all public utilities, except electric 5410
companies, rural electric companies, telegraph companies, and 5411
telephone companies: 5412

(1) The gross receipts of the company, actually received, 5413
from all sources for business done within this state for the year 5414
next preceding the first day of May, including the company's 5415
proportion of gross receipts for business done by it within this 5416
state in connection with other companies, firms, corporations, 5417
persons, or associations, but excluding all of the following: 5418

(a) Receipts from interstate business or business done for 5419
the federal government; 5420

(b) Receipts from sales to other public utilities for resale, 5421
provided such other public utility is required to file a statement 5422
pursuant to section 5727.31 of the Revised Code; 5423

(c) ~~For the year ending April 30, 1990, and each subsequent~~ 5424
~~year, receipts from the transmission or delivery of electricity to~~ 5425
~~or for a rural electric company, provided that the electricity~~ 5426
~~that has been so transmitted or delivered is for resale by the~~ 5427

~~rural electric company;~~ 5428

~~(d) Receipts of an electric company, derived from the 5429
provision of electricity and other services to a qualified former 5430
owner of the production facilities which generated the electricity 5431
from which those receipts were derived. As used in this division, 5432
a "qualified former owner" means a person who meets both of the 5433
following conditions: 5434~~

~~(i) On or before October 11, 1991, the person had sold to an 5435
electric company part of the production facility at which the 5436
electricity is generated, and, for at least twenty years prior to 5437
that sale, the facility was used to generate electricity, but it 5438
was not owned in whole or in part during that period by an 5439
electric company. 5440~~

~~(ii) At the time the electric company provided the 5441
electricity or other services for which the exclusion is claimed, 5442
the person, or a successor or assign of the person, owned not less 5443
than a twenty per cent ownership of the production facility and 5444
the rights to not less than twenty per cent of the production of 5445
that facility; and the person, or a successor or assign of the 5446
person, engaged primarily in a business other than providing 5447
electricity to others. 5448~~

~~(e) Receipts of a natural gas company of amounts billed on 5449
behalf of other entities. Transportation and billing and 5450
collection fees charged to other entities shall be included in the 5451
gross receipts of a natural gas company. 5452~~

~~(2) The total gross receipts of such company for such period 5453
in this state from business done within the state. 5454~~

~~The reports required by section 5727.31 of the Revised Code 5455
shall contain: 5456~~

~~(a) The name and principal mailing address of the company; 5457~~

(b) The total amount of the gross receipts excise taxes 5458
charged or levied as based upon its last preceding annual 5459
statement filed prior to the first day of January of the year in 5460
which such report is filed; 5461

(c) The amount of the excise taxes due with the report as 5462
provided by section 5727.31 of the Revised Code. 5463

Sec. 5727.33. (A) For the purpose of computing the public 5464
utility excise tax, the tax commissioner shall ascertain and 5465
determine the entire gross receipts actually received from all 5466
sources, excluding the receipts described in divisions (B), (C), 5467
and (D), and (E) of this section, of each ~~electric, rural~~ 5468
~~electric,~~ natural gas, pipe-line, water-works, heating, and water 5469
transportation company for business done within this state for the 5470
year ending on the thirtieth day of April, and of each telegraph 5471
and telephone company for business done within this state for the 5472
year ending on the thirtieth day of June. 5473

(B) In ascertaining and determining the gross receipts of 5474
each of the companies named in this section, the commissioner 5475
shall exclude all of the following: 5476

(1) All receipts derived wholly from interstate business; 5477

(2) All receipts derived wholly from business done for or 5478
with the federal government; 5479

~~(3) For the year ending April 30, 1990, and each subsequent~~ 5480
~~year, all receipts derived wholly from the transmission or~~ 5481
~~delivery of electricity to or for a rural electric company,~~ 5482
~~provided that the electricity that has been so transmitted or~~ 5483
~~delivered is for resale by the rural electric company;~~ 5484

~~(4)~~ All receipts from the sale of merchandise; 5485

~~(5)~~(4) All receipts from sales to other public utilities, 5486
except railroad, telegraph, and telephone companies, for resale, 5487

provided the other public utility is required to file a statement 5488
pursuant to section 5727.31 of the Revised Code. 5489

(C) In ascertaining and determining the gross receipts of a 5490
telephone company, the commissioner shall exclude all of the 5491
following: 5492

(1) ~~For the year ending June 30, 1988, and each subsequent~~ 5493
~~year, receipts~~ Receipts of amounts billed on behalf of other 5494
entities; 5495

(2) ~~For the year ending June 30, 1988, and each subsequent~~ 5496
~~year, receipts~~ Receipts from sales to other telephone companies 5497
for resale, as defined in division (G) of section 5727.32 of the 5498
Revised Code; 5499

(3) ~~For the year ending June 30, 1990, and each subsequent~~ 5500
~~year, receipts~~ Receipts from incoming or outgoing wide area 5501
transmission service or wide area transmission type service, 5502
including eight hundred or eight-hundred-type service; 5503

(4) ~~For the year ending June 30, 1990, and each subsequent~~ 5504
~~year, receipts~~ Receipts from private communications service as 5505
described in division (AA)(2) of section 5739.01 of the Revised 5506
Code; 5507

(5) ~~For the year ending June 30, 1990, and each subsequent~~ 5508
~~year, receipts~~ Receipts from sales to providers of 5509
telecommunications service for resale, as defined in division (G) 5510
of section 5727.32 of the Revised Code. 5511

(D) ~~In ascertaining and determining the gross receipts of an~~ 5512
~~electric company, the commissioner shall exclude receipts derived~~ 5513
~~from the provision of electricity and other services to a~~ 5514
~~qualified former owner of the production facilities which~~ 5515
~~generated the electricity from which those receipts were derived.~~ 5516
~~As used in this division, a "qualified former owner" means a~~ 5517
~~person who meets both of the following conditions:~~ 5518

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

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

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

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

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

shall be certified to the taxpayer and treasurer of state. 5550

Sec. 5727.42. (A) The treasurer of state shall maintain a 5551
list of all ~~excise~~ taxes levied and payments made pursuant to ~~this~~ 5552
~~chapter~~ the annual excise tax imposed by section 5727.30 of the 5553
Revised Code. The treasurer of state shall collect and the 5554
taxpayer shall pay all taxes and any penalties thereon. Payments 5555
may be made by mail, in person, by electronic funds transfer if 5556
required to do so by section 5727.311 of the Revised Code, or by 5557
any other means authorized by the treasurer of state. The 5558
treasurer of state may adopt rules concerning the methods and 5559
timeliness of payment. 5560

(B) Each tax bill issued pursuant to this section shall 5561
separately reflect the taxes due, due date, and any other 5562
information considered necessary. Except as otherwise provided in 5563
division (F) of this section, the last day on which payment may be 5564
made without penalty shall be at least twenty but not more than 5565
thirty days from the date of mailing the tax bill. The treasurer 5566
of state shall mail the tax bill, and the mailing thereof shall be 5567
prima-facie evidence of receipt thereof by the taxpayer. 5568

(C) The treasurer of state shall refund taxes as provided in 5569
this section, but no refund shall be made to a taxpayer having a 5570
delinquent claim certified pursuant to this section that remains 5571
unpaid. The treasurer of state may consult the attorney general 5572
regarding such claims. 5573

(D) Within twenty days after receipt of any excise tax 5574
assessment certified to ~~him~~ the treasurer of state, the treasurer 5575
of state shall: 5576

(1) Ascertain the difference between the total taxes shown on 5577
such assessment and the sum of all ~~advance~~ estimated payments, 5578
exclusive of any penalties thereon, previously made for that year. 5579

(2) If the difference is a deficiency, the treasurer of state 5580
shall issue a tax bill. 5581

(3) If the difference is an excess, the treasurer of state 5582
shall certify the name of the taxpayer and the amount to be 5583
refunded to the director of budget and management for payment to 5584
the taxpayer. 5585

If the taxpayer has a deficiency for one tax year and an 5586
excess for another tax year, or any combination thereof for more 5587
than two years, the treasurer of state may determine the net 5588
result and, depending on such result, proceed to mail a tax bill 5589
or certify a refund. 5590

(E) If a taxpayer fails to pay all taxes on or before the due 5591
date shown on the tax bill, or fails to make an ~~advance~~ estimated 5592
payment on or before the due date prescribed in division (B) of 5593
section 5727.31 of the Revised Code, but makes payment within ten 5594
calendar days of such date, the treasurer of state shall add a 5595
penalty equal to five per cent of the amount that should have been 5596
timely paid. If payment is not made within ten days of such date, 5597
the treasurer of state shall add a penalty equal to fifteen per 5598
cent of the amount that should have been timely paid. The 5599
treasurer of state shall prepare a delinquent claim for each tax 5600
bill on which penalties were added and certify such claims to the 5601
attorney general and tax commissioner. The attorney general shall 5602
proceed to collect the delinquent taxes and penalties thereon in 5603
the manner prescribed by law and notify the treasurer of state and 5604
tax commissioner of all collections. 5605

(F) The last day on which a natural gas company that is not 5606
required to make payments under division (B) of section 5727.31 of 5607
the Revised Code may pay its taxes without penalty shall be the 5608
fifteenth day of March of the year following the year in which the 5609
commissioner is required to certify ~~his~~ the assessment of the 5610

company's tax under section 5727.38 of the Revised Code. The tax 5611
due date shall be reflected on the tax bill. 5612

Sec. 5727.45. Four and two-tenths per cent of all excise 5613
taxes and penalties collected under sections 5727.01 to 5727.62 of 5614
the Revised Code shall be credited to the local government fund 5615
for distribution in accordance with section 5747.50 of the Revised 5616
Code, six-tenths of one per cent shall be credited to the local 5617
government revenue assistance fund for distribution in accordance 5618
with section 5747.61 of the Revised Code, and ninety-five and 5619
two-tenths per cent shall be credited to the general revenue fund. 5620

~~On or before the first day of December, annually, the tax 5621
commissioner shall certify to the treasurer of state the amounts 5622
to be credited to the local government fund and local government 5623
revenue assistance fund from the general revenue fund to ensure 5624
that the sum of the amounts credited to the local government fund 5625
and local government revenue assistance fund for the calendar year 5626
equals the sum that would have been credited during that year if 5627
the credit authorized by section 5727.391 of the Revised Code did 5628
not exist. The treasurer shall credit any such additional amounts 5629
to the two funds not later than the fifth day of December, 5630
annually. 5631~~

Sec. 5727.47. A copy of each assessment certified pursuant to 5632
section 5727.23, ~~5727.231~~, or 5727.38 of the Revised Code shall be 5633
mailed to the public utility, and its mailing shall be prima-facie 5634
evidence of its receipt by the public utility to which it is 5635
addressed. If a public utility objects to any assessment certified 5636
to it pursuant to such sections, it may file a petition for 5637
reassessment with the tax commissioner. The petition must be made 5638
in writing, signed by the authorized agent of the utility having 5639
knowledge of the facts, and filed with the commissioner, in person 5640
or by certified mail, within thirty days from the date that the 5641

assessment was mailed. If the petition is filed by certified mail, 5642
the date of the United States postmark placed on the sender's 5643
receipt by the postal employee to whom the petition is presented 5644
shall be treated as the date of filing. A true copy of the 5645
assessment objected to shall be attached to the petition and shall 5646
be incorporated by reference into the petition, but the failure to 5647
attach a copy of the assessment and incorporate it by reference 5648
does not invalidate the petition. The petition also shall indicate 5649
the utility's objections, but additional objections may be raised 5650
in writing if received prior to the date shown on the final 5651
determination by the commissioner. 5652

Notwithstanding the fact that a petition has been filed, the 5653
tax with respect to the assessment objected to shall be paid as 5654
required by law. The acceptance of the tax payment by the 5655
treasurer of state or any county treasurer shall not prejudice any 5656
claim for taxes on final determination by the commissioner or 5657
final decision by the board of tax appeals or any court. 5658

Upon receipt of a properly filed petition, the commissioner 5659
shall notify the treasurer of state or the auditor of each county 5660
to which the assessment objected to has been certified. 5661

Unless the petitioner waives a hearing, the commissioner 5662
shall assign a time and place for the hearing on the petition and 5663
notify the petitioner of the time and place of the hearing by 5664
personal service or certified mail, but the commissioner may 5665
continue the hearing from time to time if necessary. 5666

The commissioner may make such correction to the assessment 5667
as ~~he~~ the commissioner finds proper. The commissioner shall serve 5668
a copy of ~~his~~ the commissioner's final determination on the 5669
petitioner by personal service or certified mail, and ~~his~~ the 5670
commissioner's decision in the matter shall be final, subject to 5671
appeal as provided in section 5717.02 of the Revised Code. The 5672

commissioner also shall transmit a copy of ~~his~~ the final 5673
determination to the treasurer of state or applicable county 5674
auditor. In the absence of any further appeal, or when a decision 5675
of the board of tax appeals or of any court to which the decision 5676
has been appealed becomes final, the commissioner shall notify the 5677
public utility and, as appropriate, the treasurer of state who 5678
shall proceed under section 5727.42 of the Revised Code, or the 5679
applicable county auditor who shall proceed under section 5727.471 5680
of the Revised Code. The notification is not subject to further 5681
appeal. 5682

Sec. 5727.53. The taxes, fees, and penalties provided by 5683
~~sections 5727.01 to 5727.62, inclusive, of the Revised Code, this~~ 5684
~~chapter that are remitted to the treasurer of state~~ may be 5685
recovered by an action brought in the name of the state in the 5686
court of common pleas of Franklin ~~County~~ county, or of any county 5687
in which such public utility is doing business, or in which the 5688
line of any ~~street, suburban, or interurban railroad company or~~ 5689
railroad company is located, and such court of common pleas shall 5690
have jurisdiction of ~~such~~ the action regardless of the amount 5691
involved. The attorney general, on request of the tax 5692
commissioner, shall institute such action in the court of common 5693
pleas of Franklin ~~County~~ county or of any of such counties the 5694
commissioner directs. In any such action it shall be sufficient to 5695
allege that the tax, fee, or penalty sought to be recovered stands 5696
charged on the delinquent duplicate of the treasurer of state, and 5697
that the same has been unpaid for a period of thirty days after 5698
having been placed thereon. Sums recovered in any such action 5699
shall be paid into the state treasury ~~to the credit of the general~~ 5700
~~revenue fund~~ in the same manner as the tax. 5701

Sec. 5727.60. If a ~~public utility required to file a report~~ 5702
~~with the tax commissioner by sections 5727.02 to 5727.62,~~ 5703

~~inclusive, of the Revised Code, person fails to make such file a~~ 5704
~~report, it shall be subject to a penalty of ten dollars per day~~ 5705
~~for each day's omission after the time limited for making such~~ 5706
~~report within the time prescribed by section 5727.08 or 5727.31 of~~ 5707
~~the Revised Code, including any extensions of time granted by the~~ 5708
~~tax commissioner, a penalty of fifty dollars per month, not to~~ 5709
~~exceed five hundred dollars, may be imposed for each month or~~ 5710
~~fraction of a month elapsing between the due date of the report,~~ 5711
~~including any extensions, and the date the report was filed. The~~ 5712
~~penalty under this section for failing to file a report required~~ 5713
~~by section 5727.08 of the Revised Code shall be paid into the~~ 5714
~~state general revenue fund. If the penalty is not paid within~~ 5715
~~fifteen days after notice of the penalty is mailed to the person~~ 5716
~~who failed to timely file the report, the tax commissioner shall~~ 5717
~~certify the penalty as a claim to the attorney general for~~ 5718
~~collection. The penalty under this section for failing to file the~~ 5719
~~report required by section 5727.31 of the Revised Code shall be~~ 5720
~~deposited into the state treasury in the same manner as the tax is~~ 5721
~~deposited, and the commissioner may collect the penalty by~~ 5722
~~assessment pursuant to section 5727.38 of the Revised Code. The~~ 5723
~~tax commissioner may abate this penalty in full or in part.~~ 5724

Sec. 5727.61. Every public utility required by law to make 5725
returns, statements, or reports to the tax commissioner under 5726
sections 5727.01 to 5727.62 of the Revised Code shall file 5727
therewith, in such form as the commissioner prescribes, an 5728
affidavit subscribed and sworn to by a person or officer having 5729
knowledge of the facts setting forth that such public utility has 5730
not, during the preceding year, except as permitted by sections 5731
3517.082, 3599.03, and 3599.031 of the Revised Code, directly or 5732
indirectly paid, used or offered, consented, or agreed to pay or 5733
use any of its money or property for or in aid of or opposition to 5734

a political party, a candidate for election or nomination to 5735
public office, or a political action committee, legislative 5736
campaign fund, or organization that supports or opposes any such 5737
candidate or in any manner used any of its money or property for 5738
any partisan political purpose whatever, or for the reimbursement 5739
or indemnification of any person for money or property so used. 5740
Such forms of affidavit as the commissioner prescribes shall be 5741
attached to or made a part of the return, statement, or report 5742
required to be made by such public utility under sections 5727.01 5743
to 5727.62 of the Revised Code. 5744

Sec. 5727.72. No officer, employee, or agent of a ~~telegraph~~ 5745
~~or telephone company~~ person subject to this chapter shall refuse 5746
to attend before a ~~lawful board of appraisers and assessors~~ the 5747
department of taxation when required to do so, or refuse to bring 5748
with ~~him~~ the officer, employee, or agent and submit for inspection 5749
any books or papers of such ~~company~~ person in ~~his~~ the officer's, 5750
employee's, or agent's possession, custody, or control, or refuse 5751
to answer any questions put to ~~him~~ the officer, employee, or agent 5752
concerning the organization, business, or property of such ~~company~~ 5753
person. 5754

Sec. 5727.80. As used in sections 5727.80 to 5727.95 of the 5755
Revised Code: 5756

(A) "Electric distribution company" means either of the 5757
following: 5758

(1) A person who distributes electricity through a meter of 5759
an end user in this state; 5760

(2) The end user of electricity in this state, if the end 5761
user obtains electricity that is not distributed or transmitted to 5762
the end user by an electric distribution company that is required 5763
to remit the tax imposed by section 5727.81 of the Revised Code. 5764

"Electric distribution company" does not include the end user of electricity in this state who self-generates electricity that is used directly by that end user on the same site that the electricity is generated.

(B) "Kilowatt hour" means one thousand watt hours of electricity.

(C) "Meter of an end user in this state" means the last meter used to measure the kilowatt hours distributed by an electric distribution company to a location in this state, the last meter located outside of this state that is used to measure the kilowatt hours consumed at a location in this state, or, if no meter is used, the estimated kilowatt hours distributed to an unmetered location in this state.

(D) "Person" has the same meaning as in section 5701.01 of the Revised Code, but also includes a political subdivision of the state.

(E) "Municipal electric utility" means a municipal corporation that owns or operates a system for the distribution of electricity.

(F) "Qualified end user" means an end user of electricity that uses more than three million kilowatt hours of electricity at one manufacturing location in this state for a calendar day for use in a manufacturing process that features an electrochemical reaction in which electrons from direct current electricity remain a part of the product being manufactured.

(G) "Self-assessing purchaser" means a purchaser that meets all the requirements of, and pays the excise tax in accordance with, division (C) of section 5727.81 of the Revised Code.

Sec. 5727.81. (A) On and after May 1, 2001, for the purpose of raising revenue for public education and state and local

government operations, an excise tax is hereby levied and imposed 5795
on an electric distribution company, at the following rates per 5796
kilowatt hour of electricity distributed in a thirty-day period by 5797
the company through a meter of an end user in this state: 5798

<u>KILOWATT HOURS DISTRIBUTED TO</u>	<u>RATE PER</u>	5799
<u>AN END USER</u>	<u>KILOWATT HOUR</u>	5800
<u>For the first 2,000</u>	<u>\$.00465</u>	5801
<u>For the next 2,001 to 15,000</u>	<u>\$.00419</u>	5802
<u>For 15,001 and above</u>	<u>\$.00301</u>	5803

The electric distribution company shall base the monthly tax 5804
on the kilowatt hours of electricity distributed to an end user 5805
through the meter of the end user that is not measured for a 5806
thirty-day period by dividing the days in the measurement period 5807
into the total kilowatt hours measured during the measurement 5808
period to obtain a daily average usage. The tax shall be 5809
determined by obtaining the sum of divisions (A)(1), (2), and (3) 5810
of this section and multiplying that amount by the number of days 5811
in the measurement period: 5812

(1) Multiplying \$0.00465 per kilowatt hour for the first 5813
sixty-seven kilowatt hours distributed using a daily average; 5814

(2) Multiplying \$0.00419 for the next sixty-eight to five 5815
hundred kilowatt hours distributed using a daily average; 5816

(3) Multiplying \$0.00301 for the remaining kilowatt hours 5817
distributed using a daily average. 5818

Except as provided in division (C) of this section, the 5819
electric distribution company shall pay the tax to the treasurer 5820
of state in accordance with section 5727.82 of the Revised Code. 5821
Only the distribution of electricity through a meter of an end 5822
user in this state shall be used by the electric distribution 5823
company to compute the amount or estimated amount of tax due. 5824

(B) Except as provided in division (C) of this section, each 5825
electric distribution company shall pay the tax imposed by this 5826
section in all of the following circumstances: 5827

(1) The electricity is distributed by the company through a 5828
meter of an end user in this state; 5829

(2) the company is distributing electricity through a meter 5830
located in another state, but the electricity is consumed in this 5831
state in the manner prescribed by the tax commissioner; 5832

(3) the company is distributing electricity in this state 5833
without the use of a meter, but the electricity is consumed in 5834
this state as estimated and in the manner prescribed by the tax 5835
commissioner. 5836

(C)(1) A commercial or industrial purchaser that receives 5837
electricity through a meter of an end user in this state and 5838
consumes on the average, over the course of the previous calendar 5839
year, more than twenty megawatts of electricity during a 5840
thirty-day period may elect to self-assess the excise tax imposed 5841
by this section at the rate of seven per cent of the total price 5842
of electricity delivered through a meter of an end user in this 5843
state. Payment of the tax shall be made directly to the treasurer 5844
of state in accordance with divisions (A)(3) and (4) of section 5845
5727.82 of the Revised Code or, if the electric distribution 5846
company serving the self-assessing purchaser is a municipal 5847
electric utility and the purchaser is within the municipal 5848
corporation's corporate limits, to such municipal corporation's 5849
general fund in accordance with division (a)(2) of section 5727.82 5850
of the Revised Code, and upon paying in this manner, the 5851
self-assessing purchaser shall not be required to pay the excise 5852
tax to the electric distribution company from which its 5853
electricity is delivered. 5854

(2) Application for registration as a self-assessing 5855

purchaser shall be made on a form prescribed by the tax 5856
commissioner. The registration shall remain in effect until 5857
canceled by the registrant upon written notification to the 5858
commissioner of the election to pay the tax in accordance with 5859
division (A) of this section. A self-assessing purchaser shall 5860
give written notice to the electric distribution company from 5861
which its electricity is delivered of its self-assessing status, 5862
and the electric distribution company is relieved of the 5863
obligation to pay the tax imposed by division (A) of this section 5864
for electricity distributed to that self-assessing purchaser. 5865

(D) The tax imposed by this section does not apply to the 5866
distribution of any kilowatt hours of electricity to the federal 5867
government or to an end user for any day the end user is a 5868
qualified end user. The exemption under this division for a 5869
qualified end user only applies to the manufacturing location 5870
where the qualified end user uses more than three million kilowatt 5871
hours per day. 5872

Sec. 5727.82. (A)(1) Except as provided in divisions (A)(2) 5873
and (D) of this section, by the twentieth day of each month, each 5874
electric distribution company required to pay the tax imposed by 5875
section 5727.81 of the Revised Code shall file with the treasurer 5876
of state a return as prescribed by the tax commissioner and shall 5877
make payment of the full amount of tax due for the preceding 5878
month. The first payment of this tax shall be made on or before 5879
June 20, 2001. 5880

(2) If the electric distribution company required to pay the 5881
tax imposed by section 5727.81 of the Revised Code is a municipal 5882
electric utility, it may retain in its general fund that portion 5883
of the tax on the kilowatt hours distributed to end users located 5884
within the boundaries of the municipal corporation. However, the 5885
municipal electric utility shall make payment in accordance with 5886

division (A)(1) of this section of the tax due on the kilowatt 5887
hours distributed to end users located outside the boundaries of 5888
the municipal corporation. 5889

(3) By the twentieth day of each month, each self-assessing 5890
purchaser that under division (C) of section 5727.81 of the 5891
Revised Code pays directly to the treasurer of state the tax 5892
imposed by section 5727.81 of the Revised Code shall file with the 5893
treasurer of state a return as prescribed by the tax commissioner 5894
and shall make payment of the full amount of the tax due for the 5895
preceding month. 5896

(4) As prescribed by the tax commissioner, the return shall 5897
be signed by the company or self-assessing purchaser required to 5898
file it, or an authorized employee, officer, or agent of the 5899
company or purchaser. The treasurer of state shall mark on the 5900
return the date it was received and indicate payment or nonpayment 5901
of the tax shown to be due on the return. The treasurer of state 5902
immediately shall transmit all returns to the tax commissioner. 5903
The return shall be deemed filed when received by the treasurer of 5904
state. 5905

(B) Any electric distribution company or self-assessing 5906
purchaser required by this section to file a return who fails to 5907
file it and pay the tax within the period prescribed shall pay an 5908
additional charge of fifty dollars or ten per cent of the tax 5909
required to be paid for the reporting period, whichever is 5910
greater. The tax commissioner may collect the additional charge by 5911
assessment pursuant to section 5727.89 of the Revised Code. The 5912
commissioner may abate all or a portion of the additional charge 5913
and may adopt rules governing such abatements. 5914

(C) If any tax due is not paid timely in accordance with this 5915
section, the electric distribution company or self-assessing 5916
purchaser liable for the tax shall pay interest, calculated at the 5917
rate per annum prescribed by section 5703.47 of the Revised Code, 5918

from the date the tax payment was due to the date of payment or to 5919
the date an assessment is issued, whichever occurs first. Interest 5920
shall be paid in the same manner as the tax, and the commissioner 5921
may collect the interest by assessment pursuant to section 5727.89 5922
of the Revised Code. 5923

(D) Not later than the tenth day of each month, a qualified 5924
end user shall report in writing to the electric distribution 5925
company that distributes electricity to the end user the kilowatt 5926
hours that were consumed as a qualified end user for the prior 5927
month and the number of days, if any, on which the end user was 5928
not a qualified end user. For each calendar day the end user was 5929
not a qualified end user, the end user shall report in writing to 5930
the electric distribution company the number of kilowatt hours 5931
used on that day, and the electric distribution company shall pay 5932
the tax imposed under section 5727.81 of the Revised Code on each 5933
kilowatt hour that was not distributed to a qualified end user. 5934
The electric distribution company may rely in good faith on a 5935
qualified end user's report filed under this division. If it is 5936
determined that the end user was not a qualified end user for any 5937
calendar day or the quantity of electricity used by the qualified 5938
end user was overstated, the tax commissioner shall assess and 5939
collect any tax imposed under section 5727.81 of the Revised Code 5940
directly from the qualified end user. As requested by the 5941
commissioner, each end user reporting to an electric distribution 5942
company that it is a qualified end user shall provide 5943
documentation to the commissioner that establishes the volume of 5944
electricity consumed daily by the qualified end user. 5945

Sec. 5727.83. (A) If the total amount of tax required to be 5946
remitted by an electric distribution company or self-assessing 5947
purchaser to this state under section 5727.82 of the Revised Code 5948
for any calendar year equals or exceeds fifty thousand dollars, 5949
the company or self-assessing purchaser shall remit each monthly 5950

tax payment in the second ensuing and each succeeding tax year by 5951
electronic funds transfer as prescribed by divisions (B) and (C) 5952
of this section. For the first year the tax levied by section 5953
5727.81 of the Revised Code is imposed, any electric distribution 5954
company that, prior to the effective date of this section, was an 5955
electric company or a rural electric company required to remit 5956
taxes by electronic funds transfer under section 5727.311 of the 5957
Revised Code shall remit the tax imposed by section 5727.81 of the 5958
Revised Code by electronic funds transfer in accordance with this 5959
section. 5960

If the tax payment for each of two consecutive years is less 5961
than fifty thousand dollars, the company or self-assessing 5962
purchaser is relieved of the requirement to remit taxes by 5963
electronic funds transfer for the year that next follows the 5964
second of the consecutive years in which the tax payment is less 5965
than fifty thousand dollars, and is relieved of that requirement 5966
for each succeeding year unless the tax payment in a subsequent 5967
year equals or exceeds fifty thousand dollars. 5968

The tax commissioner shall notify each electric distribution 5969
company and self-assessing purchaser required to remit taxes by 5970
electronic funds transfer of the obligation to do so, shall 5971
maintain an updated list of those companies and purchasers, and 5972
shall timely certify to the treasurer of state the list and any 5973
additions thereto or deletions therefrom. Failure by the tax 5974
commissioner to notify a company or self-assessing purchaser 5975
subject to this section to remit taxes by electronic funds 5976
transfer does not relieve the company or self-assessing purchaser 5977
of its obligation to remit taxes in that manner. 5978

(B) An electric distribution company or self-assessing 5979
purchaser required by this section to remit payments by electronic 5980
funds transfer shall remit such payments to the treasurer of state 5981

in the manner prescribed by rules adopted by the treasurer of 5982
state under section 113.061 of the Revised Code, and on or before 5983
the dates specified under section 5727.82 of the Revised Code. The 5984
payment of taxes by electronic funds transfer does not affect a 5985
company's or self-assessing purchaser's obligation to file the 5986
monthly return as required under section 5727.82 of the Revised 5987
Code. 5988

(C) An electric distribution company or self-assessing 5989
purchaser required by this section to remit taxes by electronic 5990
funds transfer may apply to the treasurer of state in the manner 5991
prescribed by the treasurer of state to be excused from that 5992
requirement. The treasurer of state may excuse the company or 5993
self-assessing purchaser from remittance by electronic funds 5994
transfer for good cause shown for the period of time requested by 5995
the company or self-assessing purchaser or for a portion of that 5996
period. The treasurer of state shall notify the tax commissioner 5997
and the company or self-assessing purchaser of the treasurer of 5998
state's decision as soon as is practicable. 5999

(D) If an electric distribution company or self-assessing 6000
purchaser required by this section to remit taxes by electronic 6001
funds transfer remits those taxes by some means other than by 6002
electronic funds transfer as prescribed by this section and the 6003
rules adopted by the treasurer of state, and the treasurer of 6004
state determines that such failure was not due to reasonable cause 6005
or was due to willful neglect, the treasurer of state shall notify 6006
the tax commissioner of the failure to remit by electronic funds 6007
transfer and shall provide the commissioner with any information 6008
used in making that determination. The tax commissioner may 6009
collect an additional charge by assessment in the manner 6010
prescribed by section 5727.89 of the Revised Code. The additional 6011
charge shall equal five per cent of the amount of the taxes 6012
required to be paid by electronic funds transfer, but shall not 6013

exceed five thousand dollars. Any additional charge assessed under 6014
this section is in addition to any other penalty or charge imposed 6015
under this chapter, and shall be considered as revenue arising 6016
from the tax imposed under this chapter. The tax commissioner may 6017
abate all or a portion of such a charge and may adopt rules 6018
governing such abatements. 6019

No additional charge shall be assessed under this division 6020
against an electric distribution company or self-assessing 6021
purchaser that has been notified of its obligation to remit taxes 6022
under this section and that remits its first two tax payments 6023
after such notification by some means other than electronic funds 6024
transfer. The additional charge may be assessed upon the 6025
remittance of any subsequent tax payment that the company or 6026
purchaser remits by some means other than electronic funds 6027
transfer. 6028

Sec. 5727.84. (A) As used in this section and sections 6029
5727.85, 5727.86, and 5727.87 of the Revised Code: 6030

(1) "School district" means a city, local, or exempted 6031
village school district. 6032

(2) "Joint vocational school district" means a joint 6033
vocational school district created under section 3311.16 of the 6034
Revised Code, and includes a cooperative education school district 6035
created under section 3311.52 or 3311.521 of the Revised Code and 6036
a county school financing district created under section 3311.50 6037
of the Revised Code. 6038

(3) "Local taxing unit" means a subdivision, as defined in 6039
section 5705.01 of the Revised Code, but excludes school districts 6040
and joint vocational school districts. 6041

(4) "State education aid" means the sum of the state basic 6042
aid and state special education aid amounts computed for a school 6043

district under divisions (A) and (B) of section 3317.022 of the 6044
Revised Code. 6045

(5) "State education aid offset" means the amount certified 6046
for each school district under division (A)(1) of section 5727.85 6047
of the Revised Code. 6048

(6) "Adjusted total taxable value" has the same meaning as in 6049
section 3317.02 of the Revised Code. 6050

(7) "Tax value loss" means the amount determined under 6051
division (C) of this section. 6052

(8) "Fixed-rate levy" means any tax levied on property other 6053
than a fixed-sum levy. 6054

(9) "Fixed-rate levy loss" means the amount determined under 6055
division (D) of this section. 6056

(10) "Fixed-sum levy" means a tax levied on property at 6057
whatever rate is required to produce a specified amount of tax 6058
money or to pay debt charges, and includes school district 6059
emergency levies imposed pursuant to section 5705.194 of the 6060
Revised Code. 6061

(11) "Fixed-sum levy loss" means the amount determined under 6062
division (E) of this section. 6063

(12) "Consumer price index" means the consumer price index 6064
(all items, all urban consumers) prepared by the bureau of labor 6065
statistics of the United States department of labor. 6066

(B) All money arising from the tax imposed by section 5727.81 6067
of the Revised Code shall be credited as follows: 6068

(1) Fifty-nine and nine hundred seventy-six one-THOUSANDTHS 6069
per cent, plus an amount equal to the state education aid offset, 6070
shall be credited to the general revenue fund. 6071

(2) Two and six hundred forty-six one-THOUSANDTHS per cent 6072

shall be credited to the local government fund, for distribution 6073
in accordance with section 5747.50 of the Revised Code. 6074

(3) Three hundred seventy-eight one-THOUSANDTHS per cent 6075
shall be credited to the local government revenue assistance fund, 6076
for distribution in accordance with section 5747.61 of the Revised 6077
Code. 6078

(4) Twenty-five and nine-tenths per cent, less an amount 6079
equal to the state education aid offset, shall be credited to the 6080
school district property tax replacement fund, which is hereby 6081
created in the state treasury for the purpose of making the 6082
payments described in section 5727.85 of the Revised Code. 6083

(5) Eleven and one-tenth per cent shall be credited to the 6084
local government property tax replacement fund, which is hereby 6085
created in the state treasury for the purpose of making the 6086
payments described in section 5727.86 of the Revised Code. 6087

(C) Not later than January 1, 2002, the tax commissioner 6088
shall determine for each taxing district its tax value loss, which 6089
is the sum of the amounts described in divisions (C)(1) and (2) of 6090
this section: 6091

(1) The difference obtained by subtracting the amount 6092
described in division (C)(1)(b) from the amount described in 6093
division (C)(1)(a) of this section. 6094

(a) The value of electric company and rural electric company 6095
tangible personal property as assessed by the tax commissioner for 6096
tax year 1998 on a preliminary assessment, or an amended 6097
preliminary assessment if issued prior to March 1, 1999, and as 6098
apportioned to the taxing district for tax year 1998; 6099

(b) The value of electric company and rural electric company 6100
tangible personal property as assessed by the tax commissioner for 6101
tax year 1998 had the property been apportioned to the taxing 6102

district for tax year 2001, and assessed at the rates in effect 6103
for tax year 2001. 6104

(2) The difference obtained by subtracting the amount 6105
described in division (C)(2)(b) from the amount described in 6106
division (C)(2)(a) of this section. 6107

(a) The three-year average for tax years 1996, 1997, and 1998 6108
of the assessed value from nuclear fuel materials and assemblies 6109
assessed against a person under Chapter 5711. of the Revised Code 6110
from the leasing of them to an electric company for those 6111
respective tax years, as reflected in the preliminary assessments; 6112
6113

(b) The three-year average assessed value from nuclear fuel 6114
materials and assemblies assessed under division (C)(2)(a) of this 6115
section for tax years 1996, 1997, and 1998, as reflected in the 6116
preliminary assessments, using an assessment rate of twenty-five 6117
per cent. 6118

The tax commissioner may request that electric companies and 6119
rural electric companies file a report to help determine the tax 6120
value loss under division (C) of this section. The report shall be 6121
filed within thirty days of the commissioner's request. A company 6122
that fails to file the report or does not timely file the report 6123
is subject to the penalty in section 5727.60 of the Revised Code. 6124
6125

(D) Not later than January 1, 2002, the tax commissioner 6126
shall determine for each school district, joint vocational school 6127
district, and local taxing unit its fixed-rate levy loss, which is 6128
its tax value loss multiplied by the tax rate in effect in tax 6129
year 1998 for fixed-rate levies. 6130

(E) Not later than January 1, 2002, the tax commissioner 6131
shall determine for each school district, joint vocational school 6132
district, and local taxing unit its fixed-sum levy loss, which is 6133

the amount obtained by subtracting the amount described in 6134
division (E)(2) of this section from the amount described in 6135
division (E)(1) of this section: 6136

(1) The tax value loss multiplied by the tax rate in effect 6137
in tax year 1998 for fixed-sum levies for all taxing districts 6138
within each school district, joint vocational school district, and 6139
local taxing unit. For the years 2002 through 2006, this 6140
computation shall include school district emergency levies that 6141
existed in 1998, and all other fixed-sum levies that existed in 6142
1998 and continue to be charged in the tax year preceding the 6143
distribution year. For the years 2007 through 2016, this 6144
computation shall exclude all school district emergency levies and 6145
all other fixed-sum levies that existed in 1998 but are no longer 6146
in effect in the tax year preceding the distribution year. 6147

(2) The total taxable value in tax year 1998 in each school 6148
district, joint vocational school district, and local taxing unit 6149
multiplied by one-fourth of one mill. 6150

If the computation under division (E) of this section for any 6151
school district, joint vocational school district, or local taxing 6152
unit is greater than zero, the one-fourth of one mill that is 6153
subtracted pursuant to division (E) of section 5727.85 of the 6154
Revised Code or division (A)(2) of section 5727.86 of the Revised 6155
Code shall be apportioned among all contributing fixed-sum levies 6156
in the proportion of each levy to the sum of all fixed-sum levies 6157
within each school district, joint vocational school district, or 6158
local taxing unit. 6159

Sec. 5727.85. (A) By the thirty-first day of July of each 6160
year, beginning in 2002 and ending in 2016, the department of 6161
education shall determine the following for each school district 6162
eligible for payment under division (C) of this section: 6163

(1) The state education aid offset, which is the difference 6164
obtained by subtracting the amount described in division (A)(1)(b) 6165
of this section from the amount described in division (A)(1)(a) of 6166
this section: 6167

(a) The state education aid computed for the school district 6168
for the current fiscal year on the basis of the adjusted total 6169
taxable value; 6170

(b) The state education aid that would be computed for the 6171
school district for the current fiscal year if the district's 6172
adjusted total taxable value included the tax value loss for all 6173
taxing districts in the school district. 6174

(2) The difference obtained by subtracting the state 6175
education aid offset determined under division (A)(1) of this 6176
section from the fixed-rate levy loss determined under division 6177
(D) of section 5727.84 of the Revised Code for all taxing 6178
districts in each school district. The department of education 6179
shall certify the amount so determined to the director of budget 6180
and management. 6181

(B) Not later than the thirty-first day of October of the 6182
years 2006 through 2016, the department of education shall 6183
determine all of the following for each school district: 6184

(1) The amount obtained by subtracting the district's state 6185
education aid computed for fiscal year 2002 from the district's 6186
state education aid computed for the current fiscal year; 6187

(2) The inflation-adjusted property tax loss. The 6188
inflation-adjusted property tax loss equals the fixed-rate levy 6189
loss determined under division (D) of section 5727.84 of the 6190
Revised Code for all taxing districts in each school district plus 6191
the product obtained by multiplying that loss by the cumulative 6192
percentage increase in the consumer price index from January 1, 6193
2002, to the thirtieth day of June of the current year. 6194

(3) The difference obtained by subtracting the amount 6195
computed under division (B)(1) from the amount of the 6196
inflation-adjusted property tax loss. If this difference is zero 6197
or a negative number, no further payments shall be made under 6198
division (C) of this section to the school district from the 6199
school district property tax replacement fund. If the difference 6200
is greater than zero, the department of education shall certify 6201
the amount calculated in division (A)(2) of this section to the 6202
director of budget and management not later than the thirty-first 6203
day of December of each year, beginning in 2006 and ending in 6204
2016. 6205

(C) For all taxing districts in each school district, the 6206
director of budget and management shall pay from the school 6207
district property tax replacement fund to the county undivided 6208
income tax fund in the proper county treasury all of the 6209
following: 6210

(1) In February 2002, one-half of the fixed-rate levy loss 6211
certified under division (D) of section 5727.84 of the Revised 6212
Code on or before the day prescribed for the settlement under 6213
division (A) of section 321.24 of the Revised Code. 6214

(2) From August 2002 through August 2006, one-half of the 6215
amount certified for that fiscal year under division (A)(2) of 6216
this section on or before each of the days prescribed for the 6217
settlements under divisions (A) and (C) of section 321.24 of the 6218
Revised Code. 6219

(3) From February 2007 through August 2016, one-half of the 6220
amount certified for that calendar year under division (B)(3) of 6221
this section on or before each of the days prescribed for the 6222
settlements under divisions (A) and (C) of section 321.24 of the 6223
Revised Code. 6224

The county treasurer shall distribute amounts paid under 6225

divisions (C)(1), (2), and (3) of this section to the proper 6226
school district as if they had been levied and collected as taxes, 6227
and the school district shall apportion the amounts so received 6228
among its funds in the same proportions as if those amounts had 6229
been levied and collected as taxes. 6230

(D) Not later than January 1, 2002, for all taxing districts 6231
in each joint vocational school district, the tax commissioner 6232
shall certify to the director of budget and management the 6233
fixed-rate levy loss determined under division (D) of section 6234
5727.84 of the Revised Code. From February 2002 to August 2016, 6235
the director shall pay from the school district property tax 6236
replacement fund to the county undivided income tax fund in the 6237
proper county treasury, one-half of the fixed-rate levy loss so 6238
certified for each year on or before each of the days prescribed 6239
for the settlements under divisions (A) and (C) of section 321.24 6240
of the Revised Code. The county treasurer shall distribute such 6241
amounts to the proper joint vocational school district as if they 6242
had been levied and collected as taxes, and the joint vocational 6243
school district shall apportion the amounts so received among its 6244
funds in the same proportions as if those amounts had been levied 6245
and collected as taxes. 6246

(E)(1) Not later than January 1, 2002, for each school 6247
district and joint vocational school district, the tax 6248
commissioner shall certify to the director of budget and 6249
management the fixed-sum levy loss determined under division (E) 6250
of section 5727.84 of the Revised Code. The certification shall 6251
cover a time period sufficient to include all fixed-sum levies in 6252
effect in 1998 until they are due to expire. The director shall 6253
pay from the school district property tax replacement fund to the 6254
county undivided income tax fund in the proper county treasury 6255
one-half of the fixed-sum levy loss so certified for each year on 6256
or before each of the days prescribed for the settlements under 6257

divisions (A) and (C) of section 321.24 of the Revised Code. The 6258
county treasurer shall distribute the amounts to the proper school 6259
district or joint vocational school district as if they had been 6260
levied and collected as taxes, and the district shall apportion 6261
the amounts so received among its funds in the same proportions as 6262
if those amounts had been levied and collected as taxes. No 6263
payments shall be made under this division once all fixed-sum 6264
levies in effect in 1998 have expired. 6265

(2) Beginning in 2003 and ending in 2016, by the thirty-first 6266
day of January of each year, the tax commissioner shall review the 6267
certification originally made under division (E)(1) of this 6268
section. If the commissioner determines that a fixed-sum levy that 6269
had been scheduled to be reimbursed in the current year has 6270
expired, a revised certification for that and all subsequent years 6271
shall be made to the director of budget and management. 6272

(F) By August 5, 2002, the tax commissioner shall estimate 6274
the amount of money in the school district property tax 6275
replacement fund in excess of the amount necessary to make 6276
payments in that month under divisions (C), (D), and (E) of this 6277
section. Notwithstanding division (C) of this section, the 6278
department of education, in consultation with the tax commissioner 6279
and from those excess funds, may pay any school district four and 6280
one-half times the amount certified under division (A)(2) of this 6281
section. Payments shall be made in order from the smallest annual 6282
loss to the largest annual loss. A payment made under this 6283
division shall be in lieu of the payment to be made in August 2002 6284
under division (C)(2) of this section. No payments shall be made 6285
in the manner established in this division to any school district 6286
with annual losses from permanent improvement fixed-rate levies in 6287
excess of twenty thousand dollars, or annual losses from any other 6288
fixed-rate levies in excess of twenty thousand dollars. A school 6289

district receiving a payment under this division is no longer 6290
entitled to any further payments under division (C) of this 6291
section. 6292

(G) On the thirty-first day of July of 2003, 2004, 2005, AND 6293
2006, and on the thirty-first day of January and July of 2007 and 6294
each year thereafter, if THE AMOUNT CREDITED TO THE SCHOOL 6295
DISTRICT PROPERTY TAX REPLACEMENT FUND EXCEEDS THE AMOUNT NEEDED 6296
TO make payments FROM THE FUND UNDER DIVISIONS (C), (D), and (E) 6297
OF THIS SECTION IN THE FOLLOWING MONTH, THE DIRECTOR OF BUDGET AND 6298
MANAGEMENT SHALL DISTRIBUTE THE EXCESS AMONG SCHOOL DISTRICTS AND 6299
JOINT VOCATIONAL SCHOOL DISTRICTS. The AMOUNT DISTRIBUTED TO EACH 6300
DISTRICT SHALL BEAR THE SAME PROPORTION TO THE EXCESS REMAINING IN 6301
THE FUND AS THE ADM OF THE DISTRICT BEARS TO THE ADM OF ALL OF THE 6302
DISTRICTS. For THE PURPOSE OF THIS DIVISION, "ADM" MEANS THE 6303
FORMULA ADM IN THE CASE OF A SCHOOL DISTRICT, AND THE AVERAGE 6304
DAILY MEMBERSHIP REPORTED UNDER SECTION 3317.03 OF THE REVISED 6305
CODE IN THE CASE OF A JOINT VOCATIONAL SCHOOL DISTRICT. 6306

If, IN THE OPINION OF THE DIRECTOR OF BUDGET AND MANAGEMENT, 6307
THE EXCESS REMAINING IN THE SCHOOL DISTRICT PROPERTY TAX 6308
REPLACEMENT FUND IN ANY YEAR IS NOT SUFFICIENT TO WARRANT 6309
DISTRIBUTION UNDER THIS DIVISION, THE EXCESS SHALL REMAIN TO THE 6310
CREDIT OF THE FUND. 6311

Amounts RECEIVED BY A SCHOOL DISTRICT OR JOINT VOCATIONAL 6312
SCHOOL DISTRICT UNDER THIS DIVISION SHALL BE USED EXCLUSIVELY FOR 6313
CAPITAL IMPROVEMENTS. 6314

(H) If THE TOTAL AMOUNT IN THE SCHOOL DISTRICT PROPERTY TAX 6315
REPLACEMENT FUND IS INSUFFICIENT TO MAKE ALL PAYMENTS UNDER 6316
DIVISIONS (C), (D), and (E) OF THIS SECTION, THE PAYMENTS REQUIRED 6317
UNDER DIVISION (E) OF THIS SECTION SHALL BE MADE FIRST IN THEIR 6318
ENTIRETY. AFTER ALL PAYMENTS ARE MADE UNDER DIVISION (E) OF THIS 6319
SECTION, PAYMENTS UNDER DIVISIONS (C) AND (D) OF THIS SECTION 6320

SHALL BE MADE FROM THE BALANCE OF MONEY AVAILABLE IN THE 6321
PROPORTION OF EACH SCHOOL DISTRICT'S OR JOINT VOCATIONAL SCHOOL 6322
DISTRICT'S payment AMOUNT TO THE TOTAL AMOUNT of payments UNDER 6323
DIVISIONS (C) AND (D) OF THIS SECTION. 6324

(I) If ALL OR A PART OF THE TERRITORY OF A SCHOOL DISTRICT OR 6325
JOINT VOCATIONAL SCHOOL DISTRICT IS MERGED WITH OR TRANSFERRED TO 6326
ANOTHER DISTRICT, THE TAX COMMISSIONER SHALL ADJUST THE PAYMENTS 6327
MADE UNDER THIS SECTION TO EACH OF THE DISTRICTS IN PROPORTION TO 6328
THE TAX VALUE LOSS APPORTIONED TO THE MERGED OR TRANSFERRED 6329
TERRITORY. 6330

(J) THERE IS HEREBY CREATED THE ELECTRIC PROPERTY TAX STUDY 6331
COMMITTEE, EFFECTIVE January 1, 2011. The COMMITTEE SHALL CONSIST 6332
OF THE FOLLOWING SEVEN MEMBERS: the TAX COMMISSIONER, THREE 6333
MEMBERS OF THE SENATE APPOINTED BY THE PRESIDENT OF THE SENATE, 6334
AND THREE MEMBERS OF THE HOUSE OF REPRESENTATIVES APPOINTED BY THE 6335
SPEAKER OF THE HOUSE OF REPRESENTATIVES. The APPOINTMENTS SHALL BE 6336
MADE NOT LATER THAN JANUARY 31, 2011. THE TAX COMMISSIONER SHALL 6337
BE THE CHAIRPERSON OF THE COMMITTEE. 6338

The COMMITTEE SHALL STUDY THE EXTENT TO WHICH EACH SCHOOL 6339
DISTRICT OR JOINT VOCATIONAL SCHOOL DISTRICT HAS BEEN COMPENSATED, 6340
UNDER SECTIONS 5727.84 AND 5727.85 OF THE Revised Code AS ENACTED 6341
BY Substitute Senate Bill No. 3 OF THE 123rd general assembly AND 6342
ANY SUBSEQUENT ACTS, FOR THE PROPERTY TAX LOSS CAUSED BY THE 6343
REDUCTION IN THE ASSESSMENT RATES FOR ELECTRIC AND RURAL ELECTRIC 6344
COMPANY TANGIBLE PERSONAL PROPERTY. Not LATER THAN June 30, 2011, 6345
THE COMMITTEE SHALL ISSUE A REPORT OF ITS FINDINGS, INCLUDING ANY 6346
RECOMMENDATIONS FOR PROVIDING ADDITIONAL COMPENSATION FOR THE 6347
PROPERTY TAX LOSS OR REGARDING REMEDIAL LEGISLATION, TO THE 6348
PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE OF 6349
REPRESENTATIVES, AT WHICH TIME THE COMMITTEE SHALL CEASE TO EXIST. 6350

THE DEPARTMENT OF TAXATION AND DEPARTMENT OF EDUCATION SHALL 6351

PROVIDE SUCH INFORMATION AND ASSISTANCE AS IS REQUIRED FOR THE 6352
COMMITTEE TO CARRY OUT ITS DUTIES. 6353

Sec. 5727.86. (A) Not LATER THAN January 1, 2002, THE TAX 6354
COMMISSIONER SHALL CERTIFY TO THE DIRECTOR OF BUDGET AND 6355
MANAGEMENT, FOR ALL TAXING DISTRICTS IN EACH LOCAL TAXING UNIT, 6356
THE fixed-rate levy loss DETERMINED UNDER DIVISION (D), AND the 6357
fixed-sum levy loss determined under division (E), OF SECTION 6358
5727.84 OF THE Revised Code. Based ON THAT CERTIFICATION, THE 6359
DIRECTOR SHALL COMPUTE THE PAYMENTS to be made to each local 6360
taxing unit FOR EACH YEAR ACCORDING TO DIVISIONS (A)(1), (2), and 6361
(3) AND DIVISION (E) OF THIS SECTION, AND SHALL DISTRIBUTE the 6362
PAYMENTS in the manner prescribed by DIVISION (C) OF THIS SECTION. 6363
THE CERTIFICATION of the fixed-sum levy loss SHALL COVER a period 6364
of TIME sufficient to include ALL fixed-sum levies IN EFFECT IN 6365
1998 until they ARE DUE TO EXPIRE. 6366

(1) Except as provided in division (A)(3) of this section, 6367
for fixed-rate levy losses determined under division (D) of 6368
section 5727.84 of the Revised Code, pAYMENTS shall be MADE in 6369
each of the following years at the following PERCENTage OF THE 6370
fixed-rate levy loss CERTIFIED UNDER DIVISION (A) of this section: 6371

<u>YEAR</u>	<u>PERCENTAGE</u>	6372
2002	100%	6373
2003	100%	6374
2004	100%	6375
2005	100%	6376
2006	100%	6377
2007	80%	6378
2008	80%	6379
2009	80%	6380
2010	80%	6381
2011	80%	6382

2012	66.7%	6383
2013	53.4%	6384
2014	40.1%	6385
2015	26.8%	6386
2016	13.5%	6387
2017 <u>and thereafter</u>	0%	6388

(2) For fixed-sum levy losses determined under division (E) 6389
of section 5727.84 of the Revised Code, One HUNDRED PER CENT OF 6390
THE fixed-sum levy loss CERTIFIED UNDER DIVISION (A) OF this 6391
SECTION for payments required to be made in 2002 and thereafter. 6392

(3) A local taxing unit in a county of less than TWO HUNDRED 6393
FIFTY SQUARE MILES that receives eighty per cent or more of its 6394
combined general fund and bond retirement fund revenues from 6395
property taxes and rollbacks based on 1997 actual revenues as 6396
presented in its 1999 tax budget, and in which electric companies 6397
and rural electric companies comprise over twenty per cent of its 6398
PROPERTY VALUATION, shall receive one hundred per cent of its 6399
fixed-rate levy losses certified under division (A) of this 6400
section in years 2002 to 2016. 6401

(B) BEGINNING IN 2003, BY THE thirty-first DAY OF JANUARY of 6402
EACH YEAR, THE TAX COMMISSIONER SHALL REVIEW THE CERTIFICATION 6403
ORIGINALLY MADE UNDER division (A) of this section of the 6404
fixed-sum levy loss determined under DIVISION (E) OF SECTION 6405
5727.84 OF THE REVISED CODE. IF THE COMMISSIONER DETERMINES THAT A 6406
FIXED-SUM LEVY THAT HAD BEEN SCHEDULED TO BE REIMBURSED IN THE 6407
CURRENT YEAR HAS EXPIRED, A REVISED CERTIFICATION FOR THAT AND ALL 6408
SUBSEQUENT YEARS SHALL BE MADE. 6409

(C) Payments to local taxing units REQUIRED TO BE MADE UNDER 6410
DIVISIONS (A) AND (E) OF THIS SECTION SHALL BE PAID FROM THE LOCAL 6411
GOVERNMENT PROPERTY TAX REPLACEMENT FUND TO THE COUNTY UNDIVIDED 6412
INCOME TAX FUND IN THE PROPER COUNTY TREASURY. One-half OF THE 6413
AMOUNT CERTIFIED UNDER THOSE DIVISIONS SHALL BE PAID ON OR BEFORE 6414

EACH OF THE DAYS PRESCRIBED FOR THE SETTLEMENTS UNDER DIVISIONS 6415
(A) AND (C) OF SECTION 321.24 OF THE REVISED CODE. The COUNTY 6416
TREASURER SHALL DISTRIBUTE AMOUNTS paid UNDER DIVISION (A) OF THIS 6417
SECTION TO THE PROPER LOCAL TAXING UNIT AS IF THEY HAD BEEN LEVIED 6418
AND COLLECTED AS TAXES, AND THE LOCAL TAXING UNIT SHALL APPORTION 6419
THE AMOUNTS SO RECEIVED AMONG ITS FUNDS IN THE SAME PROPORTIONS AS 6420
IF THOSE AMOUNTS HAD BEEN LEVIED AND COLLECTED AS TAXES. Amounts 6421
DISTRIBUTED UNDER DIVISION (E) OF THIS SECTION SHALL BE CREDITED 6422
TO THE GENERAL FUND OF THE LOCAL TAXING UNIT THAT RECEIVES THEM. 6423

(D) By February 5, 2002, THE TAX COMMISSIONER SHALL ESTIMATE 6424
THE AMOUNT OF MONEY IN THE LOCAL GOVERNMENT PROPERTY TAX 6425
REPLACEMENT FUND IN EXCESS OF THE AMOUNT NECESSARY TO MAKE 6426
PAYMENTS IN THAT MONTH UNDER DIVISION (C) OF THIS SECTION. 6427
NOTWITHSTANDING DIVISION (A) OF THIS SECTION, THE TAX COMMISSIONER 6428
MAY PAY ANY LOCAL TAXING UNIT, FROM THOSE EXCESS FUNDS, nine and 6429
four-tenths TIMES THE AMOUNT computed for 2002 UNDER DIVISION 6430
(A)(1) OF THIS SECTION. Apayment made under this division SHALL BE 6431
IN LIEU OF THE PAYMENT TO BE MADE IN FEBRUARY 2002 under division 6432
(A)(1) of this section. A LOCAL TAXING UNIT RECEIVING A PAYMENT 6433
UNDER THIS DIVISION WILL NO LONGER BE ENTITLED TO ANY FURTHER 6434
PAYMENTS UNDER DIVISION (A)(1) OF THIS SECTION. 6435

(E) On the thirty-first day of July of 2002, 2003, 2004, 6436
2005, AND 2006, and on the thirty-first day of January and July of 6437
2007 and each year thereafter, if THE AMOUNT CREDITED TO THE LOCAL 6438
GOVERNMENT PROPERTY TAX REPLACEMENT FUND EXCEEDS THE AMOUNT NEEDED 6439
TO BE DISTRIBUTED FROM THE FUND UNDER DIVISION (A) OF THIS SECTION 6440
IN THE FOLLOWING MONTH, THE DIRECTOR OF BUDGET AND MANAGEMENT 6441
SHALL DISTRIBUTE THE EXCESS TO EACH COUNTY AS FOLLOWS: 6442

(1) One-half SHALL BE DISTRIBUTED TO EACH COUNTY IN 6443
PROPORTION TO EACH COUNTY'S POPULATION. 6444

(2) One-half SHALL BE DISTRIBUTED TO EACH COUNTY IN THE 6445

PROPORTION THAT THE AMOUNTS DETERMINED UNDER DIVISIONS (D) AND (E) 6446
OF SECTION 5727.84 OF THE REVISED CODE FOR ALL TAXING DISTRICTS IN 6447
THE COUNTY IS OF THE TOTAL AMOUNTS SO DETERMINED FOR ALL TAXING 6448
DISTRICTS IN THE STATE. 6449

THE AMOUNTS DISTRIBUTED TO EACH COUNTY UNDER THIS DIVISION 6450
SHALL BE DISTRIBUTED BY THE COUNTY BUDGET COMMISSION TO EACH LOCAL 6451
TAXING UNIT IN THE COUNTY IN THE PROPORTION THAT THE UNIT'S 6452
CURRENT TAXES CHARGED AND PAYABLE ARE OF THE TOTAL CURRENT TAXES 6453
CHARGED AND PAYABLE OF ALL THE LOCAL TAXING UNITS IN THE COUNTY. 6454
AS USED IN THIS DIVISION, "CURRENT TAXES CHARGED AND PAYABLE" 6455
MEANS THE TAXES CHARGED AND PAYABLE AS MOST RECENTLY DETERMINED 6456
FOR LOCAL TAXING UNITS IN THE COUNTY. 6457

IF, IN THE OPINION OF THE DIRECTOR OF BUDGET AND MANAGEMENT, 6458
THE EXCESS REMAINING IN THE LOCAL GOVERNMENT PROPERTY TAX 6459
REPLACEMENT FUND IN ANY YEAR IS NOT SUFFICIENT TO WARRANT 6460
DISTRIBUTION UNDER THIS DIVISION, THE EXCESS SHALL REMAIN TO THE 6461
CREDIT OF THE FUND. 6462

(E) If THE TOTAL AMOUNT IN THE LOCAL GOVERNMENT PROPERTY TAX 6463
REPLACEMENT FUND IS INSUFFICIENT TO MAKE ALL PAYMENTS UNDER 6464
DIVISION (C) OF THIS SECTION, THE PAYMENTS REQUIRED UNDER DIVISION 6465
(A)(2) OF THIS SECTION SHALL BE MADE FIRST IN THEIR ENTIRETY. 6466
AFTER ALL SUCH PAYMENTS ARE MADE, PAYMENTS UNDER DIVISIONS (A)(1) 6467
AND (3) OF THIS SECTION SHALL BE MADE FROM THE BALANCE OF MONEY 6468
AVAILABLE IN THE PROPORTION OF EACH LOCAL TAXING UNIT'S payment 6469
AMOUNT TO THE TOTAL AMOUNT of all payments to be made UNDER 6470
division (A)(2) OF THIS SECTION. 6471

(G) If ALL OR A PART OF THE TERRITORIES OF TWO OR MORE LOCAL 6472
TAXING UNITS ARE MERGED, OR UNINCORPORATED TERRITORY OF A TOWNSHIP 6473
IS ANNEXED BY A MUNICIPAL CORPORATION, THE TAX COMMISSIONER SHALL 6474
ADJUST THE PAYMENTS MADE UNDER THIS SECTION TO EACH OF THE LOCAL 6475
TAXING UNITS IN PROPORTION TO THE TAX VALUE LOSS APPORTIONED TO 6476

THE MERGED OR ANNEXED TERRITORY, OR AS OTHERWISE PROVIDED BY A 6477
WRITTEN AGREEMENT BETWEEN THE LEGISLATIVE AUTHORITIES OF THE LOCAL 6478
TAXING UNITS CERTIFIED TO THE TAX COMMISSIONER NOT LATER THAN THE 6479
FIRST DAY OF JUNE OF THE CALENDAR YEAR IN WHICH THE PAYMENT IS TO 6480
BE MADE. 6481

Sec. 5727.87. (A) AS USED IN THIS SECTION: 6482

(1) "ADMINISTRATIVE FEES" MEANS THE DOLLAR PERCENTAGES 6483
ALLOWED BY THE COUNTY AUDITOR FOR SERVICES OR BY THE COUNTY 6484
TREASURER AS FEES, OR PAID TO THE CREDIT OF THE REAL ESTATE 6485
ASSESSMENT FUND, UNDER DIVISIONS (A) AND (B) OF SECTION 319.54 AND 6486
DIVISION (A) OF SECTION 321.26 OF THE Revised Code. 6487

(2) "ADMINISTRATIVE FEE LOSS" MEANS A COUNTY'S LOSS OF 6488
ADMINISTRATIVE FEES due to its TAX VALUE LOSS, DETERMINED AS 6489
FOLLOWS: 6490

(a) For PURPOSES OF THE DETERMINATION made UNDER DIVISION (B) 6491
OF THIS SECTION IN THE YEARS 2002 THROUGH 2006, THE ADMINISTRATIVE 6492
FEE LOSS SHALL BE computed BY MULTIPLYING THE AMOUNTS DETERMINED 6493
FOR ALL TAXING DISTRICTS IN THE COUNTY under DIVISIONS (D) AND (E) 6494
OF SECTION 5727.84 OF THE REVISED CODE BY NINE THOUSAND SIX 6495
HUNDRED FIFTY-NINE TEN-THOUSANDTHS OF A PER cent, IF TOTAL TAXES 6496
COLLECTED IN THE COUNTY IN TAX YEAR 1998 exceeded one hundred 6497
fifty million dollars, OR ONE AND ONE THOUSAND ONE HUNDRED 6498
FIFTY-NINE TEN-THOUSANDTHS OF A PER CENT, IF TOTAL TAXES COLLECTED 6499
IN THE COUNTY IN TAX YEAR 1998 WERE one hundred fifty million 6500
dollars or less; 6501

(b) For PURPOSES OF THE DETERMINATION UNDER DIVISION (B) OF 6502
THIS SECTION IN THE YEARS 2007 THROUGH 2011, THE ADMINISTRATIVE 6503
FEE LOSS SHALL BE DETERMINED BY SUBTRACTING FROM THE DOLLAR AMOUNT 6504
OF ADMINISTRATIVE FEES COLLECTED IN THE COUNTY IN TAX YEAR 1998, 6505
THE DOLLAR AMOUNT OF ADMINISTRATIVE FEES COLLECTED IN THE COUNTY 6506

IN THE CURRENT CALENDAR YEAR. 6507

(B) Not LATER THAN the first day of JUNE of 2002 THROUGH 6508
2011, THE COUNTY AUDITOR SHALL DETERMINE THE ADMINISTRATIVE FEE 6509
LOSS FOR THE COUNTY AND CERTIFY IT TO THE COUNTY BUDGET 6510
COMMISSION. NOTWITHSTANDING DIVISIONS (C), (D), AND (E) OF SECTION 6511
5727.85 AND DIVISION (C) OF SECTION 5727.86 OF THE REVISED CODE, 6512
PRIOR TO DISTRIBUTION BY THE COUNTY TREASURER OF THE PAYMENTS 6513
PROVIDED UNDER THOSE DIVISIONS, THE COUNTY BUDGET COMMISSION SHALL 6514
DEDUCT FROM THOSE PAYMENTS THE AMOUNT OF THE ADMINISTRATIVE FEE 6515
LOSS CERTIFIED BY THE COUNTY AUDITOR, AS FOLLOWS: 6516

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(1) Seventy PER CENT OF THE ADMINISTRATIVE FEE LOSS SHALL BE 6518
DEDUCTED FROM THE PAYMENTS PROVIDED UNDER DIVISIONS (C), (D), AND 6519
(E) OF SECTION 5727.85 OF THE REVISED CODE. 6520

(2) Thirty PER CENT OF THE ADMINISTRATIVE FEE LOSS SHALL BE 6521
DEDUCTED FROM THE PAYMENTS PROVIDED UNDER DIVISION (C) OF SECTION 6522
5727.86 OF THE REVISED CODE. 6523

(C) On OR BEFORE EACH OF THE DAYS PRESCRIBED FOR THE 6524
SETTLEMENTS UNDER DIVISIONS (A) AND (C) OF SECTION 321.24 OF THE 6525
REVISED CODE IN the YEARS 2002 THROUGH 2011, THE COUNTY BUDGET 6526
COMMISSION SHALL PAY ONE-HALF OF THE AMOUNT OF THE ADMINISTRATIVE 6527
FEE LOSS TO THE COUNTY AUDITOR, COUNTY TREASURER, OR REAL ESTATE 6528
ASSESSMENT FUND AS IF THE AMOUNT HAD BEEN ALLOWED AS 6529
ADMINISTRATIVE FEES, AND SHALL DEPOSIT THE AMOUNT IN THE SAME 6530
FUNDS AS IF ALLOWED AS ADMINISTRATIVE FEES. 6531

AFTER PAYMENT OF THE ADMINISTRATIVE FEE LOSS ON OR BEFORE 6532
AUGUST 10, 2011, ALL PAYMENTS UNDER THIS SECTION SHALL CEASE. 6533

Sec. 5727.88. The tax commissioner shall administer sections 6534
5727.80 to 5727.95 of the Revised Code and may adopt such rules as 6535
are necessary to administer those sections. Upon request of the 6536

tax commissioner, the public utilities commission shall assist the 6537
tax commissioner by providing information regarding any electric 6538
distribution company that is subject to regulation by the 6539
commission. 6540

Sec. 5727.89. (A) The tax commissioner may make an 6541
assessment, based on any information in the commissioner's 6542
possession, against any electric distribution company, 6543
self-assessing purchaser, or qualified end user that fails to file 6544
a return or pay any tax, interest, or additional charge as 6545
required by sections 5727.80 to 5727.95 of the Revised Code. 6546

When information in the possession of the tax commissioner 6547
indicates that a person liable for the tax imposed by section 6548
5727.81 of the Revised Code has not paid the full amount of tax 6549
due, the commissioner may audit a representative sample of the 6550
person's business and may issue an assessment based on the audit. 6551
The commissioner shall give the person assessed written notice of 6552
the assessment by personal service or certified mail. 6553

The tax commissioner may issue an assessment for which the 6554
tax imposed by section 5727.81 of the Revised Code was due and 6555
unpaid on the date the person was informed by an agent of the tax 6556
commissioner of an investigation or audit of the person. Any 6557
payment of the tax for the period covered by the assessment, after 6558
the person is so informed, shall be credited against the 6559
assessment. 6560

A penalty of fifteen per cent shall be added to all amounts 6561
assessed under this section. The commissioner may adopt rules 6562
providing for the remission of penalties. 6563

(B) Unless the party assessed files with the tax commissioner 6564
within thirty days after service of the notice of assessment, 6565
either personally or by certified mail, a written petition for 6566

reassessment signed by the party assessed or the party's 6567
authorized agent having knowledge of the facts, the assessment is 6568
final and the amount of the assessment is due and payable from the 6569
party assessed to the treasurer of state. The petition shall 6570
indicate the objections of the party assessed, but additional 6571
objections may be raised in writing prior to the date shown on the 6572
final determination of the tax commissioner. The commissioner 6573
shall grant the petitioner a hearing on the petition, unless 6574
waived by the petitioner. 6575

(C) The commissioner may make any correction to the 6576
assessment that the commissioner finds proper and shall issue a 6577
final determination thereon. The commissioner shall serve a copy 6578
of the final determination on the petitioner either by personal 6579
service or by certified mail, and the commissioner's decision in 6580
the matter is final, subject to appeal under section 5717.02 of 6581
the Revised Code. 6582

(D) After an assessment becomes final, if any portion of the 6583
assessment, including accrued interest, remains unpaid, a 6584
certified copy of the commissioner's entry making the assessment 6585
final may be filed in the office of the clerk of the court of 6586
common pleas in the county in which the party assessed resides or 6587
in which the party's business is conducted. If the party assessed 6588
maintains no place of business in this state and is not a resident 6589
of this state, the certified copy of the entry may be filed in the 6590
office of the clerk of the court of common pleas of Franklin 6591
county. 6592

The clerk, immediately upon the filing of the entry, shall 6593
enter a judgment for the state against the person assessed in the 6594
amount shown on the entry. The judgment may be filed by the clerk 6595
in a loose-leaf book entitled "special judgments for the 6596
kilowatt-hour tax," and shall have the same effect as other 6597
judgments. Execution shall issue upon the judgment at the request 6598

of the tax commissioner, and all laws applicable to sales on 6599
execution shall apply to sales made under the judgment. 6600

The portion of the assessment not paid within thirty days 6601
after the day the assessment was issued shall bear interest at the 6602
rate per annum prescribed by section 5703.47 of the Revised Code 6603
from the day the tax commissioner issues the assessment until the 6604
day the assessment is paid. Interest shall be paid in the same 6605
manner as the tax and may be collected by the issuance of an 6606
assessment under this section. 6607

(E) If the tax commissioner believes that collection of the 6608
tax imposed by section 5727.81 of the Revised Code will be 6609
jeopardized unless proceedings to collect or secure collection of 6610
the tax are instituted without delay, the commissioner may issue a 6611
jeopardy assessment against the electric distribution company, 6612
self-assessing purchaser, or qualified end user liable for the 6613
tax. Upon issuance of the jeopardy assessment, the commissioner 6614
immediately shall file an entry with the clerk of the court of 6615
common pleas in the manner prescribed by division (D) of this 6616
section. Notice of the jeopardy assessment shall be served on the 6617
party assessed or the party's legal representative within five 6618
days of the filing of the entry with the clerk. The total amount 6619
assessed is immediately due and payable, unless the party assessed 6620
files a petition for reassessment in accordance with division (B) 6621
of this section and provides security in a form satisfactory to 6622
the commissioner and in an amount sufficient to satisfy the unpaid 6623
balance of the assessment. Full or partial payment of the 6624
assessment does not prejudice the commissioner's consideration of 6625
the petition for reassessment. 6626

(E) All money collected by the tax commissioner under this 6627
section shall be paid to the treasurer of state, and when paid 6628
shall be considered as revenue arising from the tax imposed by 6629
section 5727.81 of the Revised Code. 6630

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 or self-assessing purchaser 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 6661
or fee administered by the tax commissioner that is paid to the 6662
state or any charge, penalty, or interest arising from such a tax 6663
or fee, the amount refundable may be applied in satisfaction of 6664
the debt. If the amount refundable is less than the amount of the 6665
debt, it may be applied in partial satisfaction of the debt. If 6666
the amount refundable is greater than the amount of the debt, the 6667
amount remaining after satisfaction of the debt shall be refunded. 6668
If the electric distribution company has more than one such debt, 6669
any debt subject to section 5739.33 or division (G) of section 6670
5747.07 of the Revised Code shall be satisfied first. This section 6671
applies only to debts that have become final. 6672

(C) Any electric distribution company that can substantiate 6673
to the tax commissioner that the tax imposed by section 5727.81 of 6674
the Revised Code was paid on electricity distributed via wires and 6675
consumed at a location outside of this state may claim a refund in 6676
the manner and within the time period prescribed in division (A) 6677
of this section. 6678

(D) Before a refund is issued under this section, an electric 6679
distribution company shall certify, as prescribed by the tax 6680
commissioner, that it either did not include the tax imposed by 6681
section 5727.81 of the Revised Code in its distribution charge to 6682
an electric customer upon which a refund of the tax is claimed, or 6683
it has refunded or credited to the electric customer the excess 6684
distribution charge related to the tax that was erroneously 6685
included in the electric customer's distribution charge. 6686

Sec. 5727.92. Every person liable for the tax imposed by 6687
section 5727.81 of the Revised Code shall keep complete and 6688
accurate records of all electric distributions and other records 6689
as required by the tax commissioner. The records shall be 6690
preserved for four years after the return for the taxes to which 6691

the records pertain is due or filed, whichever is later. The 6692
records shall be available for inspection by the tax commissioner 6693
or the commissioner's authorized agent, upon request of the 6694
commissioner or such agent. 6695

Sec. 5727.93. (A) No person shall distribute electricity to a 6696
meter of an end user in this state who is not registered with the 6697
tax commissioner as an electric distribution company. 6698

(B) Each person required to register under division (A) of 6699
this section shall register prior to distributing electricity to a 6700
meter of an end user in this state. The tax commissioner shall 6701
prescribe the form of the registration application. The 6702
commissioner shall assign an identification number to each 6703
registration and notify the registrant of that number. The 6704
registration shall remain in effect until canceled in writing by 6705
the registrant upon the cessation of distributing electricity to a 6706
meter of an end user in this state or until such registration is 6707
denied, revoked, or canceled by the commissioner. A registration 6708
may be revoked or canceled by the tax commissioner as provided by 6709
Chapter 119. of the Revised Code, for failure of an electric 6710
distribution company to pay the tax imposed by section 5727.81 of 6711
the Revised Code or to comply with sections 5727.80 to 5727.95 of 6712
the Revised Code. An electric distribution company whose 6713
registration is denied may petition for a hearing, in accordance 6714
with the procedures set forth in divisions (B) and (C) of section 6715
5727.89 of the Revised Code, not later than thirty days after 6716
receiving the denial, and the final determination is subject to 6717
appeal under section 5717.02 of the Revised Code. 6718

(C) The tax commissioner shall maintain a list of the 6719
electric distribution companies registered under this section. The 6720
list shall contain the name and address of each company registered 6721
by the commissioner. The list and subsequent updates of it shall 6722

be open to public inspection. 6723

Sec. 5727.94. Each electric distribution company required to 6724
pay the tax imposed by section 5727.81 of the Revised Code shall 6725
provide to its customers in this state the statement required by 6726
section 4933.33 of the Revised Code. 6727

Sec. 5727.95. (A) No electric distribution company or 6728
self-assessing purchaser shall fail to file any return or report 6729
required to be filed pursuant to section 5727.82 of the Revised 6730
Code, or file or cause to be filed any incomplete, false, or 6731
fraudulent return, report, or statement, or aid or abet another in 6732
the filing of any false or fraudulent return, report, or 6733
statement. 6734

(B) No person shall distribute electricity to a meter of an 6735
end user in this state without holding a valid registration issued 6736
under section 5727.93 of the Revised Code. 6737

Sec. 5727.99. (A) Whoever violates section 5727.55 of the 6738
Revised Code shall be ~~fines~~ fined not less than one hundred nor 6739
more than one thousand dollars. 6740

(B) Whoever violates section 5727.71 of the Revised Code 6741
shall be fined not more than five hundred dollars and imprisoned 6742
not more than thirty days. 6743

(C) Whoever violates section 5727.72 ~~or 5727.73~~ of the 6744
Revised Code shall be fined not more than five hundred dollars or 6745
imprisoned not more than thirty days, or both. 6746

(D) Whoever violates sections 5727.80 to 5727.83, or sections 6747
5727.88 to 5727.95 of the Revised Code or any rule adopted by the 6748
tax commissioner under those sections, is guilty of a misdemeanor 6749
of the first degree on the first offense; on each subsequent 6750
offense, the person is guilty of a felony of the fourth degree. 6751

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Sec. 5733.04. As used in this chapter:

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(A) "Issued and outstanding shares of stock" applies to nonprofit corporations, as provided in section 5733.01 of the Revised Code, and includes, but is not limited to, membership certificates and other instruments evidencing ownership of an interest in such nonprofit corporations, and with respect to a financial institution ~~which~~ that does not have capital stock, "issued and outstanding shares of stock" includes, but is not limited to, ownership interests of depositors in the capital employed in such an institution.

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(B) "Taxpayer" means a corporation subject to the tax imposed by section 5733.06 of the Revised Code.

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(C) "Resident" means a corporation organized under the laws of this state.

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(D) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

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(E) "Taxable year" means the period prescribed by division (A) of section 5733.031 of the Revised Code upon the net income of which the value of the taxpayer's issued and outstanding shares of stock is determined under division (B) of section 5733.05 of the Revised Code or the period prescribed by division (A) of section 5733.031 of the Revised Code that immediately precedes the date as of which the total value of the corporation is determined under division (A) or (C) of section 5733.05 of the Revised Code.

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(F) "Tax year" means the calendar year in and for which the tax imposed by section 5733.06 of the Revised Code is required to be paid.

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(G) "Internal Revenue Code" means the "Internal Revenue Code

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of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 6782

(H) "Federal income tax" means the income tax imposed by the 6783
Internal Revenue Code. 6784

(I) Except as provided in section 5733.058 of the Revised 6785
Code, "net income" means the taxpayer's taxable income before 6786
operating loss deduction and special deductions, as required to be 6787
reported for the taxpayer's taxable year under the Internal 6788
Revenue Code, subject to the following adjustments: 6789

(1)(a) Deduct any net operating loss incurred in any taxable 6790
years ending in 1971 or thereafter but exclusive of any net 6791
operating loss incurred in taxable years ending prior to January 6792
1, 1971. This deduction shall not be allowed in any tax year 6793
commencing before December 31, 1973, but shall be carried over and 6794
allowed in tax years commencing after December 31, 1973, until 6795
fully utilized in the next succeeding taxable year or years in 6796
which the taxpayer has net income, but in no case for more than 6797
the designated carryover period as described in division (I)(1)(b) 6798
of this section. The amount of such net operating loss, as 6799
determined under the allocation and apportionment provisions of 6800
section 5733.051 and division (B) of section 5733.05 of the 6801
Revised Code for the year in which the net operating loss occurs, 6802
shall be deducted from net income, as determined under the 6803
allocation and apportionment provisions of section 5733.051 and 6804
division (B) of section 5733.05 of the Revised Code, to the extent 6805
necessary to reduce net income to zero with the remaining unused 6806
portion of the deduction, if any, carried forward to the remaining 6807
years of the designated carryover period as described in division 6808
(I)(1)(b) of this section, or until fully utilized, whichever 6809
occurs first. 6810

(b) For losses incurred in taxable years ending on or before 6811
December 31, 1981, the designated carryover period shall be the 6812

five consecutive taxable years after the taxable year in which the
net operating loss occurred. For losses incurred in taxable years
ending on or after January 1, 1982, the designated carryover
period shall be the fifteen consecutive taxable years after the
taxable year in which the net operating loss occurs.

(c) The tax commissioner may require a taxpayer to furnish
any information necessary to support a claim for deduction under
division (I)(1)(a) of this section and no deduction shall be
allowed unless the information is furnished.

(2) Deduct any amount included in net income by application
of section 78 or 951 of the Internal Revenue Code, amounts
received for royalties, technical or other services derived from
sources outside the United States, and dividends received from a
subsidiary, associate, or affiliated corporation that neither
transacts any substantial portion of its business nor regularly
maintains any substantial portion of its assets within the United
States. For purposes of determining net foreign source income
deductible under division (I)(2) of this section, the amount of
gross income from all such sources other than income derived by
application of section 78 or 951 of the Internal Revenue Code
shall be reduced by:

(a) The amount of any reimbursed expenses for personal
services performed by employees of the taxpayer for the
subsidiary, associate, or affiliated corporation;

(b) Ten per cent of the amount of royalty income and
technical assistance fees;

(c) Fifteen per cent of the amount of dividends and all other
income.

The amounts described in divisions (I)(2)(a) to (c) of this
section are deemed to be the expenses attributable to the
production of deductible foreign source income unless the taxpayer

shows, by clear and convincing evidence, less actual expenses, or 6844
the tax commissioner shows, by clear and convincing evidence, more 6845
actual expenses. 6846

(3) Add any loss or deduct any gain resulting from the sale, 6847
exchange, or other disposition of a capital asset, or an asset 6848
described in section 1231 of the Internal Revenue Code, to the 6849
extent that such loss or gain occurred prior to the first taxable 6850
year on which the tax provided for in section 5733.06 of the 6851
Revised Code is computed on the corporation's net income. For 6852
purposes of division (I)(3) of this section, the amount of the 6853
prior loss or gain shall be measured by the difference between the 6854
original cost or other basis of the asset and the fair market 6855
value as of the beginning of the first taxable year on which the 6856
tax provided for in section 5733.06 of the Revised Code is 6857
computed on the corporation's net income. At the option of the 6858
taxpayer, the amount of the prior loss or gain may be a percentage 6859
of the gain or loss, which percentage shall be determined by 6860
multiplying the gain or loss by a fraction, the numerator of which 6861
is the number of months from the acquisition of the asset to the 6862
beginning of the first taxable year on which the fee provided in 6863
section 5733.06 of the Revised Code is computed on the 6864
corporation's net income, and the denominator of which is the 6865
number of months from the acquisition of the asset to the sale, 6866
exchange, or other disposition of the asset. 6867

(4) Deduct the dividend received deduction provided by 6868
section 243 of the Internal Revenue Code. 6869

(5) Deduct any interest or interest equivalent on public 6870
obligations and purchase obligations to the extent included in 6871
federal taxable income. As used in divisions (I)(5) and (6) of 6872
this section, "public obligations," "purchase obligations," and 6873
"interest or interest equivalent" have the same meanings as in 6874
section 5709.76 of the Revised Code. 6875

(6) Add any loss or deduct any gain resulting from the sale, 6876
exchange, or other disposition of public obligations to the extent 6877
included in federal taxable income. 6878

(7) To the extent not otherwise allowed, deduct any dividends 6879
or distributions received by a taxpayer from a public utility, 6880
excluding an electric company, if the taxpayer owns at least 6881
eighty per cent of the issued and outstanding common stock of the 6882
public utility. As used in division (I)(7) of this section, 6883
"public utility" ~~or "utility"~~ means a public utility as defined in 6884
Chapter 5727. of the Revised Code, whether or not the public 6885
utility is doing business in the state. 6886

(8) To the extent not otherwise allowed, deduct any dividends 6887
received by a taxpayer from an insurance company, if the taxpayer 6888
owns at least eighty per cent of the issued and outstanding common 6889
stock of the insurance company. As used in division (I)(8) of this 6890
section, "insurance company" means an insurance company ~~which~~ that 6891
is taxable under Chapter 5725. or 5729. of the Revised Code. 6892
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(9) Deduct expenditures for modifying existing buildings or 6894
structures to meet American national standards institute standard 6895
A-117.1-1961 (R-1971), as amended; provided, that no deduction 6896
shall be allowed to the extent that such deduction is not 6897
permitted under federal law or under rules of the tax 6898
commissioner. Those deductions as are allowed may be taken over a 6899
period of five years. The tax commissioner shall adopt rules under 6900
Chapter 119. of the Revised Code establishing reasonable 6901
limitations on the extent that expenditures for modifying existing 6902
buildings or structures are attributable to the purpose of making 6903
the buildings or structures accessible to and usable by physically 6904
handicapped persons. 6905

(10) Deduct the amount of wages and salaries, if any, not 6906

otherwise allowable as a deduction but that would have been 6907
allowable as a deduction in computing federal taxable income 6908
before operating loss deduction and special deductions for the 6909
taxable year, had the targeted jobs credit allowed and determined 6910
under sections 38, 51, and 52 of the Internal Revenue Code not 6911
been in effect. 6912

(11) Deduct net interest income on obligations of the United 6913
States and its territories and possessions or of any authority, 6914
commission, or instrumentality of the United States to the extent 6915
the laws of the United States prohibit inclusion of the net 6916
interest for purposes of determining the value of the taxpayer's 6917
issued and outstanding shares of stock under division (B) of 6918
section 5733.05 of the Revised Code. As used in division (I)(11) 6919
of this section, "net interest" means interest net of any expenses 6920
taken on the federal income tax return that would not have been 6921
allowed under section 265 of the Internal Revenue Code if the 6922
interest were exempt from federal income tax. 6923

(12)(a) Except as set forth in division (I)(12)(d) of this 6924
section, to the extent not included in computing the taxpayer's 6925
federal taxable income before operating loss deduction and special 6926
deductions, add gains and deduct losses from direct or indirect 6927
sales, exchanges, or other dispositions, made by a related entity 6928
who is not a taxpayer, of the taxpayer's indirect, beneficial, or 6929
constructive investment in the stock or debt of another entity, 6930
unless the gain or loss has been included in computing the federal 6931
taxable income before operating loss deduction and special 6932
deductions of another taxpayer with a more closely related 6933
investment in the stock or debt of the other entity. The amount of 6934
gain added or loss deducted shall not exceed the product obtained 6935
by multiplying such gain or loss by the taxpayer's proportionate 6936
share, directly, indirectly, beneficially, or constructively, of 6937
the outstanding stock of the related entity immediately prior to 6938

the direct or indirect sale, exchange, or other disposition. 6939
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(b) Except as set forth in division (I)(12)(e) of this 6941
section, to the extent not included in computing the taxpayer's 6942
federal taxable income before operating loss deduction and special 6943
deductions, add gains and deduct losses from direct or indirect 6944
sales, exchanges, or other dispositions made by a related entity 6945
who is not a taxpayer, of intangible property other than stock, 6946
securities, and debt, if such property was owned, or used in whole 6947
or in part, at any time prior to or at the time of the sale, 6948
exchange, or disposition by either the taxpayer or by a related 6949
entity that was a taxpayer at any time during the related entity's 6950
ownership or use of such property, unless the gain or loss has 6951
been included in computing the federal taxable income before 6952
operating loss deduction and special deductions of another 6953
taxpayer with a more closely related ownership or use of such 6954
intangible property. The amount of gain added or loss deducted 6955
shall not exceed the product obtained by multiplying such gain or 6956
loss by the taxpayer's proportionate share, directly, indirectly, 6957
beneficially, or constructively, of the outstanding stock of the 6958
related entity immediately prior to the direct or indirect sale, 6959
exchange, or other disposition. 6960

(c) As used in division (I)(12) of this section, "related 6961
entity" means those entities described in divisions (I)(12)(c)(i) 6962
to (iii) of this section: 6963

(i) An individual stockholder, or a member of the 6964
stockholder's family enumerated in section 318 of the Internal 6965
Revenue Code, if the stockholder and the members of the 6966
stockholder's family own, directly, indirectly, beneficially, or 6967
constructively, in the aggregate, at least fifty per cent of the 6968
value of the taxpayer's outstanding stock; 6969

(ii) A stockholder, or a stockholder's partnership, estate, 6970

trust, or corporation, if the stockholder and the stockholder's 6971
partnerships, estates, trusts, and corporations own directly, 6972
indirectly, beneficially, or constructively, in the aggregate, at 6973
least fifty per cent of the value of the taxpayer's outstanding 6974
stock; 6975

(iii) A corporation, or a party related to the corporation in 6976
a manner that would require an attribution of stock from the 6977
corporation to the party or from the party to the corporation 6978
under division (I)(12)(c)(iv) of this section, if the taxpayer 6979
owns, directly, indirectly, beneficially, or constructively, at 6980
least fifty per cent of the value of the corporation's outstanding 6981
stock. 6982

(iv) The attribution rules of section 318 of the Internal 6983
Revenue Code apply for purposes of determining whether the 6984
ownership requirements in divisions (I)(12)(c)(i) to (iii) of this 6985
section have been met. 6986

(d) For purposes of the adjustments required by division 6987
(I)(12)(a) of this section, the term "investment in the stock or 6988
debt of another entity" means only those investments where the 6989
taxpayer and the taxpayer's related entities directly, indirectly, 6990
beneficially, or constructively own, in the aggregate, at any time 6991
during the twenty-four month period commencing one year prior to 6992
the direct or indirect sale, exchange, or other disposition of 6993
such investment at least fifty per cent or more of the value of 6994
either the outstanding stock or such debt of such other entity. 6995

(e) For purposes of the adjustments required by division 6996
(I)(12)(b) of this section, the term "related entity" excludes all 6997
of the following: 6998

(i) Foreign corporations as defined in section 7701 of the 6999
Internal Revenue Code; 7000

(ii) Foreign partnerships as defined in section 7701 of the 7001

Internal Revenue Code; 7002

(iii) Corporations, partnerships, estates, and trusts created 7003
or organized in or under the laws of the Commonwealth of Puerto 7004
Rico or any possession of the United States; 7005

(iv) Foreign estates and foreign trusts as defined in section 7006
7701 of the Internal Revenue Code. 7007

The exclusions described in divisions (I)(12)(e)(i) to (iv) 7008
of this section do not apply if the corporation, partnership, 7009
estate, or trust is described in any one of divisions (C)(1) to 7010
(5) of section 5733.042 of the Revised Code. 7011

(f) Nothing in division (I)(12) of this section shall require 7012
or permit a taxpayer to add any gains or deduct any losses 7013
described in divisions (I)(12)(f)(i) and (ii) of this section: 7014

(i) Gains or losses recognized for federal income tax 7015
purposes by an individual, estate, or trust without regard to the 7016
attribution rules described in division (I)(12)(c) of this 7017
section, ~~and~~; 7018

(ii) A related entity's gains or losses described in division 7019
(I)(12)(b) if the taxpayer's ownership of or use of such 7020
intangible property was limited to a period not exceeding nine 7021
months and was attributable to a transaction or a series of 7022
transactions executed in accordance with the election or elections 7023
made by the taxpayer or a related entity pursuant to section 338 7024
of the Internal Revenue Code. 7025

(13) Any adjustment required by section 5733.042 of the 7026
Revised Code. 7027

(14) Add any amount claimed as a credit under section 7028
5733.0611 of the Revised Code to the extent that such amount 7029
satisfies either of the following: 7030

(a) It was deducted or excluded from the computation of the 7031

corporation's taxable income before operating loss deduction and 7032
special deductions as required to be reported for the 7033
corporation's taxable year under the Internal Revenue Code; 7034

(b) It resulted in a reduction of the corporation's taxable 7035
income before operating loss deduction and special deductions as 7036
required to be reported for any of the corporation's taxable years 7037
under the Internal Revenue Code. 7038

(15) Deduct the amount contributed by the taxpayer to an 7039
individual development account program established by a county 7040
department of human services pursuant to sections 329.11 to 329.14 7041
of the Revised Code for the purpose of matching funds deposited by 7042
program participants. On request of the tax commissioner, the 7043
taxpayer shall provide any information that, in the tax 7044
commissioner's opinion, is necessary to establish the amount 7045
deducted under division (I)(15) of this section. 7046

(16) In the case of an electric company that was subject to 7047
the tax imposed by section 5727.30 of the Revised Code with 7048
respect to its gross receipts received during the period of May 1, 7049
2000, through May 1, 2001, the allowance for depreciation and the 7050
computation of gain or loss on the sale or other disposition of 7051
all assets placed in service prior to January 1, 2002, shall be 7052
made with reference to the Ohio tax basis of those assets in 7053
accordance with rules prescribed by the tax commissioner. For the 7054
purpose of this division, the "Ohio tax basis" means the adjusted 7055
book basis less the adjusted tax basis of the assets as recorded 7056
on the company's books of accounts as of December 31, 2001. The 7057
Ohio tax basis shall be amortized over a period of forty years as 7058
follows: 7059

<u>In years 1 to 10</u>	<u>1% per year</u>	7060
<u>In years 11 to 20</u>	<u>2% per year</u>	7061
<u>In years 21 to 30</u>	<u>3% per year</u>	7062
<u>In years 31 to 40</u>	<u>4% per year</u>	7063

The adjustments under this section shall continue to apply to 7064
assets transferred under a reorganization within the meaning of 7065
section 368A of the Internal Revenue Code, or on the organization 7066
of a corporation principally in consideration for the issuance of 7067
its stock. 7068

(J) Any term used in this chapter has the same meaning as 7069
when used in comparable context in the laws of the United States 7070
relating to federal income taxes unless a different meaning is 7071
clearly required. Any reference in this chapter to the Internal 7072
Revenue Code includes other laws of the United States relating to 7073
federal income taxes. 7074

(K) "Financial institution" has the meaning given by section 7075
5725.01 of the Revised Code but does not include a production 7076
credit association as described in 85 Stat. 597, 12 U.S.C.A. 2091. 7077

(L)(1) A "qualifying holding company" is any corporation 7078
satisfying all of the following requirements: 7079

(a) Subject to divisions (L)(2) and (3) of this section, the 7080
net book value of the corporation's intangible assets is greater 7081
than or equal to ninety per cent of the net book value of all of 7082
its assets and at least fifty per cent of the net book value of 7083
all of its assets represents direct or indirect investments in the 7084
equity of, loans and advances to, and accounts receivable due from 7085
related members; 7086

(b) At least ninety per cent of the corporation's gross 7087
income for the taxable year is attributable to the following: 7088

(i) The maintenance, management, ownership, acquisition, use, 7089
and disposition of its intangible property, its aircraft the use 7090
of which is not subject to regulation under 14 C.F.R. part 121 or 7091
part 135, and any real property described in division (L)(2)(c) of 7092
this section; 7093

(ii) The collection and distribution of income from such property. 7094
7095

(c) The corporation is not a financial institution on the last day of the taxable year ending prior to the first day of the tax year; 7096
7097
7098

(d) The corporation's related members make a good faith and reasonable effort to make timely and fully the adjustments required by division (C)(2) of section 5733.05 of the Revised Code and to pay timely and fully all uncontested taxes, interest, penalties, and other fees and charges imposed under this chapter; 7099
7100
7101
7102
7103

(e) Subject to division (L)(4) of this section, the corporation elects to be treated as a qualifying holding company for the tax year. 7104
7105
7106

A corporation otherwise satisfying divisions (L)(1)(a) to (e) of this section that does not elect to be a qualifying holding company is not a qualifying holding company for the purposes of this chapter. 7107
7108
7109
7110

(2)(a)(i) For purposes of making the ninety per cent computation under division (L)(1)(a) of this section, the net book value of the corporation's assets shall not include the net book value of aircraft or real property described in division (L)(1)(b)(i) of this section. 7111
7112
7113
7114
7115

(ii) For purposes of making the fifty per cent computation under division (L)(1)(a) of this section, the net book value of assets shall include the net book value of aircraft or real property described in division (L)(1)(b)(i) of this section. 7116
7117
7118
7119

(b)(i) As used in division (L) of this section, "intangible asset" includes, but is not limited to, the corporation's direct interest in each pass-through entity only if at all times during the corporation's taxable year ending prior to the first day of 7120
7121
7122
7123

the tax year the corporation's and the corporation's related 7124
members' combined direct and indirect interests in the capital or 7125
profits of such pass-through entity do not exceed fifty per cent. 7126
If the corporation's interest in the pass-through entity is an 7127
intangible asset for that taxable year, then the distributive 7128
share of any income from the pass-through entity shall be income 7129
from an intangible asset for that taxable year. 7130

(ii) If a corporation's and the corporation's related 7131
members' combined direct and indirect interests in the capital or 7132
profits of a pass-through entity exceed fifty per cent at any time 7133
during the corporation's taxable year ending prior to the first 7134
day of the tax year, "intangible asset" does not include the 7135
corporation's direct interest in the pass-through entity, and the 7136
corporation shall include in its assets its proportionate share of 7137
the assets of any such pass-through entity and shall include in 7138
its gross income its distributive share of the gross income of 7139
such pass-through entity in the same form as was earned by the 7140
pass-through entity. 7141

(iii) A pass-through entity's direct or indirect 7142
proportionate share of any other pass-through entity's assets 7143
shall be included for the purpose of computing the corporation's 7144
proportionate share of the pass-through entity's assets under 7145
division (L)(2)(b)(ii) of this section, and such pass-through 7146
entity's distributive share of any other pass-through entity's 7147
gross income shall be included for purposes of computing the 7148
corporation's distributive share of the pass-through entity's 7149
gross income under division (L)(2)(b)(ii) of this section. 7150

(c) For the purposes of divisions (L)(1)(b)(i), (1)(b)(ii), 7151
(2)(a)(i), and (2)(a)(ii) of this section, real property is 7152
described in division (L)(2)(c) of this section only if all of the 7153
following conditions are present at all times during the taxable 7154
year ending prior to the first day of the tax year: 7155

(i) The real property serves as the headquarters of the 7156
corporation's trade or business, or is the place from which the 7157
corporation's trade or business is principally managed or 7158
directed; 7159

(ii) Not more than ten per cent of the value of the real 7160
property and not more than ten per cent of the square footage of 7161
the building or buildings that are part of the real property is 7162
used, made available, or occupied for the purpose of providing, 7163
acquiring, transferring, selling, or disposing of tangible 7164
property or services in the normal course of business to persons 7165
other than related members, the corporation's employees and their 7166
families, and such related members' employees and their families. 7167

(d) As used in division (L) of this section, "related member" 7168
has the same meaning as in division (A)(6) of section 5733.042 of 7169
the Revised Code without regard to division (B) of that section. 7170
7171

(3) The percentages described in division (L)(1)(a) of this 7172
section shall be equal to the quarterly average of those 7173
percentages as calculated during the corporation's taxable year 7174
ending prior to the first day of the tax year. 7175

(4) With respect to the election described in division 7176
(L)(1)(e) of this section: 7177

(a) The election need not accompany a timely filed report; 7178

(b) The election need not accompany the report; rather, the 7179
election may accompany a subsequently filed but timely application 7180
for refund and timely amended report, or a subsequently filed but 7181
timely petition for reassessment; 7182

(c) The election is not irrevocable; 7183

(d) The election applies only to the tax year specified by 7184
the corporation; 7185

(e) The corporation's related members comply with division 7186
(L)(1)(d) of this section. 7187

Nothing in division (L)(4) of this section shall be construed 7188
to extend any statute of limitations set forth in this chapter. 7189

(M) "Qualifying controlled group" means two or more 7190
corporations that satisfy the ownership and control requirements 7191
of division (A) of section 5733.052 of the Revised Code. 7192

(N) "Limited liability company" means any limited liability 7193
company formed under Chapter 1705. of the Revised Code or under 7194
the laws of any other state. 7195

(O) "Pass-through entity" means a corporation that has made 7196
an election under subchapter S of Chapter 1 of Subtitle A of the 7197
Internal Revenue Code for its taxable year under that code, or a 7198
partnership, limited liability company, or any other person, other 7199
than an individual, trust, or estate, if the partnership, limited 7200
liability company, or other person is not classified for federal 7201
income tax purposes as an association taxed as a corporation. 7202

(P) "Electric company" and "combined company" have the same 7203
meanings as in section 5727.01 of the Revised Code. 7204

Sec. 5733.05. As used in this section, "qualified research" 7205
means laboratory research, experimental research, and other 7206
similar types of research; research in developing or improving a 7207
product; or research in developing or improving the means of 7208
producing a product. It does not include market research, consumer 7209
surveys, efficiency surveys, management studies, ordinary testing 7210
or inspection of materials or products for quality control, 7211
historical research, or literary research. "Product" as used in 7212
this paragraph does not include services or intangible property. 7213
7214

The annual report determines the value of the issued and 7215

outstanding shares of stock of the taxpayer, which under division 7216
(A) or divisions (B) and (C) of this section is the base or 7217
measure of the franchise tax liability. Such determination shall 7218
be made as of the date shown by the report to have been the 7219
beginning of the corporation's annual accounting period that 7220
includes the first day of January of the tax year. For the 7221
purposes of this chapter, the value of the issued and outstanding 7222
shares of stock of any corporation that is a financial institution 7223
shall be deemed to be the value as calculated in accordance with 7224
division (A) of this section. For the purposes of this chapter, 7225
the value of the issued and outstanding shares of stock of any 7226
corporation that is not a financial institution shall be deemed to 7227
be the values as calculated in accordance with divisions (B) and 7228
(C) of this section. 7229

(A) The total value, as shown by the books of the financial 7230
institution, of its capital, surplus, whether earned or unearned, 7231
undivided profits, and reserves shall be determined as prescribed 7232
by section 5733.056 of the Revised Code for tax years 1998 and 7233
thereafter. 7234

(B) The sum of the corporation's net income during the 7235
corporation's taxable year, allocated or apportioned to this state 7236
as prescribed in divisions (B)(1) and (2) of this section, and 7237
subject to sections 5733.052, 5733.053, 5733.057, and 5733.058 of 7238
the Revised Code: 7239

(1) The net income allocated to this state as provided by 7240
section 5733.051 of the Revised Code. 7241

(2) The amount of Ohio apportioned net income from sources 7242
other than those allocated under section 5733.051 of the Revised 7243
Code, which shall be determined by multiplying the corporation's 7244
net income by a fraction. The numerator of the fraction is the sum 7245
of the following products: the property factor multiplied by 7246

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 7278
reflect properly the average value of the corporation's property. 7279

(b) The payroll factor is a fraction the numerator of which 7280
is the total amount paid in this state during the taxable year by 7281
the corporation for compensation, and the denominator of which is 7282
the total compensation paid everywhere by the corporation during 7283
such year. There shall be excluded from the numerator and the 7284
denominator of the payroll factor the total compensation paid in 7285
this state to employees who are primarily engaged in qualified 7286
research. 7287

(i) Compensation means any form of remuneration paid to an 7288
employee for personal services. 7289

(ii) Compensation is paid in this state if: (1) the 7290
recipient's service is performed entirely within this state, (2) 7291
the recipient's service is performed both within and without this 7292
state, but the service performed without this state is incidental 7293
to the recipient's service within this state, (3) some of the 7294
service is performed within this state and either the base of 7295
operations, or if there is no base of operations, the place from 7296
which the service is directed or controlled is within this state, 7297
or the base of operations or the place from which the service is 7298
directed or controlled is not in any state in which some part of 7299
the service is performed, but the recipient's residence is in this 7300
state. 7301

(iii) Compensation is paid in this state to any employee of a 7302
common or contract motor carrier corporation, who performs the 7303
employee's regularly assigned duties on a motor vehicle in more 7304
than one state, in the same ratio by which the mileage traveled by 7305
such employee within the state bears to the total mileage traveled 7306
by such employee everywhere during the taxable year. 7307

(c) The sales factor is a fraction the numerator of which is 7308

the total sales in this state by the corporation during the 7309
taxable year, and the denominator of which is the total sales by 7310
the corporation everywhere during such year. In determining the 7311
numerator and denominator of the sales factor, receipts from the 7312
sale or other disposal of a capital asset or an asset described in 7313
section 1231 of the Internal Revenue Code shall be eliminated. 7314
Also, in determining the numerator and denominator of the sales 7315
factor, in the case of a reporting corporation owning at least 7316
eighty per cent of the issued and outstanding common stock of one 7317
or more ~~public utilities or~~ insurance companies or public 7318
utilities, except an electric company, or owning at least 7319
twenty-five per cent of the issued and outstanding common stock of 7320
one or more financial institutions, receipts received by the 7321
reporting corporation from such utilities, insurance companies, 7322
and financial institutions shall be eliminated. 7323

For the purpose of this section and section 5733.03 of the 7324
Revised Code, sales of tangible personal property are in this 7325
state where such property is received in this state by the 7326
purchaser. In the case of delivery of tangible personal property 7327
by common carrier or by other means of transportation, the place 7328
at which such property is ultimately received after all 7329
transportation has been completed shall be considered as the place 7330
at which such property is received by the purchaser. Direct 7331
delivery in this state, other than for purposes of transportation, 7332
to a person or firm designated by a purchaser constitutes delivery 7333
to the purchaser in this state, and direct delivery outside this 7334
state to a person or firm designated by a purchaser does not 7335
constitute delivery to the purchaser in this state, regardless of 7336
where title passes or other conditions of sale. 7337

For the purposes of this section and section 5733.03 of the 7338
Revised Code, sales of electricity and the transmission and 7339
distribution of electricity by an electric company shall be 7340

treated as a sale of a service and not as a sale of tangible 7341
personal property. 7342

Sales, other than sales of tangible personal property, are in 7343
this state if either: 7344

(i) The income-producing activity is performed solely in this 7345
state; 7346

(ii) The income-producing activity is performed both within 7347
and without this state and a greater proportion of the 7348
income-producing activity is performed within this state than in 7349
any other state, based on costs of performance. 7350

(d) If the allocation and apportionment provisions of 7351
division (B) of this section do not fairly represent the extent of 7352
the taxpayer's business activity in this state, the taxpayer may 7353
request, which request must be in writing and must accompany the 7354
report, timely filed petition for reassessment, or timely filed 7355
amended report, or the tax commissioner may require, in respect to 7356
all or any part of the taxpayer's allocated or apportioned base, 7357
if reasonable, any one or more of the following: 7358

(i) Separate accounting; 7359

(ii) The exclusion of any one or more of the factors; 7360

(iii) The inclusion of one or more additional factors ~~which~~ 7361
that will fairly represent the taxpayer's allocated or apportioned 7362
base in this state. 7363

An alternative method will be effective only with approval by 7364
the tax commissioner. 7365

Nothing in this section shall be construed to extend any 7366
statute of limitations set forth in this chapter. 7367

(C)(1) Subject to divisions (C)(2) and (3) of this section, 7368
the total value, as shown on the books of each corporation that is 7369
not a qualified holding company, of the net book value of a 7370

corporation's assets less the net carrying value of its 7371
liabilities. For the purposes of determining that total value, any 7372
reserves shown on the corporation's books shall be considered 7373
liabilities or contra assets, except for any reserves that are 7374
deemed appropriations of retained earnings under generally 7375
accepted accounting principles. 7376

(2)(a) If, on the last day of the taxpayer's taxable year 7377
preceding the tax year, the taxpayer is a related member to a 7378
corporation that elects to be a qualifying holding company for the 7379
tax year beginning after the last day of the taxpayer's taxable 7380
year, or if, on the last day of the taxpayer's taxable year 7381
preceding the tax year, a corporation that elects to be a 7382
qualifying holding company for the tax year beginning after the 7383
last day of the taxpayer's taxable year is a related member to the 7384
taxpayer, then the taxpayer's total value shall be adjusted by the 7385
qualifying amount. Except as otherwise provided under division 7386
(C)(2)(b) of this section, "qualifying amount" means the amount 7387
that, when added to the taxpayer's total value, and when 7388
subtracted from the net carrying value of the taxpayer's 7389
liabilities computed without regard to division (C)(2) of this 7390
section, or when subtracted from the taxpayer's total value and 7391
when added to the net carrying value of the taxpayer's liabilities 7392
computed without regard to division (C)(2) of this section, 7393
results in the taxpayer's debt-to-equity ratio equaling the 7394
debt-to-equity ratio of the qualifying controlled group on the 7395
last day of the taxable year ending prior to the first day of the 7396
tax year computed on a consolidated basis in accordance with 7397
general accepted accounting principles. For the purposes of 7398
division (C)(2)(a) of this section, the corporation's total value, 7399
after the adjustment required by that division, shall not exceed 7400
the net book value of the corporation's assets. 7401

(b)(i) The amount added to the taxpayer's total value and 7402

subtracted from the net carrying value of the taxpayer's 7403
liabilities shall not exceed the amount of the net carrying value 7404
of the taxpayer's liabilities owed to the taxpayer's related 7405
members. 7406

(ii) A liability owed to the taxpayer's related members 7407
includes, but is not limited to, any amount that the corporation 7408
owes to a person that is not a related member if the corporation's 7409
related member or related members in whole or in part guarantee 7410
any portion or all of that amount, or pledge, hypothecate, 7411
mortgage, or carry out any similar transactions to secure any 7412
portion or all of that amount. 7413

(3) The base upon which the tax is levied under division (C) 7414
of section 5733.06 of the Revised Code shall be computed by 7415
multiplying the amount determined under divisions (C)(1) and (2) 7416
of this section by the fraction determined under divisions 7417
(B)(2)(a) to (c) of this section and, if applicable, divisions 7418
(B)(2)(d)(ii) to (iv) of this section but without regard to 7419
section 5733.052 of the Revised Code. 7420

(4) For purposes of division (C) of this section, "related 7421
member" has the same meaning as in division (A)(6) of section 7422
5733.042 of the Revised Code without regard to division (B) of 7423
that section. 7424

Sec. 5733.06. The tax hereby charged each corporation subject 7425
to this chapter shall be the greater of the sum of divisions (A) 7426
and (B) of this section, after the reduction, if any, provided by 7427
division (J) of this section, or division (C) of this section, 7428
whichever is greater after the reduction, if any, provided by 7429
division (J) of this section, except that the tax hereby charged 7430
each financial institution subject to this chapter shall be the 7431
amount computed under division (D) of this section: 7432

(A) Except as set forth in division (F) of this section, five 7433
and one-tenth per cent upon the first fifty thousand dollars of 7434
the value of the taxpayer's issued and outstanding shares of stock 7435
as determined under division (B) of section 5733.05 of the Revised 7436
Code; 7437

(B) Except as set forth in division (F) of this section, 7438
eight and one-half per cent upon the value so determined in excess 7439
of fifty thousand dollars; or 7440

(C) Except as otherwise provided under division (G) of this 7441
section, four mills times that portion of the value of the issued 7442
and outstanding shares of stock as determined under division (C) 7443
of section 5733.05 of the Revised Code. For the purposes of 7444
division (C) of this section, division (C)(2) of section 5733.065, 7445
and division (C) of section 5733.066 of the Revised Code, the 7446
value of the issued and outstanding shares of stock of a qualified 7447
holding company is zero. 7448

(D) The tax charged each financial institution subject to 7449
this chapter shall be that portion of the value of the issued and 7450
outstanding shares of stock as determined under division (A) of 7451
section 5733.05 of the Revised Code, multiplied by the following 7452
amounts: 7453

(1) For tax years prior to the 1999 tax year, fifteen mills; 7454

(2) For the 1999 tax year, fourteen mills; 7455

(3) For tax year 2000 and thereafter, thirteen mills. 7456

(E) No tax shall be charged from any corporation ~~which~~ that 7457
has been adjudicated bankrupt, or for which a receiver has been 7458
appointed, or ~~which~~ that has made a general assignment for the 7459
benefit of creditors, except for the portion of the then current 7460
tax year during which the tax commissioner finds such corporation 7461
had the power to exercise its corporate franchise unimpaired by 7462

such proceedings or act. The minimum payment for all corporations 7463
shall be fifty dollars. 7464

The tax charged to corporations under this chapter for the 7465
privilege of engaging in business in this state, which is an 7466
excise tax levied on the value of the issued and outstanding 7467
shares of stock, shall in no manner be construed as prohibiting or 7468
otherwise limiting the powers of municipal corporations, joint 7469
economic development zones created under section 715.691 of the 7470
Revised Code, and joint economic development districts created 7471
under section 715.70 or 715.71 or sections 715.72 to 715.81 of the 7472
Revised Code in this state to impose an income tax on the income 7473
of such corporations. 7474

(F) If two or more taxpayers satisfy the ownership or control 7475
requirements of division (A) of section 5733.052 of the Revised 7476
Code, each such taxpayer shall substitute "the taxpayer's pro-rata 7477
amount" for "fifty thousand dollars" in divisions (A) and (B) of 7478
this section. For purposes of this division, "the taxpayer's 7479
pro-rata amount" is an amount that, when added to the other such 7480
taxpayers' pro-rata amounts, does not exceed fifty thousand 7481
dollars. For the purpose of making that computation, the 7482
taxpayer's pro-rata amount shall not be less than zero. Nothing in 7483
this division derogates from or eliminates the requirement to make 7484
the alternative computation of tax under division (C) of this 7485
section. 7486

(G) The tax liability of any corporation under division (C) 7487
of this section shall not exceed one hundred fifty thousand 7488
dollars. 7489

(H)(1) For the purposes of division (H) of this section, 7490
"exiting corporation" means a corporation that satisfies all of 7491
the following conditions: 7492

(a) The corporation had nexus with or in this state under the 7493

Constitution of the United States during any portion of a calendar year; 7494
7495

(b) The corporation was not a taxpayer on the first day of January immediately following that calendar year; 7496
7497

(c) The corporation was not a financial institution on the first day of January immediately following that calendar year; 7498
7499

(d) The corporation was not a transferor as defined in section 5733.053 of the Revised Code during any portion of that calendar year; 7500
7501
7502

(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; 7503
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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. 7508
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(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. 7514
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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 5733.051 and, if applicable, section 5733.052 of the Revised Code. 7520
7521
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The exiting corporation then shall compute the tax due on its 7524
unreported net income allocated and apportioned to this state by 7525
applying divisions (A), (B), and (F) of this section to that 7526
income. 7527

(4) Divisions (C) and (G) of this section, division (D)(2) of 7528
section 5733.065, and division (C) of section 5733.066 of the 7529
Revised Code do not apply to an exiting corporation, but exiting 7530
corporations are subject to every other provision of this chapter. 7531

(5) Notwithstanding sections 5733.02, 5733.021, and 5733.03 7532
of the Revised Code to the contrary, each exiting corporation 7533
shall report and pay the tax due under division (H) of this 7534
section on or before the thirty-first day of May immediately 7535
following the calendar year referred to in division (H)(1)(a) of 7536
this section. The exiting corporation shall file that report on 7537
the form most recently prescribed by the tax commissioner for the 7538
purposes of complying with sections 5733.02 and 5733.03 of the 7539
Revised Code. Upon request by the corporation, the tax 7540
commissioner may extend the date for filing the report. 7541

(6) The tax commissioner may adopt rules governing division 7542
(H) of this section. 7543

(I) Any reference in the Revised Code to "the tax imposed by 7544
section 5733.06 of the Revised Code" or "the tax due under section 7545
5733.06 of the Revised Code" includes the taxes imposed under 7546
sections 5733.065 and 5733.066 of the Revised Code. 7547

(J)(1) Division (J) of this section applies solely to a 7548
combined company. Section 5733.057 of the Revised Code shall apply 7549
when calculating the adjustments required by division (J) of this 7550
section. 7551

(2) Subject to division (J)(4) of this section, the total tax 7552
calculated in divisions (A) and (B) of this section shall be 7553
reduced by an amount calculated by multiplying such tax by a 7554

fraction, the numerator of which is the total taxable gross 7555
receipts attributed to providing public utility activity other 7556
than as an electric company under section 5727.03 of the Revised 7557
Code for the year upon which the taxable gross receipts are 7558
measured immediately preceding the tax year, and the denominator 7559
of which is the total gross receipts from all sources for the year 7560
upon which the taxable gross receipts are measured immediately 7561
preceding the tax year. Nothing herein shall be construed to 7562
exclude from the denominator any item of income described in 7563
section 5733.051 of the Revised Code. 7564

(3) Subject to division (J)(4) of this section, the total tax 7565
calculated in division (C) of this section shall be reduced by an 7566
amount calculated by multiplying such tax by the fraction 7567
described in division (J)(2) of this section. 7568

(4) In no event shall the reduction provided by division 7569
(J)(2) or (J)(3) of this section exceed the amount of the excise 7570
tax paid in accordance with section 5727.38 of the Revised Code, 7571
for the year upon which the taxable gross receipts are measured 7572
immediately preceding the tax year. 7573

Sec. 5733.09. (A) An incorporated company, whether foreign or 7574
domestic, owning and operating a public utility in this state, and 7575
~~as such~~ required by law to file reports with the tax commissioner 7576
and to pay an excise tax upon its gross receipts, and insurance, 7577
fraternal, beneficial, bond investment, and other corporations 7578
required by law to file annual reports with the superintendent of 7579
insurance and dealers in intangibles, the shares of which are, or 7580
the capital or ownership in capital employed by such dealer is, 7581
subject to the taxes imposed by section 5707.03 of the Revised 7582
Code, shall not be subject to this chapter, except for sections 7583
5733.031, 5733.042, 5733.05, 5733.052, 5733.053, 5733.069, 7584
5733.0611, 5733.40, 5733.41, and sections 5747.40 to 5747.453 of 7585

the Revised Code. An electric company subject to the filing 7586
requirements of section 5727.08 of the Revised Code or otherwise 7587
having nexus with or in this state under the Constitution of the 7588
United States, or any other corporation having any gross receipts 7589
directly attributable to providing public utility service as an 7590
electric company or having any property directly attributable to 7591
providing public utility service as an electric company, is 7592
subject to this chapter. 7593

(B) A corporation that has made an election under subchapter 7594
S, chapter one, subtitle A, of the Internal Revenue Code for its 7595
taxable year under such code is exempt from the tax imposed by 7596
section 5733.06 of the Revised Code that is based on that taxable 7597
year. 7598

A corporation that makes such an election shall file a notice 7599
of such election with the tax commissioner between the first day 7600
of January and the thirty-first day of March of each tax year that 7601
the election is in effect. 7602

(C) An entity defined to be a "real estate investment trust" 7603
by section 856 of the Internal Revenue Code, a "regulated 7604
investment company" by section 851 of the Internal Revenue Code, 7605
or a "real estate mortgage investment conduit" by section 860D of 7606
the Internal Revenue Code, is exempt from taxation for a tax year 7607
as a corporation under this chapter and is exempt from taxation 7608
for a return year as a dealer in intangibles under Chapter 5725. 7609
of the Revised Code if it provides the report required by this 7610
division. By the last day of March of the tax or return year the 7611
entity shall submit to the tax commissioner the name of the entity 7612
with a list of the names, addresses, and social security or 7613
federal identification numbers of all investors, shareholders, and 7614
other similar investors who owned any interest or invested in the 7615
entity during the preceding calendar year. The commissioner may 7616

extend the date by which the report must be submitted for 7617
reasonable cause shown by the entity. The commissioner may 7618
prescribe the form of the report required for exemption under this 7619
division. 7620

(D)(1) As used in this division: 7621

(a) "Commercial printer" means a person primarily engaged in 7622
the business of commercial printing. However, "commercial printer" 7623
does not include a person primarily engaged in the business of 7624
providing duplicating services using photocopy machines or other 7625
xerographic processes. 7626

(b) "Commercial printing" means printing by one or more 7627
common processes such as letterpress, lithography, gravure, 7628
screen, or digital imaging, and includes related activities such 7629
as binding, platemaking, prepress operation, cartographic 7630
composition, and typesetting. 7631

(c) "Contract for printing" means an oral or written 7632
agreement for the purchase of printed materials produced by a 7633
commercial printer. 7634

(d) "Intangible property located at the premises of a 7635
commercial printer" means intangible property of any kind owned or 7636
licensed by a customer of the commercial printer and furnished to 7637
the commercial printer for use in commercial printing. 7638

(e) "Printed material" means any tangible personal property 7639
produced or processed by a commercial printer pursuant to a 7640
contract for printing. 7641

(f) "Related member" has the same meaning as in division 7642
(A)(6) of section 5733.042 of the Revised Code without regard to 7643
division (B) of that section. 7644

(2) Except as provided in divisions (D)(3) and (4) of this 7645
section, a corporation not otherwise subject to the tax imposed by 7646

section 5733.06 of the Revised Code for a tax year does not become 7647
subject to that tax for the tax year solely by reason of any one 7648
or more of the following occurring in this state during the 7649
taxable year that ends immediately prior to the tax year: 7650

(a) Ownership by the corporation or a related member of the 7651
corporation of tangible personal property or intangible property 7652
located during all or any portion of the taxable year or on the 7653
first day of the tax year at the premises of a commercial printer 7654
with which the corporation or the corporation's related member has 7655
a contract for printing with respect to such property or the 7656
premises of a commercial printer's related member with which the 7657
corporation or the corporation's related member has a contract for 7658
printing with respect to such property; 7659

(b) Sales by the corporation or a related member of the 7660
corporation of property produced at and shipped or distributed 7661
from the premises of a commercial printer with which the 7662
corporation or the corporation's related member has a contract for 7663
printing with respect to such property or the premises of a 7664
commercial printer's related member with which the corporation or 7665
the corporation's related member has a contract for printing with 7666
respect to such property; 7667

(c) Activities of employees, officers, agents, or contractors 7668
of the corporation or a related member of the corporation on the 7669
premises of a commercial printer with which the corporation or the 7670
corporation's related member has a contract for printing or the 7671
premises of a commercial printer's related member with which the 7672
corporation or the corporation's related member has a contract for 7673
printing, where the activities are directly and solely related to 7674
quality control, distribution, or printing services, or any 7675
combination thereof, performed by or at the direction of the 7676
commercial printer or the commercial printer's related member. 7677

7678

(3) The exemption under this division does not apply for a taxable year to any corporation having on the first day of January of the tax year or at any time during the taxable year ending immediately preceding the first day of January of the tax year a related member which, on the first day of January of the tax year or during any portion of such taxable year of the corporation, has nexus in or with this state under the Constitution of the United States or holds a certificate of compliance with the laws of this state authorizing it to do business in this state.

(4) With respect to allowing the exemption under this division, the tax commissioner shall be guided by the doctrines of "economic reality," "sham transaction," "step transaction," and "substance over form." A corporation shall bear the burden of establishing by a preponderance of the evidence that any transaction giving rise to an exemption claimed under this division did not have as a principal purpose the avoidance of any portion of the tax imposed by section 5733.06 of the Revised Code.

Application of the doctrines listed in division (D)(4) of this section is not limited to this division.

Sec. 5733.39. (A) As used in this section:

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

(a) A facility that removes sulfur compounds from coal before 7710
the combustion of the coal and that is located off the premises of 7711
the electric generating facility where the coal processed by the 7712
compliance facility is burned; 7713

(b) Modifications to the electric generating facility where 7714
the compliance facility is constructed or installed that are 7715
necessary to accommodate the construction or installation, and 7716
operation, of the compliance facility; 7717

(c) A byproduct disposal facility, as defined in section 7718
3734.051 of the Revised Code, that exclusively disposes of wastes 7719
produced by the compliance facility and other coal combustion 7720
byproducts produced by the generating unit in or to which the 7721
compliance facility is incorporated or connected regardless of 7722
whether the byproduct disposal facility is located on the same 7723
premises as the compliance facility or generating unit that 7724
produces the wastes disposed of at the facility; 7725

(d) Facilities or equipment that is acquired, constructed, or 7726
installed, and used, at a coal-fired electric generating facility 7727
exclusively for the purpose of handling the byproducts produced by 7728
the compliance facility or other coal combustion byproducts 7729
produced by the generating unit in or to which the compliance 7730
facility is incorporated or connected; 7731

(e) A flue gas desulfurization system that is connected to a 7732
coal-fired electric generating unit and that either was placed in 7733
service prior to July 10, 1991, or construction of which was 7734
commenced prior to that date; 7735

(f) Facilities or equipment acquired, constructed, or 7736
installed, and used, at a coal-fired electric generating unit 7737
primarily for the purpose of handling the byproducts produced by a 7738
compliance facility or other coal combustion byproducts produced 7739
by the generating unit in or to which the compliance facility is 7740

incorporated or connected. 7741

(2) "Ohio coal" has the same meaning as in section 4913.01 of the Revised Code. 7742 7743

(3) "Sale and leaseback transaction" has the same meaning as in section 5727.01 of the Revised Code. 7744 7745

(B) Beginning in tax year 2002, an electric company shall be allowed a nonrefundable credit against the tax imposed by section 5733.06 of the Revised Code for Ohio coal used in any of its coal-fired electric generating units after April 30, 2001. Section 5733.057 of the Revised Code shall apply when calculating the credit allowed by this section. The credit shall be claimed at the rate of one dollar per ton of Ohio coal burned in a coal-fired electric generating unit during the taxable year ending immediately preceding the tax year. The credit is allowed only if all of the following conditions are met during such taxable year: 7746 7747 7748 7749 7750 7751 7752 7753 7754 7755

(1) The coal-fired electric generating unit is owned and used by the company claiming the credit or leased and used by that company under a sale and leaseback transaction. 7756 7757 7758

(2) A compliance facility is attached to, incorporated in, or used in conjunction with the coal-fired generating unit. 7759 7760

(3) Either of the following applies: 7761

(a) In the case of a coal-fired electric generating unit that burns coal in combination with another fuel for the purpose of complying with Phase I acid rain control requirements under Title IV of the "Clean Air Act Amendments of 1990," 104 Stat. 2584, 42 U.S.C.A. 7651, at least eighty per cent of the heat input during the taxable year is from Ohio coal. 7762 7763 7764 7765 7766 7767

(b) In the case of any other coal-fired electric generating unit, at least ninety per cent of the heat input during the taxable year is from Ohio coal. 7768 7769 7770

(C) The credit shall be claimed in the order required under 7771
section 5733.98 of the Revised Code. If the credit exceeds the tax 7772
imposed by section 5733.06 of the Revised Code after all other 7773
nonrefundable credits for the tax year as set forth in section 7774
5733.98 of the Revised Code, the excess shall not be allowed as a 7775
credit either against the taxes due for any other year or against 7776
any other tax or fee. Nothing herein shall be construed to provide 7777
for carryover or carryback of any unused credit provided by any 7778
other section of the Revised Code or for the application of any 7779
unused credit provided by any other section of the Revised Code 7780
against any other tax or fee if such section does not expressly 7781
provide either for a carryover or carryback of any unused credit 7782
or for the application of an unused credit against any other tax 7783
or fee. 7784

(D) The sum of the credits allowed for all years under 7785
section 5727.391 of the Revised Code for coal burned in each 7786
coal-fired electric generating unit and the sum of the credits 7787
allowed for all tax years under this section shall not exceed 7788
twenty per cent of the cost of the compliance facility attached 7789
to, incorporated in, or used in conjunction with the unit. If a 7790
compliance facility is used in conjunction with more than one 7791
generating unit, the tax commissioner shall prorate its cost among 7792
the units. 7793

(E) The director of environmental protection, upon the 7794
request of the tax commissioner, shall certify whether a facility 7795
is a compliance facility. In the case of a compliance facility 7796
owned by an electric company, the public utilities commission 7797
shall certify to the tax commissioner the cost of the facility as 7798
of the date it was placed in service. In the case of a compliance 7799
facility owned by a person other than an electric company, the tax 7800
commissioner shall determine the cost of the facility as of the 7801
date it was placed in service. If the owner of such a facility 7802

fails to furnish the information necessary to make that 7803
determination, no credit shall be allowed. 7804

Sec. 5733.98. (A) To provide a uniform procedure for 7805
calculating the amount of tax imposed by section 5733.06 of the 7806
Revised Code that is due under this chapter, a taxpayer shall 7807
claim any credits to which it is entitled in the following order, 7808
except as otherwise provided in section 5733.058 of the Revised 7809
Code: 7810

(1) The credit for taxes paid by a qualifying pass-through 7811
entity allowed under section 5733.0611 of the Revised Code; 7812

(2) The credit for qualifying affiliated groups under section 7813
5733.068 of the Revised Code; 7814

(3) The subsidiary corporation credit under section 5733.067 7815
of the Revised Code; 7816

(4) The savings and loan assessment credit under section 7817
5733.063 of the Revised Code; 7818

(5) The credit for recycling and litter prevention donations 7819
under section 5733.064 of the Revised Code; 7820

(6) The credit for employers that enter into agreements with 7821
child day-care centers under section 5733.36 of the Revised Code; 7822

(7) The credit for employers that reimburse employee child 7823
day-care expenses under section 5733.38 of the Revised Code; 7824

(8) The credit for manufacturing investments under section 7825
5733.061 of the Revised Code; 7826

(9) The credit for purchases of new manufacturing machinery 7827
and equipment under section 5733.31 or section 5733.311 of the 7828
Revised Code; 7829

(10) The second credit for purchases of new manufacturing 7830
machinery and equipment under section 5733.33 of the Revised Code; 7831

(11) The enterprise zone credit under section 5709.66 of the Revised Code;	7832 7833
(12) The credit for the eligible costs associated with a voluntary action under section 5733.34 of the Revised Code;	7834 7835
(13) The credit for employers that establish on-site child day-care under section 5733.37 of the Revised Code;	7836 7837
(14) The credit for purchases of qualifying grape production property under section 5733.32 of the Revised Code;	7838 7839
(15) The export sales credit under section 5733.069 of the Revised Code;	7840 7841
(16) The credit for research and development and technology transfer investors under section 5733.35 of the Revised Code;	7842 7843
(17) The enterprise zone credits under section 5709.65 of the Revised Code;	7844 7845
(18) <u>The credit for using Ohio coal under section 5733.39 of the Revised Code;</u>	7846 7847
(19) The refundable jobs creation credit under section 5733.0610 of the Revised Code.	7848 7849
(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.	7850 7851 7852 7853 7854 7855
Sec. 5739.011. (A) As used in this section:	7856
(1) "Manufacturer" means a person who is engaged in manufacturing, processing, assembling, or refining a product for sale.	7857 7858 7859

(2) "Manufacturing facility" means a single location where a manufacturing operation is conducted, including locations consisting of one or more buildings or structures in a contiguous area owned or controlled by the manufacturer.

(3) "Materials handling" means the movement of the product being or to be manufactured, during which movement the product is not undergoing any substantial change or alteration in its state or form.

(4) "Testing" means a process or procedure to identify the properties or assure the quality of a material or product.

(5) "Completed product" means a manufactured item that is in the form and condition as it will be sold by the manufacturer. An item is completed when all processes that change or alter its state or form or enhance its value are finished, even though the item subsequently will be tested to ensure its quality or be packaged for storage or shipment.

(6) "Continuous manufacturing operation" means the process in which raw materials or components are moved through the steps whereby manufacturing occurs. Materials handling of raw materials or parts from the point of receipt or ~~pre-production~~ preproduction storage or of a completed product, to or from storage, to or from packaging, or to the place from which the completed product will be shipped, is not a part of a continuous manufacturing operation.

(B) For purposes of division (E)(9) of section 5739.01 of the Revised Code, the "thing transferred" includes, but is not limited to, any of the following:

(1) Production machinery and equipment that act upon the product or machinery and equipment that treat the materials or parts in preparation for the manufacturing operation;

(2) Materials handling equipment that moves the product

through a continuous manufacturing operation; equipment that 7890
temporarily stores the product during the manufacturing operation; 7891
or, excluding motor vehicles licensed to operate on public 7892
highways, equipment used in intraplant or interplant transfers of 7893
work in process where the plant or plants between which such 7894
transfers occur are manufacturing facilities operated by the same 7895
person; 7896

(3) Catalysts, solvents, water, acids, oil, and similar 7897
consumables that interact with the product and that are an 7898
integral part of the manufacturing operation; 7899

(4) Machinery, equipment, and other tangible personal 7900
property used during the manufacturing operation that control, 7901
physically support, produce power for, lubricate, or are otherwise 7902
necessary for the functioning of production machinery and 7903
equipment and the continuation of the manufacturing operation; 7904

(5) Machinery, equipment, fuel, power, material, parts, and 7905
other tangible personal property used to manufacture machinery, 7906
equipment, or other tangible personal property used in 7907
manufacturing a product for sale; 7908

(6) Machinery, equipment, and other tangible personal 7909
property used by a manufacturer to test raw materials, the product 7910
being manufactured, or the completed product; 7911

(7) Machinery and equipment used to handle or temporarily 7912
store scrap that is intended to be reused in the manufacturing 7913
operation at the same manufacturing facility; 7914

(8) ~~Electricity, coke~~ Coke, gas, water, steam, and similar 7915
substances used in the manufacturing operation; machinery and 7916
equipment used for, and fuel consumed in, producing or extracting 7917
those substances; ~~and~~ machinery, equipment, and other tangible 7918
personal property used to treat, filter, pump, ~~alter voltage~~, or 7919
otherwise make the substance suitable for use in the manufacturing 7920

operation; and machinery and equipment used to produce electricity 7921
for use in the manufacturing operation; 7922

(9) Machinery, equipment, and other tangible personal 7923
property used to transport or transmit electricity, coke, gas, 7924
water, steam, or similar substances used in the manufacturing 7925
operation from the point of generation, if produced by the 7926
manufacturer, or from the point where the substance enters the 7927
manufacturing facility, if purchased by the manufacturer, to the 7928
manufacturing operation; 7929

(10) Machinery, equipment, and other tangible personal 7930
property that treats, filters, cools, refines, or otherwise 7931
renders water, steam, acid, oil, solvents, or similar substances 7932
used in the manufacturing operation reusable, provided that the 7933
substances are intended for reuse and not for disposal, sale, or 7934
transportation from the manufacturing facility; 7935

(11) Parts, components, and repair and installation services 7936
for items described in division (B) of this section. 7937

(C) For purposes of division (E)(9) of section 5739.01 of the 7938
Revised Code, the "thing transferred" does not include any of the 7939
following: 7940

(1) Tangible personal property used in administrative, 7941
personnel, security, inventory control, record-keeping, ordering, 7942
billing, or similar functions; 7943

(2) Tangible personal property used in storing raw materials 7944
or parts prior to the commencement of the manufacturing operation 7945
or used to handle or store a completed product, including storage 7946
that actively maintains a completed product in a marketable state 7947
or form; 7948

(3) Tangible personal property used to handle or store scrap 7949
or waste intended for disposal, sale, or other disposition, other 7950
than reuse in the manufacturing operation at the same 7951

manufacturing facility;	7952
(4) Tangible personal property that is or is to be	7953
incorporated into realty;	7954
(5) Machinery, equipment, and other tangible personal	7955
property used for ventilation, dust, or gas collection, humidity	7956
or temperature regulation, or similar environmental control,	7957
except machinery, equipment, and other tangible personal property	7958
that totally regulates the environment in a special and limited	7959
area of the manufacturing facility where the regulation is	7960
essential for production to occur;	7961
(6) Tangible personal property used for the protection and	7962
safety of workers, unless the property is attached to or	7963
incorporated into machinery and equipment used in a continuous	7964
manufacturing operation;	7965
(7) Tangible personal property used to store fuel, water,	7966
solvents, acid, oil, or similar items consumed in the	7967
manufacturing operation;	7968
(8) Machinery, equipment, and other tangible personal	7969
property used for research and development;	7970
(9) Machinery, equipment, and other tangible personal	7971
property used to clean, repair, or maintain real or personal	7972
property in the manufacturing facility;	7973
(10) Motor vehicles registered for operation on the public	7974
highways.	7975
(D) For purposes of division (E)(9) of section 5739.01 of the	7976
Revised Code, if the "thing transferred" is a machine used by a	7977
manufacturer in both a taxable and an exempt manner, it shall be	7978
totally taxable or totally exempt from taxation based upon its	7979
quantified primary use. If the "things transferred" are fungibles,	7980
they shall be taxed based upon the proportion of the fungibles	7981

used in a taxable manner. 7982

Sec. 5739.02. For the purpose of providing revenue with which 7983
to meet the needs of the state, for the use of the general revenue 7984
fund of the state, for the purpose of securing a thorough and 7985
efficient system of common schools throughout the state, for the 7986
purpose of affording revenues, in addition to those from general 7987
property taxes, permitted under constitutional limitations, and 7988
from other sources, for the support of local governmental 7989
functions, and for the purpose of reimbursing the state for the 7990
expense of administering this chapter, an excise tax is hereby 7991
levied on each retail sale made in this state. 7992

(A) The tax shall be collected pursuant to the schedules in 7993
section 5739.025 of the Revised Code. 7994

The tax applies and is collectible when the sale is made, 7995
regardless of the time when the price is paid or delivered. 7996

In the case of a sale, the price of which consists in whole 7997
or in part of rentals for the use of the thing transferred, the 7998
tax, as regards such rentals, shall be measured by the 7999
installments thereof. 8000

In the case of a sale of a service defined under division 8001
(MM) or (NN) of section 5739.01 of the Revised Code, the price of 8002
which consists in whole or in part of a membership for the receipt 8003
of the benefit of the service, the tax applicable to the sale 8004
shall be measured by the installments thereof. 8005

(B) The tax does not apply to the following: 8006

(1) Sales to the state or any of its political subdivisions, 8007
or to any other state or its political subdivisions if the laws of 8008
that state exempt from taxation sales made to this state and its 8009
political subdivisions; 8010

(2) Sales of food for human consumption off the premises 8011

where sold; 8012

(3) Sales of food sold to students only in a cafeteria, 8013
dormitory, fraternity, or sorority maintained in a private, 8014
public, or parochial school, college, or university; 8015

(4) Sales of newspapers, and of magazine subscriptions 8016
shipped by second class mail, and sales or transfers of magazines 8017
distributed as controlled circulation publications; 8018

(5) The furnishing, preparing, or serving of meals without 8019
charge by an employer to an employee provided the employer records 8020
the meals as part compensation for services performed or work 8021
done; 8022

(6) Sales of motor fuel upon receipt, use, distribution, or 8023
sale of which in this state a tax is imposed by the law of this 8024
state, but this exemption shall not apply to the sale of motor 8025
fuel on which a refund of the tax is allowable under section 8026
5735.14 of the Revised Code; and the tax commissioner may deduct 8027
the amount of tax levied by this section applicable to the price 8028
of motor fuel when granting a refund of motor fuel tax pursuant to 8029
section 5735.14 of the Revised Code and shall cause the amount 8030
deducted to be paid into the general revenue fund of this state; 8031

(7) Sales of natural gas by a natural gas company, ~~of~~ 8032
~~electricity by an electric company,~~ of water by a water-works 8033
company, or of steam by a heating company, if in each case the 8034
thing sold is delivered to consumers through ~~wires,~~ pipes, or 8035
conduits, and all sales of communications services by a telephone 8036
or telegraph company, all terms as defined in section 5727.01 of 8037
the Revised Code; 8038

(8) Casual sales by a person, or auctioneer employed directly 8039
by the person to conduct such sales, except as to such sales of 8040
motor vehicles, watercraft or outboard motors required to be 8041
titled under section 1548.06 of the Revised Code, watercraft 8042

documented with the United States coast guard, snowmobiles, and 8043
all-purpose vehicles as defined in section 4519.01 of the Revised 8044
Code; 8045

(9) Sales of services or tangible personal property, other 8046
than motor vehicles, mobile homes, and manufactured homes, by 8047
churches or by nonprofit organizations operated exclusively for 8048
charitable purposes as defined in division (B)(12) of this 8049
section, provided that the number of days on which such tangible 8050
personal property or services, other than items never subject to 8051
the tax, are sold does not exceed six in any calendar year. If the 8052
number of days on which such sales are made exceeds six in any 8053
calendar year, the church or organization shall be considered to 8054
be engaged in business and all subsequent sales by it shall be 8055
subject to the tax. In counting the number of days, all sales by 8056
groups within a church or within an organization shall be 8057
considered to be sales of that church or organization, except that 8058
sales made by separate student clubs and other groups of students 8059
of a primary or secondary school, and sales made by a 8060
parent-teacher association, booster group, or similar organization 8061
that raises money to support or fund curricular or extracurricular 8062
activities of a primary or secondary school, shall not be 8063
considered to be sales of such school, and sales by each such 8064
club, group, association, or organization shall be counted 8065
separately for purposes of the six-day limitation. This division 8066
does not apply to sales by a noncommercial educational radio or 8067
television broadcasting station. 8068

(10) Sales not within the taxing power of this state under 8069
the Constitution of the United States; 8070

(11) The transportation of persons or property, unless the 8071
transportation is by a private investigation and security service; 8072

(12) Sales of tangible personal property or services to 8073

churches, to organizations exempt from taxation under section 8074
501(c)(3) of the Internal Revenue Code of 1986, and to any other 8075
nonprofit organizations operated exclusively for charitable 8076
purposes in this state, no part of the net income of which inures 8077
to the benefit of any private shareholder or individual, and no 8078
substantial part of the activities of which consists of carrying 8079
on propaganda or otherwise attempting to influence legislation; 8080
sales to offices administering one or more homes for the aged or 8081
one or more hospital facilities exempt under section 140.08 of the 8082
Revised Code; and sales to organizations described in division (D) 8083
of section 5709.12 of the Revised Code. 8084

"Charitable purposes" means the relief of poverty; the 8085
improvement of health through the alleviation of illness, disease, 8086
or injury; the operation of an organization exclusively for the 8087
provision of professional, laundry, printing, and purchasing 8088
services to hospitals or charitable institutions; the operation of 8089
a home for the aged, as defined in section 5701.13 of the Revised 8090
Code; the operation of a radio or television broadcasting station 8091
that is licensed by the federal communications commission as a 8092
noncommercial educational radio or television station; the 8093
operation of a nonprofit animal adoption service or a county 8094
humane society; the promotion of education by an institution of 8095
learning that maintains a faculty of qualified instructors, 8096
teaches regular continuous courses of study, and confers a 8097
recognized diploma upon completion of a specific curriculum; the 8098
operation of a parent-teacher association, booster group, or 8099
similar organization primarily engaged in the promotion and 8100
support of the curricular or extracurricular activities of a 8101
primary or secondary school; the operation of a community or area 8102
center in which presentations in music, dramatics, the arts, and 8103
related fields are made in order to foster public interest and 8104
education therein; the production of performances in music, 8105

dramatics, and the arts; or the promotion of education by an 8106
organization engaged in carrying on research in, or the 8107
dissemination of, scientific and technological knowledge and 8108
information primarily for the public. 8109

Nothing in this division shall be deemed to exempt sales to 8110
any organization for use in the operation or carrying on of a 8111
trade or business, or sales to a home for the aged for use in the 8112
operation of independent living facilities as defined in division 8113
(A) of section 5709.12 of the Revised Code. 8114

(13) Building and construction materials and services sold to 8115
construction contractors for incorporation into a structure or 8116
improvement to real property under a construction contract with 8117
this state or a political subdivision thereof, or with the United 8118
States government or any of its agencies; building and 8119
construction materials and services sold to construction 8120
contractors for incorporation into a structure or improvement to 8121
real property that are accepted for ownership by this state or any 8122
of its political subdivisions, or by the United States government 8123
or any of its agencies at the time of completion of such 8124
structures or improvements; building and construction materials 8125
sold to construction contractors for incorporation into a 8126
horticulture structure or livestock structure for a person engaged 8127
in the business of horticulture or producing livestock; building 8128
materials and services sold to a construction contractor for 8129
incorporation into a house of public worship or religious 8130
education, or a building used exclusively for charitable purposes 8131
under a construction contract with an organization whose purpose 8132
is as described in division (B)(12) of this section; building and 8133
construction materials sold for incorporation into the original 8134
construction of a sports facility under section 307.696 of the 8135
Revised Code; and building and construction materials and services 8136
sold to a construction contractor for incorporation into real 8137

property outside this state if such materials and services, when
sold to a construction contractor in the state in which the real
property is located for incorporation into real property in that
state, would be exempt from a tax on sales levied by that state;

(14) Sales of ships or vessels or rail rolling stock used or
to be used principally in interstate or foreign commerce, and
repairs, alterations, fuel, and lubricants for such ships or
vessels or rail rolling stock;

(15) Sales to persons engaged in any of the activities
mentioned in division (E)(2) or (9) of section 5739.01 of the
Revised Code, to persons engaged in making retail sales, or to
persons who purchase for sale from a manufacturer tangible
personal property that was produced by the manufacturer in
accordance with specific designs provided by the purchaser, of
packages, including material and parts for packages, and of
machinery, equipment, and material for use primarily in packaging
tangible personal property produced for sale by or on the order of
the person doing the packaging, or sold at retail. "Packages"
includes bags, baskets, cartons, crates, boxes, cans, bottles,
bindings, wrappings, and other similar devices and containers, and
"packaging" means placing therein.

(16) Sales of food to persons using food stamp coupons to
purchase the food. As used in division (B)(16) of this section,
"food" has the same meaning as in the "Food Stamp Act of 1977," 91
Stat. 958, 7 U.S.C. 2012, as amended, and federal regulations
adopted pursuant to that act.

(17) Sales to persons engaged in farming, agriculture,
horticulture, or floriculture, of tangible personal property for
use or consumption directly in the production by farming,
agriculture, horticulture, or floriculture of other tangible
personal property for use or consumption directly in the

production of tangible personal property for sale by farming, 8169
agriculture, horticulture, or floriculture; or material and parts 8170
for incorporation into any such tangible personal property for use 8171
or consumption in production; and of tangible personal property 8172
for such use or consumption in the conditioning or holding of 8173
products produced by and for such use, consumption, or sale by 8174
persons engaged in farming, agriculture, horticulture, or 8175
floriculture, except where such property is incorporated into real 8176
property; 8177

(18) Sales of drugs dispensed by a licensed pharmacist upon 8178
the order of a licensed health professional authorized to 8179
prescribe drugs to a human being, as the term "licensed health 8180
professional authorized to prescribe drugs" is defined in section 8181
4729.01 of the Revised Code; insulin as recognized in the official 8182
United States pharmacopoeia; urine and blood testing materials 8183
when used by diabetics or persons with hypoglycemia to test for 8184
glucose or acetone; hypodermic syringes and needles when used by 8185
diabetics for insulin injections; epoetin alfa when purchased for 8186
use in the treatment of persons with end-stage renal disease; 8187
hospital beds when purchased for use by persons with medical 8188
problems for medical purposes; and oxygen and oxygen-dispensing 8189
equipment when purchased for use by persons with medical problems 8190
for medical purposes; 8191

(19) Sales of artificial limbs or portion thereof, breast 8192
prostheses, and other prosthetic devices for humans; braces or 8193
other devices for supporting weakened or nonfunctioning parts of 8194
the human body; wheelchairs; devices used to lift wheelchairs into 8195
motor vehicles and parts and accessories to such devices; crutches 8196
or other devices to aid human perambulation; and items of tangible 8197
personal property used to supplement impaired functions of the 8198
human body such as respiration, hearing, or elimination. No 8199
exemption under this division shall be allowed for nonprescription 8200

drugs, medicines, or remedies; items or devices used to supplement vision; items or devices whose function is solely or primarily cosmetic; or physical fitness equipment. This division does not apply to sales to a physician or medical facility for use in the treatment of a patient.

(20) Sales of emergency and fire protection vehicles and equipment to nonprofit organizations for use solely in providing fire protection and emergency services for political subdivisions of the state;

(21) Sales of tangible personal property manufactured in this state, if sold by the manufacturer in this state to a retailer for use in the retail business of the retailer outside of this state and if possession is taken from the manufacturer by the purchaser within this state for the sole purpose of immediately removing the same from this state in a vehicle owned by the purchaser;

(22) Sales of services provided by the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities, or by governmental entities of the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities;

(23) Sales of motor vehicles to nonresidents of this state upon the presentation of an affidavit executed in this state by the nonresident purchaser affirming that the purchaser is a nonresident of this state, that possession of the motor vehicle is taken in this state for the sole purpose of immediately removing it from this state, that the motor vehicle will be permanently titled and registered in another state, and that the motor vehicle will not be used in this state;

(24) Sales to persons engaged in the preparation of eggs for sale of tangible personal property used or consumed directly in

such preparation, including such tangible personal property used 8232
for cleaning, sanitizing, preserving, grading, sorting, and 8233
classifying by size; packages, including material and parts for 8234
packages, and machinery, equipment, and material for use in 8235
packaging eggs for sale; and handling and transportation equipment 8236
and parts therefor, except motor vehicles licensed to operate on 8237
public highways, used in intraplant or interplant transfers or 8238
shipment of eggs in the process of preparation for sale, when the 8239
plant or plants within or between which such transfers or 8240
shipments occur are operated by the same person. "Packages" 8241
includes containers, cases, baskets, flats, fillers, filler flats, 8242
cartons, closure materials, labels, and labeling materials, and 8243
"packaging" means placing therein. 8244

(25)(a) Sales of water to a consumer for residential use, 8245
except the sale of bottled water, distilled water, mineral water, 8246
carbonated water, or ice; 8247

(b) Sales of water by a nonprofit corporation engaged 8248
exclusively in the treatment, distribution, and sale of water to 8249
consumers, if such water is delivered to consumers through pipes 8250
or tubing. 8251

(26) Fees charged for inspection or reinspection of motor 8252
vehicles under section 3704.14 of the Revised Code; 8253

(27) Sales of solar, wind, or hydrothermal energy systems 8254
that meet the guidelines established under division (B) of section 8255
1551.20 of the Revised Code, components of such systems that are 8256
identified under division (B) or (D) of that section, or charges 8257
for the installation of such systems or components, made during 8258
the period from August 14, 1979, through December 31, 1985; 8259

(28) Sales to persons licensed to conduct a food service 8260
operation pursuant to section 3732.03 of the Revised Code, of 8261
tangible personal property primarily used directly for the 8262

following:	8263
(a) To prepare food for human consumption for sale;	8264
(b) To preserve food that has been or will be prepared for	8265
human consumption for sale by the food service operator, not	8266
including tangible personal property used to display food for	8267
selection by the consumer;	8268
(c) To clean tangible personal property used to prepare or	8269
serve food for human consumption for sale.	8270
(29) Sales of animals by nonprofit animal adoption services	8271
or county humane societies;	8272
(30) Sales of services to a corporation described in division	8273
(A) of section 5709.72 of the Revised Code, and sales of tangible	8274
personal property that qualifies for exemption from taxation under	8275
section 5709.72 of the Revised Code;	8276
(31) Sales and installation of agricultural land tile, as	8277
defined in division (B)(5)(a) of section 5739.01 of the Revised	8278
Code;	8279
(32) Sales and erection or installation of portable grain	8280
bins, as defined in division (B)(5)(b) of section 5739.01 of the	8281
Revised Code;	8282
(33) The sale, lease, repair, and maintenance of the parts	8283
for the or items attached to or incorporated in the motor vehicles that	8284
are primarily used for transporting tangible personal property by	8285
a person engaged in highway transportation for hire;	8286
(34) Sales to the state headquarters of any veterans'	8287
organization in Ohio that is either incorporated and issued a	8288
charter by the congress of the United States or is recognized by	8289
the United States veterans administration, for use by the	8290
headquarters;	8291
(35) Sales to a telecommunications service vendor of tangible	8292

personal property and services used directly and primarily in 8293
transmitting, receiving, switching, or recording any interactive, 8294
two-way electromagnetic communications, including voice, image, 8295
data, and information, through the use of any medium, including, 8296
but not limited to, poles, wires, cables, switching equipment, 8297
computers, and record storage devices and media, and component 8298
parts for the tangible personal property. The exemption provided 8299
in division (B)(35) of this section shall be in lieu of all other 8300
exceptions under division (E)(2) of section 5739.01 of the Revised 8301
Code to which a telecommunications service vendor may otherwise be 8302
entitled based upon the use of the thing purchased in providing 8303
the telecommunications service. 8304

(36) Sales of investment metal bullion and investment coins. 8305
"Investment metal bullion" means any elementary precious metal 8306
that has been put through a process of smelting or refining, 8307
including, but not limited to, gold, silver, platinum, and 8308
palladium, and which is in such state or condition that its value 8309
depends upon its content and not upon its form. "Investment metal 8310
bullion" does not include fabricated precious metal that has been 8311
processed or manufactured for one or more specific and customary 8312
industrial, professional, or artistic uses. "Investment coins" 8313
means numismatic coins or other forms of money and legal tender 8314
manufactured of gold, silver, platinum, palladium, or other metal 8315
under the laws of the United States or any foreign nation with a 8316
fair market value greater than any statutory or nominal value of 8317
such coins. 8318

(37)(a) Sales where the purpose of the consumer is to use or 8319
consume the things transferred in making retail sales and 8320
consisting of newspaper inserts, catalogues, coupons, flyers, gift 8321
certificates, or other advertising material that prices and 8322
describes tangible personal property offered for retail sale. 8323

(b) Sales to direct marketing vendors of preliminary 8324

materials such as photographs, artwork, and typesetting that will 8325
be used in printing advertising material; of printed matter that 8326
offers free merchandise or chances to win sweepstake prizes and 8327
that is mailed to potential customers with advertising material 8328
described in division (B)(37)(a) of this section; and of equipment 8329
such as telephones, computers, facsimile machines, and similar 8330
tangible personal property primarily used to accept orders for 8331
direct marketing retail sales. 8332

(c) Sales of automatic food vending machines that preserve 8333
food with a shelf life of forty-five days or less by refrigeration 8334
and dispense it to the consumer. 8335

For purposes of division (B)(37) of this section, "direct 8336
marketing" means the method of selling where consumers order 8337
tangible personal property by United States mail, delivery 8338
service, or telecommunication and the vendor delivers or ships the 8339
tangible personal property sold to the consumer from a warehouse, 8340
catalogue distribution center, or similar fulfillment facility by 8341
means of the United States mail, delivery service, or common 8342
carrier. 8343

(38) Sales to a person engaged in the business of 8344
horticulture or producing livestock of materials to be 8345
incorporated into a horticulture structure or livestock structure; 8346

(39) The sale of a motor vehicle that is used exclusively for 8347
a vanpool ridesharing arrangement to persons participating in the 8348
vanpool ridesharing arrangement when the vendor is selling the 8349
vehicle pursuant to a contract between the vendor and the 8350
department of transportation; 8351

(40) Sales of personal computers, computer monitors, computer 8352
keyboards, modems, and other peripheral computer equipment to an 8353
individual who is licensed or certified to teach in an elementary 8354
or a secondary school in this state for use by that individual in 8355

preparation for teaching elementary or secondary school students; 8356
8357

(41) Sales to a professional racing team of any of the 8358
following: 8359

(a) Motor racing vehicles; 8360

(b) Repair services for motor racing vehicles; 8361

(c) Items of property that are attached to or incorporated in 8362
motor racing vehicles, including engines, chassis, and all other 8363
components of the vehicles, and all spare, replacement, and 8364
rebuilt parts or components of the vehicles; except not including 8365
tires, consumable fluids, paint, and accessories consisting of 8366
instrumentation sensors and related items added to the vehicle to 8367
collect and transmit data by means of telemetry and other forms of 8368
communication. 8369

(42) Sales of used manufactured homes and used mobile homes, 8370
as defined in section 5739.0210 of the Revised Code, made on or 8371
after January 1, 2000; 8372

(43) Sales of tangible personal property and services to a 8373
provider of electricity used or consumed directly and primarily in 8374
generating, transmitting, or distributing electricity for use by 8375
others, including property that is or is to be incorporated into 8376
and will become a part of the consumer's production, transmission, 8377
or distribution system and that retains its classification as 8378
tangible personal property after incorporation; fuel or power used 8379
in the production, transmission, or distribution of electricity; 8380
and tangible personal property and services used in the repair and 8381
maintenance of the production, transmission, or distribution 8382
system, including only those motor vehicles as are specially 8383
designed and equipped for such use. The exemption provided in this 8384
division shall be in lieu of all other exceptions in division 8385
(E)(2) of section 5739.01 of the Revised Code to which a provider 8386

of electricity may otherwise be entitled based on the use of the 8387
tangible personal property or service purchased in generating, 8388
transmitting, or distributing electricity. 8389

For the purpose of the proper administration of this chapter, 8390
and to prevent the evasion of the tax, it is presumed that all 8391
sales made in this state are subject to the tax until the contrary 8392
is established. 8393

As used in this section, except in division (B)(16) of this 8394
section, "food" includes cereals and cereal products, milk and 8395
milk products including ice cream, meat and meat products, fish 8396
and fish products, eggs and egg products, vegetables and vegetable 8397
products, fruits, fruit products, and pure fruit juices, 8398
condiments, sugar and sugar products, coffee and coffee 8399
substitutes, tea, and cocoa and cocoa products. It does not 8400
include: spirituous or malt liquors; soft drinks; sodas and 8401
beverages that are ordinarily dispensed at bars and soda fountains 8402
or in connection therewith, other than coffee, tea, and cocoa; 8403
root beer and root beer extracts; malt and malt extracts; mineral 8404
oils, cod liver oils, and halibut liver oil; medicines, including 8405
tonics, vitamin preparations, and other products sold primarily 8406
for their medicinal properties; and water, including mineral, 8407
bottled, and carbonated waters, and ice. 8408

(C) The levy of an excise tax on transactions by which 8409
lodging by a hotel is or is to be furnished to transient guests 8410
pursuant to this section and division (B) of section 5739.01 of 8411
the Revised Code does not prevent any of the following: 8412

(1) A municipal corporation or township from levying an 8413
excise tax for any lawful purpose not to exceed three per cent on 8414
transactions by which lodging by a hotel is or is to be furnished 8415
to transient guests in addition to the tax levied by this section. 8416
If a municipal corporation or township repeals a tax imposed under 8417

division (C)(1) of this section and a county in which the 8418
municipal corporation or township has territory has a tax imposed 8419
under division (C) of section 5739.024 of the Revised Code in 8420
effect, the municipal corporation or township may not reimpose its 8421
tax as long as that county tax remains in effect. A municipal 8422
corporation or township in which a tax is levied under division 8423
(B)(2) of section 351.021 of the Revised Code may not increase the 8424
rate of its tax levied under division (C)(1) of this section to 8425
any rate that would cause the total taxes levied under both of 8426
those divisions to exceed three per cent on any lodging 8427
transaction within the municipal corporation or township. 8428

(2) A municipal corporation or a township from levying an 8429
additional excise tax not to exceed three per cent on such 8430
transactions pursuant to division (B) of section 5739.024 of the 8431
Revised Code. Such tax is in addition to any tax imposed under 8432
division (C)(1) of this section. 8433

(3) A county from levying an excise tax pursuant to division 8434
(A) of section 5739.024 of the Revised Code. 8435

(4) A county from levying an excise tax not to exceed three 8436
per cent of such transactions pursuant to division (C) of section 8437
5739.024 of the Revised Code. Such a tax is in addition to any tax 8438
imposed under division (C)(3) of this section. 8439

(5) A convention facilities authority, as defined in division 8440
(A) of section 351.01 of the Revised Code, from levying the excise 8441
taxes provided for in division (B) of section 351.021 of the 8442
Revised Code. 8443

(6) A county from levying an excise tax not to exceed one and 8444
one-half per cent of such transactions pursuant to division (D) of 8445
section 5739.024 of the Revised Code. Such tax is in addition to 8446
any tax imposed under division (C)(3) or (4) of this section. 8447

8448

(7) A county from levying an excise tax not to exceed one and 8449
one-half per cent of such transactions pursuant to division (E) of 8450
section 5739.024 of the Revised Code. Such a tax is in addition to 8451
any tax imposed under division (C)(3), (4), or (6) of this 8452
section. cP1> (D) The levy of this tax on retail sales of 8453
recreation and sports club service shall not prevent a municipal 8454
corporation from levying any tax on recreation and sports club 8455
dues or on any income generated by recreation and sports club 8456
dues. 8457

Section 2. That existing sections 113.061, 133.04, 715.013, 8458
718.01, 1551.33, 1551.35, 3317.028, 4905.01, 4905.02, 4905.03, 8459
4905.10, 4905.14, 4905.34, 4905.40, 4905.42, 4905.70, 4906.10, 8460
4909.01, 4909.05, 4909.15, 4909.161, 4911.18, 4933.33, 4933.81, 8461
4935.04, 5117.01, 5117.02, 5117.03, 5117.04, 5117.05, 5117.07, 8462
5117.08, 5117.09, 5117.10, 5117.12, 5701.03, 5703.052, 5703.053, 8463
5703.14, 5705.34, 5727.01, 5727.02, 5727.05, 5727.06, 5727.11, 8464
5727.111, 5727.15, 5727.30, 5727.31, 5727.311, 5727.32, 5727.33, 8465
5727.38, 5727.42, 5727.45, 5727.47, 5727.53, 5727.60, 5727.61, 8466
5727.72, 5727.99, 5733.04, 5733.05, 5733.06, 5733.09, 5733.98, 8467
5739.011, and 5739.02 and sections 4905.301, 4905.66, 4905.67, 8468
4905.68, 4905.69, 4909.157, 4909.158, 4909.159, 4909.191, 8469
4909.192, 4909.193, 4913.01, 4913.02, 4913.03, 4913.04, 4913.05, 8470
4913.06, 4913.07, 4933.27, 4933.34, 5727.231, and 5727.73 of the 8471
Revised Code are hereby repealed. 8472

Section 3. Sections 5727.111 and 5727.15 of the Revised Code, 8473
as amended by this act, shall first apply to tax year 2001. 8474

Section 4. Sections 4933.33, 5727.30, 5727.32, 5727.33, and 8475
5727.38 of the Revised Code, as amended by this act, shall first 8476
apply to the excise tax assessed by the Tax Commissioner for tax 8477
year 2002. 8478

Section 5. Sections 1551.33, 1551.35, 4905.01, 4905.02, 8479
4905.03, 4905.10, 4905.14, 4905.34, 4905.40, 4905.42, 4905.70, 8480
4906.10, 4909.01, 4909.05, 4909.15, 4909.161, 4935.04, and 5703.14 8481
of the Revised Code, as amended by this act, shall take effect on 8482
January 1, 2001, but if the Public Utilities Commission issues an 8483
order under division (C) of section 4928.01 of the Revised Code, 8484
as enacted by this act, the amendments to such sections shall be 8485
applied accordingly. In addition, the amendment of division 8486
(A)(4)(b) of section 4909.15 of the Revised Code, as amended by 8487
this act, shall not be applied until January 1, 2002. 8488

Section 6. Section 5727.45 of the Revised Code, as amended by 8489
this act, shall take effect January 1, 2002. 8490

Section 7. Sections 5117.01, 5117.02, 5117.03, 5117.04, 8491
5117.05, 5117.07, 5117.08, 5117.09, 5117.10, and 5117.12 of the 8492
Revised Code, as amended by this act, shall take effect on July 1, 8493
2000. 8494

Section 8. Section 5727.391 of the Revised Code is hereby 8495
repealed effective January 1, 2002. 8496

Section 9. Sections 4905.301, 4905.66, 4905.67, 4905.68, 8497
4905.69, 4909.157, 4909.158, 4909.159, 4909.191, 4909.192, 8498
4909.193, 4913.01, 4913.02, 4913.03, 4913.04, 4913.05, 4913.06, 8499
4913.07, 4933.27, and 4933.34 of the Revised Code, as repealed by 8500
this act, shall take effect on January 1, 2001, but if the Public 8501
Utilities Commission issues an order under division (C) of section 8502
4928.01 of the Revised Code, as enacted by this act, the repeal of 8503
such sections shall be applied accordingly. 8504

Section 10. The Public Utilities Commission, Consumers' 8505

Counsel, and the Attorney General shall develop a memorandum of 8506
understanding not later than January 1, 2000, to establish a 8507
system to respond effectively and efficiently to residential 8508
consumer inquiries and complaints and shall provide a joint report 8509
to the General Assembly on the efforts of the three agencies not 8510
later than June 30, 2002. 8511

Section 11. (A) As used in this section: 8512

(1) "Electric company" and "rural electric company" have the 8513
same meanings as in section 5727.01 of the Revised Code. 8514

(2) "Gross receipts" means gross receipts determined in 8515
accordance with section 5727.33 of the Revised Code. 8516

(B) Each electric company and rural electric company shall 8517
pay the public utility excise tax imposed by section 5727.30 of 8518
the Revised Code on the company's gross receipts received during 8519
the period of May 1, 2000, through May 1, 2001. Notwithstanding 8520
section 5727.31 of the Revised Code, each electric company and 8521
rural electric company shall make tax payments toward that 8522
liability. The first payment must be made on or before October 15, 8523
2000, and shall equal one-third of the estimated liability shown 8524
in the report filed on or before August 1, 2000. The second 8525
payment must be made on or before March 1, 2001, and shall equal 8526
one-third of the tax assessed by the Tax Commissioner on or before 8527
the first Monday in November, 2000. The last payment must be made 8528
on or before June 1, 2001, and shall equal one-fourth of the tax 8529
assessed by the commissioner. The final report for the period of 8530
May 1, 2000, through May 1, 2001, shall be filed by an electric 8531
company or a rural electric company on or before August 1, 2001, 8532
in accordance with division (A) of section 5727.31 and section 8533
5727.32 of the Revised Code. 8534

On or before the first Monday of November 2001, the Tax 8535

Commissioner shall assess an excise tax equal to four and 8536
three-quarters per cent of the gross receipts received by electric 8537
companies and rural electric companies during the period of May 1, 8538
2000, through May 1, 2001. Except as provided in section 5727.03 8539
of the Revised Code, as enacted by this act, after payment of this 8540
assessment, electric companies and rural electric companies are 8541
not subject to the excise tax imposed by section 5727.30 of the 8542
Revised Code. 8543

Section 12. Electric companies, as defined in section 5727.01 8544
of the Revised Code, shall first be subject to the corporation 8545
franchise tax under Chapter 5733. of the Revised Code for tax year 8546
2002, as "tax year" is defined in section 5733.04 of the Revised 8547
Code. For tax year 2002, an electric company shall pay two-thirds 8548
of its total corporation franchise tax liability under Chapter 8549
5733. of the Revised Code. The amendments in this act to sections 8550
4909.15, 5733.04, 5733.05, 5733.06, 5733.09, and 5733.98 of the 8551
Revised Code, and the enactment in this act of section 5733.39 of 8552
the Revised Code, first apply for tax year 2002. 8553
8554

Section 13. An electric company that is entitled to carry 8555
forward a credit against its public utility excise tax liability 8556
under section 5727.391 of the Revised Code before the repeal of 8557
that section under this act, is not entitled to carry forward any 8558
amount remaining after its last public utility excise tax payment 8559
and claim that amount as a credit against its corporation 8560
franchise tax liability under section 5733.39 of the Revised Code, 8561
as enacted by this act. The credit granted under section 5727.391 8562
of the Revised Code only applies through the last assessment 8563
issued by the Tax Commissioner under Section 11 of this act. 8564

Section 14. The tax levied under section 5727.81 of the 8565

Revised Code first applies on and after May 1, 2001. Before that 8566
date, any electric distribution company shall register with the 8567
Tax Commissioner in accordance with section 5727.93 of the Revised 8568
Code, as enacted by this act. 8569

Section 15. Notwithstanding section 4933.81, as amended by 8570
this act, sections 4933.82 to 4933.90 of the Revised Code, and any 8571
provision of this act, the Public Utilities Commission by order 8572
may establish a residential market pilot program prior to the 8573
starting date of competitive retail electric service as defined in 8574
section 4928.01 of the Revised Code, as enacted by this act. The 8575
program shall enable the commission and the General Assembly to 8576
make an initial evaluation of the effect of competitive retail 8577
electric service on the residential market. The program shall 8578
allow at least five per cent but not more than fifteen per cent of 8579
the residential customers of electric utilities in this state to 8580
select their electric generation supplier. Every residential 8581
customer shall be eligible to participate in a lottery or similar 8582
arrangement, as prescribed in the order, for the final selection 8583
of customer participants. In the order, the commission shall 8584
establish transition charges as contemplated under sections 8585
4928.31 to 4928.40 of the Revised Code, as enacted by this act, to 8586
be in effect for the duration of the program, with shopping 8587
incentives sufficient to allow for market development during the 8588
program. The commission shall report to the General Assembly not 8589
later than November 1, 2000, its findings and recommendations 8590
about the program and the effect of competitive retail electric 8591
service on the residential market. 8592

Section 16. The intent of division (C) of section 5727.81 of 8593
the Revised Code, as enacted by this act, is to craft a revenue 8594
neutral solution for all customer classes, with any margin of 8595

error being resolved in favor of residential customers. 8596

Section 17. Section 5727.47 of the Revised Code is presented 8597
in this act as a composite of the section as amended by both Am. 8598
Sub. H.B. 904 and Am. S.B. 358 of the 119th General Assembly, with 8599
the new language of neither of the acts shown in capital letters. 8600
This is in recognition of the principle stated in division (B) of 8601
section 1.52 of the Revised Code that such amendments are to be 8602
harmonized where not substantively irreconcilable and constitutes 8603
a legislative finding that such is the resulting version in effect 8604
prior to the effective date of this act. 8605

Section 18. If any provision of law that constitutes the 8606
whole or part of a codified or uncoded section of law contained 8607
in this act, or if any application of any provision of law that 8608
constitutes the whole or part of a codified or uncoded section 8609
of law contained in this act, is held invalid, the invalidity does 8610
not affect other provisions of law or applications of provisions 8611
of law that can be given effect without the invalid provision of 8612
law or application. To this end, the provisions of law of which 8613
the codified and uncoded sections contained in this act are 8614
composed, and their applications, are independent and severable. 8615