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Senators Johnson, Finan, Blessing, Herington, Armbruster, Hottinger,
Spada, Wachtmann, Mumper, Gardner, Kearns

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
4905.42, 4905.70, 4906.10, 4909.01, 4909.05,	4
4909.15, 4909.161, 4911.18, 4933.33, 4933.81,	5
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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 4928.44,	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
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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, 4928.51, 4928.52, 4928.53, 4928.54, 47
4928.55, 4928.56, 4928.57, 4928.58, 4928.61, 4928.62, 4928.63, 48
5727.03, 5727.80, 5727.81, 5727.82, 5727.83, 5727.84, 5727.85, 49
5727.86, 5727.87, 5727.88, 5727.89, 5727.90, 5727.91, 5727.92, 50
5727.93, 5727.94, 5727.95, and 5733.39 of the Revised Code be 51
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.

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

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

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

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

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

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voter-approved tax levy;	116
(3) Securities issued for purposes described in section	117
133.12 of the Revised Code;	118
(4) Securities issued under Chapter 122., 140., 165., 725.,	119
or 761.7 or section 131.23 of the Revised Code;	120
(5) Securities issued to pay final judgments or	121
court-approved settlements under authorizing laws and securities	122
issued under section 2744.081 of the Revised Code;	123
(6) Securities issued to pay costs of permanent improvements	124
to the extent they are issued in anticipation of the receipt of,	125
and are payable as to principal from, federal or state grants or	126
distributions for, or legally available for, that principal or for	127
the costs of those permanent improvements;	128
(7) Securities issued to evidence loans from the state	129
capital improvements fund pursuant to Chapter 164. of the Revised	130
Code or from the state infrastructure bank pursuant to section	131
5531.09 of the Revised Code;	132
(8) <u>Securities issued in an amount equal to the property tax</u>	133
<u>replacement payments received under section 5727.85 or 5727.86 of</u>	134
<u>the Revised Code;</u>	135
(9) Other securities, including self-supporting securities,	136
excepted by law from the calculation of net indebtedness or from	137
the application of this chapter;	138
(9) (10) Any other securities outstanding on October 30, 1989,	139
and then excepted from the calculation of net indebtedness or from	140
the application of this chapter, and securities issued at any time	141
to fund or refund those securities.	142
Sec. 715.013. Except as otherwise expressly authorized by the	143
Revised Code, no municipal corporation shall levy a tax that is	144

the same as or similar to a tax levied under Chapter 322., 3734., 145
3769., 4123., 4141., 4301., 4303., 4305., 4307., 4309., 5707., 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 176
election is to be held and directing the board of elections to 177
conduct the election. The ballot shall be in the following form: 178
"Shall the Ordinance providing for a... per cent levy on income 179
for (Brief description of the purpose of the proposed levy) be 180
passed? 181

FOR THE INCOME TAX 182

AGAINST THE INCOME TAX" 183

In the event of an affirmative vote, the proceeds of the levy 184
may be used only for the specified purpose. 185

(D)(1) Except as otherwise provided in division (D)(2) of 186
this section, no municipal corporation shall exempt from a tax on 187
income, compensation for personal services of individuals over 188
eighteen years of age or the net profit from a business or 189
profession. 190

(2) The legislative authority of a municipal corporation may, 191
by ordinance or resolution, exempt from a tax on income any 192
compensation arising from the grant, sale, exchange, or other 193
disposition of a stock option; the exercise of a stock option; or 194
the sale, exchange, or other disposition of stock purchased under 195
a stock option. 196

(E) Nothing in this section shall prevent a municipal 197
corporation from permitting lawful deductions as prescribed by 198
ordinance. If a taxpayer's taxable income includes income against 199
which the taxpayer has taken a deduction for federal income tax 200
purposes as reportable on the taxpayer's form 2106, and against 201
which a like deduction has not been allowed by the municipal 202
corporation, the municipal corporation shall deduct from the 203
taxpayer's taxable income an amount equal to the deduction shown 204

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 236
or other motor vehicle for the authority or commission in or 237
through the municipal corporation, unless the bus or vehicle is 238
operated on a regularly scheduled route, the operator is subject 239
to such a tax by reason of residence or domicile in the municipal 240
corporation, or the headquarters of the authority or commission is 241
located within the municipal corporation. 242

(6) The income of a public utility when that public utility 243
is subject to the tax levied under section 5727.30 of the Revised 244
Code, except starting January 1, 2002, the income of an electric 245
company or combined company, as defined in section 5727.01 of the 246
Revised Code, may be taxed by a municipal corporation. For a 247
combined company, only the income attributed from the activity of 248
an electric company shall be subject to taxation by a municipal 249
corporation. 250

(G) Any municipal corporation that taxes any type of 251
intangible income on March 29, 1988, pursuant to Section 3 of 252
Amended Substitute Senate Bill No. 238 of the 116th general 253
assembly, may continue to tax that type of income after 1988 if a 254
majority of the electors of the municipal corporation voting on 255
the question of whether to permit the taxation of that type of 256
intangible income after 1988 vote in favor thereof at an election 257
held on November 8, 1988. 258

(H) Nothing in this section or section 718.02 of the Revised 259
Code, shall authorize the levy of any tax on income ~~which~~ that a 260
municipal corporation is not authorized to levy under existing 261
laws or shall require a municipal corporation to allow a deduction 262
from taxable income for losses incurred from a sole proprietorship 263
or partnership. 264

Sec. 1551.33. (A) The director of development shall appoint 265
and fix the compensation of the director of the Ohio coal 266

development office established under section 1551.32 of the 267
Revised Code. The director of the office shall serve at the 268
pleasure of the director of development. 269

(B) The director of the office shall do all of the following: 270
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(1) Biennially prepare and maintain the Ohio coal development 272
agenda required under section 1551.34 of the Revised Code; 273
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(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
case of a fuel supply owned by the company, such term shall also
include the cost of legally extracting the fuel and its handling
prior to its shipment to the company. In the case of a coal supply
owned or controlled in whole or in part by the company, such term
shall not exceed a price that is, in the judgment of the public
utilities commission, reasonable when compared to the average cost
per million British thermal units of similar quality coal
purchased from all independent like mining operations under
similar term contracts during the same period. In determining a
reasonable price for coal from a coal supply owned or controlled
in whole or in part by the company, the public utilities
commission shall consider the use of:~~

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

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

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

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

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

~~(G) "Fuel component" means acquisition and delivery costs of fuel for the generation of electricity, including the allowable costs of purchased power as defined in section 4909.159 of the Revised Code, divided by the corresponding number of net kilowatt hours generated and purchased.~~

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

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

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

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

~~compounds resulting from the combustion of coal through the~~ 514
~~removal or reduction of those compounds before, during, or after~~ 515
~~the combustion of the coal, but before the combustion products are~~ 516
~~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. 670

~~Nothing in this section shall be construed to mean that an 671
electric light company operated not for profit, owned and operated 672
exclusively by and solely for its customers, or owned or operated 673
by a municipal corporation, is subject to sections 4905.66, 674
4905.67, 4905.68, and 4905.69 of the Revised Code. 675~~

Sec. 4905.10. (A) For the sole purpose of maintaining and 676
administering the public utilities commission and exercising its 677
supervision and jurisdiction over the railroads and public 678
utilities of the state, an amount equivalent to the appropriation 679
from the public utilities fund created under division (B) of this 680
section to the public utilities commission for railroad and public 681
utilities regulation in each fiscal year shall be apportioned 682
among and assessed against ~~the railroads~~ each railroad and public 683
~~utilities~~ utility within the state by the commission by first 684
computing an assessment as though it were to be made in proportion 685
to the intrastate gross earnings or receipts, excluding earnings 686
or receipts from sales to other public utilities for resale, of 687
the ~~railroads and~~ railroad or public ~~utilities~~ utility for the 688
calendar year next preceding that in which the ~~assessments are~~ 689
assessment is made. The commission may include in that first 690
computation any amount of a railroad's or public utility's 691
intrastate gross earnings or receipts that were underreported in a 692
prior year. in addition to whatever penalties apply under the 693
Revised Code to such underreporting, the commission shall assess 694
the railroad or public utility interest at the rate stated in 695
division (A) of section 1343.01 of the Revised Code. the 696

commission shall deposit any interest so collected into the public 697
utilities fund. 698

The final computation of the assessment shall consist of 699
imposing upon each railroad and public utility whose assessment 700
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 764
report with the public utilities commission. The report shall be 765
filed at the time and in the form prescribed by the commission, 766
shall be duly verified, and shall cover the yearly period fixed by 767
the commission. The commission shall prescribe the character of 768
the information to be embodied in the annual report, and shall 769
furnish to each public utility a blank form for it. Every public 770
utility also shall file a copy of the annual report with the 771
office of consumers' counsel; the copy shall be filed at the same 772
time that the original is filed with the commission. If any annual 773
report filed with the commission is defective or erroneous, the 774
commission may order that it be amended within a prescribed time. 775
Any amendments made pursuant to such an order shall be filed with 776
the commission and with the office of consumers' counsel. Each 777
annual report filed with the commission shall be preserved in the 778
office of the commission. The commission may, at any time, require 779
specific answers to questions upon which it desires information. 780
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(B) On the first day of July and the first day of November of 782
each year, each gas company, and natural gas company, ~~and electric~~ 783
~~light company~~ shall file with the commission a report in 784
quintuplicate stating: 785

(1) The total demand, stated in terms of ~~kilowatt hours or~~ 786
cubic feet, that the company projects will be expected of the 787
company for the following twelve months; 788

(2) ~~With respect to electric light companies, the supply of~~ 789
~~fuel for the generation of electricity that they will possess as~~ 790

~~of the first day of July and the first day of November;~~ 791

~~(3) With respect to gas companies and natural gas companies,~~ 792
~~the~~ The pertinent details of supply contracts with pipeline 793
companies and producers for the following twelve months that they 794
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
applicant owns, or by this issue will acquire, not less than
sixty-five per cent of the issued and outstanding common capital
shares of the company whose shares are to be acquired, and if the
consideration to be capitalized by the acquiring company does not
exceed the par or stated value at which the shares so acquired
were issued.

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

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

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

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

(1) Whether the purpose to which the issue or any proceeds of
it shall be applied was or is reasonably required by the utility

to meet its present and prospective obligations to provide utility service; 883
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(2) Whether the amount of the issue and the probable cost of such stocks, bonds, notes, or other evidences of indebtedness is just and reasonable; 885
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(3) What effect, if any, the issuance of such stocks, bonds, notes, or other evidences of indebtedness and the cost thereof will have upon the present and prospective revenue requirements of the utility. 888
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(G) Sections 4905.40 to 4905.42 of the Revised Code do not apply to stocks, bonds, notes, or other evidence of indebtedness issued for the purpose of financing oil or natural gas drilling, producing, gathering, and associated activities and facilities by a producer which supplies to no more than twenty purchasers only such gas as is produced, gathered, or purchased by such producer within this state. 892
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(H) Each public utility seeking authorization from the commission for the issuance of securities to finance the installation, construction, extension, or improvement of an air quality facility, as defined in section 3706.01 of the Revised Code, shall consider the availability of financing therefor from the Ohio air quality development authority and shall demonstrate to the commission that the proposed financing will be obtained on the best terms obtainable. 899
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Sec. 4905.42. To determine whether it should issue the order referred to in section 4905.40 of the Revised Code, the public utilities commission shall hold such hearings, make such inquiries or investigations, and examine such witnesses, books, papers, documents, and contracts as it deems proper. ~~Within forty-five days after an electric light company submits an application under~~ 907
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~~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 facility; 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 conservation practices as determined by the board, considering available technology and the nature and economics of the various alternatives.

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

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

Sec. 4909.01. As used in this chapter:

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

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

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

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

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

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

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

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

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

Sec. 4909.05. As used in this section:

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

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

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

(C) The original cost of each parcel of land owned in fee and 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 1414
such orders shall be served and take effect as provided for 1415
original orders. 1416

Sec. 4909.161. (A) Notwithstanding the provisions of Chapters 1417
4905. and 4909. of the Revised Code, the payment of any type of 1418
increased excise tax levy shall be considered to be a normal 1419
expense incurred by a public utility in the course of rendering 1420
service to the public, and may be recovered as such in accordance 1421
with an order of the public utilities commission. Any public 1422
utility required to pay any such increased excise tax levy may 1423
file with the public utilities commission revised rate schedules 1424
~~which that~~ will permit full recovery on an interim or permanent 1425
basis in its rates, of the amount of any resultant increased tax 1426
payments and the commission shall promptly act to approve such 1427
schedules. 1428

(B) Notwithstanding Chapters 4905. and 4909. of the Revised 1429
Code, the payment of the kilowatt-hour tax imposed by section 1430
5727.81 of the Revised Code shall be considered a normal expense 1431
incurred by an electric distribution utility, as defined in 1432
section 4928.01 of the Revised Code, in the course of rendering 1433
service to the public, and may be recovered as such in accordance 1434
with an order of the commission. An electric distribution utility 1435
required to pay the kilowatt-hour tax may file with the commission 1436
revised rate schedules that will permit full recovery on a 1437
permanent basis in its rates, of the amount of any resultant tax 1438
payments, and the commission shall act promptly to approve those 1439

schedules. in approving the schedules, the commission shall 1440
provide that the rate effect of the kilowatt-hour tax does not 1441
vary by customer and is equal for each customer based solely on 1442
kilowatt hours of electricity distributed. As used in this 1443
division, "kilowatt hour" means one thousand watt-hours of 1444
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~~ 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 1509
general revenue fund from the consumers' counsel operating fund. 1510

1511
(D) As used in this section, "public utility" includes, in 1512
addition to an electric utility as defined in section 4928.01 of 1513
the Revised Code, an electric services company, an electric 1514
cooperative, or a governmental aggregator subject to certification 1515
under section 4928.08 of the Revised Code, to the extent of the 1516
company's, cooperative's, or aggregator's engagement in the 1517
business of supplying or arranging for the supply in this state of 1518
any retail electric service for which it must be so certified. 1519

Sec. 4928.01. (A) As used in this chapter: 1520

(1) "Ancillary service" means any function necessary to the 1521
provision of electric transmission or distribution service to a 1522
retail customer and includes, but is not limited to, scheduling, 1523
system control, and dispatch services; reactive supply from 1524
generation resources and voltage control service; reactive supply 1525
from transmission resources service; regulation service; frequency 1526
response service; energy imbalance service; operating 1527
reserve-spinning reserve service; operating reserve-supplemental 1528
reserve service; load following; back-up supply service; 1529
real-power loss replacement service; dynamic scheduling; system 1530
black start capability; and network stability service. 1531

(2) "Billing and collection agent" means a fully independent 1532
agent, not affiliated with or otherwise controlled by an electric 1533
utility, electric services company, electric cooperative, or 1534

governmental aggregator subject to certification under section 1535
4928.08 of the Revised Code, to the extent that the agent is under 1536
contract with such utility, company, cooperative, or aggregator 1537
solely to provide billing and collection for retail electric 1538
service on behalf of the utility company, cooperative, or 1539
aggregator. 1540

(3) "Certified territory" means the certified territory 1541
established for an electric supplier under sections 4933.81 to 1542
4933.90 of the Revised Code as amended by Sub. S.B. No. 3 of the 1543
123rd general assembly. 1544

(4) "Competitive retail electric service" means a component 1545
of retail electric service that is competitive as provided under 1546
division (B) of this section. 1547

(5) "Electric cooperative" means a not-for-profit electric 1548
light company that both is or has been financed in whole or in 1549
part under the "Rural Electrification Act of 1936," 49 Stat. 1363, 1550
7 U.S.C. 901 and owns or operates facilities IN THIS STATE to 1551
generate, transmit, or DISTRIBUTE electricity, or a successor of 1552
such company. 1553

(6) "ELECTRIC DISTRIBUTION UTILITY" MEANS AN ELECTRIC UTILITY 1554
THAT SUPPLIES AT LEAST retail ELECTRIC DISTRIBUTION SERVICE. 1555
1556

(7) "Electric light company" has the same meaning as in 1557
section 4905.03 of the Revised Code and includes an electric 1558
services company. 1559

(8) "Electric load center" has the same meaning as in section 1560
4933.81 of the Revised Code. 1561

(9) "Electric services company" means an electric light 1562
company that is engaged on a for-profit or not-for-profit basis in 1563
the business of supplying or arranging for the supply of only a 1564

competitive retail electric service in this state. "Electric 1565
services company" includes a power marketer, power broker, 1566
aggregator, or independent power producer but excludes an electric 1567
cooperative, municipal electric utility, governmental AGGREGATOR, 1568
or billing and collection agent. 1569

(10) "Electric supplier" has the same meaning as in section 1570
4933.81 of the Revised Code. 1571

(11) "Electric utility" means an electric light company that 1572
is engaged on a for-profit basis in the business of supplying a 1573
noncompetitive retail electric service in this state or in the 1574
businesses of supplying both a noncompetitive and a competitive 1575
retail electric service in this state. "Electric utility" excludes 1576
municipal electric utility or a billing and collection agent. 1577
1578

(12) "FIRM ELECTRIC SERVICE" MEANS ELECTRIC SERVICE OTHER 1579
THAN NONFIRM ELECTRIC SERVICE. 1580

(13) "Governmental aggregator" means a legislative AUTHORITY 1581
of a municipal corporation, a board of township trustees, or a 1582
board of county commissioners acting as an aggregator for the 1583
provision of a competitive retail electric service under AUTHORITY 1584
conferred under section 4928.20 of the Revised Code. 1585

(14) A PERSON ACTS "KNOWINGLY," REGARDLESS OF THE PERSON'S 1586
PURPOSE, WHEN THE PERSON IS AWARE THAT THE PERSON'S CONDUCT WILL 1587
PROBABLY CAUSE A CERTAIN RESULT OR WILL PROBABLY BE OF A CERTAIN 1588
NATURE. A PERSON HAS KNOWLEDGE OF CIRCUMSTANCES WHEN THE PERSON IS 1589
AWARE THAT SUCH CIRCUMSTANCES PROBABLY EXIST. 1590

(15) "LEVEL OF FUNDING FOR LOW-INCOME CUSTOMER ENERGY 1591
EFFICIENCY PROGRAMS PROVIDED THROUGH ELECTRIC UTILITY RATES" MEANS 1592
THE LEVEL OF FUNDS COMMITTED BY AN ELECTRIC UTILITY PURSUANT TO AN 1593
ORDER OF THE PUBLIC UTILITIES COMMISSION ISSUED UNDER CHAPTER 1594
4905. OR 4909. OF THE REVISED CODE AND IN EFFECT ON THE DAY BEFORE 1595

THE EFFECTIVE DATE OF THIS SECTION, FOR THE PURPOSE OF IMPROVING 1596
THE ENERGY EFFICIENCY OF HOUSING FOR THE UTILITY'S LOW-INCOME 1597
CUSTOMERS. THE TERM EXCLUDES THE LEVEL OF ANY SUCH FUNDS COMMITTED 1598
TO A SPECIFIC NONPROFIT ORGANIZATION OR ORGANIZATIONS PURSUANT TO 1599
A STIPULATION OR CONTRACT. 1600

(16) "Low-income customer assistance programs" means the 1601
percentage of income payment plan program as PRESCRIBED IN RULES 1602
4901:1-18-02(B) TO (G) and 4901:1-18-04(B) OF THE OHIO 1603
ADMINISTRATIVE CODE IN EFFECT on the effective date of this 1604
section or, if modified pursuant to AUTHORITY under section 1605
4928.53 of the Revised Code, THE PROGRAM AS MODIFIED; the home 1606
energy assistance program AS PRESCRIBED IN section 5117.21 of the 1607
Revised Code and IN EXECUTIVE ORDER 97-1023-V or, if modified 1608
pursuant to AUTHORITY under section 4928.53 of the Revised Code, 1609
THE PROGRAM AS MODIFIED; the home weatherization assistance 1610
program AS PRESCRIBED in division (A)(6) of section 122.011 and in 1611
section 122.02 of the Revised Code or, if modified pursuant to 1612
AUTHORITY under section 4928.53 of the Revised Code, THE PROGRAM 1613
AS MODIFIED; THE OHIO ENERGY CREDIT PROGRAM AS PRESCRIBED IN 1614
sections 5117.01 to 5117.05, 5117.07 to 5117.12, and 5117.99 OF 1615
THE REVISED CODE or, if modified pursuant to AUTHORITY under 1616
section 4928.53 of the Revised Code, THE PROGRAM AS MODIFIED; and 1617
the TARGETED energy EFFICIENCY and WEATHERIZATION PROGRAM 1618
established under section 4928.55 of the Revised Code. 1619

(17) "Market development period" for an electric utility 1620
means the period of time beginning on the starting date of 1621
competitive retail electric service and ending on the applicable 1622
date for that utility as specified in section 4928.40 of the 1623
Revised Code, irrespective of whether the utility applies to 1624
receive transition revenues under this chapter. 1625

(18) "Market power" means the ability to impose on customers 1626
a sustained price for a product or service ABOVE the price that 1627

would prevail in a COMPETITIVE market. 1628

(19) "Municipal electric utility" means a municipal 1629
corporation that owns or operates facilities to generate, 1630
transmit, or distribute electricity. 1631

(20) "Noncompetitive retail electric service" means a 1632
component of retail electric service that is noncompetitive as 1633
provided under division (B) of this section. 1634

(21) "NONFIRM ELECTRIC SERVICE" MEANS ELECTRIC SERVICE 1635
PROVIDED PURSUANT TO A SCHEDULE FILED UNDER SECTION 4905.30 OF THE 1636
REVISED CODE OR PURSUANT TO AN ARRANGEMENT UNDER SECTION 4905.31 1637
OF THE REVISED CODE, WHICH SCHEDULE OR ARRANGEMENT INCLUDES 1638
CONDITIONS THAT MAY REQUIRE THE CUSTOMER TO CURTAIL OR INTERRUPT 1639
ELECTRIC USAGE DURING NONEMERGENCY CIRCUMSTANCES UPON NOTIFICATION 1640
BY AN ELECTRIC UTILITY. 1641

(22) "Person" has the same meaning as in section 1.59 of the 1642
Revised Code. 1643

(23) "Project" means any real or personal property connected 1644
with all or part of an industrial, distribution, commercial, or 1645
research facility, not-for-profit facility, or residence that is 1646
to be acquired, constructed, RECONSTRUCTED, enlarged, improved, 1647
furnished, or equipped, or any combination of those activities, 1648
with aid furnished pursuant to sections 4928.61 to 4928.63 of the 1649
Revised Code for the purposes of not-for-profit, industrial, 1650
commercial, distribution, residential, and research development in 1651
this state. "Project" includes, but is not limited to, any 1652
small-scale renewables project. 1653

(24) "REGULATORY ASSETS" MEANS THE UNAMORTIZED NET REGULATORY 1654
ASSETS THAT ARE CAPITALIZED OR DEFERRED ON THE REGULATORY BOOKS OF 1655
THE ELECTRIC UTILITY, PURSUANT TO AN ORDER OR PRACTICE OF THE 1656
PUBLIC UTILITIES COMMISSION OR PURSUANT TO GENERALLY ACCEPTED 1657
ACCOUNTING PRINCIPLES AS A RESULT OF A PRIOR COMMISSION 1658

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.

(25) "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.

(26) "Starting date of competitive retail electric service"
means January 1, 2001, except as provided in division (C) of this
section.

(B) For the purposes of this chapter, a retail electric
service component shall be deemed a competitive retail electric
service if the service component is competitive pursuant to a

declaration by a provision of the Revised Code or pursuant to an 1691
order of the public utilities commission authorized under division 1692
(A) of section 4928.04 of the Revised Code. Otherwise, the service 1693
component shall be deemed a noncompetitive retail electric 1694
service. 1695

(C) Prior to January 1, 2001, the public utilities commission 1696
may issue an order delaying the January 1, 2001, starting date of 1697
competitive retail electric service by a specified number of days 1698
not to exceed six months, but only for extreme technical 1699
conditions precluding the start of competitive retail electric 1700
service on January 1, 2001. 1701

Sec. 4928.02. It is the policy of this state to do the 1702
following throughout this state beginning on the starting date of 1703
competitive retail electric service: 1704

(A) Ensure the availability to consumers of adequate, 1705
reliable, safe, efficient, nondiscriminatory, and reasonably 1706
priced retail electric service; 1707

(B) Ensure the availability of unbundled and comparable 1708
retail electric service that provides consumers with the supplier, 1709
price, terms, conditions, and quality options they elect to meet 1710
their respective needs; 1711

(C) Ensure diversity of electricity supplies and suppliers, 1712
by giving consumers effective choices over the selection of those 1713
supplies and suppliers and by encouraging the development of 1714
distributed and small generation facilities; 1715

(D) Encourage innovation and market access for cost-effective 1716
supply- and demand-side retail electric service; 1717

(E) Encourage cost-effective and efficient access to 1718
information regarding the operation of the transmission and 1719
distribution systems of electric utilities in order to promote 1720

effective customer choice of retail electric service; 1721

(F) Recognize the continuing emergence of competitive 1722
electricity markets through the development and implementation of 1723
flexible regulatory treatment; 1724

(G) Ensure effective competition in the provision of retail 1725
electric service by avoiding anticompetitive subsidies flowing 1726
from a noncompetitive retail electric service to a competitive 1727
retail electric service or to a product or service other than 1728
retail electric service, and vice versa; 1729

(H) Ensure retail electric service consumers protection 1730
against unreasonable sales practices, market deficiencies, and 1731
market power; 1732

(I) Facilitate the state's effectiveness in the global 1733
economy. 1734

Sec. 4928.03. Beginning on The starting date of competitive 1735
retail electric service, retail electric generation, aggregation, 1736
power marketing, and power brokerage services supplied to 1737
consumers within the certified territory of an electric utility 1738
are competitive retail electric services that the consumers may 1739
obtain subject to this chapter from any supplier or suppliers. In 1740
accordance with a filing under division (F) of section 4933.81 of 1741
the Revised Code, retail electric generation, aggregation, power 1742
marketing, or power brokerage services supplied to consumers 1743
within the certified territory of an electric cooperative that has 1744
made the filing are competitive retail electric services that the 1745
consumers may obtain subject to this chapter from any supplier or 1746
suppliers. 1747

Beginning on The starting date of competitive retail electric 1748
service and Notwithstanding any other provision of law, each 1749
consumer in this state and the suppliers to a consumer shall have 1750

comparable and nondiscriminatory access to noncompetitive retail 1751
electric services of an electric utility in this state within its 1752
certified territory for the purpose of satisfying the consumer's 1753
electricity requirements in keeping with the policy specified in 1754
section 4928.02 of the Revised Code. 1755

Sec. 4928.04. (A) The public utilities commission by order 1756
may declare that retail ancillary, metering, or billing and 1757
collection service supplied to consumers within the certified 1758
territory of an electric utility on or after the starting date of 1759
competitive retail electric service is a competitive retail 1760
electric service that the consumers may obtain from any supplier 1761
or suppliers subject to this chapter. The commission may issue 1762
such order, after investigation and public hearing, only if it 1763
first determines either of the following: 1764

(1) There will be effective competition with respect to the 1765
service. 1766

(2) The customers of the service have reasonably available 1767
alternatives. 1768

The commission shall initiate a proceeding on or before march 1769
31, 2003, on the question of the desirability, feasibility, and 1770
timing of any such competition. 1771

(B) In carrying out division (A) of this section, the 1772
commission may prescribe different classifications, procedures, 1773
terms, or conditions for different electric utilities and for the 1774
retail electric services they provide that are declared 1775
competitive pursuant to that division, provided the 1776
classifications, procedures, terms, or conditions are reasonable 1777
and do not confer any undue economic, competitive, or market 1778
advantage or preference upon any electric utility. 1779

Sec. 4928.05. (A)(1) On and after the starting date of 1780

competitive retail electric service, a competitive retail electric 1781
service supplied by an electric utility shall not be subject to 1782
supervision and regulation by the public utilities commission 1783
under Chapters 4901. to 4909., 4933., 4935., or 4963. of the 1784
Revised Code, except sections 4905.10, 4905.33, 4905.35, and 1785
4933.81 to 4933.90; except sections 4905.06, 4935.03, 4963.40, and 1786
4963.41 of the Revised Code regarding service reliability and 1787
public safety; and except as otherwise provided in this chapter. 1788
The commission's AUTHORITY to enforce those excepted provisions 1789
with respect to a COMPETITIVE retail electric service shall be 1790
such AUTHORITY as is provided for their enforcement under Chapters 1791
4901. to 4909., 4933., 4935., and 4963. of the Revised Code and 1792
this chapter. 1793

On and after the starting date of competitive retail electric 1794
service, a competitive retail electric service supplied by an 1795
electric cooperative shall not be subject to supervision and 1796
regulation by the commission under Chapters 4901. to 4909., 4933., 1797
4935., or 4963. of the Revised Code, except as otherwise expressly 1798
provided in sections 4928.01 to 4928.10 and 4928.16 of the Revised 1799
Code. 1800

(2) On and after the starting date of competitive retail 1801
electric service, a noncompetitive retail electric service 1802
supplied by an electric utility shall be subject to supervision 1803
and regulation by the commission under Chapters 4901. to 4909., 1804
4933., 4935., and 4963. of the Revised Code and this chapter, to 1805
the extent that AUTHORITY is not preempted by federal law. The 1806
commission's AUTHORITY to enforce those provisions with respect to 1807
a noncompetitive retail electric service shall be the AUTHORITY 1808
provided under those chapters and this chapter, to the extent the 1809
AUTHORITY is not preempted by federal law. 1810

The commission shall exercise its jurisdiction with respect 1811

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

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

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

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

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be subject to and governed by Chapter 4903. of the Revised Code. 1843

(B) If the commission determines, on or after The starting 1844
date of competitive retail electric service, that there is a 1845
decline or loss of effective competition with respect to a 1846
competitive retail electric service of an electric utility, which 1847
service was declared competitive by commission order issued 1848
pursuant to division (A) of section 4928.04 of the Revised Code, 1849
the commission shall ensure that that service is provided at 1850
compensatory, fair, and nondiscriminatory prices and terms and 1851
conditions. 1852

(C) In addition to its authority under section 4928.04 of the 1853
Revised Code and divisions (A) and (B) of this section, the 1854
commission, on an ongoing basis, shall monitor and evaluate the 1855
provision of retail electric service in this state for the purpose 1856
of discerning any noncompetitive retail electric service that 1857
should be available on a competitive basis on or after The 1858
starting date of competitive retail electric service pursuant to a 1859
declaration in the revised code, and for the purpose of discerning 1860
any competitive retail electric service that is no longer subject 1861
to effective competition on or after that date. Upon such 1862
evaluation, the commission periodically shall report its findings 1863
and any recommendations for legislation to the standing committees 1864
of both houses of the general assembly that have primary 1865
jurisdiction regarding public utility legislation. Until 2008, the 1866
commission and the consumer's counsel also shall provide BIENNIAL 1867
reports to those standing committees, regarding the effectiveness 1868
of competition in the supply of competitive retail electric 1869
services in this state. In addition, until the end of all market 1870
development periods as determined or extended by the commission 1871
under section 4928.40 of the Revised Code, those standing 1872
committees shall meet at least biennially to consider the effect 1873
on this state of electric service restructuring and to receive 1874

reports from the commission, consumers' counsel, and director of 1875
development. 1876

(D) In determining, for purposes of division (B) or (C) of 1877
this section, whether there is effective competition in the 1878
provision of a retail electric service or reasonably available 1879
alternatives for that service, the commission shall consider 1880
factors including, but not limited to, all of the following: 1881

(1) The number and size of alternative providers of that 1882
service; 1883

(2) The extent to which the service is available from 1884
alternative suppliers in the relevant market; 1885

(3) The ability of alternative suppliers to make functionally 1886
equivalent or substitute services readily available at competitive 1887
prices, terms, and conditions; 1888

(4) Other indicators of market power, which may include 1889
market share, growth in market share, ease of entry, and the 1890
affiliation of suppliers of services. 1891

the burden of proof shall be on Any entity requesting, under 1892
division (b) or (c) of this section, a determination by the 1893
commission of the existence of or a lack of effective competition 1894
or reasonably available alternatives. 1895

(E)(1) beginning on The starting date of competitive retail 1896
electric service, The commission has authority under Chapters 1897
4901. to 4909. of the Revised Code, and shall exercise that 1898
authority, to resolve abuses of market power by any electric 1899
utility that interfere with effective competition in the provision 1900
of retail electric service. 1901

(2) In addition to the commission's AUTHORITY under division 1902
(E)(1) of this section, THE COMMISSION, BEGINNING THE FIRST YEAR 1903
AFTER THE MARKET DEVELOPMENT PERIOD OF A PARTICULAR ELECTRIC 1904

UTILITY AND AFTER REASONABLE NOTICE AND OPPORTUNITY FOR HEARING, 1905
MAY TAKE SUCH MEASURES WITHIN A TRANSMISSION CONSTRAINED AREA IN 1906
THE UTILITY'S CERTIFIED TERRITORY as are necessary TO ENSURE THAT 1907
RETAIL ELECTRIC GENERATION SERVICE IS PROVIDED AT REASONABLE RATES 1908
within that area. THE COMMISSION MAY EXERCISE THIS AUTHORITY ONLY 1909
UPON FINDINGS THAT an electric UTILITY is or has engaged in the 1910
abuse of MARKET POWER AND THAT that abuse IS NOT ADEQUATELY 1911
MITIGATED BY RULES AND PRACTICES OF ANY INDEPENDENT TRANSMISSION 1912
ENTITY CONTROLLING THE TRANSMISSION FACILITIES. ANY SUCH MEASURE 1913
SHALL BE TAKEN ONLY TO THE EXTENT NECESSARY TO PROTECT CUSTOMERS 1914
IN THE AREA FROM THE particular abuse of MARKET POWER AND TO THE 1915
EXTENT the COMMISSION'S AUTHORITY IS NOT PREEMPTED BY FEDERAL LAW. 1916
THE measure SHALL REMAIN in effect UNTIL THE COMMISSION, AFTER 1917
reasonable NOTICE AND OPPORTUNITY FOR HEARING, DETERMINES THAT THE 1918
particular abuse of MARKET POWER HAS BEEN MITIGATED. 1919

(E) An electric utility, electric services company, electric 1920
cooperative, or governmental aggregator subject to certification 1921
under section 4928.08 of the Revised code shall provide the 1922
commission with such information, regarding a competitive retail 1923
electric service for which it is subject to certifications, as the 1924
commission considers necessary to carry out this chapter. An 1925
electric utility shall provide the commission with such 1926
information as the commission considers necessary to carry out 1927
divisions (B) to (E) of this section. The commission shall take 1928
such measures as it considers necessary to protect the 1929
confidentiality of any such information. 1930

The commission shall require each electric utility to file 1931
with the commission on and after the starting date of competitive 1932
retail electric service an annual report of its intrastate gross 1933
receipts and sales of kilowatt hours of electricity, and shall 1934
require each electric services company, electric cooperative, and 1935
governmental aggregator subject to certification to file an annual 1936

report on and after that starting date of such receipts and sales 1937
from the provision of those retail electric services for which it 1938
is subject to certification. for the purpose of the reports, sales 1939
of kilowatt hours of electricity are deemed to occur at the meter 1940
of the retail customer. 1941

Sec. 4928.07. To the maximum extent practicable on or after 1942
The starting date of competitive retail electric service, an 1943
electric utility, electric services company, electric cooperative, 1944
or governmental aggregator subject to certification under section 1945
4928.08 of the Revised Code shall separately price competitive 1946
retail electric serviceS, and the PRICES SHALL BE ITEMIZED on the 1947
bill of a customer or otherwise disclosed to the customer. 1948
Although a competitive retail electric service shall be supplied 1949
to any consumer on such a basis, such an electric utility, 1950
electric services company, electric cooperative, or governmental 1951
AGGREGATOR may repackage the service on or after The starting date 1952
and offer it on a bundled basis with other retail electric 1953
services to meet consumer preferences. Such repackaging by an 1954
electric utility shall be subject to sections 4905.33 to 4905.35 1955
of the Revised Code. repackaging by such an electric services 1956
company, electric cooperative, or governmental aggregator shall be 1957
subject to the limitation that no such entity, as to a competitive 1958
retail electric service for which the utility, company, 1959
cooperative, or aggregator is subject to certification, shall 1960
furnish free service or service for less than actual cost for the 1961
purpose of destroying competition. 1962

Sec. 4928.08. (A) This section applies to an electric 1963
cooperative, or to a governmental AGGREGATOR that is a municipal 1964
electric utility, only to the extent of a competitive retail 1965
electric service it provides to a customer to whom it does not 1966
provide a noncompetitive retail electric service through 1967

transmission or distribution facilities it singly or jointly owns 1968
or operates. 1969

(B) No electric utility, electric services company, electric 1970
cooperative, or governmental aggregator shall provide a 1971
competitive retail electric service to a consumer in this state on 1972
and after the starting date of competitive retail electric service 1973
without first being certified by the public utilities commission 1974
regarding its managerial, technical, and financial capability to 1975
provide that service. Certification shall be granted pursuant to 1976
procedures and standards the commission shall prescribe in 1977
accordance with division (C) of this section, except that 1978
certification or certification renewal shall be deemed approved 1979
thirty days after the filing of an application with the commission 1980
unless the commission suspends that approval for good cause shown. 1981
In the case of such a suspension, the commission shall act to 1982
approve or deny certification or certification renewal to the 1983
applicant not later than ninety days after the date of the 1984
suspension 1985

(C) Capability standards adopted in rules under division (B) 1986
of this section shall be sufficient to ensure compliance with the 1987
minimum service requirements established under section 4928.10 of 1988
the Revised Code and with section 4928.09 of the Revised Code. The 1989
standards shall allow flexibility for voluntary aggregation, to 1990
encourage market creativity in responding to consumer needs and 1991
demands. The rules shall include procedures for biennially 1992
renewing certification. 1993

(d) The commission may suspend, rescind, or conditionally 1994
rescind the certification of any electric utility, electric 1995
services company, electric cooperative, or governmental aggregator 1996
issued under this section if the commission determines, after 1997
reasonable notice and opportunity for hearing, that the utility, 1998

company, cooperative, or AGGREGATOR has failed to comply with any 1999
applicable certification standards or has engaged in 2000
anticompetitive or unfair, deceptive, or unconscionable acts or 2001
practices in this state. 2002

(e) no electric distribution utility on and after the 2003
starting date of competitive retail electric service shall 2004
knowingly distribute electricity, to a retail consumer in this 2005
state, for any supplier of electricity that has not been certified 2006
by the commission pursuant to this section. 2007

Sec. 4928.09. (A)(1) No person shall operate in this state as 2008
an electric utility, an electric services company, or a billing 2009
and collection agent on and after the starting date of competitive 2010
retail electric service unless that person first does both of the 2011
following: 2012

(a) Consents irrevocably to the jurisdiction of the courts of 2013
this state and service of process in this state, including, 2014
without limitation, service of summonses and subpoenas, for any 2015
civil or criminal proceeding arising out of or relating to such 2016
operation, by providing that irrevocable consent in ACCORDANCE 2017
with division (A)(4) of this section; 2018

(b) Designates an agent authorized to receive that service of 2019
process in this state, by filing with the commission a document 2020
designating that agent. 2021

(2) No person shall continue to operate as such an electric 2022
utility, electric services company, or billing and collection 2023
agent unless that person continues to consent to such jurisdiction 2024
and service of process in this state and continues to designate an 2025
agent as provided under this division, by refileing in accordance 2026
with division (A)(4) of this section the appropriate documents 2027
filed under division (A)(1) of this section or, as applicable, the 2028
appropriate amended documents filed under division (A)(3) of this 2029

section. Such refiling shall occur during the month of December of 2030
every fourth year after the initial filing of a document under 2031
division (A)(1) of this section. 2032

(3) If the address of the person filing a document under 2033
division (A)(1) or (2) of this section changes, or if a person's 2034
agent or the address of the agent changes, from that listed on the 2035
most recently filed of such documents, the person shall file an 2036
amended document containing the new information. 2037

(4) The consent and designation required by divisions (A)(1) 2038
to (3) of this section shall be in writing, on forms prescribed by 2039
the public utilities commission. The original of each such 2040
document or amended document shall be legible and shall be filed 2041
with the commission, with a copy filed with the office of the 2042
consumers' counsel and with the attorney general's office. 2043

(B) A person who enters this state pursuant to a summons, 2044
subpoena, or other form of process authorized by this section is 2045
not subject to arrest or service of process, whether civil or 2046
criminal, in connection with other matters that arose before the 2047
person's entrance into this state pursuant to such summons, 2048
subpoena, or other form of process. 2049

(C) Divisions (A) and (B) of this section do not apply to any 2050
of the following: 2051

(1) A corporation incorporated under the laws of this state 2052
that has appointed a statutory agent pursuant to section 1701.07 2053
or 1702.06 of the Revised Code; 2054

(2) A foreign corporation licensed to transact business in 2055
this state that has appointed a designated agent pursuant to 2056
section 1703.041 of the Revised Code; 2057

(3) Any OTHER person that is a resident of this state or that 2058
files consent to service of process and designates a statutory 2059
agent pursuant to other laws of this state. 2060

Sec. 4928.10. For the protection of consumers in this state, 2061
the public utilities commission shall adopt rules under division 2062
(A) of section 4928.06 of the Revised Code specifying the 2063
necessary minimum service requirements, on or after The starting 2064
date of competitive retail electric service, of an electric 2065
utility, electric services company, electric cooperative, or 2066
governmental aggregator subject to certification under section 2067
4928.08 of the Revised Code regarding the provision directly or 2068
through its billing and collection agent of competitive retail 2069
electric services for which it is subject to certification. Rules 2070
adopted under this section shall include a prohibition against 2071
unfair, deceptive, and unconscionable acts and practices in the 2072
marketing, solicitation, and sale of such a competitive retail 2073
electric service and in the administration of any contract for 2074
service, and also shall include additional consumer protections 2075
concerning all of the following: 2076

(A) Contract disclosure. The rules shall include requirements 2077
that an electric utility, electric services company, electric 2078
cooperative, or governmental aggregator subject to certification 2079
under section 4928.08 of the Revised Code do both of the 2080
following: 2081

(1) Provide consumers with adequate, accurate, and 2082
understandable pricing and terms and conditions of service, 2083
including any switching fees, and with a document containing the 2084
terms and conditions of pricing and service before the consumer 2085
enters into the contract for service; 2086

(2) Disclose the conditions under which a customer may 2087
rescind a contract without penalty. 2088

(B) Service termination. The rules shall include disclosure 2089
of the terms identifying how customers may switch or terminate 2090
service, including any required notice and any penalties. 2091

<u>(C) Minimum content of customer bills. The rules shall</u>	2092
<u>include all of the following requirements:</u>	2093
<u>(1) uniform price disclosure and Disclosures of total billing</u>	2094
<u>units for the billing period and historical annual usage;</u>	2095
<u>(2) To the maximum extent practicable, separate listing of</u>	2096
<u>each service component to enable a customer to recalculate its</u>	2097
<u>bill for accuracy;</u>	2098
<u>(3) Identification of the supplier of each service;</u>	2099
<u>(4) Statement of where and how payment may be made and</u>	2100
<u>provision of a toll-free or local customer assistance and</u>	2101
<u>complaint number for the electric utility, electric services</u>	2102
<u>company, electric cooperative, or governmental aggregator, as well</u>	2103
<u>as a consumer assistance telephone number or numbers for state</u>	2104
<u>agencies, such as the commission, the office of the consumers'</u>	2105
<u>counsel, and the attorney general's office, with the available</u>	2106
<u>hours noted.</u>	2107
<u>(D) Disconnection and service termination, including</u>	2108
<u>requirements with respect to master-metered buildings. The rules</u>	2109
<u>shall include policies and procedures that are consistent with</u>	2110
<u>sections 4933.121 and 4933.122 of the Revised Code and the</u>	2111
<u>commission's rules adopted under those sections, and that provide</u>	2112
<u>for all of the following:</u>	2113
<u>(1) Coordination between suppliers for the purpose of</u>	2114
<u>maintaining service;</u>	2115
<u>(2) The allocation of partial payments between suppliers when</u>	2116
<u>service components are jointly billed;</u>	2117
<u>(3) A prohibition against blocking, or authorizing the</u>	2118
<u>blocking of, customer access to a noncompetitive retail electric</u>	2119
<u>service when a customer is delinquent in payments to the electric</u>	2120
<u>utility or electric services company for a competitive retail</u>	2121

electric service; 2122

(4) A prohibition against switching, or authorizing the 2123
switching of, a customer's supplier of competitive retail electric 2124
service without the prior consent of the customer in accordance 2125
with appropriate confirmation practices, which may include 2126
independent, third-party verification procedures. 2127

(5) A requirement of disclosure of the conditions under which 2128
a customer may rescind a decision to switch its supplier without 2129
penalty; 2130

(6) Specification of any required notice and any penalty for 2131
early termination of contract. 2132

(E) Minimum service quality, safety, and reliability. 2133
However, service quality, SAFETY, and reliability requirements for 2134
electric generation service shall be determined primarily through 2135
market expectations and contractual relationships. 2136

(f) Generation resource mix and environmental characteristics 2137
of power supplies. the rules shall include requirements for 2138
determination of the approximate generation resource mix and 2139
environmental characteristics of the power supplies and disclosure 2140
to the customer prior to the customer entering into a contract to 2141
purchase and four times per year under the contract. The rules 2142
also shall require that the electric utility, electric services 2143
company, electric cooperative, or governmental AGGREGATOR provide, 2144
or cause its billing and collection agent to provide, a customer 2145
with information comparing the projected, with the actual and 2146
verifiable, resource mix and environmental characteristics. This 2147
disclosure shall occur not less than annually or not less than 2148
once during the contract period if the contract period is less 2149
than one year, and prior to any renewal of a contract. 2150

2151

(g) Customer information. The rules shall include 2152

requirements that the electric utility, electric services company, 2153
electric cooperative, or governmental aggregator make generic 2154
customer load pattern information available to other electric 2155
light companies on a comparable and nondiscriminatory basis, and 2156
make customer-specific information available to other electric 2157
light companies on a comparable and nondiscriminatory basis 2158
unless, as to customer-specific information, the customer objects. 2159
The rules shall ensure that each such utility, company, 2160
cooperative, or aggregator provide clear and frequent notice to 2161
its customers of the right to object and of applicable procedures. 2162
The rules shall establish the exact language that shall be used in 2163
all such notices. 2164

Sec. 4928.11. (A) For the protection of consumers in this 2165
state, the public utilities commission shall adopt rules under 2166
division (A) of section 4928.06 of the Revised Code that specify 2167
minimum service quality, safety, and reliability requirements for 2168
NONCOMPETITIVE retail electric services supplied by an electric 2169
utility in this state, to the extent such AUTHORITY is not 2170
preempted by federal law. The rules shall include prescriptive 2171
standards for inspection, maintenance, repair, and replacement of 2172
the transmission and distribution systems of electric utilities; 2173
shall apply to each substantial type of transmission or 2174
distribution equipment or facility; shall establish uniform 2175
interconnection standards to ensure transmission and distribution 2176
system safety and reliability and shall otherwise provide for high 2177
quality, safe, and reliable electric service; and shall include 2178
standards for operation, reliability, and SAFETY during periods of 2179
emergency and disaster. The rules regarding interconnection shall 2180
seek to prevent barriers to new technology and shall not make 2181
compliance unduly burdensome or expensive. when questions arise 2182
about specific equipment to meet interconnection standards, the 2183
commission shall initiate proceedings open to the public to 2184

solicit comments from all interested parties. additionally, rules 2185
under this division shall include nondiscriminatory metering 2186
standards. 2187

(B) The commission shall require each electric utility to 2188
report annually to the commission on and after the starting date 2189
of competitive retail electric service, regarding its compliance 2190
with the rules required under division (A) of this section. the 2191
commission shall make the filed reports available to the public. 2192
Periodically as determined by commission rule under division (A) 2193
of section 4928.06 of the Revised Code and in a proceeding 2194
initiated under division (B) of section 4928.16 of the Revised 2195
Code, the commission shall review a utility's report to determine 2196
the utility's compliance and may act pursuant to DIVISION (B) of 2197
section 4928.16 of the Revised Code to enforce compliance. 2198

Sec. 4928.12. (A) Except as otherwise provided in sections 2199
4928.31 to 4928.40 of the Revised Code, no entity shall own or 2200
control transmission facilities as defined under federal law and 2201
located in this state on or after the starting date of competitive 2202
retail electric service unless that entity is a member of, and 2203
transfers control of those facilities to, one or more qualifying 2204
transmission entities, as described in division (B) of this 2205
section, that are operational. 2206

(B) An entity that owns or controls TRANSMISSION FACILITIES 2207
LOCATED IN THIS STATE complies with division (A) of this section 2208
if each transmission entity of which it is a member meets all of 2209
the following specifications: 2210

(1) The transmission entity is APPROVED BY THE FEDERAL ENERGY 2211
REGULATORY COMMISSION. 2212

(2) the transmission entity effects SEPARATE CONTROL OF 2213
TRANSMISSION FACILITIES FROM CONTROL OF GENERATION FACILITIES. 2214

(3) <u>The transmission entity prohibits or otherwise precludes</u>	2215
<u>PANCAKED TRANSMISSION RATES.</u>	2216
(4) <u>The transmission entity IMPROVES SERVICE RELIABILITY</u>	2217
<u>WITHIN THIS STATE.</u>	2218
(5) <u>the transmission entity achieves the objectives of an</u>	2219
<u>open and competitive electric generation marketplace, elimination</u>	2220
<u>of barriers to market entry, and preclusion of control of</u>	2221
<u>bottleneck electric transmission facilities in the provision of</u>	2222
<u>retail electric service.</u>	2223
(6) <u>The TRANSMISSION entity is of sufficient scope or</u>	2224
<u>otherwise operates to substantially increase economical supply</u>	2225
<u>options for consumers.</u>	2226
(7) <u>the governance structure or control of the transmission</u>	2227
<u>entity is independent of the owners and users of the TRANSMISSION</u>	2228
<u>facilities, and no member of its board of directors has an</u>	2229
<u>affiliation, with such an owner or user or with an affiliate of an</u>	2230
<u>owner or user during the member's tenure on the board, such as to</u>	2231
<u>unduly affect the transmission entity's performance.</u>	2232
(8) <u>The transmission entity operates under policies that</u>	2233
<u>promote positive performance designed to satisfy the electricity</u>	2234
<u>requirements of customers.</u>	2235
(9) <u>The transmission entity is capable of maintaining</u>	2236
<u>real-time reliability of the electric transmission system,</u>	2237
<u>ensuring comparable and nondiscriminatory transmission access and</u>	2238
<u>necessary services, minimizing system congestion, and further</u>	2239
<u>addressing real or potential transmission constraints.</u>	2240
(C) <u>to the extent that a transmission entity under division</u>	2241
<u>(A) of this section is authorized to build transmission</u>	2242
<u>facilities, that TRANSMISSION entity has the powers provided in</u>	2243
<u>and is subject to sections 1723.01 to 1723.08 of the Revised Code.</u>	2244

(D) For the purpose of forming or participating in a regional 2245
regulatory oversight body or mechanism developed for any 2246
transmission entity under division (A) of this section that is of 2247
regional scope and operates within this state: 2248

(1) The commission may make joint investigations, hold joint 2249
hearings, within or outside this state, and issue joint or 2250
concurrent orders in conjunction or concurrence with any official 2251
or agency of any state or of the United States, whether in the 2252
holding of those investigations or hearings, or in the making of 2253
those orders, the commission is functioning under agreements or 2254
compacts between states, under the concurrent power of states to 2255
regulate interstate commerce, as an agency of the United States, 2256
or otherwise. 2257

(2) The commission may negotiate and enter into agreements or 2258
compacts with agencies of other states for cooperative regulatory 2259
efforts and for the enforcement of the respective state laws 2260
regarding the transmission entity. 2261

(E) If a qualifying transmission entity is not operational as 2262
contemplated in division (A)(2) of this section, division (A)(9) 2263
of section 4928.34 of the Revised Code, or division (G) of section 2264
4928.35 of the Revised Code, the commission by rule or order shall 2265
take such measures or impose such requirements on all for-profit 2266
entities that own or control electric transmission FACILITIES 2267
located in this state as the commission determines necessary and 2268
proper to achieve independent, nondiscriminatory operation of, and 2269
separate ownership and control of, such electric transmission 2270
facilities on or after the starting date of competitive retail 2271
electric service. 2272

Sec. 4928.13. through a periodic filing with the public 2273
utilities commission in such form as the commission shall 2274
prescribe by rule under division (A) of section 4928.06 of the 2275

Revised Code, each electric utility that owns nuclear generation 2276
facilities located in this state shall demonstrate compliance with 2277
DECOMMISSIONING requirements of the nuclear regulatory commission 2278
and public utilities commission and shall demonstrate adequate 2279
financing mechanisms to fund facility DECOMMISSIONING. 2280

Sec. 4928.14. (A) After its market development period, an 2281
ELECTRIC DISTRIBUTION utility in this state shall provide 2282
consumers, on a comparable and nondiscriminatory basis within its 2283
certified territory, a standard service offer of all competitive 2284
retail electric services necessary to maintain essential electric 2285
service to consumers, including a firm supply of electric 2286
generation service. such offer shall be filed with the public 2287
utilities commission under section 4909.18 of the Revised Code. 2288

(B) After that market development period, the failure of a 2289
supplier to provide retail electric generation service to 2290
customers within the certified territory of the electric 2291
distribution utility shall result in the supplier's customers, 2292
after reasonable notice, defaulting to the utility's standard 2293
service offer filed under division (A) of this section until the 2294
customer chooses an alternative supplier. A supplier is deemed 2295
under this section to have failed to provide such service if the 2296
commission finds, after reasonable notice and opportunity for 2297
hearing, that any of the following conditions are MET: 2298

(1) the supplier has defaulted on its contracts with 2299
customers, is in receivership, or has filed for bankruptcy. 2300

(2) the supplier is no longer capable of providing the 2301
service. 2302

(3) the supplier is unable to provide delivery to 2303
transmission or distribution facilities for such period of time as 2304
may be reasonably specified by commission rule adopted under 2305

division (A) of section 4928.06 of the Revised Code. 2306

(4) The supplier's certification has been suspended, 2307
conditionally rescinded, or rescinded under division (D) of 2308
section 4928.08 of the Revised Code. 2309

Sec. 4928.15. (A) Except as otherwise provided in sections 2310
4928.31 to 4928.40 of the Revised Code, no electric utility shall 2311
supply noncompetitive retail electric DISTRIBUTION service in this 2312
state on or after The starting date of competitive retail electric 2313
service except pursuant to a schedule for that service that is 2314
consistent with the state policy specified in section 4928.02 of 2315
the Revised Code and filed with the public utilities COMMISSION 2316
under section 4909.18 of the Revised Code. the schedule shall 2317
provide that electric distribution service under the schedule is 2318
available to all consumers within the utility's certified 2319
territory and to any supplier to those consumers on a 2320
nondiscriminatory and comparable basis. distribution service rates 2321
and charges under the schedule shall be established in accordance 2322
with Chapters 4905. and 4909. of the Revised Code. The schedule 2323
shall include an obligation to build distribution facilities when 2324
necessary to provide adequate distribution service, provided that 2325
a customer requesting that service may be required to pay all or 2326
part of the reasonable incremental cost of the new facilities, in 2327
accordance with rules, policy, precedents, or orders of the 2328
commission. 2329

(B) Except as otherwise provided in sections 4928.31 to 2330
4928.40 of the Revised Code and except as preempted by federal 2331
law, no electric utility shall supply the transmission service or 2332
ancillary service component of noncompetitive retail electric 2333
service in this state on or after The starting date of competitive 2334
retail electric service except pursuant to a schedule for that 2335
service component that is consistent with the state policy 2336

specified in section 4928.02 of the Revised Code and filed with 2337
the COMMISSION under section 4909.18 of the Revised Code. The 2338
schedule shall provide that transmission or ancillary service 2339
under the schedule is available to all consumers and to any 2340
supplier to those consumers on a nondiscriminatory and comparable 2341
basis. Service rates and charges under the schedule shall be 2342
established in accordance with Chapters 4905. and 4909. of the 2343
Revised Code. 2344

Sec. 4928.16. (A)(1) The public utilities commission has 2345
jurisdiction under section 4905.26 of the Revised Code, upon 2346
complaint of any person or upon complaint or initiative of the 2347
commission on or after the starting date of competitive retail 2348
electric service, regarding the provision by an electric utility, 2349
electric services company, electric cooperative, or governmental 2350
aggregator subject to certification under section 4928.08 of the 2351
Revised Code of any service for which it is subject to 2352
certification. 2353

(2) The commission also has jurisdiction under section 2354
4905.26 of the Revised Code, upon complaint of any person or upon 2355
complaint or initiative of the commission on or after the starting 2356
date of competitive retail electric service, to determine whether 2357
an electric utility has violated or failed to comply with any 2358
provision of sections 4928.01 to 4928.15, any provision of 2359
divisions (A) to (D) of section 4928.35 of the Revised Code, or 2360
with any rule or order adopted or issued under those sections; or 2361
whether an electric services company, electric cooperative, or 2362
governmental aggregator subject to certification under section 2363
4928.08 of the Revised Code has violated or failed to comply with 2364
any provision of sections 4928.01 to 4928.10 of the Revised Code 2365
regarding a competitive retail electric service for which it is 2366
subject to certification or any rule or order adopted or issued 2367
under those sections. 2368

(B) In addition to its authority under division (C) of 2369
section 4928.08 of the Revised Code and to any other remedies 2370
provided by law, the commission, after reasonable notice and 2371
opportunity for hearing in accordance with section 4905.26 of the 2372
Revised Code, may do any of the following: 2373

(1) Order rescission of a contract or restitution to 2374
customers in any complaint brought pursuant to division (A)(1) or 2375
(2) of this section; 2376

(2) Order any remedy or forfeiture provided under sections 2377
4905.54 to 4905.60 and 4905.64 of the Revised Code upon a finding 2378
under division (A)(2) of this section that the electric utility 2379
has violated or failed to comply with any provision of sections 2380
4928.01 to 4928.15, any provision of divisions (A) to (D) of 2381
section 4928.35 of the Revised Code, or with any rule or order 2382
adopted or issued under those sections. in addition, the 2383
commission may order any remedy provided under section 4905.22, 2384
4905.37, or 4905.38 of the Revised Code if the violation or 2385
failure to comply by an electric utility related to the provision 2386
of a noncompetitive retail electric service. 2387

(3) Order any remedy or forfeiture provided under sections 2388
4905.54 to 4905.60 and 4905.64 of the Revised Code upon a finding 2389
under division (A)(2) of this section that the electric services 2390
company, electric cooperative, or governmental aggregator subject 2391
to certification under section 4928.08 of the Revised Code has 2392
violated or failed to comply, regarding a competitive retail 2393
electric service for which it is subject to certification, with 2394
any provision of sections 4928.01 to 4928.10 of the Revised Code 2395
or any rule or order adopted or issued under those sections. 2396

(C)(1) In addition to the authority conferred under section 2397
4911.15 of the Revised Code, the consumers' counsel may file a 2398
complaint under division (A)(1) or (2) of this section on behalf 2399

of residential consumers in this state or appear before the 2400
commission as a representative of those consumers pursuant to any 2401
complaint filed under division (A)(1) or (2) of this section. 2402

(2) In addition to the authority conferred under section 2403
4911.19 of the Revised Code, the consumers' counsel, upon 2404
reasonable grounds on and after the starting date of competitive 2405
retail electric service, may file with the commission under 2406
section 4905.26 of the Revised Code a complaint for discovery if 2407
the recipient of an inquiry under section 4911.19 of the Revised 2408
Code fails to provide a response within the time specified in that 2409
section. 2410

(D) Section 4905.61 of the Revised Code applies to a 2411
violation by an electric utility of, or to a failure of an 2412
electric utility to comply with, any provision of sections 4928.01 2413
to 4928.15, any provision of divisions (A) to (D) of section 2414
4928.35 of the Revised Code, or with any rule or order adopted or 2415
issued under those sections. 2416

Sec. 4928.17. (A) except as otherwise provided in sections 2417
4928.31 to 4928.40 of the Revised Code and beginning on The 2418
starting date of competitive retail electric service, no electric 2419
utility shall engage in this state, either directly or through an 2420
affiliate, in the businesses of supplying a noncompetitive retail 2421
electric service and supplying a competitive retail electric 2422
service, or in the businesses of supplying a noncompetitive retail 2423
electric service and supplying a product or service other than 2424
retail electric service, unless the utility implements and 2425
operates under a corporate separation plan that is approved by the 2426
public utilities commission under this section, is consistent with 2427
the policy specified in section 4928.02 of the Revised Code, and 2428
achieves all of the following: 2429

(1) The plan provides, at minimum, for the provision of the 2430

competitive retail electric service or the nonelectric product or 2431
service through a fully separated affiliate of the utility, and 2432
the plan includes separate accounting requirements, the code of 2433
conduct as ordered by the commission pursuant to a rule it shall 2434
adopt under division (A) of section 4928.06 of the Revised Code, 2435
and such other measures as are necessary to effectuate the policy 2436
specified in section 4928.02 of the Revised Code. 2437

(2) The plan satisfies the public interest in preventing 2438
unfair competitive advantage and preventing the abuse of market 2439
power. 2440

(3) The plan is sufficient to ensure that the utility will 2441
not extend any undue preference or advantage to any affiliate, 2442
division, or part of its own business engaged in the business of 2443
supplying the competitive retail electric service or NONELECTRIC 2444
product or service, and to ensure that any such affiliate, 2445
division, or part will not receive undue preference or advantage 2446
from any affiliate, division, or part of the business engaged in 2447
business of supplying the noncompetitive retail electric service. 2448
No such utility, affiliate, division, or part shall extend such 2449
undue preference. 2450

(B) The commission may approve, modify and approve, or 2451
disapprove a corporate separation plan filed with the commission 2452
under division (A) of this section. As part of the code of conduct 2453
required under division (A)(1) of this section, the commission 2454
shall adopt rules pursuant to division (A) of section 4928.06 of 2455
the Revised Code regarding corporate separation AND procedures for 2456
plan filing and approval. The rules shall include limitations on 2457
affiliate practices solely for the purpose of maintaining a 2458
separation of the affiliate's business from the business of the 2459
utility to prevent unfair competitive advantage by VIRTUE of that 2460
relationship. The rules also shall include an opportunity for any 2461
person having a real and substantial interest in the corporate 2462

separation plan to file specific objections to the plan and 2463
propose specific responses to issues raised in the objections, 2464
which objections and responses the commission shall address in its 2465
final order. Prior to commission approval of the plan, the 2466
commission shall afford a hearing upon those aspects of the plan 2467
that the commission determines reasonably require a hearing. the 2468
commission may reject and require refiling of a substantially 2469
inadequate plan under this section. 2470

(C) The commission shall issue an order approving or 2471
modifying and approving a corporate separation plan under this 2472
section, to be effective on the date specified in the order, only 2473
upon findings that the plan reasonably complies with the 2474
requirements of division (A) of this section and will provide for 2475
ongoing compliance with the policy specified in section 4928.02 of 2476
the Revised Code. 2477

(D) Any party may seek an amendment to a CORPORATE separation 2478
plan approved under this section, and the commission, pursuant to 2479
a request from any party or on its own initiative, may order as it 2480
considers necessary the filing of an amended CORPORATE separation 2481
plan to reflect changed circumstances. 2482

(E) Notwithstanding section 4905.20, 4905.21, 4905.46, or 2483
4905.48 of the Revised Code, an electric utility may divest itself 2484
of any generating asset at any time without commission approval, 2485
subject to the provisions of Title XLIX of the Revised Code 2486
relating to the transfer of transmission, distribution, or 2487
ancillary service provided by such generating asset. 2488

Sec. 4928.18. (A) Notwithstanding division (D)(2)(a) of 2489
section 4909.15 of the Revised Code, nothing in this chapter 2490
prevents the public utilities commission from exercising its 2491
AUTHORITY under Title XLIX of the Revised Code to protect 2492
customers of retail electric service supplied by an electric 2493

utility FROM any adverse effect of the utility's provision of a 2494
product or service other than retail electric service. 2495

(B) The commission has jurisdiction under section 4905.26 of 2496
the Revised Code, upon complaint of any person or upon complaint 2497
or initiative of the commission on or after the starting date of 2498
competitive retail electric service, to determine whether an 2499
electric utility or its affiliate has violated any provision of 2500
section 4928.17 of the Revised Code or an order issued or rule 2501
adopted under that section. for this purpose, the commission may 2502
examine such books, accounts, or other records kept by an electric 2503
utility or its affiliate as may relate to the businesses for which 2504
corporate separation is required under section 4928.17 of the 2505
Revised Code, and may investigate such utility or affiliate 2506
operations as may relate to those businesses and investigate the 2507
interrelationship of those operations. any such examination or 2508
investigation by the commission shall be governed by chapter 4903. 2509
OF the revised code. 2510

(C) In addition to any remedies otherwise provided by law, 2511
the commission, regarding a determination of a violation pursuant 2512
to division (B) of this section, may do any of the following: 2513

(1) Issue an order directing the utility or affiliate to 2514
comply; 2515

(2) Modify an order as the commission finds reasonable and 2516
appropriate and order the utility or affiliate to comply with the 2517
modified order; 2518

(3) Suspend or abrogate an order, in whole or in part; 2519

(4) Issue an order that the utility or affiliate pay 2520
restitution to any person injured by the violation or failure to 2521
comply; 2522

(5) impose a forfeiture on the utility or affiliate of up to 2523

twenty-five thousand dollars per day per violation. The recovery 2524
and deposit of any such forfeiture shall be subject to sections 2525
4905.57 and 4905.59 of the Revised Code. 2526

(D) In addition to any other remedies AUTHORIZED by law, the 2527
commission, regarding a violation by an electric utility relating 2528
to a corporate separation plan involving competitive retail 2529
electric service, may do either of the following: 2530

(1) Suspend or abrogate an order, to the extent it is in 2531
effect, authorizing an opportunity for the utility to receive 2532
transition revenues under a transition plan approved by the 2533
commission under section 4928.33 of the Revised Code; 2534

(2) Notwithstanding any provision of sections 4933.81 to 2535
4933.90 of the Revised Code to the contrary, issue an order 2536
authorizing another electric light company to furnish 2537
noncompetitive retail electric service to all electric load 2538
centers within the certified territory of the electric utility 2539
without a finding of physically inadequate service under section 2540
4933.83 of the Revised Code. 2541

(E) Section 4905.61 of the Revised Code applies in the CASE 2542
OF any violation of section 4928.17 of the Revised Code or of any 2543
rule adopted or order issued under that section. 2544

Sec. 4928.19. As part of their ongoing consumer education 2545
efforts, the public utilities commission and the office of the 2546
consumers' counsel shall ENGAGE in cooperative agency efforts to 2547
educate consumers in this state regarding electric industry 2548
restructuring under this chapter. 2549

Sec. 4928.20. (A) the legislative AUTHORITY of a municipal 2550
corporation through the adoption of an ORDINANCE, or the board of 2551
township trustees of a township or the board of county 2552
commissioners of a county through the adoption of a resolution, 2553

may provide through aggregation for the supply, on or after the 2554
starting date of competitive retail electric service, of any 2555
competitive retail electric service to electric load centers 2556
located respectively, within the municipal corporation, township, 2557
or unincorporated area of the county, except to the extent such 2558
aggregation is otherwise prohibited by sections 4933.81 to 4933.90 2559
of the Revised Code or other law of this state. but no such 2560
aggregation shall occur unless the person owning, occupying, 2561
controlling, or using the electric load centers provides prior 2562
written consent. 2563

(B) a governmental aggregator under division (A) of this 2564
section is not a public utility engaging in the WHOLESALE purchase 2565
and resale of electricity, and provision of the AGGREGATED service 2566
is not a wholesale utility transaction. a governmental aggregator 2567
shall be subject to supervision and regulation by the public 2568
utilities commission only to the extent of any competitive retail 2569
electric service it provides and commission authority under this 2570
chapter. 2571

(C) This section does not apply in the case of a municipal 2572
corporation that supplies such aggregated service to electric load 2573
centers to which its municipal electric utility also supplies a 2574
noncompetitive retail electric service through transmission or 2575
distribution facilities the utility singly or jointly owns or 2576
operates. 2577

Sec. 4928.31. (A) Not later than ninety days after the 2578
effective date of this section, an electric utility supplying 2579
retail electric service in this state on that date shall file with 2580
the public utilities commission a plan for the utility's provision 2581
of retail electric service in this state during the market 2582
development period. this transition plan shall be in such form as 2583
the commission shall prescribe by rule adopted under division (A) 2584

of section 4928.06 of the Revised Code and shall include all of 2585
the following: 2586

(1) A RATE UNBUNDLING PLAN that specifies, consistent with 2587
divisions (A)(1) to (7) of section 4928.34 of the Revised Code and 2588
any rules adopted by the commission under division (A) of section 2589
4928.06 of the Revised Code, THE UNBUNDLED COMPONENTS FOR ELECTRIC 2590
GENERATION, TRANSMISSION, AND DISTRIBUTION SERVICE AND SUCH OTHER 2591
UNBUNDLED service COMPONENTS AS THE COMMISSION requires, to BE 2592
CHARGED BY THE UTILITY beginning on THE STARTING DATE OF 2593
COMPETITIVE RETAIL ELECTRIC SERVICE and that includes information 2594
the commission requires to fix and determine those components; 2595

(2) A corporate separation plan consistent with section 2596
4928.17 of the Revised Code and any rules adopted by the 2597
commission under division (A) of section 4928.06 of the Revised 2598
Code; 2599

(3) Such plan or plans as the commission requires to address 2600
operational support systems and any other technical implementation 2601
issues pertaining to COMPETITIVE retail electric service 2602
consistent with any rules adopted by the commission under division 2603
(A) of section 4928.06 of the Revised Code; 2604

(4) An employee assistance plan for providing severance, 2605
retraining, early retirement, retention, outplacement, and other 2606
assistance for the utility's employees whose employment is 2607
affected by electric industry restructuring under this chapter; 2608

(5) A consumer education plan consistent with section 4928.42 2609
of the Revised Code and any rules adopted by the commission under 2610
division (A) of section 4928.06 of the Revised Code. 2611
2612

Additionally, a transition plan under this SECTION MAY 2613
include An application for the opportunity to receive transition 2614

revenues as authorized under sections 4928.31 to 4928.40 of the 2615
Revised Code, which application shall be consistent with those 2616
sections and any rules adopted by the commission under division 2617
(A) of section 4928.06 of the Revised Code. The transition plan 2618
also may include a plan for the independent operation of THE 2619
UTILITY'S transmission facilities consistent with section 4928.12 2620
of the Revised Code, division (A)(13) of section 4928.34 of the 2621
Revised Code, and any rules adopted by the commission under 2622
division (A) of section 4928.06 of the Revised Code. 2623

The commission may reject and require refiling, in whole or 2624
in part, of any substantially inadequate transition plan. 2625

(B) The electric utility shall provide public notice of its 2626
filing under division (A) of this section, in a form and manner 2627
that the commission shall prescribe by rule adopted under division 2628
(A) of section 4928.06 of the Revised Code. however, the adoption 2629
of rules regarding the public notice under this division, 2630
regarding the form of the transition plan under division (A) of 2631
this section, and regarding procedures for expedited discovery 2632
under division (A) of section 4928.32 of the Revised Code are not 2633
subject to division (D) of section 111.15 of the Revised Code. 2634

Sec. 4928.32. (A) the public utilities commission shall 2635
establish reasonable procedures for expedited discovery in any 2636
proceeding initiated to consider a transition plan filed under 2637
section 4928.31 of the Revised Code. 2638

(B) Not later than forty-five days after the date on which an 2639
electric utility files a transition plan under section 4928.31 of 2640
the Revised Code, any person having a real and substantial 2641
interest in the transition plan may file with the commission 2642
preliminary objections to the transition plan, which shall 2643
identify with specificity issues pertaining to any aspect of the 2644
transition plan, and any such person may propose specific 2645

responses to those issues. The commission shall address THOSE 2646
OBJECTIONS and RESPONSES in its final order. 2647

In addition, not later than ninety days after the plan's 2648
filing, the commission staff shall file with the commission a 2649
report of its recommendations with respect to the plan. Prior to 2650
commission approval of the plan, the commission shall afford a 2651
hearing upon those aspects of the plan that the commission 2652
determines reasonably require a hearing. 2653

(C) The commission shall maintain a complete record of all 2654
proceedings relative to a transition plan filed under section 2655
4928.31 of the Revised Code and shall issue and file with the 2656
record of the case findings of fact and written opinions setting 2657
forth the reasons for any modification to or its approval of a 2658
transition plan. 2659

Sec. 4928.33. (A) Not later than two hundred seventy-five 2660
days after the date an electric utility files a transition plan 2661
under section 4928.31 of the Revised Code, but, in any event, not 2662
later THAN october 31, 2000, the public utilities commission shall 2663
issue a final order approving the transition plan as filed under 2664
section 4928.31 of the Revised Code or an order modifying and 2665
approving that plan. The order is subject to section 4903.15 of 2666
the Revised Code and is subject to review and appeal under chapter 2667
4903. of the Revised Code. 2668

(B) If the COMMISSION fails to issue, by october 31, 2000, a 2669
final order approving a transition plan, or such a final order has 2670
been enjoined in whole or in part pending appeal to a court, the 2671
commission shall issue an interim order prescribing a transition 2672
plan, to have effect on an interim basis only, and containing the 2673
plan components required by division (A) of section 4928.31 of the 2674
Revised Code and providing for the opportunity for transition 2675
revenue receipt if such an application were included in the plan 2676

filed by the utility under that section. the interim order is 2677
subject to section 4903.15 of the Revised Code but is not subject 2678
to review and appeal under Chapter 4903. of the Revised Code. 2679

An interim plan prescribed under the interim order shall be 2680
effective for the electric utility beginning on the starting date 2681
of competitive retail electric service and shall continue in 2682
effect until such time as any other replacement transition plan 2683
takes effect pursuant to a final commission order or resolution of 2684
an appeal. any interim plan so prescribed shall comply with THE 2685
APPLICABLE provisions of section 4928.34 of the revised Code. A 2686
final commission order shall provide for a reconciliation of those 2687
amounts determined in the final order relative to division (A) of 2688
section 4928.31 of the Revised Code as compared to the interim 2689
amounts as determined under this division. 2690

(C) No electric utility required to file a transition plan 2691
under section 4928.31 of the Revised Code shall fail to implement 2692
a transition plan approved or prescribed for the utility by a 2693
commission order issued under division (a) or (b) of this section. 2694
No electric utility shall provide retail electric service in this 2695
state during the market development period except pursuant to such 2696
an approved or prescribed transition plan. 2697

Sec. 4928.34. (A) The public utilities commission shall not 2698
approve or prescribe a transition plan under division (A) or (B) 2699
of section 4928.33 of the Revised Code unless the commission first 2700
makes all of the following determinations: 2701

(1) The unbundled components for the electric transmission 2702
component of retail electric service, as specified in the 2703
utility's rate unbundling plan required by division (A)(1) of 2704
section 4928.31 of the Revised Code, equal the tariff rates 2705
determined by the federal energy regulatory commission that are in 2706
effect on the date of the approval of the transition plan under 2707

sections 4928.31 to 4928.40 of the Revised Code, as each such rate 2708
is determined applicable to each particular customer class by the 2709
commission. 2710

(2) the unbundled components for retail electric distribution 2711
service in the rate unbundling plan equal the difference between 2712
the costs ATTRIBUTABLE to the utility's transmission and 2713
distribution rates and charges under its schedule of rates and 2714
charges in effect on the effective date of this section, based 2715
upon the record in the most recent rate proceeding of the utility 2716
for which the utility's schedule was established, and the tariff 2717
rates for electric transmission service determined by the federal 2718
energy regulatory commission as described in division (A)(1) of 2719
this section. 2720

(3) all other unbundled components required by the commission 2721
in the rate unbundling plan equal the costs attributable to the 2722
particular service as reflected in the utility's schedule of rates 2723
and charges in effect on the effective date of this section. 2724
2725

(4) the unbundled components for retail electric generation 2726
service in the rate unbundling plan equal the residual amount 2727
remaining after the determination of the transmission, 2728
distribution, and other unbundled components. 2729

(5) all unbundled components in the rate unbundling plan have 2730
been adjusted to reflect any rate reductions under rate 2731
settlements in effect on the effective date of this section. 2732
however, all earnings obligations, RESTRICTIONS, or caps imposed 2733
on an electric utility in a commission order prior to the 2734
effective date of this section are void. 2735

(6) Subject to division (A)(5) of this section, the total of 2736
all unbundled components in the rate UNBUNDLING plan are capped 2737
and do not exceed the total of all rates and charges in effect 2738

under the applicable bundled schedule of the electric utility 2739
PURSUANT TO SECTION 4905.30 OF THE REVISED CODE in effect on the 2740
day before the effective date of this section, including the 2741
transition charge determined under section 4928.40 of the Revised 2742
Code, any changes in the taxation of electric UTILITIES and retail 2743
electric service under Sub. S.B. No. 3 of the 123rd General 2744
Assembly, the universal service rider authorized by section 2745
4928.51 of the Revised Code, and the temporary rider authorized by 2746
section 4928.61 of the Revised Code. for the purpose of this 2747
division, the rate cap applicable to a customer receiving electric 2748
service pursuant to an arrangement approved by the commission 2749
under section 4905.31 of the Revised Code is the total of all 2750
rates and charges in effect under the contract. 2751

(7) The rate unbundling plan complies with any rules adopted 2752
by the commission under division (A) of section 4928.06 of the 2753
Revised Code. 2754

(8) The corporate separation plan required by division (a)(2) 2755
of section 4928.31 of the Revised Code complies with section 2756
4928.17 of the Revised Code and any rules adopted by the 2757
commission under division (A) of section 4928.06 of the Revised 2758
Code. 2759

(9) any plan or plans the commission requires to address 2760
operational support systems and any other technical implementation 2761
issues pertaining to COMPETITIVE retail electric service COMPLY 2762
WITH any rules adopted by the commission under division (A) of 2763
section 4928.06 of the Revised Code. 2764

(10) The employee assistance plan required by division (A)(4) 2765
of section 4928.31 of the Revised Code sufficiently provides 2766
severance, retraining, early retirement, retention, outplacement, 2767
and other assistance for the utility's employees whose employment 2768
is affected by electric industry restructuring under this chapter. 2769

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(11) The consumer education plan required under division 2771
(A)(5) of section 4928.31 of the Revised Code complies with 2772
section 4928.42 of the Revised Code and any rules adopted by the 2773
commission under division (A) of section 4928.06 of the Revised 2774
Code. 2775

(12) The TRANSITION REVENUES FOR WHICH AN ELECTRIC UTILITY IS 2776
AUTHORIZED A REVENUE OPPORTUNITY UNDER SECTIONS 4928.31 TO 4928.40 2777
OF THE REVISED CODE ARE THE ALLOWABLE TRANSITION COSTS OF THE 2778
UTILITY AS SUCH COSTS ARE DETERMINED BY THE COMMISSION PURSUANT TO 2779
SECTION 4928.39 OF THE REVISED CODE, AND THE transition charges 2780
for the customer classes of the utility are the charges determined 2781
pursuant to section 4928.40 of the Revised Code. 2782
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(13) Any independent transmission plan included in the 2784
transition plan filed under section 4928.31 of the Revised Code 2785
reasonably complies with section 4928.12 of the Revised Code and 2786
any rules adopted by the commission under division (A) of section 2787
4928.06 of the Revised Code, unless the commission, for good cause 2788
shown, authorizes the utility to defer compliance until an order 2789
is issued under division (G) of section 4928.35 of the Revised 2790
Code. 2791

(14) The utility is in compliance with sections 4928.01 to 2792
4928.11 of the Revised Code and any rules or orders of the 2793
commission adopted or issued under those sections. 2794

In addition, a transition plan approved by the commission 2795
under section 4928.33 of the Revised Code but not containing an 2796
approved independent transmission plan shall contain the express 2797
conditions that the utility will comply with an order issued under 2798
division (G) of section 4928.35 of the Revised Code. 2799

(b) Subject to division (E) of section 4928.17 of the Revised 2800

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

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

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

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to the end of the market development period. immediately upon the 2832
issuance of that order, the electric utility shall file revised 2833
rate schedules under section 4909.18 of the Revised Code to effect 2834
the order. 2835

(C) The schedule under division (A) of this section 2836
containing the unbundled distribution components shall provide 2837
that electric distribution service under the schedule will be 2838
available to all retail electric service customers in the electric 2839
utility's certified territory and their suppliers on a 2840
nondiscriminatory and comparable basis on and after the starting 2841
date of competitive retail electric service. The schedule also 2842
shall include an obligation to build distribution facilities when 2843
necessary to provide adequate distribution service, provided that 2844
a customer requesting that service may be required to pay all or 2845
part of the reasonable incremental cost of the new facilities, in 2846
accordance with rules, policy, precedents, or orders of the 2847
commission. 2848

(D) during the market development period, an electric 2849
distribution utility shall provide consumers on a comparable and 2850
nondiscriminatory basis within its certified territory a standard 2851
service offer of all competitive retail electric services 2852
necessary to maintain essential electric service to CONSUMERS, 2853
including a firm supply of electric generation service priced in 2854
accordance with the schedule containing the utility's UNBUNDLED 2855
generation service component. IMMEDIATELY upon approval of its 2856
transition plan, the utility shall file the standard service offer 2857
with the commission under section 4909.18 of the Revised Code. 2858
during the market development period, the failure of a supplier to 2859
deliver retail electric generation service shall result in the 2860
supplier's customers, after reasonable notice, defaulting to the 2861
utility's standard service offer filed under this division until 2862
the customer chooses an alternative supplier. a supplier is deemed 2863

under this section to have failed to deliver such service if any 2864
of the conditions specified in divisions (b)(1) to (4) of section 2865
4928.14 of the Revised Code is met. 2866

(E) An amendment of a corporate separation plan contained in 2867
a transition plan approved by the commission under section 4928.33 2868
of the Revised Code shall be filed and approved as a corporate 2869
separation plan pursuant to section 4928.17 of the Revised Code. 2870

(F) Any change to an electric utility's opportunity to 2871
receive transition revenues under a transition plan approved in 2872
accordance with section 4928.33 of the Revised Code shall be 2873
authorized only as provided in sections 4928.31 to 4928.40 of the 2874
Revised Code. 2875

(G) The commission, by order, shall require each electric 2876
utility whose approved transition plan did not include an 2877
independent transmission plan as described in division (A)(13) of 2878
section 4928.34 of the Revised Code to be a member of, and 2879
transfer control of transmission facilities it owns or controls in 2880
this state to, one or more qualifying transmission entities, as 2881
described in division (B) of section 4928.12 of the Revised Code, 2882
that are planned to be operational on and after december 31, 2005. 2883
the commission's order may specify an earlier date on which the 2884
transmission entity or entities are planned to be operational if 2885
the commission considers it necessary to carry out the policy 2886
specified in section 4928.02 of the Revised Code or to encourage 2887
effective competition in retail electric service in this state. 2888

Upon the issuance of the order, each such utility shall file 2889
with the commission a plan for such independent operation of the 2890
utility's transmission facilities consistent with this division. 2891
the commission may reject and require refiling of any 2892
substantially inadequate plan submitted under this division. 2893

after REASONable notice and opportunity for hearing, the 2894

commission shall approve the plan upon a finding that the plan
will result in the utility's COMPLIANCE with the order, this
division, and any rules adopted under division (A) of section
4928.06 of the Revised Code. the approved independent transmission
plan shall be deemed a part of the utility's transition plan for
purposes of sections 4928.31 to 4928.40 of the Revised Code.

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Sec. 4928.36. The public utilities commission has
jurisdiction under section 4905.26 of the Revised Code, upon
complaint by any person or upon complaint or initiative of the
commission on or after the starting date of competitive retail
electric service, to determine whether an electric utility has
failed to implement, in conformance with an order under section
4928.33 of the Revised Code or in ongoing compliance with
applicable provisions of the policy specified in section 4928.02
of the Revised Code, a transition plan approved under section
4928.33 of the Revised Code. If, after reasonable notice and
opportunity for hearing as provided in section 4905.26 of the
Revised Code, the commission determines that the utility has
failed to so comply, the commission, in addition to any other
remedies provided by law, may use the remedies specified in
divisions (C)(1) to (3) and (D)(1) and (2) of section 4928.18 of
the Revised Code to enforce compliance.

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Sec. 4928.37. (A)(1) Sections 4928.31 to 4928.40 of the
Revised Code provide an electric utility the opportunity to
receive transition revenues that may assist it in making the
transition to a fully competitive retail electric generation
market. An electric Utility for which transition revenues are
approved pursuant to sections 4928.31 to 4928.40 of the Revised
Code shall receive those revenues through both of the following
mechanisms beginning on the starting date of competitive retail

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electric service and ending on the expiration date of its market 2926
development period as determined under section 4928.40 of the 2927
Revised Code: 2928

(a) payment of unbundled rates for retail electric services 2929
by each customer that is supplied retail electric generation 2930
service during the market development period by the customer's 2931
electric distribution utility, which rates shall be specified in 2932
schedules filed under section 4928.35 of the Revised Code; 2933

(b) Payment of a nonbypassable and competitively neutral 2934
transition charge by each customer that is supplied retail 2935
electric generation service during the market development period 2936
by an entity other than the customer's electric distribution 2937
utility, as such transition charge is determined under section 2938
4928.40 of the Revised Code. the transition charge shall be 2939
payable by each such retail electric distribution service customer 2940
in the certified territory of the electric utility for which the 2941
transition revenues are approved and shall be billed on each 2942
kilowatt hour of electricity delivered to the customer by the 2943
electric distribution utility as registered on the customer's 2944
meter during the utility's market development period as kilowatt 2945
hour is defined in section 4909.161 of the Revised Code. the 2946
transition charge for each customer class shall reflect the cost 2947
allocation to that class as provided under bundled rates and 2948
charges in effect on the day before the effective date of this 2949
section. Additionally, as reflected in section 4928.39 or 4928.40 2950
of the Revised Code, the transition charges shall be structured to 2951
provide shopping incentives to customers sufficient to encourage 2952
the development of effective competition in the supply of retail 2953
electric generation service. TO THE EXTENT POSSIBLE, THE LEVEL AND 2954
STRUCTURE OF THE TRANSITION CHARGE SHALL BE DESIGNED TO AVOID 2955
REVENUE RESPONSIBILITY SHIFTS AMONG THE UTILITY'S CUSTOMER CLASSES 2956
AND RATE SCHEDULES. 2957

(2)(a) Notwithstanding division (A)(1)(b) of this section, 2958
the transition charge shall not be payable on electricity supplied 2959
by a municipal electric utility to a retail electric distribution 2960
service customer in the certified territory of the electric 2961
utility for which the transition revenues are approved, if the 2962
municipal electric utility provides electric transmission or 2963
distribution service, or both services, through transmission or 2964
distribution facilities singly or jointly owned or operated by the 2965
municipal electric utility. 2966

(b) The transition charge shall not be payable on electricity 2967
supplied or consumed in this state except such electricity as is 2968
delivered to a retail customer by an electric distribution utility 2969
and is registered on the customer's meter during the utility's 2970
market development period. 2971

(3) the transition charge shall not be discounted by any 2972
party unless there is a determination by the Department of 2973
Development that such a discount is part of an approved economic 2974
development package involving state or local funding and is 2975
necessary for economic development to occur within this state 2976
instead of another state. 2977

(4) Nothing prevents payment of all or part of the transition 2978
charge by another party on a customer's behalf if that payment 2979
does not contravene sections 4905.33 to 4905.35 of the Revised 2980
Code or this chapter. 2981

(B) The electric utility shall separately itemize and 2982
disclose, or cause its billing and collection agent to separately 2983
itemize and disclose, the transition charge on the customer's bill 2984
in accordance with reasonable SPECIFICATIONS the commission shall 2985
prescribe by rule under division (A) of section 4928.06 of the 2986
Revised Code. 2987

Sec. 4928.38. Pursuant to a transition plan approved under 2988
section 4928.33 of the Revised Code, An electric utility in this 2989
state may receive transition revenues under sections 4928.31 to 2990
4928.40 of the Revised Code, beginning on The starting date of 2991
competitive retail electric service. Except as provided in 2992
sections 4905.33 to 4905.35 of the Revised Code and this Chapter, 2993
an electric utility that receives such transition revenues shall 2994
be wholly responsible for how to use those revenues and wholly 2995
responsible for whether it is in a competitive position after the 2996
market development period. The utility's receipt of transition 2997
revenues shall terminate at the end of the market development 2998
period. With the termination of that approved revenue source, the 2999
utility shall be fully on its own in the competitive market. The 3000
commission shall not authorize the receipt of transition revenues 3001
or any equivalent revenues by an electric utility except as 3002
expressly authorized in sections 4928.31 to 4928.40 of the Revised 3003
Code. 3004

Sec. 4928.39. Upon the filing of an application by an 3005
electric utility under section 4928.31 of the Revised Code for the 3006
opportunity to receive transition revenues under sections 4928.31 3007
to 4928.40 of the Revised Code, the public utilities commission, 3008
by order under section 4928.33 of the Revised Code, shall 3009
determine the total allowable amount of the transition costs of 3010
the utility to be received as transition revenues under those 3011
sections. such amount shall be the just and reasonable transition 3012
COSTS of the utility, which costs the commission finds meet all of 3013
the following criteria: 3014

(A) The costs were prudently incurred. 3015

(B) The costs are a legitimate and verifiable result of 3016
electric restructuring under this chapter. 3017

(C) The costs are unrecoverable in a competitive market. 3018

(D) The costs are directly assignable or allocable to retail 3019
electric generation service provided to consumers in this state. 3020

Transition costs under this section shall not include the 3021
costs of employee assistance under the employee assistance plan 3022
included in the utility's approved transition plan under section 3023
4928.33 of the Revised Code. 3024

Further, if requested in the application, the commission's 3025
order under this section shall separately identify regulatory 3026
assets of the utility that are a part of the total allowable 3027
amount of transition costs determined under this section and 3028
separately identify that portion of a transition charge determined 3029
under section 4928.40 of the Revised Code that is allocable to 3030
those assets, WHICH PORTION OF A TRANSITION CHARGE SHALL BE 3031
SUBJECT TO ADJUSTMENT ONLY PROSPECTIVELY AND AFTER THE MIDPOINT OF 3032
THE MARKET DEVELOPMENT PERIOD. 3033

The electric utility shall have the burden of demonstrating 3034
allowable transition costs as AUTHORIZED under this section. the 3035
commission may impose reasonable commitments upon the utility's 3036
collection of the transition revenues to ensure that those 3037
revenues are used to eliminate the allowable transition costs of 3038
the utility during the market development period and are not 3039
available for use by the utility to achieve an undue competitive 3040
advantage, or to impose an undue disadvantage, in the provision by 3041
the utility of regulated or unregulated products or services. 3042

Sec. 4928.40. (A) UPON determining under section 4928.39 of 3043
the Revised Code the allowable transition costs of an electric 3044
utility AUTHORIZED for collection as transition revenues under 3045
sections 4928.31 to 4928.40 of the Revised Code, the public 3046
utilities commission, by order under section 4928.33 of the 3047

Revised Code, shall establish the transition charge for each 3048
customer class of the electric utility and, to the extent 3049
possible, each rate schedule within each such customer class, with 3050
all such transition charges being collected as provided in 3051
division (A)(1)(b) of section 4928.37 of the Revised Code during a 3052
market development period for the utility, ending on such date as 3053
the commission shall reasonably prescribe. no such market 3054
development period shall end after december 31, 2005, unless the 3055
commission extends the utility's market development period for up 3056
to five years, to the extent the commission determines necessary 3057
to reduce the level of the transition charges applicable to any 3058
rate schedule in order to encourage effective competition. 3059

factors the commission shall consider in prescribing the 3060
expiration date of the utility's market development period and the 3061
transition charge for each customer class and rate schedule of the 3062
utility include, but are not limited to, the total allowable 3063
amount of transition costs of the electric utility as determined 3064
under section 4928.39 of the Revised Code; the relevant market 3065
price for the delivered supply of electricity to customers in that 3066
customer class and, to the extent possible, in each rate schedule 3067
as determined by the commission; and such shopping incentives by 3068
customer class as are considered necessary to induce, at the 3069
minimum, a twenty per cent load switching rate by customer class 3070
halfway through the utility's market development period but not 3071
later than December 31, 2003. In no case shall the commission 3072
establish a shopping incentive in an amount exceeding the 3073
unbundled component for retail electric generation service set in 3074
the utility's approved transition plan under section 4928.33 of 3075
the Revised Code, and in no case shall the commission establish a 3076
transition charge in an amount less than zero. 3077

(B) THE COMMISSION may CONDUCT A PERIODIC REVIEW no more 3078
often than annually AND, AS IT DETERMINES NECESSARY, ADJUST THE 3079

TRANSITION CHARGES OF THE ELECTRIC UTILITY as INITIALLY 3080
established under division (A) of this section or subsequently 3081
adjusted under this division. any such adjustment shall be in 3082
accordance with division (A) of this section and may reflect 3083
changes in the relevant market. 3084

(C) Notwithstanding any provision of this chapter, the 3085
commission shall issue an order under section 4928.33 of the 3086
Revised Code approving a transition plan for an electric utility 3087
that contains a rate reduction for residential customers of that 3088
utility, provided that the rate reduction shall not increase the 3089
rates or transition cost RESPONSIBILITY of any other customer 3090
class of the utility. the rate reduction shall be in effect only 3091
for such portion of the UTILITY'S market development period as the 3092
commission shall specify AND shall be applied to the unbundled 3093
generation component for retail electric generation service as set 3094
in the utility's approved transition plan under section 4928.33 of 3095
the Revised Code subject to the price cap for residential 3096
customers required under division (A)(6) of section 4928.34 of the 3097
Revised Code. The amount of the rate reduction shall be FIVE PER 3098
CENT OF THE AMOUNT OF THAT UNBUNDLED GENERATION COMPONENT, but 3099
shall not unduly discourage market entry by alternative suppliers 3100
seeking to serve the residential market in this state. THE 3101
COMMISSION, AFTER REASONABLE NOTICE AND OPPORTUNITY FOR HEARING, 3102
may terminate the rate reduction by order UPON A FINDING THAT THE 3103
RATE REDUCTION IS UNDULY DISCOURAGING MARKET ENTRY BY SUCH 3104
ALTERNATIVE SUPPLIERS. No such termination of the rate reduction 3105
shall take effect prior to the midpoint of the utility's market 3106
development period. 3107

(D) Beginning on the starting date of competitive retail 3108
electric service, no electric utility in this state SHALL prohibit 3109
the resale of electric generation service OR impose unreasonable 3110
or discriminatory conditions or limitations on the resale of 3111

electric generation service. 3112

Sec. 4928.41. The transition revenue authority provided under 3113
sections 4928.31 to 4928.40 of the Revised Code for electric 3114
utilities does not affect the authority of an electric cooperative 3115
in this state to receive transition revenues. 3116

Sec. 4928.42. PRIOR TO THE STARTING DATE OF COMPETITIVE 3117
RETAIL ELECTRIC SERVICE, THE public utilities COMMISSION, IN 3118
CONSULTATION WITH THE CONSUMERS' COUNSEL AND WITH OTHER STATE 3119
AGENCIES AS CONSIDERED NECESSARY, SHALL PRESCRIBE AND ADOPT BY 3120
ORDER A GENERAL PLAN BY WHICH EACH ELECTRIC UTILITY shall PROVIDE 3121
DURING ITS MARKET DEVELOPMENT PERIOD CONSUMER EDUCATION ON 3122
ELECTRIC RESTRUCTURING UNDER this chapter. THE GENERAL PLAN SHALL 3123
REQUIRE the UTILITIES TO SPEND ON SUCH CONSUMER EDUCATION WITHIN 3124
their respective CERTIFIED SERVICE TERRITORIES IN THE AGGREGATE UP 3125
TO SIXTEEN MILLION DOLLARS IN THE FIRST YEAR OF THAT PERIOD AND AN 3126
ADDITIONAL SEVENTEEN MILLION DOLLARS IN THE AGGREGATE IN 3127
DECREASING AMOUNTS OVER THE REMAINING YEARS OF each utility's 3128
MARKET DEVELOPMENT PERIOD, WITH THE AGGREGATE AMOUNTS DIVIDED 3129
AMONG THE UTILITIES BASED ON THEIR RESPECTIVE NUMBER OF CUSTOMERS 3130
AS OF DECEMBER 31, 1997. THE GENERAL PLAN SHALL PROHIBIT SUCH 3131
CONSUMER EDUCATION FROM OCCURRING IN COMBINATION WITH MARKETING 3132
FOR THE UTILITY'S OR ITS AFFILIATE'S RETAIL ELECTRIC SERVICES. 3133

Sec. 4928.43. Each state agency that provides employment 3134
assistance and job training programs, including the bureau of 3135
employment services and the department of development, shall 3136
provide concentrated attention through those programs to assisting 3137
employees whose employment in electric generation-related 3138
activities and other related areas is affected by electric 3139
industry restructuring under this chapter. 3140

Sec. 4928.44. (A) The public utilities commission may 3141
determine, by order and after reasonable notice and opportunity 3142
for hearing, that CUSTOMERS THAT ARE NONFIRM ELECTRIC SERVICE 3143
customers of electric UTILITIES ON THE EFFECTIVE DATE OF THIS 3144
SECTION would be assisted by the implementation by each such 3145
utility of a service schedule that complies with division (C) of 3146
this section. in the order, the commission shall specify the 3147
period of time, ending not later than december 31, 2005, during 3148
which the service OFFERING would be available to ANY SUCH NONFIRM 3149
ELECTRIC SERVICE customers or A group of such customers. upon the 3150
issuance of the order, ANY SUCH NONFIRM ELECTRIC SERVICE customer 3151
or A group of SUCH customers shall be, for the purposes of this 3152
section, eligible customers in each electric utility's 3153
transmission tariff subject to the JURISDICTION of the federal 3154
energy regulatory commission FOR THE PERIOD SPECIFIED IN THE 3155
ORDER, and each electric UTILITY with nonfirm customers shall file 3156
a service schedule pursuant to section 4909.18 of the Revised Code 3157
to effectuate this service offering. 3158

(b) the service schedule AUTHORIZED under division (A) of 3159
this section, FOR THE PERIOD ENDING NOT LATER THAN DECEMBER 31, 3160
2005, AS SPECIFIED IN THE COMMISSION'S ORDER UNDER THAT DIVISION, 3161
shall PROVIDE FOR BOTH OF THE FOLLOWING: 3162

(1) for service and billing purposes, conjunctive metering 3163
for a group of CUSTOMERS THAT ARE NONFIRM CUSTOMERS ON THE 3164
EFFECTIVE DATE OF THIS SECTION; 3165

(2) direct, comparable and nondiscriminatory access to the 3166
transmission and distribution services, capacities, functions, and 3167
facilities of the electric UTILITY BY any CUSTOMER THAT IS A 3168
nonFIRM ELECTRIC SERVICE customer ON THE EFFECTIVE DATE OF THIS 3169
SECTION or BY A group of ANY SUCH customers, for the purpose of 3170
securing from a supplier or suppliers of the customer's or group's 3171

choice all or a portion of the customer's or group's electric 3172
power and energy requirements in excess of any requirements 3173
supplied by an electric UTILITY on a firm basis. 3174

the failure of an electric UTILITY to file such schedule 3175
constitutes inadequate service under title XLIX of the Revised 3176
Code. 3177

(c) the service offering authorized pursuant to this section 3178
shall be in addition to any service options otherwise available to 3179
A NONFIRM ELECTRIC SERVICE customer or group of NONFIRM ELECTRIC 3180
SERVICE customers. if a CUSTOMER THAT IS A NONFIRM ELECTRIC 3181
SERVICE customer ON THE EFFECTIVE DATE OF THIS SECTION or A group 3182
of SUCH customers elects to meet all or a portion of the 3183
customer's or group's electric power and energy requirements not 3184
served by an electric utility during a time of nonemergency 3185
curtailment or interruption in excess of any requirements supplied 3186
by an electric UTILITY on a firm basis, by purchasing electricity 3187
and related services from a supplier or suppliers other than that 3188
electric utility, any existing service arrangement under section 3189
4905.31 of the Revised Code or any existing schedule under section 3190
4905.30 of the Revised Code shall be modified to permit this 3191
election to occur without economic penalty and to facilitate the 3192
customer's or group's access to the electric market for the 3193
purpose of managing supply and price volatility risks. 3194

(d) NOTHING IN DIVISIONS (a) TO (c) OF THIS SECTION AFFECTS 3195
ANY OBLIGATION OF an electric utility TO curtail or interrupt 3196
electric transmission or distribution service to the extent 3197
required to protect the interests of firm ELECTRIC SERVICE 3198
customers from an injury that is otherwise unavoidable but for the 3199
curtailment or interruption. Nothing in those divisions shall be 3200
construed or applied to increase rates and charges for firm 3201
electric service customers including residential firm electric 3202
service customers. 3203

Sec. 4928.51. (A) There is hereby established in the state 3204
treasury a universal service fund, into which shall be deposited 3205
all universal service revenues remitted to the director of 3206
development under this section, for the exclusive purposes of 3207
providing funding for the low-income customer assistance programs 3208
and for the consumer education program authorized under section 3209
4928.56 of the Revised Code, and paying the administrative costs 3210
of the low-income customer assistance programs and the consumer 3211
education program. Interest on the fund shall be credited to the 3212
fund. disbursements from the fund shall be made to any supplier 3213
that provides a competitive retail electric service to a customer 3214
who is approved to receive assistance under a specified low-income 3215
customer assistance program and to any authorized provider of 3216
weatherization or energy efficiency service to a customer approved 3217
to receive such assistance under a specified low-income customer 3218
ASSISTANCE program. 3219

(B) universal service revenues shall include all of the 3220
following: 3221

(1) Revenues remitted to the director after collection by an 3222
electric distribution utility beginning July 1, 2000, attributable 3223
to the collection from customers of the universal service rider 3224
prescribed under section 4928.52 of the Revised Code; 3225

(2) Revenues remitted to the director that have been 3226
collected by an electric distribution utility beginning July 1, 3227
2000, as customer payments under the percentage of income payment 3228
plan program, including revenues remitted under division (c) of 3229
this section; 3230

(3) adequate revenues remitted to the director after 3231
collection by a MUNICIPAL electric utility or electric cooperative 3232
in this state not earlier than July 1, 2000, upon the utility's or 3233
cooperative's decision to participate in the low-income customer 3234

assistance programs. 3235

(C) beginning July 1, 2000, an electric distribution utility 3236
shall transfer to the director the right to collect all arrearage 3237
payments of a customer for percentage of income payment plan 3238
program debt owed to the utility on the day before that date or 3239
retain the right to collect that debt but remit to the director 3240
all program revenues received by the utility for that customer. 3241

(D) THE PUBLIC UTILITIES COMMISSION SHALL COMPLETE AN AUDIT 3242
OF EACH ELECTRIC UTILITY BY JULY 1, 2000, FOR THE PURPOSE OF 3243
ESTABLISHING A BASELINE FOR THE PERCENTAGE OF INCOME PAYMENT PLAN 3244
PROGRAM COMPONENT OF THE LOW-INCOME ASSISTANCE PROGRAMS. 3245

Sec. 4928.52. (A) Beginning July 1, 2000, the universal 3246
service rider shall replace the percentage of income payment plan 3247
rider in existence on the effective date of this section and ANY 3248
AMOUNT IN THE RATES OF AN ELECTRIC UTILITY FOR THE FUNDING OF 3249
LOW-INCOME ENERGY EFFICIENCY PROGRAMS. THE UNIVERSAL SERVICE RIDER 3250
shall be a rider on retail electric distribution service rates as 3251
such rates are determined by the public utilities commission 3252
pursuant to this chapter. the universal service rider for the 3253
first five years after the starting date of competitive retail 3254
electric service shall be the sum of all of the following: 3255

(1) the level of the percentage of income payment plan 3256
program rider in existence on the effective date of this section; 3257

(2) an amount equal to the level of funding for low-income 3258
customer energy efficiency programs provided through electric 3259
utility rates in effect on the effective date of this section; 3260

(3) any additional amount necessary and SUFFICIENT to fund 3261
through the universal service rider the ADMINISTRATIVE costs of 3262
the low-income customer AssISTANCE programs and the consumer 3263
education program created in section 4928.56 of the Revised Code. 3264

(B) If, during or after the five-year period specified in 3265
division (a) of this section, the director of development, after 3266
CONSULTATION with the public benefits advisory board created under 3267
section 4928.58 of the Revised Code, determines that revenues in 3268
the universal service fund and revenues from federal or other 3269
sources of funding for those programs, including general revenue 3270
fund appropriations for the ohio energy credit program, will be 3271
insufficient to cover the administrative costs of the low-income 3272
customer AssISTANCE programs and the consumer education program 3273
and provide adequate funding for THOSE PROGRAMS, the director 3274
shall file a petition with the commission for an increase in the 3275
universal service rider. the commission, after reasonable notice 3276
and OPPORTUNITY for hearing, may adjust the universal service 3277
rider by the minimum amount necessary to provide the additional 3278
revenues. the commission shall not decrease the universal service 3279
rider without the approval of the director, after consultation by 3280
the director with the advisory board. 3281

(c) the universal service rider established under DIVISION 3282
(A) or (B) of this section shall be set in such a manner so as not 3283
to shift among the customer classes of electric distribution 3284
utilities the costs of funding low-income customer ASSISTANCE 3285
programs. 3286

Sec. 4928.53. (A) Beginning July 1, 2000, the director of 3287
development is hereby authorized to administer the low-income 3288
customer assistance programs. for that purpose, the tax 3289
commissioner and the public utilities commission shall cooperate 3290
with and provide such assistance as the director REQUIRES FOR 3291
ADMINISTRATION of the low-income customer assistance programs. The 3292
director shall consolidate the administration of and redesign and 3293
coordinate the operations of those programs within the department 3294
to provide, to the maximum extent possible, for efficient program 3295

administration and a one-stop application and ELIGIBILITY 3296
determination process at the local level for consumers. 3297

3298

(B)(1) not later than March 1, 2000, the director, in 3299
accordance with chapter 119. of the Revised Code, shall adopt 3300
rules to carry out sections 4928.51 to 4928.58 of the Revised Code 3301
and ensure the effective and EFFICIENT ADMINISTRATION and 3302
operation of the low-income customer assistance programs. the 3303
rules shall take effect on the July 1, 2000. 3304

(2) the director's authority to adopt rules under this 3305
division for the Ohio energy credit program shall be subject to 3306
such rule-making AUTHORITY as is conferred on the director by 3307
sections 5117.01 to 5117.12 of the Revised Code, as amended by 3308
Sub. S.B. No. 3 of the 123rd general assembly, except that rules 3309
initially adopted by the director for the Ohio energy credit 3310
program shall incorporate the substance of those sections as they 3311
exist on the effective date of this section. 3312

(3) the director's AUTHORITY to adopt rules under this 3313
division for the percentage of income payment plan program shall 3314
include authority to adopt rules prescribing criteria for customer 3315
eligibility and policies REGARDING payment and crediting 3316
arrangements and responsibilities, procedures for verifying 3317
customer eligibility, procedures for disbursing public funds to 3318
suppliers and otherwise administering funds under the director's 3319
jurisdiction, and requirements as to timely remittances of 3320
revenues described in division (B) of section 4928.51 of the 3321
Revised Code. The director's authority in division (B)(3) of this 3322
section excludes authority to prescribe service disconnection and 3323
customer billing policies and procedures and to address complaints 3324
against suppliers under the percentage of payment plan program, 3325
which excluded authority shall be exercised by the public 3326

utilities commission, in coordination with the director. Rules 3327
initially adopted by the director for the percentage of income 3328
payment plan program shall incorporate the eligibility criteria 3329
and payment arrangement and responsibility policies set forth in 3330
rule 4901:1-18-04(B) of the Ohio Administrative Code in effect on 3331
the effective date of this section. 3332

Sec. 4928.54. Beginning on the starting date of competitive 3333
retail electric service, the director of development may aggregate 3334
percentage of income payment plan program customers for the 3335
purpose of competitively auctioning the supply of competitive 3336
retail electric generation service to bidders certified under 3337
section 4928.08 of the Revised Code and further qualified under 3338
ELIGIBILITY criteria the director prescribes by rule under 3339
division (b) of section 4928.53 of the Revised Code after 3340
consultation with the commission and electric light companies 3341
regarding any such rule. the objectives of the auction shall be to 3342
provide reliable retail electric generation service to customers, 3343
based on selection criteria that the winning bid provide the 3344
lowest cost and best value to customers. The rules adopted by the 3345
director under division (b) of section 4928.53 of the Revised Code 3346
shall ensure a fair and unbiased auction process and the 3347
performance of any winning bidder. 3348

Sec. 4928.55. The director of development shall establish an 3349
energy efficiency and weatherization program targeted to 3350
high-cost, high-volume use structures occupied by customers 3351
eligible for the percentage of income PAYMENT plan program, with 3352
the goal to reducing the energy bills of the occupants. Acceptance 3353
of energy efficiency and WEATHERIZATION services provided by the 3354
program shall be a condition for the eligibility of any such 3355
customer to participate in the percentage of income payment plan 3356
program. Any difference between universal service fund revenues 3357

under section 4928.51 of the Revised Code and any savings in 3358
percentage of income payment plan program costs as a result of 3359
competitive auctioning under section 4928.54 of the Revised Code 3360
shall be reinvested in the targeted energy EFFICIENCY and 3361
WEATHERIZATION program. 3362

Sec. 4928.56. The director of development may adopt rules in 3363
accordance with Chapter 119. of the Revised Code establishing an 3364
education program for consumers eligible to participate in the 3365
low-income customer assistance programs. the education program 3366
shall provide information to consumers regarding energy efficiency 3367
and energy conservation. 3368

Sec. 4928.57. On and after the starting date of competitive 3369
retail electric service, the director of development shall provide 3370
a report every two years until 2008 to the standing committees of 3371
the general assembly that deal with public utility matters, 3372
regarding the effectiveness of the low-income customer assistance 3373
programs and the consumer education program, and the effectiveness 3374
of the energy EFFICIENCY revolving loan program created under 3375
sections 4928.61 to 4928.63 of the Revised Code. 3376

Sec. 4928.58. (A) there is hereby created the public benefits 3377
ADVISORY board, WHICH HAS THE PURPOSE OF ENSURING THAT ENERGY 3378
SERVICES BE PROVIDED TO LOW-INCOME CONSUMERS IN THIS STATE IN AN 3379
AFFORDABLE MANNER CONSISTENT WITH THE POLICY SPECIFIED IN SECTION 3380
4928.02 OF THE REVISED CODE. THE ADVISORY BOARD SHALL CONSIST of 3381
twenty-one members as follows: the director of development, the 3382
CHAIRPERSON of the public utilities commission, the consumers' 3383
counsel, and the director of the air quality development 3384
authority, each serving ex officio and represented by a designee 3385
at the official's discretion; two members of the house of 3386
representatives appointed by the speaker of the house of 3387

representatives, NEITHER of the SAME POLITICAL party, and two 3388
members of the senate appointed by the president of the senate, 3389
neither of the same political party; and thirteen members 3390
appointed by the governor with the advice and consent of the 3391
senate, consisting of one representative of suppliers of 3392
competitive retail electric service; one representative of the 3393
residential class of electric utility customers; one 3394
representative of the industrial class of electric utility 3395
customers; one representative of the commercial class of electric 3396
utility customers; one representative of agricultural or rural 3397
customers of an electric utility; two customers RECEIVING 3398
assistance under one or more of the low-income customer assistance 3399
programs, to represent customers eligible for any such assistance, 3400
including senior citizens; one representative of the general 3401
public; one representative of local intake agencies; one 3402
representative of a community-based organization serving 3403
low-income customers; one representative of environmental 3404
protection interests; one representative of lending institutions; 3405
and one person considered an expert in energy efficiency or 3406
renewables technology. Initial appointments shall be made not 3407
later than November 1, 1999. 3408

(B) Initial terms of six of the appointed members shall end 3409
on June 30, 2003, and initial terms of the remaining seven 3410
appointed MEMBERS shall end on june 30, 2004. thereafter, terms of 3411
appointed members shall be for three years, with each term ending 3412
on the same day of the same month as the term it succeeds. each 3413
member shall hold office from the date of the member's appointment 3414
until the end of the term for which the member was appointed. 3415
members may be reappointed. 3416

Vacancies shall be filled in the manner provided for original 3417
appointments. Any member APPOINTED to fill a vacancy occurring 3418
prior to the expiration date of the term for which the member's 3419

predecessor was appointed shall hold office as a member for the 3420
REMAINDER of that term. a member shall continue in office after 3421
the expiration date of the member's term until the member's 3422
successor takes office or until a period of sixty days has 3423
elapsed, whichever occurs first. 3424

(C) Board members shall be reimbursed for their actual and 3425
necessary expenses incurred in the performance of board duties. 3426
such REIMBURSEMENTS constitute, as applicable, administrative 3427
costs of the low-income customer assistance programs for the 3428
purpose of division (A) of section 4928.51 of the Revised Code or 3429
administrative costs of the energy efficiency revolving loan 3430
program for the purpose of division (A) of section 4528.61 of the 3431
Revised Code. 3432

(D) The advisory board shall select a chairperson from among 3433
its members. only board members appointed by the governor with THE 3434
advice and consent of the senate shall be voting members of the 3435
board; each shall have one vote in all deliberations of the board. 3436
a majority of the voting members constitute a quorum. 3437

(E) The duties of the advisory board shall be as follows: 3438

(1) Advise the director in the administration of the 3439
UNIVERSAL service fund and the low-income customer assistance 3440
programs and advise the director on the director's recommendation 3441
to the commission regarding the appropriate level of the universal 3442
service rider; 3443

(2) Advise the director on the administration of the energy 3444
efficiency revolving loan program and the energy efficiency 3445
revolving loan program fund under sections 4928.61 to 4928.63 of 3446
the Revised Code. 3447

(F) the advisory board is not an agency, as defined in 3448
section 101.82 of the Revised Code, for purposes of divisions (A) 3449
and (B) of section 101.84 of the Revised Code. 3450

Sec. 4928.61. (A) There is hereby established in the state 3451
treasury an energy efficiency revolving loan fund, into which 3452
shall be deposited all energy EFFICIENCY revenues remitted to the 3453
director of development under division (B) of this section, for 3454
the exclusive purposes of funding the energy efficiency revolving 3455
loan program created under section 4928.62 of the Revised Code and 3456
paying the program's administrative costs. Interest on the fund 3457
shall be credited to the fund. 3458

(B) energy efficiency revenues shall include all of the 3459
following: 3460

(1) Revenues remitted to the director after collection by 3461
each electric DISTRIBUTION utility in this state of a temporary 3462
rider on retail electric distribution service rates as such rates 3463
are determined by the public utilities commission pursuant to this 3464
chapter. The rider shall be a uniform amount statewide, determined 3465
by the director of development, after consultation with the public 3466
benefits advisory board created by section 4928.58 of the Revised 3467
Code. The amount shall be determined by dividing an aggregate 3468
revenue target for a given year as determined by the director, 3469
after consultation with the advisory board, by the number of 3470
customers of electric distribution utilities in this state in the 3471
prior year. Such aggregate revenue target shall not exceed more 3472
than fifteen million dollars in any year through 2005 and shall 3473
not exceed more than five million dollars in any year after 2005. 3474
The rider shall be imposed beginning on the starting date of 3475
competitive retail electric service and shall terminate at the end 3476
of ten years following that starting date or until the energy 3477
efficiency revolving loan fund, including interest, reaches one 3478
hundred million dollars, whichever is first. 3479

(2) Revenues from energy efficiency revolving loan program 3480
loan repayments and payments from energy efficiency revolving loan 3481

program loan collections pursuant to section 4928.62 of the 3482
Revised Code; 3483

(3) Adequate revenues remitted to the director after 3484
collection by a MUNICIPAL electric utility or electric cooperative 3485
in this state not earlier than the starting date of competitive 3486
retail electric service upon the utility's or cooperative's 3487
decision to participate in the energy efficiency revolving loan 3488
PROGRAM. 3489

(C)(1) Each electric distribution utility in this state shall 3490
remit to the director on a quarterly basis the revenues described 3491
in divisions (B)(1) and (2) of this section. Such remittances 3492
shall begin with the first quarter following the starting date of 3493
competitive RETAIL ELECTRIC service. 3494

(2) Each participating electric cooperative and participating 3495
municipal electric utility shall remit to the director on a 3496
quarterly basis the revenues described in division (B)(3) of this 3497
section. such remittances shall begin with the first quarter 3498
following the participating cooperative's or utility's decision to 3499
participate. 3500

(3) All remittances under divisions (C)(1) and (2) of this 3501
section shall continue only until the end of ten years following 3502
that starting date or until the energy efficiency revolving loan 3503
fund, including interest, reaches one hundred million dollars, 3504
whichever is first. 3505

Sec. 4928.62. (A) Beginning on the starting date of 3506
competitive retail electric service, there is hereby created the 3507
energy EFFICIENCY revolving loan program, which shall be 3508
administered by the director of development. Under the program, 3509
the director may AUTHORIZE the use of moneys in the energy 3510
efficiency revolving loan fund for financial assistance for 3511

projects in this state. To the extent feasible given approved 3512
applications for assistance, the assistance shall be distributed 3513
among the certified territories of electric distribution utilities 3514
and participating electric cooperatives, and among the service 3515
areas of participating municipal electric utilities, in amounts 3516
proportionate to the remittances of each utility and cooperative 3517
under divisions (B)(1) and (3) of section 4928.61 of the Revised 3518
Code. The assistance shall be made or provided through approved 3519
lending institutions in the form of loans at below market rates, 3520
loan GUARANTEES for such loans, and linked deposits for such 3521
loans. the director shall not AUTHORIZE financial assistance under 3522
the program unless the director first DETERMINES all of the 3523
following: 3524

(1) the project will include an investment in products, 3525
technologies, or services, including energy efficiency for 3526
low-income housing, for residential, small commercial and small 3527
industrial business, local government, educational institution, 3528
nonprofit ENTITY, or agricultural customers of an electric 3529
distribution utility in this state or a participating MUNICIPAL 3530
electric utility or electric cooperative in this state. 3531

(2) the project will IMPROVE energy efficiency in a 3532
cost-efficient manner by using both the most appropriate national, 3533
federal, or other standards for products as determined by the 3534
director, and the best practices for use of technology, products, 3535
or services in the context of the total facility or building. 3536

(3) the project will benefit the economic and environmental 3537
welfare of the citizens of this state. 3538

(4) the receipt of financial assistance is a major factor in 3539
the applicant's decision to proceed with or invest in the project. 3540

(B) In carrying out sections 4928.61 to 4928.63 of the 3541
Revised Code, the director may do all of the following for THE 3542

<u>PURPOSE of the energy efficiency revolving loan program:</u>	3543
<u>(1) acquire in the name of the director any property of any</u>	3544
<u>kind or character in accordance with this section, by purchase,</u>	3545
<u>purchase at foreclosure, or EXCHANGE, on such terms and in such</u>	3546
<u>manner as the director considers proper;</u>	3547
<u>(2) make and enter into all contracts and agreements</u>	3548
<u>necessary or incidental to the performance of the director's</u>	3549
<u>duties and the exercise of the director's powers under those</u>	3550
<u>sections;</u>	3551
<u>(3) employ or enter into contracts with financial</u>	3552
<u>consultants, marketing consultants, consulting engineers,</u>	3553
<u>architects, managers, construction experts, attorneys, technical</u>	3554
<u>MONITORS, energy evaluators, OR OTHER EMPLOYEES or agents as the</u>	3555
<u>director considers necessary, and shall fix their compensation;</u>	3556
<u>(4) adopt rules prescribing the application procedures for</u>	3557
<u>financial assistance under the program; the terms and conditions</u>	3558
<u>of any loans, loan guarantees, linked deposits, and contracts;</u>	3559
<u>criteria pertaining to the eligibility of participating lending</u>	3560
<u>institutions; and any OTHER MATTERS necessary for the</u>	3561
<u>implementation of the program;</u>	3562
<u>(5) do all things necessary and appropriate for the operation</u>	3563
<u>of the program.</u>	3564
<u>(C) financial statements, financial data, and trade secrets</u>	3565
<u>submitted to or received by the director from an applicant or</u>	3566
<u>recipient of financial assistance under sections 4928.61 to</u>	3567
<u>4928.63 of the Revised Code, or any INFORMATION taken from those</u>	3568
<u>statements, data, or trade secrets for any purpose, are not public</u>	3569
<u>records for the purpose of section 149.43 of the Revised Code.</u>	3570
<u>Sec. 4928.63. The director of development and the public</u>	3571
<u>benefits advisory board have the powers and duties provided in</u>	3572

sections 4928.61 and 4928.62 of the Revised Code, in order to 3573
promote the welfare of the people of this state, to stabilize the 3574
economy, to ASSIST in the improvement and development within this 3575
state of not-for-profit entity, industrial, commercial, 3576
DISTRIBUTION, residential, and research buildings and activities 3577
required for the people of this state, to improve the ECONOMIC 3578
welfare of the people of this state, and also to ASSIST in the 3579
improvement of air, water, or thermal POLLUTION control facilities 3580
and SOLid waste disposal facilities. it is hereby determined that 3581
the accomplishment of those purposes is essential so that the 3582
people of this state may maintain their present high standards in 3583
comparison with the people of other states and so that 3584
opportunities for improving the economic welfare of the people of 3585
this state, for improving the housing of residents of this state, 3586
and for favorable markets for the products of this state's natural 3587
resources, agriculture, and manufacturing shall be improved; and 3588
that it is necessary for this state to establish the program 3589
authorized pursuant to sections 4928.61 and 4928.62 of the Revised 3590
Code, to establish the energy efficiency revolving loan program 3591
and program fund and the energy efficiency REVOLVING loan program 3592
advisory board, and to vest the director and the board with the 3593
powers and duties PROVIDED in sections 4928.61 and 4928.62 of the 3594
Revised Code. 3595

Sec. 4933.33. Annually, each electric light distribution 3596
company as defined in section 5727.80 of the Revised Code shall 3597
cause to appear on each customer bill, or shall distribute to each 3598
of its customers, the following statement: 3599

"Under state law, the amount you are being billed includes: 3600

(1) ~~Gross receipts~~ Kilowatt-hour taxes that have been in 3601
effect since ~~1969~~ 2001 and are currently at \$. % (The 3602
current ~~total percentage~~ dollar figure of the ~~total gross receipts~~ 3603

~~kilowatt-hour taxes levied in Chapter 5727. by section 5727.81 of~~ 3604
~~the Revised Code and any other section of law shall be placed in~~ 3605
~~the blank); and~~ 3606

(2) Assessments to assist in the support of the operations of 3607
the PUCO and the office of the consumers' counsel that have been 3608
in effect since 1912 and 1977, respectively." 3609

Nothing in this section shall be construed to mean ~~either~~ 3610
~~that an electric light distribution company operated not for~~ 3611
~~profit or one that is owned or operated by a municipal corporation~~ 3612
~~is subject to this section or that an electric light company~~ 3613
subject to this section may not cause such appearance or 3614
distribute such statement on a more frequent basis. 3615

Sec. 4933.81. As used in sections 4933.81 to 4933.90 of the 3616
Revised Code: 3617

(A) "Electric supplier" means any electric light company as 3618
defined in section 4905.03 of the Revised Code, including electric 3619
light companies organized as nonprofit corporations, but not 3620
including a municipal ~~corporation~~ corporations or other ~~unit~~ units 3621
of local government that ~~provides~~ provide electric service. 3622

(B) "Adequate facilities" means distribution lines or 3623
facilities having sufficient capacity to meet the maximum 3624
estimated electric service requirements of its existing customers 3625
and of any new customer occurring during the year following the 3626
commencement of permanent electric service, and to assure all such 3627
customers of reasonable continuity and quality of service. 3628
Distribution facilities and lines of an electric supplier shall be 3629
considered "adequate facilities" if such supplier offers to 3630
undertake to make its distribution facilities and lines meet such 3631
service requirements and ~~can~~, in the determination of the public 3632
utilities commission, can do so within a reasonable time. 3633

(C) "Distribution line" means any electric line ~~having a~~ 3634
~~design voltage below thirty-five thousand volts phase to phase~~ 3635
~~which~~ that is being or has been used primarily to provide electric 3636
service directly to electric load centers by the owner of such 3637
line. 3638

(D) "Existing distribution line" means any distribution line 3639
of an electric supplier which was in existence on January 1, 1977, 3640
or under ~~construction~~ CONSTRUCTION on such that date. 3641

(E) "Electric load center" means all the electric-consuming 3642
facilities of any type or character owned, occupied, controlled, 3643
or used by a person at a single location, which facilities have 3644
been, are, or will be connected to and served at a metered point 3645
of delivery and to which electric service has been, is, or will be 3646
rendered. 3647

(F) "Electric service" means retail electric service 3648
furnished to an electric load center for ultimate consumption ~~and~~ 3649
~~does not include, but excludes~~ furnishing electric power or energy 3650
at wholesale for resale. In the case of a for-profit electric 3651
supplier and beginning on the starting date of competitive retail 3652
electric service as defined in section 4928.01 of the Revised 3653
Code, "electric service" also excludes a competitive retail 3654
electric service. In the case of a not-for-profit electric 3655
supplier and beginning on that starting date, "electric service" 3656
also excludes any service component of a competitive retail 3657
electric service that is specified in an irrevocable filing the 3658
electric supplier makes with the public utilities commission for 3659
informational purposes only to eliminate permanently its certified 3660
territory under sections 4933.81 to 4933.90 of the Revised Code as 3661
to that service component. the filing shall specify the date on 3662
which such territory is so eliminated. notwithstanding division 3663
(B) of section 4928.01 of the Revised Code, such a service 3664
component may include retail ancillary, metering, or billing and 3665

collection service irrespective of whether that service component 3666
has or has not been declared competitive under section 4928.04 of 3667
the Revised Code. upon receipt of the filing by the commission, 3668
the not-for-profit electric supplier's certified territory shall 3669
be eliminated permanently as to the service component specified in 3670
the filing as of the date specified in the filing. As used in this 3671
division, "competitive retail electric service" and "retail 3672
electric service" have the same meanings as in section 4928.01 of 3673
the Revised Code. 3674

(G) "Certified territory" means a geographical area the 3675
boundaries of which have been established pursuant to sections 3676
4933.81 to 4933.90 of the Revised Code within which an electric 3677
supplier is authorized and required to provide electric service. 3678

(H) "Other unit of local government" means any governmental 3679
unit or body that may come into existence after ~~the effective date~~ 3680
~~of this section~~ July 12, 1978, with powers and authority similar 3681
to those of a municipal corporation, or ~~which~~ that is created to 3682
replace or exercise the relevant powers of any one or more 3683
municipal corporations. 3684

Sec. 4935.04. (A) As used in this chapter: 3685

(1) "Major utility facility" means: 3686

(a) ~~An electric generating plant and associated facilities~~ 3687
~~designed for, or capable of, operation at a capacity of fifty~~ 3688
~~megawatts or more;~~ 3689

~~(b)~~ An electric transmission line and associated facilities 3690
of a design capacity of one hundred twenty-five kilovolts or more; 3691

~~(c)~~(b) A gas or natural gas transmission line and associated 3692
facilities designed for, or capable of, transporting gas or 3693
natural gas at pressures in excess of one hundred twenty-five 3694
pounds per square inch. 3695

"Major utility facility" does not include electric, gas, or 3696
natural gas distributing lines and gas or natural gas gathering 3697
lines and associated facilities as defined by the public utilities 3698
commission; facilities owned or operated by industrial firms, 3699
persons, or institutions that produce or transmit gas, or natural 3700
gas, or electricity primarily for their own use or as a byproduct 3701
of their operations; gas or natural gas transmission lines and 3702
associated facilities over which an agency of the United States 3703
has certificate jurisdiction; facilities owned or operated by a 3704
person furnishing gas or natural gas directly to fifteen thousand 3705
or fewer customers within this state. 3706

(2) "Person" has the meaning set forth in section 4906.01 of 3707
the Revised Code. 3708

(B) Each person owning or operating a gas or natural gas 3709
transmission line and associated facilities within this state over 3710
which an agency of the United States has certificate jurisdiction 3711
shall furnish to the commission a copy of the energy information 3712
filed by the person with that agency of the United States. 3713

(C) Each person owning or operating a major utility facility 3714
within this state, or furnishing gas, natural gas, or electricity 3715
directly to more than fifteen thousand customers within this state 3716
annually shall furnish a report to the commission for its review. 3717
The report shall be termed the long-term forecast report and shall 3718
contain: 3719

(1) A year-by-year, ten-year forecast of annual energy 3720
demand, peak load, reserves, and a general description of the 3721
resource plan to meet demand; 3722

(2) A range of projected loads during the period; 3723

(3) A description of major utility facilities planned to be 3724
added or taken out of service in the next ten years, including 3725
~~prospective sites for generating plants and~~, to the extent the 3726

information is available, prospective sites for transmission line 3727
locations; 3728

(4) For gas and natural gas, a projection of anticipated 3729
supply, supply prices, and sources of supply over the forecast 3730
period; 3731

~~(5) For electricity, a range of projected loads and a 3732
projection of annual energy demand, anticipated generating 3733
capacity, and system seasonal peak demand for a twenty-year 3734
period; 3735~~

~~(6)~~ A description of proposed changes in the transmission 3736
system planned for the next five years; 3737

~~(7)~~(6) A month-by-month forecast of both energy demand and 3738
peak load for electric utilities, and gas sendout for gas and 3739
natural gas utilities, for the next two years. The report shall 3740
describe the major utility facilities that, in the judgment of 3741
such person, will be required to supply system demands during the 3742
forecast period. The report from a gas or natural gas utility 3743
shall cover the ten- and five-year periods next succeeding the 3744
date of the report, and the report from an electric utility shall 3745
cover the twenty-, ten-, and five-year periods next succeeding the 3746
date of the report. Each report shall be made available to the 3747
public and furnished upon request to municipal corporations and 3748
governmental agencies charged with the duty of protecting the 3749
environment or of planning land use. The report shall be in such 3750
form and shall contain such information as may be prescribed by 3751
the commission. 3752

Each person not owning or operating a major utility facility 3753
within this state and serving fifteen thousand or fewer gas, or 3754
natural gas, or electric customers within this state shall furnish 3755
such information as the commission ~~may require~~ requires. 3756

(D) The commission shall: 3757

(1) Review and comment on the reports filed under division 3758
(C) of this section, and make the information contained ~~therein~~ in 3759
the reports readily available to the public and other interested 3760
government agencies; 3761

(2) Compile and publish each year the ~~general locations of~~ 3762
~~the proposed power plant sites and~~ general locations of proposed 3763
and existing transmission line routes within its jurisdiction as 3764
identified in the reports filed under division (C) of this 3765
section, identifying the general location of such sites and routes 3766
and the approximate year when construction is expected to 3767
commence, and to make such information readily available to the 3768
public, to each newspaper of daily or weekly circulation within 3769
the area affected by the proposed site and route, and to 3770
interested federal, state, and local agencies; 3771

(3) Hold a public hearing: 3772

(a) On the first long-term forecast report filed after 3773
January 11, 1983; 3774

(b) At least once in every five years, on the latest report 3775
furnished by any person subject to this section; 3776

(c) On the latest report furnished by any person subject to 3777
this section if the report contains a substantial change from the 3778
preceding report furnished by that person. "Substantial change" 3779
includes, but is not limited to: 3780

(i) ~~The addition or cancellation of a generating facility of~~ 3781
~~fifty megawatts or more in the report furnished pursuant to~~ 3782
~~division (C) of this section;~~ 3783

~~(ii)~~ A change in forecasted peak loads or energy consumption 3784
over the forecast period of greater than an average of one-half of 3785
one per cent per year; 3786

~~(iii)~~(ii) Demonstration of good cause to the commission by an 3787

interested party. 3788

The commission shall fix a time for the hearing, which shall 3789
be not later than ninety days after the report is filed, and 3790
publish notice of the date, time of day, and location of the 3791
hearing in a newspaper of general circulation in each county in 3792
which the person furnishing the report has or intends to locate a 3793
major utility facility and will provide service during the period 3794
covered by the report. The notice shall be published not less than 3795
fifteen nor more than thirty days before the hearing and shall 3796
state the matters to be considered. 3797

Absent a showing of good cause, the commission shall not hold 3798
hearings under division (D)(3) of this section with respect to 3799
persons who, as the primary purpose of their business, furnish 3800
gas, or natural gas, or electricity directly to fifteen thousand 3801
or fewer customers within this state solely for direct consumption 3802
by those customers. 3803

(4) Require such information from persons subject to its 3804
jurisdiction as necessary to assist in the conduct of hearings and 3805
any investigation or studies it may undertake; 3806

(5) Conduct any studies or investigations that are necessary 3807
or appropriate to carry out its responsibilities under this 3808
section. 3809

(E)(1) The scope of the hearing held under division (D)(3) of 3810
this section shall be limited to issues relating to forecasting. 3811
The power siting board, the office of consumers' counsel, and all 3812
other persons having an interest in the proceedings shall be 3813
afforded the opportunity to be heard and to be represented by 3814
counsel. The commission may adjourn the hearing from time to time. 3815
3816

(2) The hearing shall include, but not be limited to, a 3817
review of: 3818

(a) The projected loads and energy requirements for each year of the period;	3819 3820
(b) The estimated installed capacity and supplies to meet the projected load requirements.	3821 3822
(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:	3823 3824 3825 3826
(1) All information relating to current activities, facilities agreements, and published energy policies of the state has been completely and accurately represented;	3827 3828 3829
(2) The load requirements are based on substantially accurate historical information and adequate methodology;	3830 3831
(3) The forecasting methods consider the relationships between price and energy consumption;	3832 3833
(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;	3834 3835 3836 3837
(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;	3838 3839 3840 3841 3842 3843
(6) The report considers plans for expansion of the regional power grid and the planned facilities of other utilities in the state;	3844 3845 3846
(7) All assumptions made in the forecast are reasonable and adequately documented.	3847 3848

(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 3881
that such determination was unreasonable or unlawful. 3882

The proceeding to obtain such reversal, vacation, or 3883
modification shall be by notice of appeal, filed with the 3884
commission by any party to the proceeding before it, against the 3885
commission, setting forth the determination appealed from and 3886
errors complained of. The notice of appeal shall be served, unless 3887
waived, upon the commission by leaving a copy at the office of the 3888
~~chairman~~ chairperson of the commission at Columbus. The court may 3889
permit an interested party to intervene by cross-appeal. 3890

(3) No proceeding to reverse, vacate, or modify a 3891
determination of the commission is commenced unless the notice of 3892
appeal is filed within sixty days after the date of the 3893
determination. 3894

Sec. 5117.01. ~~(A)~~ As used in ~~this chapter~~ sections 5117.01 to 3895
5117.12 of the Revised Code: 3896

~~(1)~~(A) "Credit" means the credit on utility heating bills 3897
granted under division (A) of section 5117.09 of the Revised Code. 3898

~~(2)~~(B) "Current monthly bill" means the amount charged for 3899
energy consumed in the most recent monthly billing period and does 3900
not include any past due balance. 3901

~~(3)~~(C) "Current total income" means the adjusted gross income 3902
of the head of household and the person's spouse for the six-month 3903
period beginning the first day of January and ending the thirtieth 3904
day of June of the year in which an application is made, as 3905
determined under the "Internal Revenue Code of 1954," 68A Stat. 3, 3906
26 U.S.C. 1, as amended, minus the amount of disability benefits 3907
included in adjusted gross income but not to exceed twenty-six 3908
hundred dollars, plus old age and survivors benefits received 3909
pursuant to the "Social Security Act," retirement, pension, 3910

annuity, or other retirement payments or benefits not included in 3911
federal adjusted gross income; payments received pursuant to the 3912
"Railroad Retirement Act," 50 Stat. 307, 45 U.S.C. 228, and 3913
interest on federal, state, and local government obligations. 3914
Disability benefits paid by the veterans administration or a 3915
branch of the armed forces of the United States on account of an 3916
injury or disability are not included in current total income. 3917

3918

~~(4)~~(D) "Energy company" means every retail propane dealer 3919
that distributes propane by pipeline, and every electric light, 3920
rural electric, gas, or natural gas company. 3921

~~(5)~~(E) "Energy dealer" means every retail dealer of fuel oil, 3922
propane, coal, wood, and kerosene. 3923

~~(6)~~(F) "Head of household" means a person who occupies a 3924
household as the person's homestead and who is financially 3925
responsible for its other occupants, if any, or the spouse of such 3926
a person if both occupy the same household. No person is a head of 3927
household if the person occupies a household for the taxable year 3928
prior to the year in which an application is filed and was claimed 3929
as a dependent on the federal income tax return of another 3930
occupant of the same household and was not the taxpayer's spouse 3931
or if the person could have been claimed if such a return had been 3932
filed for such year and was not the other occupant's spouse. 3933

~~(7)~~(G) "Household" means any dwelling unit, including a unit 3934
in a multiple unit dwelling, a manufactured home, or a mobile 3935
home, to which utility heating services or energy commodities are 3936
provided. 3937

~~(8)~~(H) "Payment" means the one hundred twenty-five-dollar 3938
payment provided under division (A) of section 5117.10 of the 3939
Revised Code. 3940

~~(9)~~(I) "Permanently and totally disabled" refers to a person 3941

who has, on the first day of July of the year an application is 3942
made, some impairment in body or mind that makes the person unfit 3943
to work at any substantially remunerative employment that the 3944
person would otherwise be reasonably able to perform and that 3945
will, with reasonable probability, continue for an indefinite 3946
period of at least twelve months without any present indication of 3947
recovery therefrom, or who has been certified as permanently and 3948
totally disabled by a state or federal agency having the function 3949
of so classifying persons. 3950

~~(10)~~(J) "Sixty-five years of age or older" refers to a person 3951
who has attained age sixty-four prior to the first day of January 3952
of the year of application for reduction in utility charges. 3953
3954

~~(11)~~(K) "Total income" means the adjusted gross income of the 3955
head of household and the person's spouse for the year preceding 3956
the year in which an application is made, as determined under the 3957
"Internal Revenue Code of 1954," 68A Stat. 3, 26 U.S.C. 1, as 3958
amended, minus the amount of disability benefits included in 3959
adjusted gross income but not to exceed fifty-two hundred dollars, 3960
plus old age and survivors benefits received pursuant to the 3961
"Social Security Act," retirement, pension, annuity, or other 3962
retirement payments or benefits not included in federal adjusted 3963
gross income; payments received pursuant to the "Railroad 3964
Retirement Act," 50 Stat. 307, 45 U.S.C. 228; and interest on 3965
federal, state, and local government obligations. Disability 3966
benefits paid by the ~~veteran's administration~~ department of
veterans affairs or a branch of the armed forces of the United 3967
States on account of an injury or disability shall not be included 3968
in total income. 3969
3970

~~(B) As used in sections 5117.01 to 5117.12 of the Revised~~ 3971
~~Code:~~ 3972

~~(1) "Applicant" means any person who has submitted an~~ 3973

~~application under division (C) of section 5117.03 of the Revised~~ 3974
~~Code.~~ 3975

~~(2) "Application" means the application in section 5117.03 of~~ 3976
~~the Revised Code.~~ 3977

~~(3) "Program" means the Ohio energy credit program~~ 3978
~~established under sections 5117.01 to 5117.12 of the Revised Code.~~ 3979

~~(4)(L)~~ "Purchased power costs" means charges for the costs of 3980
power purchased by an electric light company under Chapters 4905. 3981
and 4909. of the Revised Code and includes charges resulting from 3982
the exchange of electric power. 3983

Sec. 5117.02. (A) The director of development, to the extent 3984
necessary in consultation with the tax commissioner, shall adopt 3985
rules, or amendments and rescissions of rules, pursuant to section 3986
4928.52 of the Revised Code, for the administration of the Ohio 3987
energy credit program under sections 5117.01 to 5117.12 of the 3988
Revised Code. 3989

(B) As a means of efficiently administering the program 3990
~~established by sections 5117.01 to 5117.12 of the Revised Code,~~ 3991
the ~~tax commissioner~~ director may extend, by as much as a total of 3992
thirty days, any date specified in such sections for the 3993
performance of a particular action by an individual or an officer. 3994

(C)(1) Except as provided in division (C)(2) of this section, 3995
the director, to the extent necessary in consultation with the tax 3996
commissioner, shall adopt, in accordance with divisions (A), (B), 3997
(C), (D), (E), and (H) of section 119.03 and section 119.04 of the 3998
Revised Code, ~~adopt~~ whatever rules, or amendments or rescissions 3999
of rules are required by or are otherwise necessary to implement 4000
sections 5117.01 to 5117.12 of the Revised Code. A rule, 4001
amendment, or rescission adopted under this division is not exempt 4002
from the hearing requirements of section 119.03 of the Revised 4003

Code pursuant to division (G) of that section, or subject to 4004
section 111.15 or 5703.14 of the Revised Code. 4005

4006

(2) If an emergency necessitates the immediate adoption of a 4007
rule, or the immediate adoption of an amendment or rescission of a 4008
rule that is required by or otherwise necessary to implement 4009
sections 5117.01 to 5117.12 of the Revised Code, the director, to 4010
the extent necessary in consultation with the tax commissioner 4011
~~may~~, immediately may adopt the emergency rule, amendment, or 4012
rescission without complying with division (A), (B), (C), (D), 4013
(E), or (H) of section 119.03 of the Revised Code so long as ~~he~~ 4014
the director states the reasons for the necessity in the emergency 4015
rule, amendment, or rescission. The emergency rule, amendment, or 4016
rescission is effective on the day copies of the emergency rule, 4017
amendment, or rescission, in final form and in compliance with 4018
division (A)(2) of section 119.04 of the Revised Code, are filed 4019
as follows: two certified copies of the emergency rule, amendment, 4020
or rescission shall be filed with both the secretary of state and 4021
the director of the legislative service commission, and one 4022
certified copy of the emergency rule, amendment, or rescission 4023
shall be filed with the joint committee on agency rule review. If 4024
all copies are not filed on the same day, the emergency rule, 4025
amendment, or rescission is effective on the day on which the 4026
latest filing is made. An emergency rule, amendment, or rescission 4027
adopted under this division is not subject to section 111.15, 4028
division (F) of section 119.03, or section 5703.14 of the Revised 4029
Code. An emergency rule, amendment, or rescission adopted under 4030
this division continues in effect until amended or rescinded by 4031
the director, to the extent necessary in consultation with the tax 4032
commissioner, in accordance with division (C)(1) or (2) of this 4033
section, except that the rescission of an emergency rescission 4034
does not revive the rule rescinded. 4035

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

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

(a) The name and address of the applicant;

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

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

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

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

(f) The age of the applicant; 4066

(g) Any other information required to make eligibility 4067
determinations under section 5117.07 of the Revised Code. 4068

Each form shall contain a statement that signing such 4069
application constitutes a delegation of authority by the applicant 4070
to the commissioner to examine any financial records that relate 4071
to income earned by the applicant as stated on the application for 4072
the purpose of determining eligibility under section 5117.07 of 4073
the Revised Code and possible violation of division (B) of section 4074
5117.11 of the Revised Code. 4075

(2) The tax commissioner shall mail or otherwise provide an 4076
application form to each person requesting such form. 4077

(B)(1) The director, to the extent necessary in consultation 4078
with the tax commissioner, shall devise and prescribe an 4079
application renewal form on which the head of household may 4080
indicate by check mark that ~~he~~ the head of household received a 4081
credit or payment for the preceding heating season. Application 4082
renewal forms shall seek from persons applying on such basis a 4083
certification by the applicant attesting to ~~his~~ the applicant's 4084
permanent and total disability and the name of a physician, 4085
psychologist, or government agency willing to provide an 4086
additional certification if so requested under division (D) of 4087
section 5117.07 of the Revised Code. Such forms shall also include 4088
such other information as the director, to the extent necessary in 4089
consultation with the tax commissioner, requires and shall be 4090
clear and concise in format, requirements, and instructions. 4091

4092

(2) On or before the fifteenth day of June, the ~~tax~~ 4093
~~commissioner~~ director shall mail or otherwise provide an 4094
application renewal form to each head of household who received a 4095
credit or payment during the preceding heating season. 4096

(3) Application renewal forms shall be reviewed and disposed 4097
of in the same manner provided for application forms in section 4098
5117.07 of the Revised Code. 4099

(C) Applications and application renewal forms shall be 4100
returned to the ~~tax commissioner~~ director no later than the first 4101
day of September. If an applicant is determined eligible for a 4102
credit under division (A)(1) of section 5117.07 of the Revised 4103
Code and the applicant's account number is not provided on the 4104
application form pursuant to division (A)(1)(c) of this section, 4105
the ~~tax commissioner~~ director shall make a good faith effort to 4106
acquire such number before certifying the applicant's eligibility 4107
to an energy company under section 5117.08 of the Revised Code. 4108
The ~~tax commissioner~~ director may request an energy company to 4109
assist in efforts to acquire an applicant's account number and, if 4110
so requested, a company shall cooperate in such efforts. 4111

Sec. 5117.04. (A) Every energy company and energy dealer 4112
~~shall~~, at least once during June, and once during August, shall 4113
begin to distribute to each of its residential heating customers a 4114
plain and clear notice, printed in ten-point type on a sheet or 4115
card on which no other words appear on either the front or back, 4116
that states the right of qualified residential customers to 4117
receive a credit or payment under the Ohio energy credit program 4118
and that explains in detail, in a fashion reasonably calculated to 4119
inform, the relevant mechanisms established under sections 5117.01 4120
to 5117.12 of the Revised Code to effectuate that right. The 4121
notice shall also contain, in ten-point boldface type, the 4122
following statement: "The right of eligible customers to receive a 4123
credit against utility bills or a payment for energy bills is 4124
provided in legislation (House Bill 657) passed by the General 4125
Assembly and signed by the Governor." 4126

(B) The ~~tax commissioner~~ director of development shall cause 4127

to be printed notices of the type specified in division (A) of 4128
this section and application forms in sufficient quantity for 4129
distribution. The ~~tax-commissioner~~ director shall maintain a 4130
system for distributing application forms to appropriate public 4131
locations. The distribution system shall be designed to make 4132
application forms available to as many qualified persons as 4133
possible. 4134

(C) The ~~tax-commissioner~~ director shall arrange for the 4135
establishment of a toll-free telephone number to enable all 4136
persons in this state to make inquiries and obtain information 4137
concerning the credits or payments. 4138

Sec. 5117.05. The ~~tax-commissioner~~ director of development, 4139
in consultation with the commission on Hispanic-Latino affairs, 4140
shall develop an outreach program, including Spanish-speaking 4141
communication formats, designed to make all Spanish-speaking 4142
persons who meet the eligibility requirements for participation in 4143
the Ohio energy credit program aware of the nature and extent of 4144
available benefits and methods for acquiring and making 4145
applications. The program shall include assistance to such persons 4146
in making applications. The ~~commissioner~~ director shall implement 4147
the program in cooperation with the commission ~~on Hispanic-Latino~~ 4148
~~affairs~~. 4149

Sec. 5117.07. (A) On or before the first day of October, the 4150
~~tax-commissioner~~ director of development shall review all 4151
applications submitted under division (C) of section 5117.03 of 4152
the Revised Code and shall determine the eligibility of each 4153
applicant to receive a credit or payment. 4154

(1) An applicant is eligible for a credit of thirty per cent 4155
if the applicant is a head of household, has a total income of 4156
five thousand dollars or less or a current total income of two 4157

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 4188
system is not provided, more than one applicant occupying such 4189
dwelling may be determined eligible for a payment under division 4190
(A)(3)(a) of this section. 4191

(B) Notwithstanding division (A) of this section: 4192

(1) No head of household who resides in public housing or 4193
receives a rent subsidy from a government agency is eligible for a 4194
credit or payment unless the person's rent subsidy does not 4195
reflect the costs of ~~his~~ that person's household receiving the 4196
source of energy for its primary heating system; 4197

(2) A resident of a nursing home, hospital, or other extended 4198
health care facility is not eligible for a credit or payment for 4199
the costs of providing the source of energy for the primary 4200
heating system of the facility. 4201

(C) The director, in consultation with the tax commissioner, 4202
shall establish a procedure whereby ~~he~~ the commissioner can verify 4203
total income and current total income for the calendar year in 4204
which an applicant is determined eligible for a payment or credit. 4205
If a person receives a credit or payment that ~~he~~ the person is 4206
ineligible to receive under division (A) of this section as 4207
determined by the commissioner, that person shall refund to the 4208
~~tax commissioner~~ director the credit or payment, or excess portion 4209
of a credit or payment, ~~he~~ that person received. The sum refunded 4210
shall be deposited in the state treasury to the credit of the 4211
~~general revenue fund~~ universal service fund created in section 4212
4928.51 of the Revised Code. 4213

(D) The ~~tax commissioner~~ director may request an additional 4214
certification of permanent and total disability for any applicant 4215
claiming such status on an application renewal form submitted 4216
under section 5117.03 of the Revised Code. Such certification 4217
shall be requested from the person or agency named on the form 4218

pursuant to division (B)(1) of section 5117.03 of the Revised 4219
Code. If such additional certification is refused due to a 4220
conclusion by the person or agency that the applicant is not 4221
permanently and totally disabled, the ~~commissioner~~ director shall 4222
determine the applicant ineligible for any credit or payment. If 4223
such additional certification is unavailable or refused for any 4224
other reason, the ~~tax commissioner~~ director may determine the 4225
applicant to be eligible for a credit or payment provided ~~he~~ the 4226
director has good cause to believe the applicant is permanently 4227
and totally disabled. 4228

(E) On or before the first day of October, the ~~tax~~ 4229
~~commissioner~~ director shall notify each applicant of the 4230
disposition of ~~his~~ the applicant's application under divisions (A) 4231
and (B) of this section. At the same time, ~~he~~ the director shall 4232
notify the applicant, regardless of whether ~~his~~ the applicant's 4233
application is approved or disapproved, that the applicant may be 4234
eligible to participate in a state or federal weatherization 4235
program and should contact ~~his~~ the applicant's community action 4236
agency for further information. If an application is disapproved, 4237
the applicant may appeal to the ~~tax commissioner~~ director for a 4238
hearing on the matter. A notice of disapproval shall include a 4239
detailed explanation of the applicant's right of appeal under this 4240
chapter. Any such appeal shall be on an appeal form prescribed by 4241
the ~~tax commissioner~~ director and shall be filed with the ~~tax~~ 4242
~~commissioner~~ director within twenty days of the receipt of the 4243
notice of disapproval. 4244

Sec. 5117.08. (A)(1) On or before the tenth day of October, 4245
the ~~tax commissioner~~ director of development shall begin to 4246
prepare and certify to each energy company that provides energy 4247
for home heating a list containing the name and account number of 4248
each head of household determined eligible for a credit under 4249
divisions (A) and (B) of section 5117.07 of the Revised Code and 4250

served by that company, the address of the household, and the 4251
source of the heat produced by the primary heating system in the 4252
residence of the applicant. The ~~tax commissioner may~~ director, for 4253
good cause, may certify addenda to such lists, containing the 4254
names of any heads of household whose names were not included in 4255
the earlier lists but who, except for failure to meet the deadline 4256
requirements of sections 5117.01 to 5117.12 of the Revised Code, 4257
would have been certified in the original lists. Within thirty 4258
days of receipt of such list and in any month for which a credit 4259
is required under sections 5117.01 to 5117.12 of the Revised Code, 4260
the company may verify that each head of household on the 4261
~~commissioner's~~ director's list receives energy for home heating at 4262
the household address appearing on such list or that the source of 4263
heat produced by the primary heating system in the household is 4264
energy supplied by the company. If the company determines that a 4265
person listed does not receive energy for home heating at such 4266
address or that the source of the heat produced by the primary 4267
heating system in the residence of such person is not supplied by 4268
the company, it shall notify the ~~commissioner~~ director of such 4269
fact and may refuse to grant the credit provided under division 4270
(A) of section 5117.07 of the Revised Code. Upon receipt of such 4271
notice, the ~~commissioner~~ director shall determine the accuracy of 4272
the determination of the company and, should ~~he~~ the director not 4273
concur with the company, shall order the company to provide the 4274
credit. 4275

(2) The good faith exercise by any company of any power of 4276
refusal granted under division (A)(1) of this section does not 4277
subject such company to any penalty or liability provided under 4278
division (A) of section 5117.11 of the Revised Code. 4279

(B)(1) Nothing in sections 5117.01 to 5117.12 of the Revised 4280
Code shall be construed to abridge the right of an otherwise 4281
eligible applicant to receive a credit or payment because ~~he~~ the 4282

applicant has either changed the location of ~~his~~ the applicant's 4283
residence or the nature of the occupancy of ~~his~~ the applicant's 4284
residence, as between a tenant or an owner, at a time that could, 4285
as a result of the operation of sections 5117.01 to 5117.12 of the 4286
Revised Code, cause ~~him~~ the applicant to be disqualified from 4287
receiving, or continuing to receive, the credit or payment. 4288

(2) Where a person who submits a form or information required 4289
under sections 5117.01 to 5117.10 of the Revised Code does so in a 4290
timely fashion but, because of the occurrence of an error or 4291
omission with respect to such form or information, either on ~~his~~ 4292
the person's own part or on the part of those persons required by 4293
sections 5117.01 to 5117.12 of the Revised Code to take 4294
administrative, executive, or ministerial action regarding such 4295
form or information, the certification of eligibility by the ~~tax~~ 4296
~~commissioner~~ director to an energy company takes place after the 4297
expiration of a deadline imposed under sections 5117.01 to 5117.12 4298
of the Revised Code, the company shall grant the credit within 4299
thirty days and, whenever appropriate, grant the credit on a 4300
retroactive basis. 4301

(3) The ~~tax commissioner~~ director shall adopt a rule ensuring 4302
that the requirements of divisions (B)(1) and (2) of this section 4303
are effectuated. 4304

Sec. 5117.09. (A) With respect to each of its residential 4305
customers, every energy company shall, after receipt of a 4306
certification list provided under division (A) of section 5117.08 4307
of the Revised Code, cause the granting of a credit in accordance 4308
with this section against the monthly billing of each household 4309
appearing on the list except as provided in division (A) of 4310
section 5117.08 of the Revised Code. In the case of an applicant 4311
who has a total income of five thousand dollars or less or a 4312
current total income of two thousand five hundred dollars or less, 4313

the credit shall amount to thirty per cent of the current monthly 4314
bill rendered to such household by the company for the billing 4315
months of December, January, February, March, and April following 4316
the receipt of a list on which the household appears. In the case 4317
of an applicant who has a total income of more than five thousand 4318
dollars but not more than nine thousand dollars or a current total 4319
income of more than two thousand five hundred dollars but not more 4320
than four thousand five hundred dollars, the credit shall amount 4321
to twenty-five per cent of the current monthly bill rendered to 4322
such household by the company for the billing months of December, 4323
January, February, March, and April following the receipt of a 4324
list on which the household appears. If purchased power costs are 4325
incurred by an energy company during the billing month for which a 4326
credit is provided under this division, the credit shall also be 4327
applied to such costs, whether or not the costs are charged to a 4328
current ~~monthly~~ MONTHLY bill for such months. 4329

(B) Every energy company shall read the meter of each of its 4330
qualified residential customers who may receive a credit under 4331
division (A) of this section at least one time for the service 4332
period of November and at least one time in the service period for 4333
the current monthly bill rendered for the billing month of April. 4334
In the event a company is unable to read a meter because of 4335
failure to gain access after a good faith effort or because a 4336
certification list was supplied to the utility fewer than thirty 4337
days prior to the normal date of meter reading, the company may 4338
render a calculated bill. In such instances, the company shall 4339
make an adjustment to the amount of the credit granted to the 4340
customer based upon the next actual reading of the meter if the 4341
reading shows the previous calculation to have been in error and 4342
set forth the amount of such adjustments in the report required to 4343
be filed with the ~~tax commissioner~~ director of development under 4344
division (D) of this section. 4345

(C) On each billing that is subject to a credit under 4346
division (A) of this section, there shall appear in ten-point type 4347
both the amount of the credit and to the left of such amount "Ohio 4348
Energy Credit." 4349

(D) On or before the fifteenth day of each month following 4350
one in which credits were provided under division (A) of this 4351
section, each energy company shall, on a form prescribed by the 4352
~~tax commissioner~~ director and requesting information that ~~he~~ the 4353
director determines is necessary for the purpose of verifying the 4354
propriety of the payment of credits, certify to the ~~commissioner~~ 4355
director the total amount of all credits it granted pursuant to 4356
division (A) of this section during the preceding month. Not later 4357
than thirty days after ~~his~~ receipt of such certification, the 4358
~~commissioner~~ director shall pay the company the amount certified. 4359
If the ~~commissioner~~ director determines that a company previously 4360
received amounts greater than the amounts of credits properly 4361
granted, such company, upon notice from the ~~commissioner~~ director, 4362
shall reimburse the ~~commissioner~~ director in the amount of the 4363
overpayments. Such reimbursements shall be deposited in the 4364
general revenue fund. 4365

(E)(1) Any energy company that purposely fails to grant the 4366
credit provided under division (A) of this section is liable to 4367
each person entitled to the credit and certified to the company by 4368
the ~~tax commissioner~~ director pursuant to division (A) of section 4369
5117.08 of the Revised Code in treble the amount of the total 4370
credit not granted. The consumers' counsel ~~may~~, on behalf of any 4371
person or persons not granted the credit, may bring an action to 4372
recover such treble damages in the court of common pleas of the 4373
county in which is located the office of the company nearest the 4374
household of any such person or persons. The consumers' counsel 4375
~~may~~ also, on behalf of any persons not granted the credit, may 4376
bring a class action to recover such treble damages in the court 4377

of common pleas of any county in which is located an office of the 4378
company and, if feasible, in which is located a significant number 4379
of members of the class. Any treble damage recovery under this 4380
division does not, in any manner, diminish any other liability 4381
provided under sections 5117.01 to 5117.12 of the Revised Code. 4382
Clerical errors shall not be considered an offense or incur 4383
liability under this division. 4384

(2) An action shall be brought by the consumers' counsel 4385
under division (E)(1) of this section only after ~~he~~ the consumers' 4386
counsel has made a good faith attempt to dispose of the claim by 4387
settlement, including a good faith request for only such 4388
information in the possession of an energy company as is needed to 4389
determine the existence or extent of such a right of action. 4390

(3) Nothing in division (E)(1) of this section shall be 4391
construed to prevent persons acting without the assistance of the 4392
consumers' counsel from bringing an action or class action under 4393
such division. 4394

Sec. 5117.10. (A) On or before the fifteenth day of January, 4395
the ~~tax commissioner~~ director of development shall pay each 4396
applicant determined eligible for a payment under divisions (A) 4397
and (B) of section 5117.07 of the Revised Code one hundred 4398
twenty-five dollars. 4399

(B) The ~~tax commissioner~~ director may withhold from any 4400
payment to which a person would otherwise be entitled under 4401
division (A) of this section any amount that the ~~tax commissioner~~ 4402
director determines was erroneously received by such person in a 4403
preceding year under this or the program established under Am. 4404
Sub. H.B. 230, as amended by Am. H.B. 937, Am. Sub. H.B. 1073, Am. 4405
Sub. S.B. 493, and Am. Sub. S.B. 523 of the 112th general 4406
assembly, provided the ~~tax commissioner~~ director has employed all 4407
other legal methods reasonably available to obtain reimbursement 4408

for the erroneous payment or credit prior to the commencement of 4409
the current program year. 4410

(C) Payments made under this section and credits granted 4411
under section 5117.09 of the Revised Code shall not be considered 4412
income for the purpose of determining eligibility or the level of 4413
benefits or assistance under section 329.042 or Chapters 5107., 4414
5111., and 5115. of the Revised Code; supplemental security income 4415
payments under Title XVI of the "Social Security Act," 49 Stat. 4416
620 (1935), 42 U.S.C. 301, as amended; or any other program under 4417
which eligibility or the level of benefits or assistance is based 4418
upon need measured by income. 4419

Sec. 5117.12. (A) On or before the thirty-first day of August 4420
of each year, each energy company shall file a written report with 4421
the ~~tax commissioner~~ director of development regarding the impact, 4422
if any, of the requirements of division (E) of section 5117.11 of 4423
the Revised Code on the number of uncollectible and past due 4424
residential accounts for the twelve-month period ending on the 4425
preceding thirty-first day of July. The report shall include such 4426
information as is prescribed by the ~~tax commissioner~~ director. The 4427
information shall be based on actual reviews of residential 4428
customer accounts and shall be presented in verifiable form. The 4429
~~tax commissioner~~ director may consult with the public utilities 4430
commission and the consumers' counsel in prescribing the contents 4431
of such reports and complying with the requirements of division 4432
(C)(4) of this section. 4433

(B) Before the thirty-first day of January of each year, the 4434
~~tax commissioner~~ director shall prepare a written report including 4435
a final review of the Ohio energy credit program for which 4436
applications were required to be mailed or provided by the 4437
fifteenth day of June of the second preceding calendar year 4438
pursuant to section 5117.03 of the Revised Code and an interim 4439

review of the program for which applications were required to be 4440
mailed or provided by the fifteenth day of June of the preceding 4441
calendar year under such section. On or before the thirty-first 4442
day of January of each year, the ~~commissioner~~ director shall 4443
provide written copies of such report to the speaker of the house 4444
of representatives, president of the senate, minority leaders of 4445
the house of representatives and senate, chairpersons of the house 4446
finance and appropriations committee and senate finance committee, 4447
chairpersons of the committees of the house of representatives and 4448
senate customarily entrusted with matters concerning public 4449
utilities, clerk of the house of representatives, and clerk of the 4450
senate. 4451

(C) Each report prepared under division (B) of this section 4452
shall include a review of: 4453

(1) Program costs; 4454

(2) The number of persons receiving credits or payments under 4455
the program; 4456

(3) Progress in the implementation of any changes in the 4457
program made by the general assembly within the period covered by 4458
the report; 4459

(4) The impact, if any, of the requirements of division (E) 4460
of section 5117.11 of the Revised Code on the number of 4461
uncollectible and past due residential accounts of energy 4462
companies for the twelve-month period ending on the preceding 4463
thirty-first day of July; 4464

(5) The impact of any federal energy assistance programs 4465
available to the same groups of people as are eligible for the 4466
energy credit program under sections 5117.01 to 5117.12 of the 4467
Revised Code, together with any recommendations on modifications 4468
that may, because of the federal programs, be needed in the energy 4469
credit program; 4470

(6) Any suggestions for improving the program; 4471

(7) Any other matters considered appropriate by the 4472
~~commissioner~~ director. 4473

(D) The ~~tax commissioner~~ director shall consult with the 4474
auditor of state, energy companies, energy dealers, department of 4475
aging, and commission on Hispanic-Latino affairs in the 4476
preparation of any report under this section. The ~~commissioner~~ 4477
director may require information from such agencies for the 4478
purpose of preparing such report. 4479

Sec. 5701.03. As used in Title LVII of the Revised Code: 4480

(A) "Personal property" includes every tangible thing that is 4481
the subject of ownership, whether animate or inanimate, including 4482
a business fixture, and that does not constitute real property as 4483
defined in section 5701.02 of the Revised Code. "Personal 4484
property" also includes every share, portion, right, or interest, 4485
either legal or equitable, in and to every ship, vessel, or boat, 4486
used or designed to be used in business either exclusively or 4487
partially in navigating any of the waters within or bordering on 4488
this state, whether such ship, vessel, or boat is within the 4489
jurisdiction of this state or elsewhere. "Personal property" does 4490
not include money as defined in section 5701.04 of the Revised 4491
Code, motor vehicles registered by the owner thereof, electricity, 4492
or, for purposes of any tax levied on personal property, patterns, 4493
jigs, dies, or drawings that are held for use and not for sale in 4494
the ordinary course of business, except to the extent that the 4495
value of the electricity, patterns, jigs, dies, or drawings is 4496
included in the valuation of inventory produced for sale. 4497
4498

(B) "Business fixture" means an item of tangible personal 4499
property that has become permanently attached or affixed to the 4500

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. 4533

Upon certification by the tax commissioner to the treasurer 4534
of state of a tax refund, fee refund, or tax credit due, or by the 4535
superintendent of insurance of a domestic or foreign insurance tax 4536
refund, the treasurer of state may place the amount certified to 4537
the credit of the fund. The certified amount transferred shall be 4538
derived from current receipts of the same tax or the fee for which 4539
the refund arose or, in the case of a tax credit refund, from the 4540
current receipts of the taxes levied by sections 5739.02 and 4541
5741.02 of the Revised Code. 4542

If the tax refund arises from a tax payable to the general 4543
revenue fund, and current receipts from that source are inadequate 4544
to make the transfer of the amount so certified, the treasurer of 4545
state may transfer such certified amount from current receipts of 4546
the sales tax levied by section 5739.02 of the Revised Code. 4547

Sec. 5703.053. As used in this section, "postal service" 4548
means the United States postal service. 4549

An application to the tax commissioner for a tax refund under 4550
sections 4307.05, 4307.07, 5727.91, 5728.061, 5735.122, 5735.13, 4551
5735.14, 5735.141, 5735.142, 5739.07, 5741.10, 5743.05, 5743.53, 4552
5749.08, and 5753.06 of the Revised Code or division (B) of 4553
section 5703.05 of the Revised Code, or a fee refunded under 4554
section 3734.905 of the Revised Code, that is received after the 4555
last day for filing under such section shall be considered to have 4556
been filed in a timely manner if: 4557

(A) The application is delivered by the postal service and 4558
the earliest postal service postmark on the cover in which the 4559
application is enclosed is not later than the last day for filing 4560
the application; 4561

(B) The application is delivered by the postal service, the 4562

only postmark on the cover in which the application is enclosed 4563
was affixed by a private postal meter, the date of that postmark 4564
is not later than the last day for filing the application, and the 4565
application is received within seven days of such last day; or 4566

(C) The application is delivered by the postal service, no 4567
postmark date was affixed to the cover in which the application is 4568
enclosed or the date of the postmark so affixed is not legible, 4569
and the application is received within seven days of the last day 4570
for making the application. 4571

Sec. 5703.14. (A) Any rule adopted by the board of tax 4572
appeals and any rule of the department of taxation adopted by the 4573
tax commissioner shall be effective on the tenth day after the day 4574
on which the rule in final form and in compliance with division 4575
(B) of this section is filed by the board or the commissioner as 4576
follows: 4577

(1) Two certified copies of the rule shall be filed with both 4578
the secretary of state and the director of the legislative service 4579
commission; 4580

(2) Two certified copies of the rule shall be filed with the 4581
joint committee on agency rule review. Division (A)(2) of this 4582
section does not apply to any rule to which division (H) of 4583
section 119.03 of the Revised Code does not apply. 4584

If all copies are not filed on the same day, the rule shall 4585
be effective on the tenth day after the day on which the latest 4586
filing is made. If the board or the commissioner in adopting a 4587
rule designates an effective date that is later than the effective 4588
date provided for by this division, the rule if filed as required 4589
by this division shall become effective on the later date 4590
designated by the board or commissioner. 4591

(B) The board and commissioner shall file the rule in 4592

compliance with the following standards and procedures: 4593

(1) The rule shall be numbered in accordance with the 4594
numbering system devised by the director for the Ohio 4595
administrative code. 4596

(2) The rule shall be prepared and submitted in compliance 4597
with the rules of the legislative service commission. 4598

(3) The rule shall clearly state the date on which it is to 4599
be effective and the date on which it will expire, if known. 4600

(4) Each rule that amends or rescinds another rule shall 4601
clearly refer to the rule that is amended or rescinded. Each 4602
amendment shall fully restate the rule as amended. 4603

If the director of the legislative service commission or ~~his~~ 4604
the director's designee gives the board or commissioner written 4605
notice pursuant to section 103.05 of the Revised Code that a rule 4606
filed by the board or commissioner is not in compliance with the 4607
rules of the legislative service commission, the board or 4608
commissioner shall within thirty days after receipt of the notice 4609
conform the rule to the rules of the legislative service 4610
commission as directed in the notice. 4611

All rules of the department and board filed pursuant to 4612
division (A)(1) of this section shall be recorded by the secretary 4613
of state and the director under the name of the department or 4614
board and shall be numbered in accordance with the numbering 4615
system devised by the director. The secretary of state and the 4616
director shall preserve the rules in an accessible manner. Each 4617
such rule shall be a public record open to public inspection and 4618
may be lent to any law publishing company that wishes to reproduce 4619
it. Each such rule shall also be made available to interested 4620
parties upon request directed to the department. 4621

(C) Applications for review of any rule adopted and 4622

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.

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

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(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;

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

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with the joint committee on agency rule review. Division (C)(2) of 4655
this section does not apply to any rule to which division (H) of 4656
section 119.03 of the Revised Code does not apply. 4657

On the tenth day after the copies of the determination have 4658
been received by the secretary of state, the director, and, if 4659
applicable, the joint committee, the rule referred to in the 4660
determination shall cease to be in effect. If all copies of the 4661
determination are not filed on the same day, the rule shall remain 4662
in effect until the tenth day after the day on which the latest 4663
filing is made. This section does not apply to licenses issued 4664
under sections 5735.02, 5739.17, and 5743.15 of the Revised Code, 4665
which shall be governed by sections 119.01 to 119.13 of the 4666
Revised Code. 4667

The board is not required to hear an application for the 4668
review of any rule where the grounds of the allegation that the 4669
rule is unreasonable have been previously contained in an 4670
application for review and have been previously heard and passed 4671
upon by the board. 4672

(D) This section does not apply to the adoption of any rule, 4673
or to the amendment or rescission of any rule by the director of 4674
development in consultation with the tax commissioner under 4675
division (C)(1) or (2) of section 5117.02 of the Revised Code. 4676

(E) As used in this section, "substantive revision" has the 4677
same meaning as in division (J) of section 119.01 of the Revised 4678
Code. 4679

Sec. 5705.34. When the budget commission has completed its 4680
work with respect to a tax budget, it shall certify its action to 4681
the taxing authority, together with an estimate by the county 4682
auditor of the rate of each tax necessary to be levied by the 4683
taxing authority within its subdivision or taxing unit, and what 4684

part thereof is in excess of, and what part within, the ten-mill 4685
tax limitation. The certification shall also indicate the date on 4686
which each tax levied by the taxing authority will expire. ~~Each~~ 4687

If a taxing authority levies a tax for a fixed sum of money 4688
or to pay debt charges for the tax year for which the tax budget 4689
is prepared, and the tax was levied in tax year 1998, the county 4690
auditor, when estimating the rate at which the tax shall be levied 4691
in the current year, shall estimate the rate necessary to raise 4692
the required sum less the estimated amount of any payments made 4693
for the tax year to a taxing unit under sections 5727.85 and 4694
5727.86 of the Revised Code. The estimated rate shall be the rate 4695
of the levy that the budget commission certifies with its action 4696
under this section. 4697

Each taxing authority, by ordinance or resolution, shall 4698
authorize the necessary tax levies and certify them to the county 4699
auditor before the first day of October in each year, or at such 4700
later date as is approved by the tax commissioner, except that the 4701
certification by a board of education shall be made by the first 4702
day of April or at such later date as is approved by the 4703
commissioner, and except that a township board of park 4704
commissioners that is appointed by the board of township trustees 4705
and oversees a township park district that contains only 4706
unincorporated territory shall authorize only those taxes approved 4707
by, and only at the rate approved by, the board of township 4708
trustees as required by division (C) of section 511.27 of the 4709
Revised Code. If the levying of a tax to be placed on the 4710
duplicate of the current year is approved by the electors of the 4711
subdivision under sections 5705.01 to 5705.47 of the Revised Code; 4712
if the rate of a school district tax is increased due to the 4713
repeal of a school district income tax and property tax rate 4714
reduction at an election held pursuant to section 5748.04 of the 4715
Revised Code; or if refunding bonds to refund all or a part of the 4716

principal of bonds payable from a tax levy for the ensuing fiscal 4717
year are issued or sold and in the process of delivery, the budget 4718
commission shall reconsider and revise its action on the budget of 4719
the subdivision or school library district for whose benefit the 4720
tax is to be levied after the returns of such election are fully 4721
canvassed, or after the issuance or sale of such refunding bonds 4722
is certified to it. 4723

Sec. 5727.01. As used in this chapter: 4724

(A) "Public utility" means each person referred to as a 4725
telephone company, telegraph company, electric company, natural 4726
gas company, pipe-line company, water-works company, water 4727
transportation company, heating company, rural electric company, 4728
or railroad company. 4729

(B) "Gross receipts" means the entire receipts for business 4730
done by any person from operation as a public utility, or 4731
incidental thereto, or in connection therewith, including any 4732
receipts received under Chapter 4928. of the Revised Code. The 4733
gross receipts for business done by an incorporated company 4734
engaged in operation as a public utility includes the entire 4735
receipts for business done by such company under the exercise of 4736
its corporate powers, whether from the operation as a public 4737
utility or from any other business. 4738

(C) "Rural electric company" means any nonprofit corporation, 4739
organization, association, or cooperative engaged in the business 4740
of supplying electricity to its members or persons owning an 4741
interest therein in an area the major portion of which is rural. 4742
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(D) Any person: 4744

(1) Is a telegraph company when engaged in the business of 4745
transmitting telegraphic messages to, from, through, or in this 4746

state; 4747

(2) Is a telephone company when primarily engaged in the 4748
business of providing local exchange telephone service, excluding 4749
cellular radio service, in this state; 4750

(3) Is an electric company when engaged in the business of 4751
generating, transmitting, or distributing electricity within this 4752
state for use by others, but excludes a rural electric company; 4753

(4) Is a natural gas company when engaged in the business of 4754
supplying natural gas for lighting, power, or heating purposes to 4755
consumers within this state; 4756

(5) Is a pipe-line company when engaged in the business of 4757
transporting natural gas, oil, or coal or its derivatives through 4758
pipes or tubing, either wholly or partially within this state; 4759

(6) Is a water-works company when engaged in the business of 4760
supplying water through pipes or tubing, or in a similar manner, 4761
to consumers within this state; 4762

(7) Is a water transportation company when engaged in the 4763
transportation of passengers or property, by boat or other 4764
watercraft, over any waterway, whether natural or artificial, from 4765
one point within this state to another point within this state, or 4766
between points within this state and points without this state; 4767

(8) Is a heating company when engaged in the business of 4768
supplying water, steam, or air through pipes or tubing to 4769
consumers within this state for heating purposes; 4770

(9) Is a railroad company when engaged in the business of 4771
owning or operating a railroad either wholly or partially within 4772
this state on rights-of-way acquired and held exclusively by such 4773
company, or otherwise, and includes a passenger, street, suburban, 4774
or interurban railroad company. 4775

As used in division (D)(2) of this section, "local exchange 4776

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

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

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

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

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

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

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

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

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

(J) "Production equipment" means all taxable steam, nuclear,
hydraulic, and other production plant equipment used to generate
electricity. 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~~ 4837

(C) Any person whose primary business in this state consists 4838
of producing, refining, or marketing petroleum or its products. 4839

Sec. 5727.03. (A) A combined company shall file a separate 4840
report under section 5727.08 of the Revised Code for each listed 4841
activity of a combined company. The tax commissioner shall 4842
separately value, apportion, and assess the company's property. 4843
Divisions (B)(1), (2), and (3) of this section shall be used to 4844
determine the taxable property that cannot directly be attributed 4845
to providing one of the listed activities of a combined company. 4846
Beginning with the public utility excise tax assessed by the tax 4847
commissioner on or before the first Monday in November 2002, 4848
division (C) of this section shall be used by the tax commissioner 4849
to separate the gross receipts of a combined company attributed to 4850
the activity of an electric company or a rural electric company. 4851

(B)(1) The taxable property to attribute to an electric 4852
company or a rural electric company activity shall be the taxable 4853
cost of the property that cannot be directly attributed to a 4854
listed activity of a combined company multiplied by a numerator 4855
that is the taxable cost of property that can be directly 4856
attributed to the activity of an electric company or a rural 4857
electric company and a denominator that is the sum of the taxable 4858
cost that can be directly attributed to all the listed activities 4859
of a combined company. 4860

(2) The taxable property to attribute to a heating company 4861
shall be the taxable cost of the property that cannot be directly 4862
attributed to a listed activity of a combined company multiplied 4863
by a numerator that is the taxable cost of property that can be 4864
directly attributed to the activity of a heating company and a 4865
denominator that is the sum of the taxable cost that can be 4866
directly attributed to all listed activities of a combined 4867

company. 4868

(3) The taxable property to attribute to a natural gas 4869
company shall be the taxable cost of the property that cannot be 4870
directly attributed to a listed activity of a combined company 4871
multiplied by a numerator that is the taxable cost of property 4872
that can be directly attributed to the activity of a natural gas 4873
company and a denominator that is the sum of the taxable cost that 4874
can be directly attributed to all the listed activities of a 4875
combined company. 4876

(C) Notwithstanding any other provision of the Revised Code, 4877
a combined company shall continue to be subject to the excise tax 4878
imposed by section 5727.30 of the Revised Code. From the report 4879
filed by a combined company under section 5727.31 of the Revised 4880
Code, the tax commissioner shall exclude the taxable gross 4881
receipts directly ATTRIBUTABLE to the activity of an electric 4882
company or a rural electric company. In addition, the tax 4883
commissioner shall exclude the portion of taxable gross receipts 4884
that cannot be attributed to a listed combined public utility 4885
activity or another public utility activity subject to the excise 4886
tax imposed by section 5727.30 of the Revised Code by multiplying 4887
those taxable gross receipts by a numerator that is the taxable 4888
gross receipts that can be attributed to an electric company or a 4889
rural electric company activity, and a denominator that is the sum 4890
of the taxable GROSS receipts that can be directly attributed to a 4891
listed combined company activity or another public utility 4892
activity subject to the excise tax imposed by section 5727.30 of 4893
the Revised Code. For purposes of determining the taxable gross 4894
receipts for providing electric company or rural electric company 4895
service under this division, the taxable gross receipts as 4896
reported under section 5727.32 of the Revised Code and determined 4897
under section 5727.33 of the Revised Code, prior to the amendment 4898
of those sections by Substitute Senate Bill No. 3 of the 123rd 4899

general assembly, shall be used. 4900

Sec. 5727.05. ~~This chapter does~~ Sections 5727.01 to 5727.61 4901
of the Revised Code do not apply to either of the following: 4902

(A) Nonprofit corporations as defined in division (C) of 4903
section 1702.01 of the Revised Code that are engaged exclusively 4904
in the treatment, distribution, and sale of water to consumers; 4905

(B) Municipal corporations within this state. 4906

Sec. 5727.06. (A) Except as otherwise provided by law, the 4907
following constitutes the taxable property of a public utility or 4908
interexchange telecommunications company that shall be assessed by 4909
the tax commissioner: 4910

(1) In the case of a railroad company, all real property and 4911
tangible personal property owned or operated by the railroad 4912
company in this state on the thirty-first day of December of the 4913
preceding year; 4914

(2) In the case of a water transportation company, all 4915
tangible personal property, except watercraft, owned or operated 4916
by the water transportation company in this state on the 4917
thirty-first day of December of the preceding year and all 4918
watercraft owned or operated by the water transportation company 4919
in this state during the preceding calendar year; 4920

(3) In the case of all other public utilities and 4921
interexchange telecommunications companies, all tangible personal 4922
property that on the thirty-first day of December of the preceding 4923
year was both located in this state and: 4924

(a) Owned by the public utility or interexchange 4925
telecommunications company; or 4926

(b) Leased by the public utility or interexchange 4927
telecommunications company under a sale and leaseback transaction. 4928

(B) In the case of an interexchange telecommunications 4929
company, all taxable property shall be subject to the provisions 4930
of this chapter and shall be valued by the commissioner in 4931
accordance with division ~~(B)~~(A) of section 5727.11 of the Revised 4932
Code ~~and assessed by the commissioner in accordance with division~~ 4933
~~(G) of section 5727.111 of the Revised Code~~ A person described by 4934
this division shall file the report required by section 5727.08 of 4935
the Revised Code. Persons described in this division shall not be 4936
considered taxpayers, as defined in division (B) of section 4937
5711.01 of the Revised Code, and shall not be required to file a 4938
return and list their taxable property under any provision of 4939
Chapter 5711. of the Revised Code. 4940

(C) The lien of the state for taxes levied each year on the 4941
real and personal property of public utilities and interexchange 4942
telecommunications companies shall attach thereto on the 4943
thirty-first day of December of the preceding year. 4944

(D) Property that is required by division (A)(3)(b) of this 4945
section to be assessed by the tax commissioner under this chapter 4946
shall not be listed by the owner of the property under Chapter 4947
5711. of the Revised Code. 4948

(E) The tax commissioner may adopt rules governing the 4949
listing of the taxable property of public utilities and 4950
interexchange telecommunications companies and the determination 4951
of true value. 4952

Sec. 5727.11. (A) ~~As used in this section, section 5727.111,~~ 4953
~~and division (C) of section 5727.15 of the Revised Code,~~ 4954
~~"production equipment" means all taxable steam, nuclear,~~ 4955
~~hydraulic, and other production plant equipment, and all taxable~~ 4956
~~station equipment that is located at a production plant.~~ 4957

~~(B)~~ Except as provided in divisions ~~(B)~~, (C), (D), ~~(E)~~, and 4958

~~(G)(F)~~ of this section, the true value of all taxable property 4959
required by division (A)(2) or (3) of section 5727.06 of the 4960
Revised Code to be assessed by the tax commissioner shall be 4961
determined by a method of valuation using cost as capitalized on 4962
the public utility's books and records less composite annual 4963
allowances as prescribed by the commissioner. If the commissioner 4964
finds that application of this method will not result in the 4965
determination of true value of the public utility's taxable 4966
property, ~~he~~ the commissioner may use another method of valuation. 4967
~~The cost of property subject to a sale and leaseback transaction~~ 4968
~~is the cost of the property as capitalized on the books and~~ 4969
~~records of the public utility owning the property immediately~~ 4970
~~prior to the sale and leaseback transaction.~~ 4971

~~(C)(B)~~ The true value of current gas stored underground is 4972
the cost of that gas shown on the books and records of the public 4973
utility on the thirty-first day of December of the preceding year. 4974

~~(D)(C)~~ The true value of noncurrent gas stored underground is 4975
thirty-five per cent of the cost of that gas shown on the books 4976
and records of the public utility on the thirty-first day of 4977
December of the preceding year. 4978

~~(E)~~ The (D)(1) Except as provided in division (D)(2) of this 4979
section, the true value of the production equipment of an electric 4980
company and the true value of all taxable property of a rural 4981
electric company is the equipment's or property's cost as 4982
capitalized on the company's books and records less fifty per cent 4983
of that cost as an allowance for depreciation and obsolescence. 4984
~~The cost of equipment or property subject to a sale and leaseback~~ 4985
~~transaction is the cost of the property as capitalized on the~~ 4986
~~books and records of the public utility owning the equipment or~~ 4987
~~property immediately prior to the sale and leaseback transaction.~~ 4988

(2) The true value of the production equipment of an electric 4989
company or rural electric company purchased, transferred, or 4990

placed into service after the effective date of this amendment is 4991
the purchase price of the equipment as capitalized on the 4992
company's books and records less composite annual allowances as 4993
prescribed by the tax commissioner. 4994

~~(F)~~(E) The true value of taxable property described in 4995
division (A)(2) or (3) of section 5727.06 of the Revised Code 4996
shall not include the allowance for funds used during construction 4997
or interest during construction ~~which~~ that has been capitalized on 4998
the public utility's books and records as part of the total cost 4999
of the taxable property. This division shall not apply to the 5000
taxable property of an electric company or a rural electric 5001
company, excluding transmission and distribution property, first 5002
placed into service after December 31, 2000, or to the taxable 5003
property a person purchases, which includes transfers, if that 5004
property was used in business by the seller prior to the purchase. 5005

~~(G)~~(F) The true value of watercraft owned or operated by a 5006
water transportation company shall be determined by multiplying 5007
the true value of the watercraft as determined under division 5008
~~(B)~~(A) of this section by a fraction, the numerator of which is 5009
the number of revenue-earning miles traveled by the watercraft in 5010
the waters of this state and the denominator of which is the 5011
number of revenue-earning miles traveled by the watercraft in all 5012
waters. 5013

(G) The cost of property subject to a sale and leaseback 5014
transaction is the cost of the property as capitalized on the 5015
books and records of the public utility owning the property 5016
immediately prior to the sale and leaseback transaction. 5017

Sec. 5727.111. The taxable property of each public utility, 5018
except a railroad company, and of each interexchange 5019
telecommunications company shall be assessed at the following 5020
percentages of true value: 5021

(A) Fifty per cent in the case of the taxable transmission 5022
and distribution property of a rural electric company, and 5023
twenty-five per cent for all its other taxable property; 5024

(B) In the case of a telephone or telegraph company, ~~the~~ 5025
~~percentage provided under division (E) of section 5711.22 of the~~ 5026
~~Revised Code~~ twenty-five per cent for taxable property first 5027
subject to taxation in this state for tax year 1995 or thereafter, 5028
and eighty-eight per cent for all other taxable property; 5029

(C) Eighty-eight per cent in the case of a natural gas or 5030
pipe-line company; 5031

(D) Eighty-eight per cent in the case of a water-works or 5032
heating company; 5033

~~(E) One hundred per cent in the case of the taxable~~ 5034
~~production equipment of an electric company;~~ 5035

~~(F) Eighty-eight~~ (1) Except as provided in division (E)(2) of 5036
this section, eighty-eight per cent in the case of ~~all taxable~~ 5037
~~personal~~ the taxable transmission and distribution property of an 5038
electric company, ~~other than its production equipment and~~ 5039
twenty-five per cent for all its other taxable property; 5040

(2) Property listed and assessed under divisions (B)(1) and 5041
(2) of section 5711.22 of the Revised Code shall continue to be 5042
assessed at one hundred per cent for production equipment and 5043
eighty-eight per cent for all other taxable property until January 5044
1, 2002. 5045

~~(G) The percentage provided under division (E) of section~~ 5046
~~5711.22 of the Revised Code~~ (F) Twenty-five per cent in the case 5047
of an interexchange telecommunications company; 5048

~~(H)~~(G) Twenty-five per cent in the case of a water 5049
transportation company. 5050

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

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

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

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

(B) In the case of a railroad company:

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

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

(3) The taxable value of real property used in railroad 5081
operations shall be apportioned to each taxing district in 5082
proportion to its relative value in each taxing district. 5083

(C) In the case of an electric company: 5084

(1) ~~Seventy per cent of the~~ The taxable value of all 5085
production equipment ~~and of all station equipment that is not~~ 5086
~~production equipment~~ shall be apportioned to the taxing district 5087
in which such property is physically located; and 5088

(2) ~~The remaining value of such property, together with the~~ 5089
value of all other taxable personal property, shall be apportioned 5090
to each taxing district in the ~~per cent~~ proportion that the cost 5091
of ~~all transmission and distribution~~ the taxable personal property 5092
physically located in the each taxing district is of the total 5093
cost of all ~~transmission and distribution~~ taxable personal 5094
property physically located in this state. 5095

~~(3) If an electric company's taxable value for the current~~ 5096
~~year includes the value of any production equipment at a plant at~~ 5097
~~which the initial cost of the plant's production equipment~~ 5098
~~exceeded one billion dollars, then prior to making the~~ 5099
~~apportionments required for that company by divisions (C)(1) and~~ 5100
~~(2) of this section, the tax commissioner shall do the following:~~ 5101

~~(a) Subtract four hundred twenty million dollars from the~~ 5102
~~total taxable value of the production equipment at that plant for~~ 5103
~~the current tax year.~~ 5104

~~(b) Multiply the difference thus obtained by a fraction, the~~ 5105
~~numerator of which is the portion of the taxable value of that~~ 5106
~~plant's production equipment included in the company's total value~~ 5107
~~for the current tax year, and the denominator of which is the~~ 5108
~~total taxable value of such equipment included in the total~~ 5109
~~taxable value of all electric companies for such year.~~ 5110

~~(c) Apportion the product thus obtained to taxing districts 5111
in the manner prescribed in division (C)(2) of this section. 5112~~

~~(d) Deduct the amounts so apportioned from the taxable value 5113
of the company's production equipment at the plant, prior to 5114
making the apportionments required by divisions (C)(1) and (2) of 5115
this section. 5116~~

~~For purposes of division (C) of this section, "initial cost" 5117
applies only to production equipment of plants placed in 5118
commercial operation on or after January 1, 1987, and means the 5119
cost of all production equipment at a plant for the first year the 5120
plant's equipment was subject to taxation. 5121~~

(D) In the case of all other public utilities, the value of 5122
the property to be apportioned shall be apportioned to each taxing 5123
district in proportion to the entire value of such property within 5124
this state. 5125

Sec. 5727.30. Each public utility, except electric companies, 5126
rural electric companies, and railroad companies, shall be subject 5127
to an annual excise tax, as provided by sections 5727.31 to 5128
5727.62 of the Revised Code, for the privilege of owning property 5129
in this state or doing business in this state during the 5130
twelve-month period next succeeding the period upon which the tax 5131
is based. The tax shall be imposed against each such public 5132
utility ~~which~~ that, on the first day of such twelve-month period, 5133
owns property in this state or is doing business in this state, 5134
and the lien for the tax, including any penalties and interest 5135
accruing thereon, shall attach on such day to the property of the 5136
public utility in this state. 5137

Sec. 5727.31. (A) Each public utility, ~~except railroad~~ 5138
~~companies, doing business or owning property in this state shall~~ 5139
subject to the tax imposed under section 5727.30 of the Revised 5140

Code, annually, on or before the first day of August, shall file 5141
with the tax commissioner a statement in such form as the 5142
commissioner prescribes. 5143

(B)(1) Annually, on or before the fifteenth day of October of 5144
the current year, each public utility ~~subject to the excise taxes~~ 5145
~~levied by this chapter~~ whose estimated excise taxes for the 5146
current year as based upon the statement required to be filed in 5147
that year by division (A) of this section are, in the case of a 5148
public utility other than a natural gas company, one thousand 5149
dollars or more, or are, in the case of a natural gas company, 5150
three hundred twenty-five thousand dollars or more, shall file 5151
with the treasurer of state a report, in such form as the tax 5152
commissioner prescribes, showing the amount of excise tax 5153
estimated to be charged or levied pursuant to law for the current 5154
year upon the basis of such annual statement, and shall remit a 5155
portion of the estimated excise taxes shown to be due by the 5156
report. The portion of the estimated excise taxes due at the time 5157
the report is filed shall be one-third of its total excise taxes 5158
estimated to be charged or levied for the current year based upon 5159
the annual statement filed under division (A) of this section. 5160

(2) Annually, on or before the first day of March and June, 5161
each public utility ~~subject to the excise taxes levied by this~~ 5162
~~chapter~~ whose excise taxes as based upon its last preceding annual 5163
statement filed under division (A) of this section prior to the 5164
first day of January were, in the case of a public utility other 5165
than a natural gas company, one thousand dollars or more, or were, 5166
in the case of a natural gas company, three hundred twenty-five 5167
thousand dollars or more, shall file with the treasurer of state a 5168
report, in such form as the tax commissioner prescribes, showing 5169
the amount of excise tax charged or levied pursuant to law upon 5170
the basis of such annual statement, and shall remit a portion of 5171
the excise taxes shown to be due by each such report. The portion 5172

of the excise taxes due at the time each such report is filed 5173
shall be one-third of its total excise taxes so charged or levied 5174
based upon such annual statement. 5175

(C) Any public utility subject to the excise taxes imposed by 5176
~~this chapter~~ section 5727.30 of the Revised Code whose tax as 5177
certified under section 5727.38 of the Revised Code in a year 5178
equals or exceeds the amount specified for that year in section 5179
5727.311 of the Revised Code shall make the payments required 5180
under this section in the second ensuing and each succeeding year 5181
in the manner prescribed by section 5727.311 of the Revised Code, 5182
except as otherwise prescribed by that section. 5183

(D)(1) For purposes of this section, a report required to be 5184
filed under division (B) of this section is considered filed when 5185
it is received by the treasurer of state. 5186

(2) For purposes of this section and sections 5727.311 and 5187
5727.42 of the Revised Code, remittance of an excise tax required 5188
to be made under this section is considered to be made when the 5189
remittance is received by the treasurer of state, or when credited 5190
to an account designated by the treasurer of state for the receipt 5191
of tax remittances. 5192

Sec. 5727.311. (A) Any public utility subject to an excise 5193
tax imposed by ~~this chapter~~ section 5727.30 of the Revised Code 5194
whose tax as certified by the tax commissioner under section 5195
5727.38 of the Revised Code ~~in the year indicated in the following~~ 5196
~~schedule~~ equals or exceeds ~~the amount indicated for that year in~~ 5197
~~the schedule~~ fifty thousand dollars shall make each payment 5198
required under division (B) of section 5727.31 of the Revised Code 5199
for the second ensuing and each succeeding year by electronic 5200
funds transfer as prescribed by division (B) of this section. 5201
~~Year for which~~ 5202
~~tax was certified~~ ~~1992~~ ~~1993 and thereafter~~ 5203

Amount of tax ~~\$100,000~~ ~~\$50,000~~ 5204
certified

If the tax certified by the tax commissioner in each of two 5205
consecutive years ~~beginning with 1993~~ is less than fifty thousand 5206
dollars, the public utility is relieved of the requirement to 5207
remit taxes by electronic funds transfer for the year that next 5208
follows the second of the consecutive years in which the tax 5209
certified is less than fifty thousand dollars, and is relieved of 5210
that requirement for each succeeding year unless the tax certified 5211
in a subsequent year equals or exceeds fifty thousand dollars. The 5212
tax commissioner shall notify each public utility required to 5213
remit taxes by electronic funds transfer of the public utility's 5214
obligation to do so, shall maintain an updated list of those 5215
public utilities, and shall timely certify the list and any 5216
additions thereto or deletions therefrom to the treasurer of 5217
state. Failure by the tax commissioner to notify a public utility 5218
subject to this section to remit taxes by electronic funds 5219
transfer does not relieve the public utility of its obligation to 5220
remit taxes by electronic funds transfer. 5221

(B) Public utilities required by this section to remit 5222
periodic payments by electronic funds transfer shall remit such 5223
payments to the treasurer of state in the manner prescribed by 5224
rules adopted by the treasurer of state under section 113.061 of 5225
the Revised Code. The payment of public utility excise taxes by 5226
electronic funds transfer does not affect a public utility's 5227
obligation to file the annual statement and periodic reports in 5228
the manner and at the times prescribed by section 5727.31 of the 5229
Revised Code. 5230

A public utility required by this section to remit taxes by 5231
electronic funds transfer may apply to the treasurer of state in 5232
the manner prescribed by the treasurer of state to be excused from 5233
that requirement. The treasurer of state may excuse the public 5234

utility from remittance by electronic funds transfer for good 5235
cause shown for the period of time requested by the public utility 5236
or for a portion of that period. The treasurer of state shall 5237
notify the tax commissioner and the public utility of the 5238
~~treasurer's~~ treasurer of state's decision as soon as is 5239
practicable. 5240

(C) If a public utility required by this section to remit 5241
taxes by electronic funds transfer remits those taxes by some 5242
means other than by electronic funds transfer as prescribed by 5243
this section and the rules adopted by the treasurer of state, and 5244
the treasurer of state determines that the failure to remit taxes 5245
as required was not due to reasonable cause or was due to willful 5246
neglect, the treasurer of state may impose an additional charge on 5247
the public utility equal to five per cent of the amount of the 5248
taxes required to be paid by electronic funds transfer, but not to 5249
exceed five thousand dollars. Any additional charge imposed under 5250
this section is in addition to any other penalty or charge imposed 5251
under this chapter, and shall be considered as revenue arising 5252
from excise taxes imposed by this chapter. 5253

No additional charge shall be assessed under this division 5254
against a public utility that has been notified of its obligation 5255
to remit taxes under this section and that remits its first two 5256
tax payments after such notification by some means other than 5257
electronic funds transfer. The additional charge may be assessed 5258
upon the remittance of any subsequent tax payment that the public 5259
utility remits by some means other than electronic funds transfer. 5260

Sec. 5727.32. The statement required by section 5727.31 of 5261
the Revised Code for the purpose of the public utility excise tax 5262
shall contain: 5263

(A) The name of the company; 5264

(B) The nature of the company, whether a person, association, 5265

or corporation, and under the laws of what state or country	5266
organized;	5267
(C) The location of its principal office;	5268
(D) The name and post-office address of the president,	5269
secretary, auditor, treasurer, and superintendent or general	5270
manager;	5271
(E) The name and post-office address of the chief officer or	5272
managing agent of the company in this state;	5273
(F) The amount of the excise taxes paid or to be paid with	5274
the reports made during the current calendar year as provided by	5275
section 5727.31 of the Revised Code;	5276
(G) In the case of telegraph and telephone companies:	5277
(1) The gross receipts from all sources, whether messages,	5278
telephone tolls, rentals, or otherwise, for business done within	5279
this state, including all sums earned or charged, whether actually	5280
received or not, for the year ending on the thirtieth day of June,	5281
and the company's proportion of gross receipts for business done	5282
by it within this state in connection with other companies, firms,	5283
corporations, persons, or associations, but excluding all of the	5284
following:	5285
(a) All of the receipts derived wholly from interstate	5286
business or business done for or with the federal government;	5287
(b) The receipts of amounts billed on behalf of other	5288
entities;	5289
(c) The receipts from sales to other telephone companies for	5290
resale;	5291
(d) For the year ending June 30, 1990, and each subsequent	5292
year, receipts <u>Receipts</u> from sales to providers of	5293
telecommunications service for resale, receipts from incoming or	5294
outgoing wide area transmission service or wide area transmission	5295

type service, including eight hundred or eight-hundred-type 5296
service, and receipts from private communications service. 5297

As used in this division, "receipts from sales to other 5298
telephone companies for resale" and "receipts from sales to 5299
providers of telecommunications service for resale" include, but 5300
are not limited to, receipts of carrier access charges. "Carrier 5301
access charges" means compensation paid to the taxpayer telephone 5302
company by another telephone company or by a provider of 5303
telecommunications service for the use of the taxpayer's 5304
facilities to originate or terminate telephone calls or 5305
telecommunications service. 5306

(2) The total gross receipts for such period from business 5307
done within this state. 5308

(H) In the case of all public utilities, except electric 5309
companies, rural electric companies, telegraph companies, and 5310
telephone companies: 5311

(1) The gross receipts of the company, actually received, 5312
from all sources for business done within this state for the year 5313
next preceding the first day of May, including the company's 5314
proportion of gross receipts for business done by it within this 5315
state in connection with other companies, firms, corporations, 5316
persons, or associations, but excluding all of the following: 5317

(a) Receipts from interstate business or business done for 5318
the federal government; 5319

(b) Receipts from sales to other public utilities for resale, 5320
provided such other public utility is required to file a statement 5321
pursuant to section 5727.31 of the Revised Code; 5322

(c) ~~For the year ending April 30, 1990, and each subsequent~~ 5323
~~year, receipts from the transmission or delivery of electricity to~~ 5324
~~or for a rural electric company, provided that the electricity~~ 5325
~~that has been so transmitted or delivered is for resale by the~~ 5326

~~rural electric company;~~ 5327

~~(d) Receipts of an electric company, derived from the 5328
provision of electricity and other services to a qualified former 5329
owner of the production facilities which generated the electricity 5330
from which those receipts were derived. As used in this division, 5331
a "qualified former owner" means a person who meets both of the 5332
following conditions: 5333~~

~~(i) On or before October 11, 1991, the person had sold to an 5334
electric company part of the production facility at which the 5335
electricity is generated, and, for at least twenty years prior to 5336
that sale, the facility was used to generate electricity, but it 5337
was not owned in whole or in part during that period by an 5338
electric company. 5339~~

~~(ii) At the time the electric company provided the 5340
electricity or other services for which the exclusion is claimed, 5341
the person, or a successor or assign of the person, owned not less 5342
than a twenty per cent ownership of the production facility and 5343
the rights to not less than twenty per cent of the production of 5344
that facility; and the person, or a successor or assign of the 5345
person, engaged primarily in a business other than providing 5346
electricity to others. 5347~~

~~(e) Receipts of a natural gas company of amounts billed on 5348
behalf of other entities. Transportation and billing and 5349
collection fees charged to other entities shall be included in the 5350
gross receipts of a natural gas company. 5351~~

~~(2) The total gross receipts of such company for such period 5352
in this state from business done within the state. 5353~~

~~The reports required by section 5727.31 of the Revised Code 5354
shall contain: 5355~~

~~(a) The name and principal mailing address of the company; 5356~~

(b) The total amount of the gross receipts excise taxes 5357
charged or levied as based upon its last preceding annual 5358
statement filed prior to the first day of January of the year in 5359
which such report is filed; 5360

(c) The amount of the excise taxes due with the report as 5361
provided by section 5727.31 of the Revised Code. 5362

Sec. 5727.33. (A) For the purpose of computing the public 5363
utility excise tax, the tax commissioner shall ascertain and 5364
determine the entire gross receipts actually received from all 5365
sources, excluding the receipts described in divisions (B), (C), 5366
and (D), and (E) of this section, of each ~~electric, rural~~ 5367
~~electric,~~ natural gas, pipe-line, water-works, heating, and water 5368
transportation company for business done within this state for the 5369
year ending on the thirtieth day of April, and of each telegraph 5370
and telephone company for business done within this state for the 5371
year ending on the thirtieth day of June. 5372

(B) In ascertaining and determining the gross receipts of 5373
each of the companies named in this section, the commissioner 5374
shall exclude all of the following: 5375

(1) All receipts derived wholly from interstate business; 5376

(2) All receipts derived wholly from business done for or 5377
with the federal government; 5378

~~(3) For the year ending April 30, 1990, and each subsequent~~ 5379
~~year, all receipts derived wholly from the transmission or~~ 5380
~~delivery of electricity to or for a rural electric company,~~ 5381
~~provided that the electricity that has been so transmitted or~~ 5382
~~delivered is for resale by the rural electric company;~~ 5383

~~(4)~~ All receipts from the sale of merchandise; 5384

~~(5)~~(4) All receipts from sales to other public utilities, 5385
except railroad, telegraph, and telephone companies, for resale, 5386

provided the other public utility is required to file a statement 5387
pursuant to section 5727.31 of the Revised Code. 5388

(C) In ascertaining and determining the gross receipts of a 5389
telephone company, the commissioner shall exclude all of the 5390
following: 5391

(1) ~~For the year ending June 30, 1988, and each subsequent~~ 5392
~~year, receipts~~ Receipts of amounts billed on behalf of other 5393
entities; 5394

(2) ~~For the year ending June 30, 1988, and each subsequent~~ 5395
~~year, receipts~~ Receipts from sales to other telephone companies 5396
for resale, as defined in division (G) of section 5727.32 of the 5397
Revised Code; 5398

(3) ~~For the year ending June 30, 1990, and each subsequent~~ 5399
~~year, receipts~~ Receipts from incoming or outgoing wide area 5400
transmission service or wide area transmission type service, 5401
including eight hundred or eight-hundred-type service; 5402

(4) ~~For the year ending June 30, 1990, and each subsequent~~ 5403
~~year, receipts~~ Receipts from private communications service as 5404
described in division (AA)(2) of section 5739.01 of the Revised 5405
Code; 5406

(5) ~~For the year ending June 30, 1990, and each subsequent~~ 5407
~~year, receipts~~ Receipts from sales to providers of 5408
telecommunications service for resale, as defined in division (G) 5409
of section 5727.32 of the Revised Code. 5410

(D) ~~In ascertaining and determining the gross receipts of an~~ 5411
~~electric company, the commissioner shall exclude receipts derived~~ 5412
~~from the provision of electricity and other services to a~~ 5413
~~qualified former owner of the production facilities which~~ 5414
~~generated the electricity from which those receipts were derived.~~ 5415
~~As used in this division, a "qualified former owner" means a~~ 5416
~~person who meets both of the following conditions:~~ 5417

~~(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. 5449

Sec. 5727.42. (A) The treasurer of state shall maintain a 5450
list of all ~~excise~~ taxes levied and payments made pursuant to ~~this~~ 5451
~~chapter~~ the annual excise tax imposed by section 5727.30 of the 5452
Revised Code. The treasurer of state shall collect and the 5453
taxpayer shall pay all taxes and any penalties thereon. Payments 5454
may be made by mail, in person, by electronic funds transfer if 5455
required to do so by section 5727.311 of the Revised Code, or by 5456
any other means authorized by the treasurer of state. The 5457
treasurer of state may adopt rules concerning the methods and 5458
timeliness of payment. 5459

(B) Each tax bill issued pursuant to this section shall 5460
separately reflect the taxes due, due date, and any other 5461
information considered necessary. Except as otherwise provided in 5462
division (F) of this section, the last day on which payment may be 5463
made without penalty shall be at least twenty but not more than 5464
thirty days from the date of mailing the tax bill. The treasurer 5465
of state shall mail the tax bill, and the mailing thereof shall be 5466
prima-facie evidence of receipt thereof by the taxpayer. 5467

(C) The treasurer of state shall refund taxes as provided in 5468
this section, but no refund shall be made to a taxpayer having a 5469
delinquent claim certified pursuant to this section that remains 5470
unpaid. The treasurer of state may consult the attorney general 5471
regarding such claims. 5472

(D) Within twenty days after receipt of any excise tax 5473
assessment certified to ~~him~~ the treasurer of state, the treasurer 5474
of state shall: 5475

(1) Ascertain the difference between the total taxes shown on 5476
such assessment and the sum of all ~~advance~~ estimated payments, 5477
exclusive of any penalties thereon, previously made for that year. 5478

(2) If the difference is a deficiency, the treasurer of state 5479
shall issue a tax bill. 5480

(3) If the difference is an excess, the treasurer of state 5481
shall certify the name of the taxpayer and the amount to be 5482
refunded to the director of budget and management for payment to 5483
the taxpayer. 5484

If the taxpayer has a deficiency for one tax year and an 5485
excess for another tax year, or any combination thereof for more 5486
than two years, the treasurer of state may determine the net 5487
result and, depending on such result, proceed to mail a tax bill 5488
or certify a refund. 5489

(E) If a taxpayer fails to pay all taxes on or before the due 5490
date shown on the tax bill, or fails to make an ~~advance~~ estimated 5491
payment on or before the due date prescribed in division (B) of 5492
section 5727.31 of the Revised Code, but makes payment within ten 5493
calendar days of such date, the treasurer of state shall add a 5494
penalty equal to five per cent of the amount that should have been 5495
timely paid. If payment is not made within ten days of such date, 5496
the treasurer of state shall add a penalty equal to fifteen per 5497
cent of the amount that should have been timely paid. The 5498
treasurer of state shall prepare a delinquent claim for each tax 5499
bill on which penalties were added and certify such claims to the 5500
attorney general and tax commissioner. The attorney general shall 5501
proceed to collect the delinquent taxes and penalties thereon in 5502
the manner prescribed by law and notify the treasurer of state and 5503
tax commissioner of all collections. 5504

(F) The last day on which a natural gas company that is not 5505
required to make payments under division (B) of section 5727.31 of 5506
the Revised Code may pay its taxes without penalty shall be the 5507
fifteenth day of March of the year following the year in which the 5508
commissioner is required to certify ~~his~~ the assessment of the 5509

company's tax under section 5727.38 of the Revised Code. The tax 5510
due date shall be reflected on the tax bill. 5511

Sec. 5727.45. Four and two-tenths per cent of all excise 5512
taxes and penalties collected under sections 5727.01 to 5727.62 of 5513
the Revised Code shall be credited to the local government fund 5514
for distribution in accordance with section 5747.50 of the Revised 5515
Code, six-tenths of one per cent shall be credited to the local 5516
government revenue assistance fund for distribution in accordance 5517
with section 5747.61 of the Revised Code, and ninety-five and 5518
two-tenths per cent shall be credited to the general revenue fund. 5519

~~On or before the first day of December, annually, the tax 5520
commissioner shall certify to the treasurer of state the amounts 5521
to be credited to the local government fund and local government 5522
revenue assistance fund from the general revenue fund to ensure 5523
that the sum of the amounts credited to the local government fund 5524
and local government revenue assistance fund for the calendar year 5525
equals the sum that would have been credited during that year if 5526
the credit authorized by section 5727.391 of the Revised Code did 5527
not exist. The treasurer shall credit any such additional amounts 5528
to the two funds not later than the fifth day of December, 5529
annually. 5530~~

Sec. 5727.47. A copy of each assessment certified pursuant to 5531
section 5727.23, ~~5727.231~~, or 5727.38 of the Revised Code shall be 5532
mailed to the public utility, and its mailing shall be prima-facie 5533
evidence of its receipt by the public utility to which it is 5534
addressed. If a public utility objects to any assessment certified 5535
to it pursuant to such sections, it may file a petition for 5536
reassessment with the tax commissioner. The petition must be made 5537
in writing, signed by the authorized agent of the utility having 5538
knowledge of the facts, and filed with the commissioner, in person 5539
or by certified mail, within thirty days from the date that the 5540

assessment was mailed. If the petition is filed by certified mail, 5541
the date of the United States postmark placed on the sender's 5542
receipt by the postal employee to whom the petition is presented 5543
shall be treated as the date of filing. A true copy of the 5544
assessment objected to shall be attached to the petition and shall 5545
be incorporated by reference into the petition, but the failure to 5546
attach a copy of the assessment and incorporate it by reference 5547
does not invalidate the petition. The petition also shall indicate 5548
the utility's objections, but additional objections may be raised 5549
in writing if received prior to the date shown on the final 5550
determination by the commissioner. 5551

Notwithstanding the fact that a petition has been filed, the 5552
tax with respect to the assessment objected to shall be paid as 5553
required by law. The acceptance of the tax payment by the 5554
treasurer of state or any county treasurer shall not prejudice any 5555
claim for taxes on final determination by the commissioner or 5556
final decision by the board of tax appeals or any court. 5557

Upon receipt of a properly filed petition, the commissioner 5558
shall notify the treasurer of state or the auditor of each county 5559
to which the assessment objected to has been certified. 5560

Unless the petitioner waives a hearing, the commissioner 5561
shall assign a time and place for the hearing on the petition and 5562
notify the petitioner of the time and place of the hearing by 5563
personal service or certified mail, but the commissioner may 5564
continue the hearing from time to time if necessary. 5565

The commissioner may make such correction to the assessment 5566
as ~~he~~ the commissioner finds proper. The commissioner shall serve 5567
a copy of ~~his~~ the commissioner's final determination on the 5568
petitioner by personal service or certified mail, and ~~his~~ the 5569
commissioner's decision in the matter shall be final, subject to 5570
appeal as provided in section 5717.02 of the Revised Code. The 5571

commissioner also shall transmit a copy of ~~his~~ the final 5572
determination to the treasurer of state or applicable county 5573
auditor. In the absence of any further appeal, or when a decision 5574
of the board of tax appeals or of any court to which the decision 5575
has been appealed becomes final, the commissioner shall notify the 5576
public utility and, as appropriate, the treasurer of state who 5577
shall proceed under section 5727.42 of the Revised Code, or the 5578
applicable county auditor who shall proceed under section 5727.471 5579
of the Revised Code. The notification is not subject to further 5580
appeal. 5581

Sec. 5727.53. The taxes, fees, and penalties provided by 5582
~~sections 5727.01 to 5727.62, inclusive, of the Revised Code, this~~ 5583
~~chapter that are remitted to the treasurer of state~~ may be 5584
recovered by an action brought in the name of the state in the 5585
court of common pleas of Franklin ~~County~~ county, or of any county 5586
in which such public utility is doing business, or in which the 5587
line of any ~~street, suburban, or interurban railroad company or~~ 5588
railroad company is located, and such court of common pleas shall 5589
have jurisdiction of ~~such~~ the action regardless of the amount 5590
involved. The attorney general, on request of the tax 5591
commissioner, shall institute such action in the court of common 5592
pleas of Franklin ~~County~~ county or of any of such counties the 5593
commissioner directs. In any such action it shall be sufficient to 5594
allege that the tax, fee, or penalty sought to be recovered stands 5595
charged on the delinquent duplicate of the treasurer of state, and 5596
that the same has been unpaid for a period of thirty days after 5597
having been placed thereon. Sums recovered in any such action 5598
shall be paid into the state treasury ~~to the credit of the general~~ 5599
~~revenue fund~~ in the same manner as the tax. 5600

Sec. 5727.60. If a ~~public utility required to file a report~~ 5601
~~with the tax commissioner by sections 5727.02 to 5727.62,~~ 5602

~~inclusive, of the Revised Code, person fails to make such file a~~ 5603
~~report, it shall be subject to a penalty of ten dollars per day~~ 5604
~~for each day's omission after the time limited for making such~~ 5605
~~report within the time prescribed by section 5727.08 or 5727.31 of~~ 5606
~~the Revised Code, including any extensions of time granted by the~~ 5607
~~tax commissioner, a penalty of fifty dollars per month, not to~~ 5608
~~exceed five hundred dollars, may be imposed for each month or~~ 5609
~~fraction of a month elapsing between the due date of the report,~~ 5610
~~including any extensions, and the date the report was filed. The~~ 5611
~~penalty under this section for failing to file a report required~~ 5612
~~by section 5727.08 of the Revised Code shall be paid into the~~ 5613
~~state general revenue fund. If the penalty is not paid within~~ 5614
~~fifteen days after notice of the penalty is mailed to the person~~ 5615
~~who failed to timely file the report, the tax commissioner shall~~ 5616
~~certify the penalty as a claim to the attorney general for~~ 5617
~~collection. The penalty under this section for failing to file the~~ 5618
~~report required by section 5727.31 of the Revised Code shall be~~ 5619
~~deposited into the state treasury in the same manner as the tax is~~ 5620
~~deposited, and the commissioner may collect the penalty by~~ 5621
~~assessment pursuant to section 5727.38 of the Revised Code. The~~ 5622
~~tax commissioner may abate this penalty in full or in part.~~ 5623

Sec. 5727.61. Every public utility required by law to make 5624
returns, statements, or reports to the tax commissioner under 5625
sections 5727.01 to 5727.62 of the Revised Code shall file 5626
therewith, in such form as the commissioner prescribes, an 5627
affidavit subscribed and sworn to by a person or officer having 5628
knowledge of the facts setting forth that such public utility has 5629
not, during the preceding year, except as permitted by sections 5630
3517.082, 3599.03, and 3599.031 of the Revised Code, directly or 5631
indirectly paid, used or offered, consented, or agreed to pay or 5632
use any of its money or property for or in aid of or opposition to 5633

a political party, a candidate for election or nomination to 5634
public office, or a political action committee, legislative 5635
campaign fund, or organization that supports or opposes any such 5636
candidate or in any manner used any of its money or property for 5637
any partisan political purpose whatever, or for the reimbursement 5638
or indemnification of any person for money or property so used. 5639
Such forms of affidavit as the commissioner prescribes shall be 5640
attached to or made a part of the return, statement, or report 5641
required to be made by such public utility under sections 5727.01 5642
to 5727.62 of the Revised Code. 5643

Sec. 5727.72. No officer, employee, or agent of a ~~telegraph~~ 5644
~~or telephone company~~ person subject to this chapter shall refuse 5645
to attend before a ~~lawful board of appraisers and assessors~~ the 5646
department of taxation when required to do so, or refuse to bring 5647
with ~~him~~ the officer, employee, or agent and submit for inspection 5648
any books or papers of such ~~company~~ person in ~~his~~ the officer's, 5649
employee's, or agent's possession, custody, or control, or refuse 5650
to answer any questions put to ~~him~~ the officer, employee, or agent 5651
concerning the organization, business, or property of such ~~company~~ 5652
person. 5653

Sec. 5727.80. As used in sections 5727.80 to 5727.95 of the 5654
Revised Code: 5655

(A) "Electric distribution company" means either of the 5656
following: 5657

(1) A person who distributes electricity through a meter of 5658
an end user in this state; 5659

(2) The end user of electricity in this state, if the end 5660
user obtains electricity that is not distributed or transmitted to 5661
the end user by an electric distribution company that is required 5662
to remit the tax imposed by section 5727.81 of the Revised Code. 5663

"Electric distribution company" does not include the end user of 5664
electricity in this state who self-generates electricity that is 5665
used directly by that end user on the same site that the 5666
electricity is generated. 5667

(B) "Kilowatt hour" means one thousand watt hours of 5668
electricity. 5669

(C) "Meter of an end user in this state" means the last meter 5670
used to measure the kilowatt hours distributed by an electric 5671
distribution company to a location in this state, the last meter 5672
located outside of this state that is used to measure the kilowatt 5673
hours consumed at a location in this state, or, if no meter is 5674
used, the estimated kilowatt hours distributed to an unmetered 5675
location in this state. 5676

(D) "Person" has the same meaning as in section 5701.01 of 5677
the Revised Code, but also includes a political subdivision of the 5678
state. 5679

(E) "Municipal electric utility" means a municipal 5680
corporation that owns or operates a system for the distribution of 5681
electricity. 5682

(F) "Qualified end user" means an end user of electricity 5683
that uses more than three million kilowatt hours of electricity at 5684
one manufacturing location in this state for a calendar day for 5685
use in a manufacturing process that features an electrochemical 5686
reaction in which electrons from direct current electricity remain 5687
a part of the product being manufactured. 5688

(G) "Self-assessing purchaser" means a purchaser that meets 5689
all the requirements of, and pays the excise tax in accordance 5690
with, division (C) of section 5727.81 of the Revised Code. 5691

Sec. 5727.81. (A) On and after May 1, 2001, for the purpose 5692
of raising revenue for public education and state and local 5693

government operations, an excise tax is hereby levied and imposed 5694
on an electric distribution company, at the following rates per 5695
kilowatt hour of electricity distributed in a thirty-day period by 5696
the company through a meter of an end user in this state: 5697

<u>KILOWATT HOURS DISTRIBUTED TO</u>	<u>RATE PER</u>	5698
<u>AN END USER</u>	<u>KILOWATT HOUR</u>	5699
<u>For the first 2,000</u>	<u>\$0.00465</u>	5700
<u>For the next 2,001 to 15,000</u>	<u>\$0.00419</u>	5701
<u>For 15,001 and above</u>	<u>\$0.00301</u>	5702

The electric distribution company shall base the monthly tax 5703
on the kilowatt hours of electricity distributed to an end user 5704
through the meter of the end user that is not measured for a 5705
thirty-day period by dividing the days in the measurement period 5706
into the total kilowatt hours measured during the measurement 5707
period to obtain a daily average usage. The tax shall be 5708
determined by obtaining the sum of divisions (A)(1), (2), and (3) 5709
of this section and multiplying that amount by the number of days 5710
in the measurement period: 5711

(1) Multiplying \$0.00465 per kilowatt hour for the first 5712
sixty-seven kilowatt hours distributed using a daily average; 5713

(2) Multiplying \$0.00419 for the next sixty-eight to five 5714
hundred kilowatt hours distributed using a daily average; 5715

(3) Multiplying \$0.00301 for the remaining kilowatt hours 5716
distributed using a daily average. 5717

Except as provided in division (C) of this section, the 5718
electric distribution company shall pay the tax to the treasurer 5719
of state in accordance with section 5727.82 of the Revised Code. 5720
Only the distribution of electricity through a meter of an end 5721
user in this state shall be used by the electric distribution 5722
company to compute the amount or estimated amount of tax due. 5723

(B) Except as provided in division (C) of this section, each 5724
electric distribution company shall pay the tax imposed by this 5725
section in all of the following circumstances: 5726

(1) The electricity is distributed by the company through a 5727
meter of an end user in this state; 5728

(2) the company is distributing electricity through a meter 5729
located in another state, but the electricity is consumed in this 5730
state in the manner prescribed by the tax commissioner; 5731

(3) the company is distributing electricity in this state 5732
without the use of a meter, but the electricity is consumed in 5733
this state as estimated and in the manner prescribed by the tax 5734
commissioner. 5735

(C)(1) A commercial or industrial purchaser that receives 5736
electricity through a meter of an end user in this state and 5737
consumes on the average, over the course of the previous calendar 5738
year, more than twenty megawatts of electricity during a 5739
thirty-day period may elect to self-assess the excise tax imposed 5740
by this section at the rate of seven per cent of the total price 5741
of electricity delivered through a meter of an end user in this 5742
state. Payment of the tax shall be made directly to the treasurer 5743
of state in accordance with divisions (A)(3) and (4) of section 5744
5727.82 of the Revised Code or, if the electric distribution 5745
company serving the self-assessing purchaser is a municipal 5746
electric utility and the purchaser is within the municipal 5747
corporation's corporate limits, to such municipal corporation's 5748
general fund in accordance with division (a)(2) of section 5727.82 5749
of the Revised Code, and upon paying in this manner, the 5750
self-assessing purchaser shall not be required to pay the excise 5751
tax to the electric distribution company from which its 5752
electricity is delivered. 5753

(2) Application for registration as a self-assessing 5754

purchaser shall be made on a form prescribed by the tax 5755
commissioner. The registration shall remain in effect until 5756
canceled by the registrant upon written notification to the 5757
commissioner of the election to pay the tax in accordance with 5758
division (A) of this section. A self-assessing purchaser shall 5759
give written notice to the electric distribution company from 5760
which its electricity is delivered of its self-assessing status, 5761
and the electric distribution company is relieved of the 5762
obligation to pay the tax imposed by division (A) of this section 5763
for electricity distributed to that self-assessing purchaser. 5764

(D) The tax imposed by this section does not apply to the 5765
distribution of any kilowatt hours of electricity to the federal 5766
government or to an end user for any day the end user is a 5767
qualified end user. The exemption under this division for a 5768
qualified end user only applies to the manufacturing location 5769
where the qualified end user uses more than three million kilowatt 5770
hours per day. 5771

Sec. 5727.82. (A)(1) Except as provided in divisions (A)(2) 5772
and (D) of this section, by the twentieth day of each month, each 5773
electric distribution company required to pay the tax imposed by 5774
section 5727.81 of the Revised Code shall file with the treasurer 5775
of state a return as prescribed by the tax commissioner and shall 5776
make payment of the full amount of tax due for the preceding 5777
month. The first payment of this tax shall be made on or before 5778
June 20, 2001. 5779

(2) If the electric distribution company required to pay the 5780
tax imposed by section 5727.81 of the Revised Code is a municipal 5781
electric utility, it may retain in its general fund that portion 5782
of the tax on the kilowatt hours distributed to end users located 5783
within the boundaries of the municipal corporation. However, the 5784
municipal electric utility shall make payment in accordance with 5785

division (A)(1) of this section of the tax due on the kilowatt 5786
hours distributed to end users located outside the boundaries of 5787
the municipal corporation. 5788

(3) By the twentieth day of each month, each self-assessing 5789
purchaser that under division (C) of section 5727.81 of the 5790
Revised Code pays directly to the treasurer of state the tax 5791
imposed by section 5727.81 of the Revised Code shall file with the 5792
treasurer of state a return as prescribed by the tax commissioner 5793
and shall make payment of the full amount of the tax due for the 5794
preceding month. 5795

(4) As prescribed by the tax commissioner, the return shall 5796
be signed by the company or self-assessing purchaser required to 5797
file it, or an authorized employee, officer, or agent of the 5798
company or purchaser. The treasurer of state shall mark on the 5799
return the date it was received and indicate payment or nonpayment 5800
of the tax shown to be due on the return. The treasurer of state 5801
immediately shall transmit all returns to the tax commissioner. 5802
The return shall be deemed filed when received by the treasurer of 5803
state. 5804

(B) Any electric distribution company or self-assessing 5805
purchaser required by this section to file a return who fails to 5806
file it and pay the tax within the period prescribed shall pay an 5807
additional charge of fifty dollars or ten per cent of the tax 5808
required to be paid for the reporting period, whichever is 5809
greater. The tax commissioner may collect the additional charge by 5810
assessment pursuant to section 5727.89 of the Revised Code. The 5811
commissioner may abate all or a portion of the additional charge 5812
and may adopt rules governing such abatements. 5813

(C) If any tax due is not paid timely in accordance with this 5814
section, the electric distribution company or self-assessing 5815
purchaser liable for the tax shall pay interest, calculated at the 5816
rate per annum prescribed by section 5703.47 of the Revised Code, 5817

from the date the tax payment was due to the date of payment or to 5818
the date an assessment is issued, whichever occurs first. Interest 5819
shall be paid in the same manner as the tax, and the commissioner 5820
may collect the interest by assessment pursuant to section 5727.89 5821
of the Revised Code. 5822

(D) Not later than the tenth day of each month, a qualified 5823
end user shall report in writing to the electric distribution 5824
company that distributes electricity to the end user the kilowatt 5825
hours that were consumed as a qualified end user for the prior 5826
month and the number of days, if any, on which the end user was 5827
not a qualified end user. For each calendar day the end user was 5828
not a qualified end user, the end user shall report in writing to 5829
the electric distribution company the number of kilowatt hours 5830
used on that day, and the electric distribution company shall pay 5831
the tax imposed under section 5727.81 of the Revised Code on each 5832
kilowatt hour that was not distributed to a qualified end user. 5833
The electric distribution company may rely in good faith on a 5834
qualified end user's report filed under this division. If it is 5835
determined that the end user was not a qualified end user for any 5836
calendar day or the quantity of electricity used by the qualified 5837
end user was overstated, the tax commissioner shall assess and 5838
collect any tax imposed under section 5727.81 of the Revised Code 5839
directly from the qualified end user. As requested by the 5840
commissioner, each end user reporting to an electric distribution 5841
company that it is a qualified end user shall provide 5842
documentation to the commissioner that establishes the volume of 5843
electricity consumed daily by the qualified end user. 5844

Sec. 5727.83. (A) If the total amount of tax required to be 5845
remitted by an electric distribution company or self-assessing 5846
purchaser to this state under section 5727.82 of the Revised Code 5847
for any calendar year equals or exceeds fifty thousand dollars, 5848
the company or self-assessing purchaser shall remit each monthly 5849

tax payment in the second ensuing and each succeeding tax year by 5850
electronic funds transfer as prescribed by divisions (B) and (C) 5851
of this section. For the first year the tax levied by section 5852
5727.81 of the Revised Code is imposed, any electric distribution 5853
company that, prior to the effective date of this section, was an 5854
electric company or a rural electric company required to remit 5855
taxes by electronic funds transfer under section 5727.311 of the 5856
Revised Code shall remit the tax imposed by section 5727.81 of the 5857
Revised Code by electronic funds transfer in accordance with this 5858
section. 5859

If the tax payment for each of two consecutive years is less 5860
than fifty thousand dollars, the company or self-assessing 5861
purchaser is relieved of the requirement to remit taxes by 5862
electronic funds transfer for the year that next follows the 5863
second of the consecutive years in which the tax payment is less 5864
than fifty thousand dollars, and is relieved of that requirement 5865
for each succeeding year unless the tax payment in a subsequent 5866
year equals or exceeds fifty thousand dollars. 5867

The tax commissioner shall notify each electric distribution 5868
company and self-assessing purchaser required to remit taxes by 5869
electronic funds transfer of the obligation to do so, shall 5870
maintain an updated list of those companies and purchasers, and 5871
shall timely certify to the treasurer of state the list and any 5872
additions thereto or deletions therefrom. Failure by the tax 5873
commissioner to notify a company or self-assessing purchaser 5874
subject to this section to remit taxes by electronic funds 5875
transfer does not relieve the company or self-assessing purchaser 5876
of its obligation to remit taxes in that manner. 5877

(B) An electric distribution company or self-assessing 5878
purchaser required by this section to remit payments by electronic 5879
funds transfer shall remit such payments to the treasurer of state 5880

in the manner prescribed by rules adopted by the treasurer of 5881
state under section 113.061 of the Revised Code, and on or before 5882
the dates specified under section 5727.82 of the Revised Code. The 5883
payment of taxes by electronic funds transfer does not affect a 5884
company's or self-assessing purchaser's obligation to file the 5885
monthly return as required under section 5727.82 of the Revised 5886
Code. 5887

(C) An electric distribution company or self-assessing 5888
purchaser required by this section to remit taxes by electronic 5889
funds transfer may apply to the treasurer of state in the manner 5890
prescribed by the treasurer of state to be excused from that 5891
requirement. The treasurer of state may excuse the company or 5892
self-assessing purchaser from remittance by electronic funds 5893
transfer for good cause shown for the period of time requested by 5894
the company or self-assessing purchaser or for a portion of that 5895
period. The treasurer of state shall notify the tax commissioner 5896
and the company or self-assessing purchaser of the treasurer of 5897
state's decision as soon as is practicable. 5898

(D) If an electric distribution company or self-assessing 5899
purchaser required by this section to remit taxes by electronic 5900
funds transfer remits those taxes by some means other than by 5901
electronic funds transfer as prescribed by this section and the 5902
rules adopted by the treasurer of state, and the treasurer of 5903
state determines that such failure was not due to reasonable cause 5904
or was due to willful neglect, the treasurer of state shall notify 5905
the tax commissioner of the failure to remit by electronic funds 5906
transfer and shall provide the commissioner with any information 5907
used in making that determination. The tax commissioner may 5908
collect an additional charge by assessment in the manner 5909
prescribed by section 5727.89 of the Revised Code. The additional 5910
charge shall equal five per cent of the amount of the taxes 5911
required to be paid by electronic funds transfer, but shall not 5912

exceed five thousand dollars. Any additional charge assessed under 5913
this section is in addition to any other penalty or charge imposed 5914
under this chapter, and shall be considered as revenue arising 5915
from the tax imposed under this chapter. The tax commissioner may 5916
abate all or a portion of such a charge and may adopt rules 5917
governing such abatements. 5918

No additional charge shall be assessed under this division 5919
against an electric distribution company or self-assessing 5920
purchaser that has been notified of its obligation to remit taxes 5921
under this section and that remits its first two tax payments 5922
after such notification by some means other than electronic funds 5923
transfer. The additional charge may be assessed upon the 5924
remittance of any subsequent tax payment that the company or 5925
purchaser remits by some means other than electronic funds 5926
transfer. 5927

Sec. 5727.84. (A) As used in this section and sections 5928
5727.85, 5727.86, and 5727.87 of the Revised Code: 5929

(1) "School district" means a city, local, or exempted 5930
village school district. 5931

(2) "Joint vocational school district" means a joint 5932
vocational school district created under section 3311.16 of the 5933
Revised Code, and includes a cooperative education school district 5934
created under section 3311.52 or 3311.521 of the Revised Code and 5935
a county school financing district created under section 3311.50 5936
of the Revised Code. 5937

(3) "Local taxing unit" means a subdivision, as defined in 5938
section 5705.01 of the Revised Code, but excludes school districts 5939
and joint vocational school districts. 5940

(4) "State education aid" means the sum of the state basic 5941
aid and state special education aid amounts computed for a school 5942

district under divisions (A) and (B) of section 3317.022 of the 5943
Revised Code. 5944

(5) "State education aid offset" means the amount certified 5945
for each school district under division (A)(1) of section 5727.85 5946
of the Revised Code. 5947

(6) "Adjusted total taxable value" has the same meaning as in 5948
section 3317.02 of the Revised Code. 5949

(7) "Tax value loss" means the amount determined under 5950
division (C) of this section. 5951

(8) "Fixed-rate levy" means any tax levied on property other 5952
than a fixed-sum levy. 5953

(9) "Fixed-rate levy loss" means the amount determined under 5954
division (D) of this section. 5955

(10) "Fixed-sum levy" means a tax levied on property at 5956
whatever rate is required to produce a specified amount of tax 5957
money or to pay debt charges, and includes school district 5958
emergency levies imposed pursuant to section 5705.194 of the 5959
Revised Code. 5960

(11) "Fixed-sum levy loss" means the amount determined under 5961
division (E) of this section. 5962

(12) "Consumer price index" means the consumer price index 5963
(all items, all urban consumers) prepared by the bureau of labor 5964
statistics of the United States department of labor. 5965

(B) All money arising from the tax imposed by section 5727.81 5966
of the Revised Code shall be credited as follows: 5967

(1) Fifty-nine and nine hundred seventy-six one-THOUSANDTHS 5968
per cent, plus an amount equal to the state education aid offset, 5969
shall be credited to the general revenue fund. 5970

(2) Two and six hundred forty-six one-THOUSANDTHS per cent 5971

shall be credited to the local government fund, for distribution 5972
in accordance with section 5747.50 of the Revised Code. 5973

(3) Three hundred seventy-eight one-THOUSANDTHS per cent 5974
shall be credited to the local government revenue assistance fund, 5975
for distribution in accordance with section 5747.61 of the Revised 5976
Code. 5977

(4) Twenty-five and nine-tenths per cent, less an amount 5978
equal to the state education aid offset, shall be credited to the 5979
school district property tax replacement fund, which is hereby 5980
created in the state treasury for the purpose of making the 5981
payments described in section 5727.85 of the Revised Code. 5982

(5) Eleven and one-tenth per cent shall be credited to the 5983
local government property tax replacement fund, which is hereby 5984
created in the state treasury for the purpose of making the 5985
payments described in section 5727.86 of the Revised Code. 5986

(C) Not later than January 1, 2002, the tax commissioner 5987
shall determine for each taxing district its tax value loss, which 5988
is the sum of the amounts described in divisions (C)(1) and (2) of 5989
this section: 5990

(1) The difference obtained by subtracting the amount 5991
described in division (C)(1)(b) from the amount described in 5992
division (C)(1)(a) of this section. 5993

(a) The value of electric company and rural electric company 5994
tangible personal property as assessed by the tax commissioner for 5995
tax year 1998 on a preliminary assessment, or an amended 5996
preliminary assessment if issued prior to March 1, 1999, and as 5997
apportioned to the taxing district for tax year 1998; 5998

(b) The value of electric company and rural electric company 5999
tangible personal property as assessed by the tax commissioner for 6000
tax year 1998 had the property been apportioned to the taxing 6001

district for tax year 2001, and assessed at the rates in effect 6002
for tax year 2001. 6003

(2) The difference obtained by subtracting the amount 6004
described in division (C)(2)(b) from the amount described in 6005
division (C)(2)(a) of this section. 6006

(a) The three-year average for tax years 1996, 1997, and 1998 6007
of the assessed value from nuclear fuel materials and assemblies 6008
assessed against a person under Chapter 5711. of the Revised Code 6009
from the leasing of them to an electric company for those 6010
respective tax years, as reflected in the preliminary assessments; 6011
6012

(b) The three-year average assessed value from nuclear fuel 6013
materials and assemblies assessed under division (C)(2)(a) of this 6014
section for tax years 1996, 1997, and 1998, as reflected in the 6015
preliminary assessments, using an assessment rate of twenty-five 6016
per cent. 6017

The tax commissioner may request that electric companies and 6018
rural electric companies file a report to help determine the tax 6019
value loss under division (C) of this section. The report shall be 6020
filed within thirty days of the commissioner's request. A company 6021
that fails to file the report or does not timely file the report 6022
is subject to the penalty in section 5727.60 of the Revised Code. 6023
6024

(D) Not later than January 1, 2002, the tax commissioner 6025
shall determine for each school district, joint vocational school 6026
district, and local taxing unit its fixed-rate levy loss, which is 6027
its tax value loss multiplied by the tax rate in effect in tax 6028
year 1998 for fixed-rate levies. 6029

(E) Not later than January 1, 2002, the tax commissioner 6030
shall determine for each school district, joint vocational school 6031
district, and local taxing unit its fixed-sum levy loss, which is 6032

the amount obtained by subtracting the amount described in 6033
division (E)(2) of this section from the amount described in 6034
division (E)(1) of this section: 6035

(1) The tax value loss multiplied by the tax rate in effect 6036
in tax year 1998 for fixed-sum levies for all taxing districts 6037
within each school district, joint vocational school district, and 6038
local taxing unit. For the years 2002 through 2006, this 6039
computation shall include school district emergency levies that 6040
existed in 1998, and all other fixed-sum levies that existed in 6041
1998 and continue to be charged in the tax year preceding the 6042
distribution year. For the years 2007 through 2016, this 6043
computation shall exclude all school district emergency levies and 6044
all other fixed-sum levies that existed in 1998 but are no longer 6045
in effect in the tax year preceding the distribution year. 6046

(2) The total taxable value in tax year 1998 in each school 6047
district, joint vocational school district, and local taxing unit 6048
multiplied by one-fourth of one mill. 6049

If the computation under division (E) of this section for any 6050
school district, joint vocational school district, or local taxing 6051
unit is greater than zero, the one-fourth of one mill that is 6052
subtracted pursuant to division (E) of section 5727.85 of the 6053
Revised Code or division (A)(2) of section 5727.86 of the Revised 6054
Code shall be apportioned among all contributing fixed-sum levies 6055
in the proportion of each levy to the sum of all fixed-sum levies 6056
within each school district, joint vocational school district, or 6057
local taxing unit. 6058

Sec. 5727.85. (A) By the thirty-first day of July of each 6059
year, beginning in 2002 and ending in 2016, the department of 6060
education shall determine the following for each school district 6061
eligible for payment under division (C) of this section: 6062

(1) The state education aid offset, which is the difference obtained by subtracting the amount described in division (A)(1)(b) of this section from the amount described in division (A)(1)(a) of this section: 6063
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(a) The state education aid computed for the school district for the current fiscal year on the basis of the adjusted total taxable value; 6067
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(b) The state education aid that would be computed for the school district for the current fiscal year if the district's adjusted total taxable value included the tax value loss for all taxing districts in the school district. 6070
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(2) The difference obtained by subtracting the state education aid offset determined under division (A)(1) of this section from the fixed-rate levy loss determined under division (D) of section 5727.84 of the Revised Code for all taxing districts in each school district. The department of education shall certify the amount so determined to the director of budget and management. 6074
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(B) Not later than the thirty-first day of October of the years 2006 through 2016, the department of education shall determine all of the following for each school district: 6081
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(1) The amount obtained by subtracting the district's state education aid computed for fiscal year 2002 from the district's state education aid computed for the current fiscal year; 6084
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(2) The inflation-adjusted property tax loss. The inflation-adjusted property tax loss equals the fixed-rate levy loss determined under division (D) of section 5727.84 of the Revised Code for all taxing districts in each school district plus the product obtained by multiplying that loss by the cumulative percentage increase in the consumer price index from January 1, 2002, to the thirtieth day of June of the current year. 6087
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(3) The difference obtained by subtracting the amount 6094
computed under division (B)(1) from the amount of the 6095
inflation-adjusted property tax loss. If this difference is zero 6096
or a negative number, no further payments shall be made under 6097
division (C) of this section to the school district from the 6098
school district property tax replacement fund. If the difference 6099
is greater than zero, the department of education shall certify 6100
the amount calculated in division (A)(2) of this section to the 6101
director of budget and management not later than the thirty-first 6102
day of December of each year, beginning in 2006 and ending in 6103
2016. 6104

(C) For all taxing districts in each school district, the 6105
director of budget and management shall pay from the school 6106
district property tax replacement fund to the county undivided 6107
income tax fund in the proper county treasury all of the 6108
following: 6109

(1) In February 2002, one-half of the fixed-rate levy loss 6110
certified under division (D) of section 5727.84 of the Revised 6111
Code on or before the day prescribed for the settlement under 6112
division (A) of section 321.24 of the Revised Code. 6113

(2) From August 2002 through August 2006, one-half of the 6114
amount certified for that fiscal year under division (A)(2) of 6115
this section on or before each of the days prescribed for the 6116
settlements under divisions (A) and (C) of section 321.24 of the 6117
Revised Code. 6118

(3) From February 2007 through August 2016, one-half of the 6119
amount certified for that calendar year under division (B)(3) of 6120
this section on or before each of the days prescribed for the 6121
settlements under divisions (A) and (C) of section 321.24 of the 6122
Revised Code. 6123

The county treasurer shall distribute amounts paid under 6124

divisions (C)(1), (2), and (3) of this section to the proper
school district as if they had been levied and collected as taxes,
and the school district shall apportion the amounts so received
among its funds in the same proportions as if those amounts had
been levied and collected as taxes.

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(D) Not later than January 1, 2002, for all taxing districts
in each joint vocational school district, the tax commissioner
shall certify to the director of budget and management the
fixed-rate levy loss determined under division (D) of section
5727.84 of the Revised Code. From February 2002 to August 2016,
the director shall pay from the school district property tax
replacement fund to the county undivided income tax fund in the
proper county treasury, one-half of the fixed-rate levy loss so
certified for each year on or before each of the days prescribed
for the settlements under divisions (A) and (C) of section 321.24
of the Revised Code. The county treasurer shall distribute such
amounts to the proper joint vocational school district as if they
had been levied and collected as taxes, and the joint vocational
school district shall apportion the amounts so received among its
funds in the same proportions as if those amounts had been levied
and collected as taxes.

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(E)(1) Not later than January 1, 2002, for each school
district and joint vocational school district, the tax
commissioner shall certify to the director of budget and
management the fixed-sum levy loss determined under division (E)
of section 5727.84 of the Revised Code. The certification shall
cover a time period sufficient to include all fixed-sum levies in
effect in 1998 until they are due to expire. The director shall
pay from the school district property tax replacement fund to the
county undivided income tax fund in the proper county treasury
one-half of the fixed-sum levy loss so certified for each year on
or before each of the days prescribed for the settlements under

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divisions (A) and (C) of section 321.24 of the Revised Code. The
county treasurer shall distribute the amounts to the proper school
district or joint vocational school district as if they had been
levied and collected as taxes, and the district shall apportion
the amounts so received among its funds in the same proportions as
if those amounts had been levied and collected as taxes. No
payments shall be made under this division once all fixed-sum
levies in effect in 1998 have expired.

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(2) Beginning in 2003 and ending in 2016, by the thirty-first
day of January of each year, the tax commissioner shall review the
certification originally made under division (E)(1) of this
section. If the commissioner determines that a fixed-sum levy that
had been scheduled to be reimbursed in the current year has
expired, a revised certification for that and all subsequent years
shall be made to the director of budget and management.

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(F) By August 5, 2002, the tax commissioner shall estimate
the amount of money in the school district property tax
replacement fund in excess of the amount necessary to make
payments in that month under divisions (C), (D), and (E) of this
section. Notwithstanding division (C) of this section, the
department of education, in consultation with the tax commissioner
and from those excess funds, may pay any school district four and
one-half times the amount certified under division (A)(2) of this
section. Payments shall be made in order from the smallest annual
loss to the largest annual loss. A payment made under this
division shall be in lieu of the payment to be made in August 2002
under division (C)(2) of this section. No payments shall be made
in the manner established in this division to any school district
with annual losses from permanent improvement fixed-rate levies in
excess of twenty thousand dollars, or annual losses from any other
fixed-rate levies in excess of twenty thousand dollars. A school

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district receiving a payment under this division is no longer 6189
entitled to any further payments under division (C) of this 6190
section. 6191

(G) On the thirty-first day of July of 2003, 2004, 2005, AND 6192
2006, and on the thirty-first day of January and July of 2007 and 6193
each year thereafter, if THE AMOUNT CREDITED TO THE SCHOOL 6194
DISTRICT PROPERTY TAX REPLACEMENT FUND EXCEEDS THE AMOUNT NEEDED 6195
TO make payments FROM THE FUND UNDER DIVISIONS (C), (D), and (E) 6196
OF THIS SECTION IN THE FOLLOWING MONTH, THE DIRECTOR OF BUDGET AND 6197
MANAGEMENT SHALL DISTRIBUTE THE EXCESS AMONG SCHOOL DISTRICTS AND 6198
JOINT VOCATIONAL SCHOOL DISTRICTS. The AMOUNT DISTRIBUTED TO EACH 6199
DISTRICT SHALL BEAR THE SAME PROPORTION TO THE EXCESS REMAINING IN 6200
THE FUND AS THE ADM OF THE DISTRICT BEARS TO THE ADM OF ALL OF THE 6201
DISTRICTS. For THE PURPOSE OF THIS DIVISION, "ADM" MEANS THE 6202
FORMULA ADM IN THE CASE OF A SCHOOL DISTRICT, AND THE AVERAGE 6203
DAILY MEMBERSHIP REPORTED UNDER SECTION 3317.03 OF THE REVISED 6204
CODE IN THE CASE OF A JOINT VOCATIONAL SCHOOL DISTRICT. 6205

If, IN THE OPINION OF THE DIRECTOR OF BUDGET AND MANAGEMENT, 6206
THE EXCESS REMAINING IN THE SCHOOL DISTRICT PROPERTY TAX 6207
REPLACEMENT FUND IN ANY YEAR IS NOT SUFFICIENT TO WARRANT 6208
DISTRIBUTION UNDER THIS DIVISION, THE EXCESS SHALL REMAIN TO THE 6209
CREDIT OF THE FUND. 6210

Amounts RECEIVED BY A SCHOOL DISTRICT OR JOINT VOCATIONAL 6211
SCHOOL DISTRICT UNDER THIS DIVISION SHALL BE USED EXCLUSIVELY FOR 6212
CAPITAL IMPROVEMENTS. 6213

(H) If THE TOTAL AMOUNT IN THE SCHOOL DISTRICT PROPERTY TAX 6214
REPLACEMENT FUND IS INSUFFICIENT TO MAKE ALL PAYMENTS UNDER 6215
DIVISIONS (C), (D), and (E) OF THIS SECTION, THE PAYMENTS REQUIRED 6216
UNDER DIVISION (E) OF THIS SECTION SHALL BE MADE FIRST IN THEIR 6217
ENTIRETY. AFTER ALL PAYMENTS ARE MADE UNDER DIVISION (E) OF THIS 6218
SECTION, PAYMENTS UNDER DIVISIONS (C) AND (D) OF THIS SECTION 6219

SHALL BE MADE FROM THE BALANCE OF MONEY AVAILABLE IN THE 6220
PROPORTION OF EACH SCHOOL DISTRICT'S OR JOINT VOCATIONAL SCHOOL 6221
DISTRICT'S payment AMOUNT TO THE TOTAL AMOUNT of payments UNDER 6222
DIVISIONS (C) AND (D) OF THIS SECTION. 6223

(I) If ALL OR A PART OF THE TERRITORY OF A SCHOOL DISTRICT OR 6224
JOINT VOCATIONAL SCHOOL DISTRICT IS MERGED WITH OR TRANSFERRED TO 6225
ANOTHER DISTRICT, THE TAX COMMISSIONER SHALL ADJUST THE PAYMENTS 6226
MADE UNDER THIS SECTION TO EACH OF THE DISTRICTS IN PROPORTION TO 6227
THE TAX VALUE LOSS APPORTIONED TO THE MERGED OR TRANSFERRED 6228
TERRITORY. 6229

(J) THERE IS HEREBY CREATED THE ELECTRIC PROPERTY TAX STUDY 6230
COMMITTEE, EFFECTIVE January 1, 2011. The COMMITTEE SHALL CONSIST 6231
OF THE FOLLOWING SEVEN MEMBERS: the TAX COMMISSIONER, THREE 6232
MEMBERS OF THE SENATE APPOINTED BY THE PRESIDENT OF THE SENATE, 6233
AND THREE MEMBERS OF THE HOUSE OF REPRESENTATIVES APPOINTED BY THE 6234
SPEAKER OF THE HOUSE OF REPRESENTATIVES. The APPOINTMENTS SHALL BE 6235
MADE NOT LATER THAN JANUARY 31, 2011. THE TAX COMMISSIONER SHALL 6236
BE THE CHAIRPERSON OF THE COMMITTEE. 6237

The COMMITTEE SHALL STUDY THE EXTENT TO WHICH EACH SCHOOL 6238
DISTRICT OR JOINT VOCATIONAL SCHOOL DISTRICT HAS BEEN COMPENSATED, 6239
UNDER SECTIONS 5727.84 AND 5727.85 OF THE Revised Code AS ENACTED 6240
BY Substitute Senate Bill No. 3 OF THE 123rd general assembly AND 6241
ANY SUBSEQUENT ACTS, FOR THE PROPERTY TAX LOSS CAUSED BY THE 6242
REDUCTION IN THE ASSESSMENT RATES FOR ELECTRIC AND RURAL ELECTRIC 6243
COMPANY TANGIBLE PERSONAL PROPERTY. Not LATER THAN June 30, 2011, 6244
THE COMMITTEE SHALL ISSUE A REPORT OF ITS FINDINGS, INCLUDING ANY 6245
RECOMMENDATIONS FOR PROVIDING ADDITIONAL COMPENSATION FOR THE 6246
PROPERTY TAX LOSS OR REGARDING REMEDIAL LEGISLATION, TO THE 6247
PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE OF 6248
REPRESENTATIVES, AT WHICH TIME THE COMMITTEE SHALL CEASE TO EXIST. 6249

THE DEPARTMENT OF TAXATION AND DEPARTMENT OF EDUCATION SHALL 6250

PROVIDE SUCH INFORMATION AND ASSISTANCE AS IS REQUIRED FOR THE
COMMITTEE TO CARRY OUT ITS DUTIES.

Sec. 5727.86. (A) Not LATER THAN January 1, 2002, THE TAX
COMMISSIONER SHALL CERTIFY TO THE DIRECTOR OF BUDGET AND
MANAGEMENT, FOR ALL TAXING DISTRICTS IN EACH LOCAL TAXING UNIT,
THE fixed-rate levy loss DETERMINED UNDER DIVISION (D), AND the
fixed-sum levy loss determined under division (E), OF SECTION
5727.84 OF THE Revised Code. Based ON THAT CERTIFICATION, THE
DIRECTOR SHALL COMPUTE THE PAYMENTS to be made to each local
taxing unit FOR EACH YEAR ACCORDING TO DIVISIONS (A)(1), (2), and
(3) AND DIVISION (E) OF THIS SECTION, AND SHALL DISTRIBUTE the
PAYMENTS in the manner prescribed by DIVISION (C) OF THIS SECTION.
THE CERTIFICATION of the fixed-sum levy loss SHALL COVER a period
of TIME sufficient to include ALL fixed-sum levies IN EFFECT IN
1998 until they ARE DUE TO EXPIRE.

(1) Except as provided in division (A)(3) of this section,
for fixed-rate levy losses determined under division (D) of
section 5727.84 of the Revised Code, pAYMENTS shall be MADE in
each of the following years at the following PERCENTage OF THE
fixed-rate levy loss CERTIFIED UNDER DIVISION (A) of this section:

<u>YEAR</u>	<u>PERCENTAGE</u>	
2002	100%	
2003	100%	
2004	100%	
2005	100%	
2006	100%	
2007	80%	
2008	80%	
2009	80%	
2010	80%	
2011	80%	

2012	66.7%	6282
2013	53.4%	6283
2014	40.1%	6284
2015	26.8%	6285
2016	13.5%	6286
2017 <u>and thereafter</u>	0%	6287

(2) For fixed-sum levy losses determined under division (E) 6288
of section 5727.84 of the Revised Code, One HUNDRED PER CENT OF 6289
THE fixed-sum levy loss CERTIFIED UNDER DIVISION (A) OF this 6290
SECTION for payments required to be made in 2002 and thereafter. 6291

(3) A local taxing unit in a county of less than TWO HUNDRED 6292
FIFTY SQUARE MILES that receives eighty per cent or more of its 6293
combined general fund and bond retirement fund revenues from 6294
property taxes and rollbacks based on 1997 actual revenues as 6295
presented in its 1999 tax budget, and in which electric companies 6296
and rural electric companies comprise over twenty per cent of its 6297
PROPERTY VALUATION, shall receive one hundred per cent of its 6298
fixed-rate levy losses certified under division (A) of this 6299
section in years 2002 to 2016. 6300

(B) BEGINNING IN 2003, BY THE thirty-first DAY OF JANUARY of 6301
EACH YEAR, THE TAX COMMISSIONER SHALL REVIEW THE CERTIFICATION 6302
ORIGINALLY MADE UNDER division (A) of this section of the 6303
fixed-sum levy loss determined under DIVISION (E) OF SECTION 6304
5727.84 OF THE REVISED CODE. IF THE COMMISSIONER DETERMINES THAT A 6305
FIXED-SUM LEVY THAT HAD BEEN SCHEDULED TO BE REIMBURSED IN THE 6306
CURRENT YEAR HAS EXPIRED, A REVISED CERTIFICATION FOR THAT AND ALL 6307
SUBSEQUENT YEARS SHALL BE MADE. 6308

(C) Payments to local taxing units REQUIRED TO BE MADE UNDER 6309
DIVISIONS (A) AND (E) OF THIS SECTION SHALL BE PAID FROM THE LOCAL 6310
GOVERNMENT PROPERTY TAX REPLACEMENT FUND TO THE COUNTY UNDIVIDED 6311
INCOME TAX FUND IN THE PROPER COUNTY TREASURY. One-half OF THE 6312
AMOUNT CERTIFIED UNDER THOSE DIVISIONS SHALL BE PAID ON OR BEFORE 6313

EACH OF THE DAYS PRESCRIBED FOR THE SETTLEMENTS UNDER DIVISIONS 6314
(A) AND (C) OF SECTION 321.24 OF THE REVISED CODE. The COUNTY 6315
TREASURER SHALL DISTRIBUTE AMOUNTS paid UNDER DIVISION (A) OF THIS 6316
SECTION TO THE PROPER LOCAL TAXING UNIT AS IF THEY HAD BEEN LEVIED 6317
AND COLLECTED AS TAXES, AND THE LOCAL TAXING UNIT SHALL APPORTION 6318
THE AMOUNTS SO RECEIVED AMONG ITS FUNDS IN THE SAME PROPORTIONS AS 6319
IF THOSE AMOUNTS HAD BEEN LEVIED AND COLLECTED AS TAXES. Amounts 6320
DISTRIBUTED UNDER DIVISION (E) OF THIS SECTION SHALL BE CREDITED 6321
TO THE GENERAL FUND OF THE LOCAL TAXING UNIT THAT RECEIVES THEM. 6322

(D) By February 5, 2002, THE TAX COMMISSIONER SHALL ESTIMATE 6323
THE AMOUNT OF MONEY IN THE LOCAL GOVERNMENT PROPERTY TAX 6324
REPLACEMENT FUND IN EXCESS OF THE AMOUNT NECESSARY TO MAKE 6325
PAYMENTS IN THAT MONTH UNDER DIVISION (C) OF THIS SECTION. 6326
NOTWITHSTANDING DIVISION (A) OF THIS SECTION, THE TAX COMMISSIONER 6327
MAY PAY ANY LOCAL TAXING UNIT, FROM THOSE EXCESS FUNDS, nine and 6328
four-tenths TIMES THE AMOUNT computed for 2002 UNDER DIVISION 6329
(A)(1) OF THIS SECTION. Apayment made under this division SHALL BE 6330
IN LIEU OF THE PAYMENT TO BE MADE IN FEBRUARY 2002 under division 6331
(A)(1) of this section. A LOCAL TAXING UNIT RECEIVING A PAYMENT 6332
UNDER THIS DIVISION WILL NO LONGER BE ENTITLED TO ANY FURTHER 6333
PAYMENTS UNDER DIVISION (A)(1) OF THIS SECTION. 6334

(E) On the thirty-first day of July of 2002, 2003, 2004, 6335
2005, AND 2006, and on the thirty-first day of January and July of 6336
2007 and each year thereafter, if THE AMOUNT CREDITED TO THE LOCAL 6337
GOVERNMENT PROPERTY TAX REPLACEMENT FUND EXCEEDS THE AMOUNT NEEDED 6338
TO BE DISTRIBUTED FROM THE FUND UNDER DIVISION (A) OF THIS SECTION 6339
IN THE FOLLOWING MONTH, THE DIRECTOR OF BUDGET AND MANAGEMENT 6340
SHALL DISTRIBUTE THE EXCESS TO EACH COUNTY AS FOLLOWS: 6341

(1) One-half SHALL BE DISTRIBUTED TO EACH COUNTY IN 6342
PROPORTION TO EACH COUNTY'S POPULATION. 6343

(2) One-half SHALL BE DISTRIBUTED TO EACH COUNTY IN THE 6344

PROPORTION THAT THE AMOUNTS DETERMINED UNDER DIVISIONS (D) AND (E) 6345
OF SECTION 5727.84 OF THE REVISED CODE FOR ALL TAXING DISTRICTS IN 6346
THE COUNTY IS OF THE TOTAL AMOUNTS SO DETERMINED FOR ALL TAXING 6347
DISTRICTS IN THE STATE. 6348

THE AMOUNTS DISTRIBUTED TO EACH COUNTY UNDER THIS DIVISION 6349
SHALL BE DISTRIBUTED BY THE COUNTY BUDGET COMMISSION TO EACH LOCAL 6350
TAXING UNIT IN THE COUNTY IN THE PROPORTION THAT THE UNIT'S 6351
CURRENT TAXES CHARGED AND PAYABLE ARE OF THE TOTAL CURRENT TAXES 6352
CHARGED AND PAYABLE OF ALL THE LOCAL TAXING UNITS IN THE COUNTY. 6353
AS USED IN THIS DIVISION, "CURRENT TAXES CHARGED AND PAYABLE" 6354
MEANS THE TAXES CHARGED AND PAYABLE AS MOST RECENTLY DETERMINED 6355
FOR LOCAL TAXING UNITS IN THE COUNTY. 6356

IF, IN THE OPINION OF THE DIRECTOR OF BUDGET AND MANAGEMENT, 6357
THE EXCESS REMAINING IN THE LOCAL GOVERNMENT PROPERTY TAX 6358
REPLACEMENT FUND IN ANY YEAR IS NOT SUFFICIENT TO WARRANT 6359
DISTRIBUTION UNDER THIS DIVISION, THE EXCESS SHALL REMAIN TO THE 6360
CREDIT OF THE FUND. 6361

(E) If THE TOTAL AMOUNT IN THE LOCAL GOVERNMENT PROPERTY TAX 6362
REPLACEMENT FUND IS INSUFFICIENT TO MAKE ALL PAYMENTS UNDER 6363
DIVISION (C) OF THIS SECTION, THE PAYMENTS REQUIRED UNDER DIVISION 6364
(A)(2) OF THIS SECTION SHALL BE MADE FIRST IN THEIR ENTIRETY. 6365
AFTER ALL SUCH PAYMENTS ARE MADE, PAYMENTS UNDER DIVISIONS (A)(1) 6366
AND (3) OF THIS SECTION SHALL BE MADE FROM THE BALANCE OF MONEY 6367
AVAILABLE IN THE PROPORTION OF EACH LOCAL TAXING UNIT'S payment 6368
AMOUNT TO THE TOTAL AMOUNT of all payments to be made UNDER 6369
division (A)(2) OF THIS SECTION. 6370

(G) If ALL OR A PART OF THE TERRITORIES OF TWO OR MORE LOCAL 6371
TAXING UNITS ARE MERGED, OR UNINCORPORATED TERRITORY OF A TOWNSHIP 6372
IS ANNEXED BY A MUNICIPAL CORPORATION, THE TAX COMMISSIONER SHALL 6373
ADJUST THE PAYMENTS MADE UNDER THIS SECTION TO EACH OF THE LOCAL 6374
TAXING UNITS IN PROPORTION TO THE TAX VALUE LOSS APPORTIONED TO 6375

THE MERGED OR ANNEXED TERRITORY, OR AS OTHERWISE PROVIDED BY A 6376
WRITTEN AGREEMENT BETWEEN THE LEGISLATIVE AUTHORITIES OF THE LOCAL 6377
TAXING UNITS CERTIFIED TO THE TAX COMMISSIONER NOT LATER THAN THE 6378
FIRST DAY OF JUNE OF THE CALENDAR YEAR IN WHICH THE PAYMENT IS TO 6379
BE MADE. 6380

Sec. 5727.87. (A) AS USED IN THIS SECTION: 6381

(1) "ADMINISTRATIVE FEES" MEANS THE DOLLAR PERCENTAGES 6382
ALLOWED BY THE COUNTY AUDITOR FOR SERVICES OR BY THE COUNTY 6383
TREASURER AS FEES, OR PAID TO THE CREDIT OF THE REAL ESTATE 6384
ASSESSMENT FUND, UNDER DIVISIONS (A) AND (B) OF SECTION 319.54 AND 6385
DIVISION (A) OF SECTION 321.26 OF THE Revised Code. 6386

(2) "ADMINISTRATIVE FEE LOSS" MEANS A COUNTY'S LOSS OF 6387
ADMINISTRATIVE FEES due to its TAX VALUE LOSS, DETERMINED AS 6388
FOLLOWS: 6389

(a) For PURPOSES OF THE DETERMINATION made UNDER DIVISION (B) 6390
OF THIS SECTION IN THE YEARS 2002 THROUGH 2006, THE ADMINISTRATIVE 6391
FEE LOSS SHALL BE computed BY MULTIPLYING THE AMOUNTS DETERMINED 6392
FOR ALL TAXING DISTRICTS IN THE COUNTY under DIVISIONS (D) AND (E) 6393
OF SECTION 5727.84 OF THE REVISED CODE BY NINE THOUSAND SIX 6394
HUNDRED FIFTY-NINE TEN-THOUSANDTHS OF A PER cent, IF TOTAL TAXES 6395
COLLECTED IN THE COUNTY IN TAX YEAR 1998 exceeded one hundred 6396
fifty million dollars, OR ONE AND ONE THOUSAND ONE HUNDRED 6397
FIFTY-NINE TEN-THOUSANDTHS OF A PER CENT, IF TOTAL TAXES COLLECTED 6398
IN THE COUNTY IN TAX YEAR 1998 WERE one hundred fifty million 6399
dollars or less; 6400

(b) For PURPOSES OF THE DETERMINATION UNDER DIVISION (B) OF 6401
THIS SECTION IN THE YEARS 2007 THROUGH 2011, THE ADMINISTRATIVE 6402
FEE LOSS SHALL BE DETERMINED BY SUBTRACTING FROM THE DOLLAR AMOUNT 6403
OF ADMINISTRATIVE FEES COLLECTED IN THE COUNTY IN TAX YEAR 1998, 6404
THE DOLLAR AMOUNT OF ADMINISTRATIVE FEES COLLECTED IN THE COUNTY 6405

IN THE CURRENT CALENDAR YEAR. 6406

(B) Not LATER THAN the first day of JUNE of 2002 THROUGH 6407
2011, THE COUNTY AUDITOR SHALL DETERMINE THE ADMINISTRATIVE FEE 6408
LOSS FOR THE COUNTY AND CERTIFY IT TO THE COUNTY BUDGET 6409
COMMISSION. NOTWITHSTANDING DIVISIONS (C), (D), AND (E) OF SECTION 6410
5727.85 AND DIVISION (C) OF SECTION 5727.86 OF THE REVISED CODE, 6411
PRIOR TO DISTRIBUTION BY THE COUNTY TREASURER OF THE PAYMENTS 6412
PROVIDED UNDER THOSE DIVISIONS, THE COUNTY BUDGET COMMISSION SHALL 6413
DEDUCT FROM THOSE PAYMENTS THE AMOUNT OF THE ADMINISTRATIVE FEE 6414
LOSS CERTIFIED BY THE COUNTY AUDITOR, AS FOLLOWS: 6415

(1) Seventy PER CENT OF THE ADMINISTRATIVE FEE LOSS SHALL BE 6417
DEDUCTED FROM THE PAYMENTS PROVIDED UNDER DIVISIONS (C), (D), AND 6418
(E) OF SECTION 5727.85 OF THE REVISED CODE. 6419

(2) Thirty PER CENT OF THE ADMINISTRATIVE FEE LOSS SHALL BE 6420
DEDUCTED FROM THE PAYMENTS PROVIDED UNDER DIVISION (C) OF SECTION 6421
5727.86 OF THE REVISED CODE. 6422

(C) On OR BEFORE EACH OF THE DAYS PRESCRIBED FOR THE 6423
SETTLEMENTS UNDER DIVISIONS (A) AND (C) OF SECTION 321.24 OF THE 6424
REVISED CODE IN the YEARS 2002 THROUGH 2011, THE COUNTY BUDGET 6425
COMMISSION SHALL PAY ONE-HALF OF THE AMOUNT OF THE ADMINISTRATIVE 6426
FEE LOSS TO THE COUNTY AUDITOR, COUNTY TREASURER, OR REAL ESTATE 6427
ASSESSMENT FUND AS IF THE AMOUNT HAD BEEN ALLOWED AS 6428
ADMINISTRATIVE FEES, AND SHALL DEPOSIT THE AMOUNT IN THE SAME 6429
FUNDS AS IF ALLOWED AS ADMINISTRATIVE FEES. 6430

AFTER PAYMENT OF THE ADMINISTRATIVE FEE LOSS ON OR BEFORE 6431
AUGUST 10, 2011, ALL PAYMENTS UNDER THIS SECTION SHALL CEASE. 6432

Sec. 5727.88. The tax commissioner shall administer sections 6433
5727.80 to 5727.95 of the Revised Code and may adopt such rules as 6434
are necessary to administer those sections. Upon request of the 6435

tax commissioner, the public utilities commission shall assist the 6436
tax commissioner by providing information regarding any electric 6437
distribution company that is subject to regulation by the 6438
commission. 6439

Sec. 5727.89. (A) The tax commissioner may make an 6440
assessment, based on any information in the commissioner's 6441
possession, against any electric distribution company, 6442
self-assessing purchaser, or qualified end user that fails to file 6443
a return or pay any tax, interest, or additional charge as 6444
required by sections 5727.80 to 5727.95 of the Revised Code. 6445

When information in the possession of the tax commissioner 6446
indicates that a person liable for the tax imposed by section 6447
5727.81 of the Revised Code has not paid the full amount of tax 6448
due, the commissioner may audit a representative sample of the 6449
person's business and may issue an assessment based on the audit. 6450
The commissioner shall give the person assessed written notice of 6451
the assessment by personal service or certified mail. 6452

The tax commissioner may issue an assessment for which the 6453
tax imposed by section 5727.81 of the Revised Code was due and 6454
unpaid on the date the person was informed by an agent of the tax 6455
commissioner of an investigation or audit of the person. Any 6456
payment of the tax for the period covered by the assessment, after 6457
the person is so informed, shall be credited against the 6458
assessment. 6459

A penalty of fifteen per cent shall be added to all amounts 6460
assessed under this section. The commissioner may adopt rules 6461
providing for the remission of penalties. 6462

(B) Unless the party assessed files with the tax commissioner 6463
within thirty days after service of the notice of assessment, 6464
either personally or by certified mail, a written petition for 6465

reassessment signed by the party assessed or the party's 6466
authorized agent having knowledge of the facts, the assessment is 6467
final and the amount of the assessment is due and payable from the 6468
party assessed to the treasurer of state. The petition shall 6469
indicate the objections of the party assessed, but additional 6470
objections may be raised in writing prior to the date shown on the 6471
final determination of the tax commissioner. The commissioner 6472
shall grant the petitioner a hearing on the petition, unless 6473
waived by the petitioner. 6474

(C) The commissioner may make any correction to the 6475
assessment that the commissioner finds proper and shall issue a 6476
final determination thereon. The commissioner shall serve a copy 6477
of the final determination on the petitioner either by personal 6478
service or by certified mail, and the commissioner's decision in 6479
the matter is final, subject to appeal under section 5717.02 of 6480
the Revised Code. 6481

(D) After an assessment becomes final, if any portion of the 6482
assessment, including accrued interest, remains unpaid, a 6483
certified copy of the commissioner's entry making the assessment 6484
final may be filed in the office of the clerk of the court of 6485
common pleas in the county in which the party assessed resides or 6486
in which the party's business is conducted. If the party assessed 6487
maintains no place of business in this state and is not a resident 6488
of this state, the certified copy of the entry may be filed in the 6489
office of the clerk of the court of common pleas of Franklin 6490
county. 6491

The clerk, immediately upon the filing of the entry, shall 6492
enter a judgment for the state against the person assessed in the 6493
amount shown on the entry. The judgment may be filed by the clerk 6494
in a loose-leaf book entitled "special judgments for the 6495
kilowatt-hour tax," and shall have the same effect as other 6496
judgments. Execution shall issue upon the judgment at the request 6497

of the tax commissioner, and all laws applicable to sales on 6498
execution shall apply to sales made under the judgment. 6499

The portion of the assessment not paid within thirty days 6500
after the day the assessment was issued shall bear interest at the 6501
rate per annum prescribed by section 5703.47 of the Revised Code 6502
from the day the tax commissioner issues the assessment until the 6503
day the assessment is paid. Interest shall be paid in the same 6504
manner as the tax and may be collected by the issuance of an 6505
assessment under this section. 6506

(E) If the tax commissioner believes that collection of the 6507
tax imposed by section 5727.81 of the Revised Code will be 6508
jeopardized unless proceedings to collect or secure collection of 6509
the tax are instituted without delay, the commissioner may issue a 6510
jeopardy assessment against the electric distribution company, 6511
self-assessing purchaser, or qualified end user liable for the 6512
tax. Upon issuance of the jeopardy assessment, the commissioner 6513
immediately shall file an entry with the clerk of the court of 6514
common pleas in the manner prescribed by division (D) of this 6515
section. Notice of the jeopardy assessment shall be served on the 6516
party assessed or the party's legal representative within five 6517
days of the filing of the entry with the clerk. The total amount 6518
assessed is immediately due and payable, unless the party assessed 6519
files a petition for reassessment in accordance with division (B) 6520
of this section and provides security in a form satisfactory to 6521
the commissioner and in an amount sufficient to satisfy the unpaid 6522
balance of the assessment. Full or partial payment of the 6523
assessment does not prejudice the commissioner's consideration of 6524
the petition for reassessment. 6525

(E) All money collected by the tax commissioner under this 6526
section shall be paid to the treasurer of state, and when paid 6527
shall be considered as revenue arising from the tax imposed by 6528
section 5727.81 of the Revised Code. 6529

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: 6530 6531 6532 6533 6534 6535

(A) The party assessed failed to file a return as required by section 5727.82 of the Revised Code; 6536 6537

(B) The party assessed knowingly filed a false or fraudulent return; 6538 6539

(C) The party assessed and the tax commissioner waived in writing the time limitation. 6540 6541

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. 6542 6543 6544 6545 6546 6547 6548 6549

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. 6550 6551 6552 6553 6554 6555 6556 6557 6558

(B) If an electric distribution company entitled to a refund 6559

of taxes under this section is indebted to the state for any tax 6560
or fee administered by the tax commissioner that is paid to the 6561
state or any charge, penalty, or interest arising from such a tax 6562
or fee, the amount refundable may be applied in satisfaction of 6563
the debt. If the amount refundable is less than the amount of the 6564
debt, it may be applied in partial satisfaction of the debt. If 6565
the amount refundable is greater than the amount of the debt, the 6566
amount remaining after satisfaction of the debt shall be refunded. 6567
If the electric distribution company has more than one such debt, 6568
any debt subject to section 5739.33 or division (G) of section 6569
5747.07 of the Revised Code shall be satisfied first. This section 6570
applies only to debts that have become final. 6571

(C) Any electric distribution company that can substantiate 6572
to the tax commissioner that the tax imposed by section 5727.81 of 6573
the Revised Code was paid on electricity distributed via wires and 6574
consumed at a location outside of this state may claim a refund in 6575
the manner and within the time period prescribed in division (A) 6576
of this section. 6577

(D) Before a refund is issued under this section, an electric 6578
distribution company shall certify, as prescribed by the tax 6579
commissioner, that it either did not include the tax imposed by 6580
section 5727.81 of the Revised Code in its distribution charge to 6581
an electric customer upon which a refund of the tax is claimed, or 6582
it has refunded or credited to the electric customer the excess 6583
distribution charge related to the tax that was erroneously 6584
included in the electric customer's distribution charge. 6585

Sec. 5727.92. Every person liable for the tax imposed by 6586
section 5727.81 of the Revised Code shall keep complete and 6587
accurate records of all electric distributions and other records 6588
as required by the tax commissioner. The records shall be 6589
preserved for four years after the return for the taxes to which 6590

the records pertain is due or filed, whichever is later. The 6591
records shall be available for inspection by the tax commissioner 6592
or the commissioner's authorized agent, upon request of the 6593
commissioner or such agent. 6594

Sec. 5727.93. (A) No person shall distribute electricity to a 6595
meter of an end user in this state who is not registered with the 6596
tax commissioner as an electric distribution company. 6597

(B) Each person required to register under division (A) of 6598
this section shall register prior to distributing electricity to a 6599
meter of an end user in this state. The tax commissioner shall 6600
prescribe the form of the registration application. The 6601
commissioner shall assign an identification number to each 6602
registration and notify the registrant of that number. The 6603
registration shall remain in effect until canceled in writing by 6604
the registrant upon the cessation of distributing electricity to a 6605
meter of an end user in this state or until such registration is 6606
denied, revoked, or canceled by the commissioner. A registration 6607
may be revoked or canceled by the tax commissioner as provided by 6608
Chapter 119. of the Revised Code, for failure of an electric 6609
distribution company to pay the tax imposed by section 5727.81 of 6610
the Revised Code or to comply with sections 5727.80 to 5727.95 of 6611
the Revised Code. An electric distribution company whose 6612
registration is denied may petition for a hearing, in accordance 6613
with the procedures set forth in divisions (B) and (C) of section 6614
5727.89 of the Revised Code, not later than thirty days after 6615
receiving the denial, and the final determination is subject to 6616
appeal under section 5717.02 of the Revised Code. 6617

(C) The tax commissioner shall maintain a list of the 6618
electric distribution companies registered under this section. The 6619
list shall contain the name and address of each company registered 6620
by the commissioner. The list and subsequent updates of it shall 6621

be open to public inspection. 6622

Sec. 5727.94. Each electric distribution company required to 6623
pay the tax imposed by section 5727.81 of the Revised Code shall 6624
provide to its customers in this state the statement required by 6625
section 4933.33 of the Revised Code. 6626

Sec. 5727.95. (A) No electric distribution company or 6627
self-assessing purchaser shall fail to file any return or report 6628
required to be filed pursuant to section 5727.82 of the Revised 6629
Code, or file or cause to be filed any incomplete, false, or 6630
fraudulent return, report, or statement, or aid or abet another in 6631
the filing of any false or fraudulent return, report, or 6632
statement. 6633

(B) No person shall distribute electricity to a meter of an 6634
end user in this state without holding a valid registration issued 6635
under section 5727.93 of the Revised Code. 6636

Sec. 5727.99. (A) Whoever violates section 5727.55 of the 6637
Revised Code shall be ~~fin~~es fined not less than one hundred nor 6638
more than one thousand dollars. 6639

(B) Whoever violates section 5727.71 of the Revised Code 6640
shall be fined not more than five hundred dollars and imprisoned 6641
not more than thirty days. 6642

(C) Whoever violates section 5727.72 ~~or 5727.73~~ of the 6643
Revised Code shall be fined not more than five hundred dollars or 6644
imprisoned not more than thirty days, or both. 6645

(D) Whoever violates sections 5727.80 to 5727.83, or sections 6646
5727.88 to 5727.95 of the Revised Code or any rule adopted by the 6647
tax commissioner under those sections, is guilty of a misdemeanor 6648
of the first degree on the first offense; on each subsequent 6649
offense, the person is guilty of a felony of the fourth degree. 6650

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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. 6681

(H) "Federal income tax" means the income tax imposed by the 6682
Internal Revenue Code. 6683

(I) Except as provided in section 5733.058 of the Revised 6684
Code, "net income" means the taxpayer's taxable income before 6685
operating loss deduction and special deductions, as required to be 6686
reported for the taxpayer's taxable year under the Internal 6687
Revenue Code, subject to the following adjustments: 6688

(1)(a) Deduct any net operating loss incurred in any taxable 6689
years ending in 1971 or thereafter but exclusive of any net 6690
operating loss incurred in taxable years ending prior to January 6691
1, 1971. This deduction shall not be allowed in any tax year 6692
commencing before December 31, 1973, but shall be carried over and 6693
allowed in tax years commencing after December 31, 1973, until 6694
fully utilized in the next succeeding taxable year or years in 6695
which the taxpayer has net income, but in no case for more than 6696
the designated carryover period as described in division (I)(1)(b) 6697
of this section. The amount of such net operating loss, as 6698
determined under the allocation and apportionment provisions of 6699
section 5733.051 and division (B) of section 5733.05 of the 6700
Revised Code for the year in which the net operating loss occurs, 6701
shall be deducted from net income, as determined under the 6702
allocation and apportionment provisions of section 5733.051 and 6703
division (B) of section 5733.05 of the Revised Code, to the extent 6704
necessary to reduce net income to zero with the remaining unused 6705
portion of the deduction, if any, carried forward to the remaining 6706
years of the designated carryover period as described in division 6707
(I)(1)(b) of this section, or until fully utilized, whichever 6708
occurs first. 6709

(b) For losses incurred in taxable years ending on or before 6710
December 31, 1981, the designated carryover period shall be the 6711

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 6743
the tax commissioner shows, by clear and convincing evidence, more 6744
actual expenses. 6745

(3) Add any loss or deduct any gain resulting from the sale, 6746
exchange, or other disposition of a capital asset, or an asset 6747
described in section 1231 of the Internal Revenue Code, to the 6748
extent that such loss or gain occurred prior to the first taxable 6749
year on which the tax provided for in section 5733.06 of the 6750
Revised Code is computed on the corporation's net income. For 6751
purposes of division (I)(3) of this section, the amount of the 6752
prior loss or gain shall be measured by the difference between the 6753
original cost or other basis of the asset and the fair market 6754
value as of the beginning of the first taxable year on which the 6755
tax provided for in section 5733.06 of the Revised Code is 6756
computed on the corporation's net income. At the option of the 6757
taxpayer, the amount of the prior loss or gain may be a percentage 6758
of the gain or loss, which percentage shall be determined by 6759
multiplying the gain or loss by a fraction, the numerator of which 6760
is the number of months from the acquisition of the asset to the 6761
beginning of the first taxable year on which the fee provided in 6762
section 5733.06 of the Revised Code is computed on the 6763
corporation's net income, and the denominator of which is the 6764
number of months from the acquisition of the asset to the sale, 6765
exchange, or other disposition of the asset. 6766

(4) Deduct the dividend received deduction provided by 6767
section 243 of the Internal Revenue Code. 6768

(5) Deduct any interest or interest equivalent on public 6769
obligations and purchase obligations to the extent included in 6770
federal taxable income. As used in divisions (I)(5) and (6) of 6771
this section, "public obligations," "purchase obligations," and 6772
"interest or interest equivalent" have the same meanings as in 6773
section 5709.76 of the Revised Code. 6774

(6) Add any loss or deduct any gain resulting from the sale, 6775
exchange, or other disposition of public obligations to the extent 6776
included in federal taxable income. 6777

(7) To the extent not otherwise allowed, deduct any dividends 6778
or distributions received by a taxpayer from a public utility, 6779
excluding an electric company, if the taxpayer owns at least 6780
eighty per cent of the issued and outstanding common stock of the 6781
public utility. As used in division (I)(7) of this section, 6782
"public utility" ~~or "utility"~~ means a public utility as defined in 6783
Chapter 5727. of the Revised Code, whether or not the public 6784
utility is doing business in the state. 6785

(8) To the extent not otherwise allowed, deduct any dividends 6786
received by a taxpayer from an insurance company, if the taxpayer 6787
owns at least eighty per cent of the issued and outstanding common 6788
stock of the insurance company. As used in division (I)(8) of this 6789
section, "insurance company" means an insurance company ~~which~~ that 6790
is taxable under Chapter 5725. or 5729. of the Revised Code. 6791
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(9) Deduct expenditures for modifying existing buildings or 6793
structures to meet American national standards institute standard 6794
A-117.1-1961 (R-1971), as amended; provided, that no deduction 6795
shall be allowed to the extent that such deduction is not 6796
permitted under federal law or under rules of the tax 6797
commissioner. Those deductions as are allowed may be taken over a 6798
period of five years. The tax commissioner shall adopt rules under 6799
Chapter 119. of the Revised Code establishing reasonable 6800
limitations on the extent that expenditures for modifying existing 6801
buildings or structures are attributable to the purpose of making 6802
the buildings or structures accessible to and usable by physically 6803
handicapped persons. 6804

(10) Deduct the amount of wages and salaries, if any, not 6805

otherwise allowable as a deduction but that would have been 6806
allowable as a deduction in computing federal taxable income 6807
before operating loss deduction and special deductions for the 6808
taxable year, had the targeted jobs credit allowed and determined 6809
under sections 38, 51, and 52 of the Internal Revenue Code not 6810
been in effect. 6811

(11) Deduct net interest income on obligations of the United 6812
States and its territories and possessions or of any authority, 6813
commission, or instrumentality of the United States to the extent 6814
the laws of the United States prohibit inclusion of the net 6815
interest for purposes of determining the value of the taxpayer's 6816
issued and outstanding shares of stock under division (B) of 6817
section 5733.05 of the Revised Code. As used in division (I)(11) 6818
of this section, "net interest" means interest net of any expenses 6819
taken on the federal income tax return that would not have been 6820
allowed under section 265 of the Internal Revenue Code if the 6821
interest were exempt from federal income tax. 6822

(12)(a) Except as set forth in division (I)(12)(d) of this 6823
section, to the extent not included in computing the taxpayer's 6824
federal taxable income before operating loss deduction and special 6825
deductions, add gains and deduct losses from direct or indirect 6826
sales, exchanges, or other dispositions, made by a related entity 6827
who is not a taxpayer, of the taxpayer's indirect, beneficial, or 6828
constructive investment in the stock or debt of another entity, 6829
unless the gain or loss has been included in computing the federal 6830
taxable income before operating loss deduction and special 6831
deductions of another taxpayer with a more closely related 6832
investment in the stock or debt of the other entity. The amount of 6833
gain added or loss deducted shall not exceed the product obtained 6834
by multiplying such gain or loss by the taxpayer's proportionate 6835
share, directly, indirectly, beneficially, or constructively, of 6836
the outstanding stock of the related entity immediately prior to 6837

the direct or indirect sale, exchange, or other disposition. 6838
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(b) Except as set forth in division (I)(12)(e) of this 6840
section, to the extent not included in computing the taxpayer's 6841
federal taxable income before operating loss deduction and special 6842
deductions, add gains and deduct losses from direct or indirect 6843
sales, exchanges, or other dispositions made by a related entity 6844
who is not a taxpayer, of intangible property other than stock, 6845
securities, and debt, if such property was owned, or used in whole 6846
or in part, at any time prior to or at the time of the sale, 6847
exchange, or disposition by either the taxpayer or by a related 6848
entity that was a taxpayer at any time during the related entity's 6849
ownership or use of such property, unless the gain or loss has 6850
been included in computing the federal taxable income before 6851
operating loss deduction and special deductions of another 6852
taxpayer with a more closely related ownership or use of such 6853
intangible property. The amount of gain added or loss deducted 6854
shall not exceed the product obtained by multiplying such gain or 6855
loss by the taxpayer's proportionate share, directly, indirectly, 6856
beneficially, or constructively, of the outstanding stock of the 6857
related entity immediately prior to the direct or indirect sale, 6858
exchange, or other disposition. 6859

(c) As used in division (I)(12) of this section, "related 6860
entity" means those entities described in divisions (I)(12)(c)(i) 6861
to (iii) of this section: 6862

(i) An individual stockholder, or a member of the 6863
stockholder's family enumerated in section 318 of the Internal 6864
Revenue Code, if the stockholder and the members of the 6865
stockholder's family own, directly, indirectly, beneficially, or 6866
constructively, in the aggregate, at least fifty per cent of the 6867
value of the taxpayer's outstanding stock; 6868

(ii) A stockholder, or a stockholder's partnership, estate, 6869

trust, or corporation, if the stockholder and the stockholder's
partnerships, estates, trusts, and corporations own directly,
indirectly, beneficially, or constructively, in the aggregate, at
least fifty per cent of the value of the taxpayer's outstanding
stock;

(iii) A corporation, or a party related to the corporation in
a manner that would require an attribution of stock from the
corporation to the party or from the party to the corporation
under division (I)(12)(c)(iv) of this section, if the taxpayer
owns, directly, indirectly, beneficially, or constructively, at
least fifty per cent of the value of the corporation's outstanding
stock.

(iv) The attribution rules of section 318 of the Internal
Revenue Code apply for purposes of determining whether the
ownership requirements in divisions (I)(12)(c)(i) to (iii) of this
section have been met.

(d) For purposes of the adjustments required by division
(I)(12)(a) of this section, the term "investment in the stock or
debt of another entity" means only those investments where the
taxpayer and the taxpayer's related entities directly, indirectly,
beneficially, or constructively own, in the aggregate, at any time
during the twenty-four month period commencing one year prior to
the direct or indirect sale, exchange, or other disposition of
such investment at least fifty per cent or more of the value of
either the outstanding stock or such debt of such other entity.

(e) For purposes of the adjustments required by division
(I)(12)(b) of this section, the term "related entity" excludes all
of the following:

(i) Foreign corporations as defined in section 7701 of the
Internal Revenue Code;

(ii) Foreign partnerships as defined in section 7701 of the

Internal Revenue Code; 6901

(iii) Corporations, partnerships, estates, and trusts created 6902
or organized in or under the laws of the Commonwealth of Puerto 6903
Rico or any possession of the United States; 6904

(iv) Foreign estates and foreign trusts as defined in section 6905
7701 of the Internal Revenue Code. 6906

The exclusions described in divisions (I)(12)(e)(i) to (iv) 6907
of this section do not apply if the corporation, partnership, 6908
estate, or trust is described in any one of divisions (C)(1) to 6909
(5) of section 5733.042 of the Revised Code. 6910

(f) Nothing in division (I)(12) of this section shall require 6911
or permit a taxpayer to add any gains or deduct any losses 6912
described in divisions (I)(12)(f)(i) and (ii) of this section: 6913

(i) Gains or losses recognized for federal income tax 6914
purposes by an individual, estate, or trust without regard to the 6915
attribution rules described in division (I)(12)(c) of this 6916
section, ~~and~~; 6917

(ii) A related entity's gains or losses described in division 6918
(I)(12)(b) if the taxpayer's ownership of or use of such 6919
intangible property was limited to a period not exceeding nine 6920
months and was attributable to a transaction or a series of 6921
transactions executed in accordance with the election or elections 6922
made by the taxpayer or a related entity pursuant to section 338 6923
of the Internal Revenue Code. 6924

(13) Any adjustment required by section 5733.042 of the 6925
Revised Code. 6926

(14) Add any amount claimed as a credit under section 6927
5733.0611 of the Revised Code to the extent that such amount 6928
satisfies either of the following: 6929

(a) It was deducted or excluded from the computation of the 6930

corporation's taxable income before operating loss deduction and 6931
special deductions as required to be reported for the 6932
corporation's taxable year under the Internal Revenue Code; 6933

(b) It resulted in a reduction of the corporation's taxable 6934
income before operating loss deduction and special deductions as 6935
required to be reported for any of the corporation's taxable years 6936
under the Internal Revenue Code. 6937

(15) Deduct the amount contributed by the taxpayer to an 6938
individual development account program established by a county 6939
department of human services pursuant to sections 329.11 to 329.14 6940
of the Revised Code for the purpose of matching funds deposited by 6941
program participants. On request of the tax commissioner, the 6942
taxpayer shall provide any information that, in the tax 6943
commissioner's opinion, is necessary to establish the amount 6944
deducted under division (I)(15) of this section. 6945

(16) In the case of an electric company that was subject to 6946
the tax imposed by section 5727.30 of the Revised Code with 6947
respect to its gross receipts received during the period of May 1, 6948
2000, through May 1, 2001, the allowance for depreciation and the 6949
computation of gain or loss on the sale or other disposition of 6950
all assets placed in service prior to January 1, 2002, shall be 6951
made with reference to the Ohio tax basis of those assets in 6952
accordance with rules prescribed by the tax commissioner. For the 6953
purpose of this division, the "Ohio tax basis" means the adjusted 6954
book basis less the adjusted tax basis of the assets as recorded 6955
on the company's books of accounts as of December 31, 2001. The 6956
Ohio tax basis shall be amortized over a period of forty years as 6957
follows: 6958

<u>In years 1 to 10</u>	<u>1% per year</u>	6959
<u>In years 11 to 20</u>	<u>2% per year</u>	6960
<u>In years 21 to 30</u>	<u>3% per year</u>	6961
<u>In years 31 to 40</u>	<u>4% per year</u>	6962

The adjustments under this section shall continue to apply to 6963
assets transferred under a reorganization within the meaning of 6964
section 368A of the Internal Revenue Code, or on the organization 6965
of a corporation principally in consideration for the issuance of 6966
its stock. 6967

(J) Any term used in this chapter has the same meaning as 6968
when used in comparable context in the laws of the United States 6969
relating to federal income taxes unless a different meaning is 6970
clearly required. Any reference in this chapter to the Internal 6971
Revenue Code includes other laws of the United States relating to 6972
federal income taxes. 6973

(K) "Financial institution" has the meaning given by section 6974
5725.01 of the Revised Code but does not include a production 6975
credit association as described in 85 Stat. 597, 12 U.S.C.A. 2091. 6976

(L)(1) A "qualifying holding company" is any corporation 6977
satisfying all of the following requirements: 6978

(a) Subject to divisions (L)(2) and (3) of this section, the 6979
net book value of the corporation's intangible assets is greater 6980
than or equal to ninety per cent of the net book value of all of 6981
its assets and at least fifty per cent of the net book value of 6982
all of its assets represents direct or indirect investments in the 6983
equity of, loans and advances to, and accounts receivable due from 6984
related members; 6985

(b) At least ninety per cent of the corporation's gross 6986
income for the taxable year is attributable to the following: 6987

(i) The maintenance, management, ownership, acquisition, use, 6988
and disposition of its intangible property, its aircraft the use 6989
of which is not subject to regulation under 14 C.F.R. part 121 or 6990
part 135, and any real property described in division (L)(2)(c) of 6991
this section; 6992

(ii) The collection and distribution of income from such property.	6993 6994
(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;	6995 6996 6997
(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;	6998 6999 7000 7001 7002
(e) Subject to division (L)(4) of this section, the corporation elects to be treated as a qualifying holding company for the tax year.	7003 7004 7005
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.	7006 7007 7008 7009
(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.	7010 7011 7012 7013 7014
(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.	7015 7016 7017 7018
(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	7019 7020 7021 7022

the tax year the corporation's and the corporation's related 7023
members' combined direct and indirect interests in the capital or 7024
profits of such pass-through entity do not exceed fifty per cent. 7025
If the corporation's interest in the pass-through entity is an 7026
intangible asset for that taxable year, then the distributive 7027
share of any income from the pass-through entity shall be income 7028
from an intangible asset for that taxable year. 7029

(ii) If a corporation's and the corporation's related 7030
members' combined direct and indirect interests in the capital or 7031
profits of a pass-through entity exceed fifty per cent at any time 7032
during the corporation's taxable year ending prior to the first 7033
day of the tax year, "intangible asset" does not include the 7034
corporation's direct interest in the pass-through entity, and the 7035
corporation shall include in its assets its proportionate share of 7036
the assets of any such pass-through entity and shall include in 7037
its gross income its distributive share of the gross income of 7038
such pass-through entity in the same form as was earned by the 7039
pass-through entity. 7040

(iii) A pass-through entity's direct or indirect 7041
proportionate share of any other pass-through entity's assets 7042
shall be included for the purpose of computing the corporation's 7043
proportionate share of the pass-through entity's assets under 7044
division (L)(2)(b)(ii) of this section, and such pass-through 7045
entity's distributive share of any other pass-through entity's 7046
gross income shall be included for purposes of computing the 7047
corporation's distributive share of the pass-through entity's 7048
gross income under division (L)(2)(b)(ii) of this section. 7049

(c) For the purposes of divisions (L)(1)(b)(i), (1)(b)(ii), 7050
(2)(a)(i), and (2)(a)(ii) of this section, real property is 7051
described in division (L)(2)(c) of this section only if all of the 7052
following conditions are present at all times during the taxable 7053
year ending prior to the first day of the tax year: 7054

(i) The real property serves as the headquarters of the 7055
corporation's trade or business, or is the place from which the 7056
corporation's trade or business is principally managed or 7057
directed; 7058

(ii) Not more than ten per cent of the value of the real 7059
property and not more than ten per cent of the square footage of 7060
the building or buildings that are part of the real property is 7061
used, made available, or occupied for the purpose of providing, 7062
acquiring, transferring, selling, or disposing of tangible 7063
property or services in the normal course of business to persons 7064
other than related members, the corporation's employees and their 7065
families, and such related members' employees and their families. 7066

(d) As used in division (L) of this section, "related member" 7067
has the same meaning as in division (A)(6) of section 5733.042 of 7068
the Revised Code without regard to division (B) of that section. 7069
7070

(3) The percentages described in division (L)(1)(a) of this 7071
section shall be equal to the quarterly average of those 7072
percentages as calculated during the corporation's taxable year 7073
ending prior to the first day of the tax year. 7074

(4) With respect to the election described in division 7075
(L)(1)(e) of this section: 7076

(a) The election need not accompany a timely filed report; 7077

(b) The election need not accompany the report; rather, the 7078
election may accompany a subsequently filed but timely application 7079
for refund and timely amended report, or a subsequently filed but 7080
timely petition for reassessment; 7081

(c) The election is not irrevocable; 7082

(d) The election applies only to the tax year specified by 7083
the corporation; 7084

(e) The corporation's related members comply with division 7085
(L)(1)(d) of this section. 7086

Nothing in division (L)(4) of this section shall be construed 7087
to extend any statute of limitations set forth in this chapter. 7088

(M) "Qualifying controlled group" means two or more 7089
corporations that satisfy the ownership and control requirements 7090
of division (A) of section 5733.052 of the Revised Code. 7091

(N) "Limited liability company" means any limited liability 7092
company formed under Chapter 1705. of the Revised Code or under 7093
the laws of any other state. 7094

(O) "Pass-through entity" means a corporation that has made 7095
an election under subchapter S of Chapter 1 of Subtitle A of the 7096
Internal Revenue Code for its taxable year under that code, or a 7097
partnership, limited liability company, or any other person, other 7098
than an individual, trust, or estate, if the partnership, limited 7099
liability company, or other person is not classified for federal 7100
income tax purposes as an association taxed as a corporation. 7101

(P) "Electric company" and "combined company" have the same 7102
meanings as in section 5727.01 of the Revised Code. 7103

Sec. 5733.05. As used in this section, "qualified research" 7104
means laboratory research, experimental research, and other 7105
similar types of research; research in developing or improving a 7106
product; or research in developing or improving the means of 7107
producing a product. It does not include market research, consumer 7108
surveys, efficiency surveys, management studies, ordinary testing 7109
or inspection of materials or products for quality control, 7110
historical research, or literary research. "Product" as used in 7111
this paragraph does not include services or intangible property. 7112
7113

The annual report determines the value of the issued and 7114

outstanding shares of stock of the taxpayer, which under division 7115
(A) or divisions (B) and (C) of this section is the base or 7116
measure of the franchise tax liability. Such determination shall 7117
be made as of the date shown by the report to have been the 7118
beginning of the corporation's annual accounting period that 7119
includes the first day of January of the tax year. For the 7120
purposes of this chapter, the value of the issued and outstanding 7121
shares of stock of any corporation that is a financial institution 7122
shall be deemed to be the value as calculated in accordance with 7123
division (A) of this section. For the purposes of this chapter, 7124
the value of the issued and outstanding shares of stock of any 7125
corporation that is not a financial institution shall be deemed to 7126
be the values as calculated in accordance with divisions (B) and 7127
(C) of this section. 7128

(A) The total value, as shown by the books of the financial 7129
institution, of its capital, surplus, whether earned or unearned, 7130
undivided profits, and reserves shall be determined as prescribed 7131
by section 5733.056 of the Revised Code for tax years 1998 and 7132
thereafter. 7133

(B) The sum of the corporation's net income during the 7134
corporation's taxable year, allocated or apportioned to this state 7135
as prescribed in divisions (B)(1) and (2) of this section, and 7136
subject to sections 5733.052, 5733.053, 5733.057, and 5733.058 of 7137
the Revised Code: 7138

(1) The net income allocated to this state as provided by 7139
section 5733.051 of the Revised Code. 7140

(2) The amount of Ohio apportioned net income from sources 7141
other than those allocated under section 5733.051 of the Revised 7142
Code, which shall be determined by multiplying the corporation's 7143
net income by a fraction. The numerator of the fraction is the sum 7144
of the following products: the property factor multiplied by 7145

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 7177
reflect properly the average value of the corporation's property. 7178

(b) The payroll factor is a fraction the numerator of which 7179
is the total amount paid in this state during the taxable year by 7180
the corporation for compensation, and the denominator of which is 7181
the total compensation paid everywhere by the corporation during 7182
such year. There shall be excluded from the numerator and the 7183
denominator of the payroll factor the total compensation paid in 7184
this state to employees who are primarily engaged in qualified 7185
research. 7186

(i) Compensation means any form of remuneration paid to an 7187
employee for personal services. 7188

(ii) Compensation is paid in this state if: (1) the 7189
recipient's service is performed entirely within this state, (2) 7190
the recipient's service is performed both within and without this 7191
state, but the service performed without this state is incidental 7192
to the recipient's service within this state, (3) some of the 7193
service is performed within this state and either the base of 7194
operations, or if there is no base of operations, the place from 7195
which the service is directed or controlled is within this state, 7196
or the base of operations or the place from which the service is 7197
directed or controlled is not in any state in which some part of 7198
the service is performed, but the recipient's residence is in this 7199
state. 7200

(iii) Compensation is paid in this state to any employee of a 7201
common or contract motor carrier corporation, who performs the 7202
employee's regularly assigned duties on a motor vehicle in more 7203
than one state, in the same ratio by which the mileage traveled by 7204
such employee within the state bears to the total mileage traveled 7205
by such employee everywhere during the taxable year. 7206

(c) The sales factor is a fraction the numerator of which is 7207

the total sales in this state by the corporation during the 7208
taxable year, and the denominator of which is the total sales by 7209
the corporation everywhere during such year. In determining the 7210
numerator and denominator of the sales factor, receipts from the 7211
sale or other disposal of a capital asset or an asset described in 7212
section 1231 of the Internal Revenue Code shall be eliminated. 7213
Also, in determining the numerator and denominator of the sales 7214
factor, in the case of a reporting corporation owning at least 7215
eighty per cent of the issued and outstanding common stock of one 7216
or more ~~public utilities or~~ insurance companies or public 7217
utilities, except an electric company, or owning at least 7218
twenty-five per cent of the issued and outstanding common stock of 7219
one or more financial institutions, receipts received by the 7220
reporting corporation from such utilities, insurance companies, 7221
and financial institutions shall be eliminated. 7222

For the purpose of this section and section 5733.03 of the 7223
Revised Code, sales of tangible personal property are in this 7224
state where such property is received in this state by the 7225
purchaser. In the case of delivery of tangible personal property 7226
by common carrier or by other means of transportation, the place 7227
at which such property is ultimately received after all 7228
transportation has been completed shall be considered as the place 7229
at which such property is received by the purchaser. Direct 7230
delivery in this state, other than for purposes of transportation, 7231
to a person or firm designated by a purchaser constitutes delivery 7232
to the purchaser in this state, and direct delivery outside this 7233
state to a person or firm designated by a purchaser does not 7234
constitute delivery to the purchaser in this state, regardless of 7235
where title passes or other conditions of sale. 7236

For the purposes of this section and section 5733.03 of the 7237
Revised Code, sales of electricity and the transmission and 7238
distribution of electricity by an electric company shall be 7239

treated as a sale of a service and not as a sale of tangible 7240
personal property. 7241

Sales, other than sales of tangible personal property, are in 7242
this state if either: 7243

(i) The income-producing activity is performed solely in this 7244
state; 7245

(ii) The income-producing activity is performed both within 7246
and without this state and a greater proportion of the 7247
income-producing activity is performed within this state than in 7248
any other state, based on costs of performance. 7249

(d) If the allocation and apportionment provisions of 7250
division (B) of this section do not fairly represent the extent of 7251
the taxpayer's business activity in this state, the taxpayer may 7252
request, which request must be in writing and must accompany the 7253
report, timely filed petition for reassessment, or timely filed 7254
amended report, or the tax commissioner may require, in respect to 7255
all or any part of the taxpayer's allocated or apportioned base, 7256
if reasonable, any one or more of the following: 7257

(i) Separate accounting; 7258

(ii) The exclusion of any one or more of the factors; 7259

(iii) The inclusion of one or more additional factors ~~which~~ 7260
that will fairly represent the taxpayer's allocated or apportioned 7261
base in this state. 7262

An alternative method will be effective only with approval by 7263
the tax commissioner. 7264

Nothing in this section shall be construed to extend any 7265
statute of limitations set forth in this chapter. 7266

(C)(1) Subject to divisions (C)(2) and (3) of this section, 7267
the total value, as shown on the books of each corporation that is 7268
not a qualified holding company, of the net book value of a 7269

corporation's assets less the net carrying value of its 7270
liabilities. For the purposes of determining that total value, any 7271
reserves shown on the corporation's books shall be considered 7272
liabilities or contra assets, except for any reserves that are 7273
deemed appropriations of retained earnings under generally 7274
accepted accounting principles. 7275

(2)(a) If, on the last day of the taxpayer's taxable year 7276
preceding the tax year, the taxpayer is a related member to a 7277
corporation that elects to be a qualifying holding company for the 7278
tax year beginning after the last day of the taxpayer's taxable 7279
year, or if, on the last day of the taxpayer's taxable year 7280
preceding the tax year, a corporation that elects to be a 7281
qualifying holding company for the tax year beginning after the 7282
last day of the taxpayer's taxable year is a related member to the 7283
taxpayer, then the taxpayer's total value shall be adjusted by the 7284
qualifying amount. Except as otherwise provided under division 7285
(C)(2)(b) of this section, "qualifying amount" means the amount 7286
that, when added to the taxpayer's total value, and when 7287
subtracted from the net carrying value of the taxpayer's 7288
liabilities computed without regard to division (C)(2) of this 7289
section, or when subtracted from the taxpayer's total value and 7290
when added to the net carrying value of the taxpayer's liabilities 7291
computed without regard to division (C)(2) of this section, 7292
results in the taxpayer's debt-to-equity ratio equaling the 7293
debt-to-equity ratio of the qualifying controlled group on the 7294
last day of the taxable year ending prior to the first day of the 7295
tax year computed on a consolidated basis in accordance with 7296
general accepted accounting principles. For the purposes of 7297
division (C)(2)(a) of this section, the corporation's total value, 7298
after the adjustment required by that division, shall not exceed 7299
the net book value of the corporation's assets. 7300

(b)(i) The amount added to the taxpayer's total value and 7301

subtracted from the net carrying value of the taxpayer's 7302
liabilities shall not exceed the amount of the net carrying value 7303
of the taxpayer's liabilities owed to the taxpayer's related 7304
members. 7305

(ii) A liability owed to the taxpayer's related members 7306
includes, but is not limited to, any amount that the corporation 7307
owes to a person that is not a related member if the corporation's 7308
related member or related members in whole or in part guarantee 7309
any portion or all of that amount, or pledge, hypothecate, 7310
mortgage, or carry out any similar transactions to secure any 7311
portion or all of that amount. 7312

(3) The base upon which the tax is levied under division (C) 7313
of section 5733.06 of the Revised Code shall be computed by 7314
multiplying the amount determined under divisions (C)(1) and (2) 7315
of this section by the fraction determined under divisions 7316
(B)(2)(a) to (c) of this section and, if applicable, divisions 7317
(B)(2)(d)(ii) to (iv) of this section but without regard to 7318
section 5733.052 of the Revised Code. 7319

(4) For purposes of division (C) of this section, "related 7320
member" has the same meaning as in division (A)(6) of section 7321
5733.042 of the Revised Code without regard to division (B) of 7322
that section. 7323

Sec. 5733.06. The tax hereby charged each corporation subject 7324
to this chapter shall be the greater of the sum of divisions (A) 7325
and (B) of this section, after the reduction, if any, provided by 7326
division (J) of this section, or division (C) of this section, 7327
whichever is greater after the reduction, if any, provided by 7328
division (J) of this section, except that the tax hereby charged 7329
each financial institution subject to this chapter shall be the 7330
amount computed under division (D) of this section: 7331

(A) Except as set forth in division (F) of this section, five 7332
and one-tenth per cent upon the first fifty thousand dollars of 7333
the value of the taxpayer's issued and outstanding shares of stock 7334
as determined under division (B) of section 5733.05 of the Revised 7335
Code; 7336

(B) Except as set forth in division (F) of this section, 7337
eight and one-half per cent upon the value so determined in excess 7338
of fifty thousand dollars; or 7339

(C) Except as otherwise provided under division (G) of this 7340
section, four mills times that portion of the value of the issued 7341
and outstanding shares of stock as determined under division (C) 7342
of section 5733.05 of the Revised Code. For the purposes of 7343
division (C) of this section, division (C)(2) of section 5733.065, 7344
and division (C) of section 5733.066 of the Revised Code, the 7345
value of the issued and outstanding shares of stock of a qualified 7346
holding company is zero. 7347

(D) The tax charged each financial institution subject to 7348
this chapter shall be that portion of the value of the issued and 7349
outstanding shares of stock as determined under division (A) of 7350
section 5733.05 of the Revised Code, multiplied by the following 7351
amounts: 7352

(1) For tax years prior to the 1999 tax year, fifteen mills; 7353

(2) For the 1999 tax year, fourteen mills; 7354

(3) For tax year 2000 and thereafter, thirteen mills. 7355

(E) No tax shall be charged from any corporation ~~which~~ that 7356
has been adjudicated bankrupt, or for which a receiver has been 7357
appointed, or ~~which~~ that has made a general assignment for the 7358
benefit of creditors, except for the portion of the then current 7359
tax year during which the tax commissioner finds such corporation 7360
had the power to exercise its corporate franchise unimpaired by 7361

such proceedings or act. The minimum payment for all corporations 7362
shall be fifty dollars. 7363

The tax charged to corporations under this chapter for the 7364
privilege of engaging in business in this state, which is an 7365
excise tax levied on the value of the issued and outstanding 7366
shares of stock, shall in no manner be construed as prohibiting or 7367
otherwise limiting the powers of municipal corporations, joint 7368
economic development zones created under section 715.691 of the 7369
Revised Code, and joint economic development districts created 7370
under section 715.70 or 715.71 or sections 715.72 to 715.81 of the 7371
Revised Code in this state to impose an income tax on the income 7372
of such corporations. 7373

(F) If two or more taxpayers satisfy the ownership or control 7374
requirements of division (A) of section 5733.052 of the Revised 7375
Code, each such taxpayer shall substitute "the taxpayer's pro-rata 7376
amount" for "fifty thousand dollars" in divisions (A) and (B) of 7377
this section. For purposes of this division, "the taxpayer's 7378
pro-rata amount" is an amount that, when added to the other such 7379
taxpayers' pro-rata amounts, does not exceed fifty thousand 7380
dollars. For the purpose of making that computation, the 7381
taxpayer's pro-rata amount shall not be less than zero. Nothing in 7382
this division derogates from or eliminates the requirement to make 7383
the alternative computation of tax under division (C) of this 7384
section. 7385

(G) The tax liability of any corporation under division (C) 7386
of this section shall not exceed one hundred fifty thousand 7387
dollars. 7388

(H)(1) For the purposes of division (H) of this section, 7389
"exiting corporation" means a corporation that satisfies all of 7390
the following conditions: 7391

(a) The corporation had nexus with or in this state under the 7392

Constitution of the United States during any portion of a calendar year; 7393
7394

(b) The corporation was not a taxpayer on the first day of January immediately following that calendar year; 7395
7396

(c) The corporation was not a financial institution on the first day of January immediately following that calendar year; 7397
7398

(d) The corporation was not a transferor as defined in section 5733.053 of the Revised Code during any portion of that calendar year; 7399
7400
7401

(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; 7402
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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. 7407
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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. 7413
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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. 7419
7420
7421
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The exiting corporation then shall compute the tax due on its 7423
unreported net income allocated and apportioned to this state by 7424
applying divisions (A), (B), and (F) of this section to that 7425
income. 7426

(4) Divisions (C) and (G) of this section, division (D)(2) of 7427
section 5733.065, and division (C) of section 5733.066 of the 7428
Revised Code do not apply to an exiting corporation, but exiting 7429
corporations are subject to every other provision of this chapter. 7430

(5) Notwithstanding sections 5733.02, 5733.021, and 5733.03 7431
of the Revised Code to the contrary, each exiting corporation 7432
shall report and pay the tax due under division (H) of this 7433
section on or before the thirty-first day of May immediately 7434
following the calendar year referred to in division (H)(1)(a) of 7435
this section. The exiting corporation shall file that report on 7436
the form most recently prescribed by the tax commissioner for the 7437
purposes of complying with sections 5733.02 and 5733.03 of the 7438
Revised Code. Upon request by the corporation, the tax 7439
commissioner may extend the date for filing the report. 7440

(6) The tax commissioner may adopt rules governing division 7441
(H) of this section. 7442

(I) Any reference in the Revised Code to "the tax imposed by 7443
section 5733.06 of the Revised Code" or "the tax due under section 7444
5733.06 of the Revised Code" includes the taxes imposed under 7445
sections 5733.065 and 5733.066 of the Revised Code. 7446

(J)(1) Division (J) of this section applies solely to a 7447
combined company. Section 5733.057 of the Revised Code shall apply 7448
when calculating the adjustments required by division (J) of this 7449
section. 7450

(2) Subject to division (J)(4) of this section, the total tax 7451
calculated in divisions (A) and (B) of this section shall be 7452
reduced by an amount calculated by multiplying such tax by a 7453

fraction, the numerator of which is the total taxable gross 7454
receipts attributed to providing public utility activity other 7455
than as an electric company under section 5727.03 of the Revised 7456
Code for the year upon which the taxable gross receipts are 7457
measured immediately preceding the tax year, and the denominator 7458
of which is the total gross receipts from all sources for the year 7459
upon which the taxable gross receipts are measured immediately 7460
preceding the tax year. Nothing herein shall be construed to 7461
exclude from the denominator any item of income described in 7462
section 5733.051 of the Revised Code. 7463

(3) Subject to division (J)(4) of this section, the total tax 7464
calculated in division (C) of this section shall be reduced by an 7465
amount calculated by multiplying such tax by the fraction 7466
described in division (J)(2) of this section. 7467

(4) In no event shall the reduction provided by division 7468
(J)(2) or (J)(3) of this section exceed the amount of the excise 7469
tax paid in accordance with section 5727.38 of the Revised Code, 7470
for the year upon which the taxable gross receipts are measured 7471
immediately preceding the tax year. 7472

Sec. 5733.09. (A) An incorporated company, whether foreign or 7473
domestic, owning and operating a public utility in this state, and 7474
~~as such~~ required by law to file reports with the tax commissioner 7475
and to pay an excise tax upon its gross receipts, and insurance, 7476
fraternal, beneficial, bond investment, and other corporations 7477
required by law to file annual reports with the superintendent of 7478
insurance and dealers in intangibles, the shares of which are, or 7479
the capital or ownership in capital employed by such dealer is, 7480
subject to the taxes imposed by section 5707.03 of the Revised 7481
Code, shall not be subject to this chapter, except for sections 7482
5733.031, 5733.042, 5733.05, 5733.052, 5733.053, 5733.069, 7483
5733.0611, 5733.40, 5733.41, and sections 5747.40 to 5747.453 of 7484

the Revised Code. An electric company subject to the filing 7485
requirements of section 5727.08 of the Revised Code or otherwise 7486
having nexus with or in this state under the Constitution of the 7487
United States, or any other corporation having any gross receipts 7488
directly attributable to providing public utility service as an 7489
electric company or having any property directly attributable to 7490
providing public utility service as an electric company, is 7491
subject to this chapter. 7492

(B) A corporation that has made an election under subchapter 7493
S, chapter one, subtitle A, of the Internal Revenue Code for its 7494
taxable year under such code is exempt from the tax imposed by 7495
section 5733.06 of the Revised Code that is based on that taxable 7496
year. 7497

A corporation that makes such an election shall file a notice 7498
of such election with the tax commissioner between the first day 7499
of January and the thirty-first day of March of each tax year that 7500
the election is in effect. 7501

(C) An entity defined to be a "real estate investment trust" 7502
by section 856 of the Internal Revenue Code, a "regulated 7503
investment company" by section 851 of the Internal Revenue Code, 7504
or a "real estate mortgage investment conduit" by section 860D of 7505
the Internal Revenue Code, is exempt from taxation for a tax year 7506
as a corporation under this chapter and is exempt from taxation 7507
for a return year as a dealer in intangibles under Chapter 5725. 7508
of the Revised Code if it provides the report required by this 7509
division. By the last day of March of the tax or return year the 7510
entity shall submit to the tax commissioner the name of the entity 7511
with a list of the names, addresses, and social security or 7512
federal identification numbers of all investors, shareholders, and 7513
other similar investors who owned any interest or invested in the 7514
entity during the preceding calendar year. The commissioner may 7515

extend the date by which the report must be submitted for 7516
reasonable cause shown by the entity. The commissioner may 7517
prescribe the form of the report required for exemption under this 7518
division. 7519

(D)(1) As used in this division: 7520

(a) "Commercial printer" means a person primarily engaged in 7521
the business of commercial printing. However, "commercial printer" 7522
does not include a person primarily engaged in the business of 7523
providing duplicating services using photocopy machines or other 7524
xerographic processes. 7525

(b) "Commercial printing" means printing by one or more 7526
common processes such as letterpress, lithography, gravure, 7527
screen, or digital imaging, and includes related activities such 7528
as binding, platemaking, prepress operation, cartographic 7529
composition, and typesetting. 7530

(c) "Contract for printing" means an oral or written 7531
agreement for the purchase of printed materials produced by a 7532
commercial printer. 7533

(d) "Intangible property located at the premises of a 7534
commercial printer" means intangible property of any kind owned or 7535
licensed by a customer of the commercial printer and furnished to 7536
the commercial printer for use in commercial printing. 7537

(e) "Printed material" means any tangible personal property 7538
produced or processed by a commercial printer pursuant to a 7539
contract for printing. 7540

(f) "Related member" has the same meaning as in division 7541
(A)(6) of section 5733.042 of the Revised Code without regard to 7542
division (B) of that section. 7543

(2) Except as provided in divisions (D)(3) and (4) of this 7544
section, a corporation not otherwise subject to the tax imposed by 7545

section 5733.06 of the Revised Code for a tax year does not become 7546
subject to that tax for the tax year solely by reason of any one 7547
or more of the following occurring in this state during the 7548
taxable year that ends immediately prior to the tax year: 7549

(a) Ownership by the corporation or a related member of the 7550
corporation of tangible personal property or intangible property 7551
located during all or any portion of the taxable year or on the 7552
first day of the tax year at the premises of a commercial printer 7553
with which the corporation or the corporation's related member has 7554
a contract for printing with respect to such property or the 7555
premises of a commercial printer's related member with which the 7556
corporation or the corporation's related member has a contract for 7557
printing with respect to such property; 7558

(b) Sales by the corporation or a related member of the 7559
corporation of property produced at and shipped or distributed 7560
from the premises of a commercial printer with which the 7561
corporation or the corporation's related member has a contract for 7562
printing with respect to such property or the premises of a 7563
commercial printer's related member with which the corporation or 7564
the corporation's related member has a contract for printing with 7565
respect to such property; 7566

(c) Activities of employees, officers, agents, or contractors 7567
of the corporation or a related member of the corporation on the 7568
premises of a commercial printer with which the corporation or the 7569
corporation's related member has a contract for printing or the 7570
premises of a commercial printer's related member with which the 7571
corporation or the corporation's related member has a contract for 7572
printing, where the activities are directly and solely related to 7573
quality control, distribution, or printing services, or any 7574
combination thereof, performed by or at the direction of the 7575
commercial printer or the commercial printer's related member. 7576

7577

(3) The exemption under this division does not apply for a taxable year to any corporation having on the first day of January of the tax year or at any time during the taxable year ending immediately preceding the first day of January of the tax year a related member which, on the first day of January of the tax year or during any portion of such taxable year of the corporation, has nexus in or with this state under the Constitution of the United States or holds a certificate of compliance with the laws of this state authorizing it to do business in this state.

(4) With respect to allowing the exemption under this division, the tax commissioner shall be guided by the doctrines of "economic reality," "sham transaction," "step transaction," and "substance over form." A corporation shall bear the burden of establishing by a preponderance of the evidence that any transaction giving rise to an exemption claimed under this division did not have as a principal purpose the avoidance of any portion of the tax imposed by section 5733.06 of the Revised Code.

Application of the doctrines listed in division (D)(4) of this section is not limited to this division.

Sec. 5733.39. (A) As used in this section:

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

(a) A facility that removes sulfur compounds from coal before the combustion of the coal and that is located off the premises of the electric generating facility where the coal processed by the compliance facility is burned; 7609 7610 7611 7612

(b) Modifications to the electric generating facility where the compliance facility is constructed or installed that are necessary to accommodate the construction or installation, and operation, of the compliance facility; 7613 7614 7615 7616

(c) A byproduct disposal facility, as defined in section 3734.051 of the Revised Code, that exclusively disposes of wastes produced by the compliance facility and other coal combustion byproducts produced by the generating unit in or to which the compliance facility is incorporated or connected regardless of whether the byproduct disposal facility is located on the same premises as the compliance facility or generating unit that produces the wastes disposed of at the facility; 7617 7618 7619 7620 7621 7622 7623 7624

(d) Facilities or equipment that is acquired, constructed, or installed, and used, at a coal-fired electric generating facility exclusively for the purpose of handling the byproducts produced by the compliance facility or other coal combustion byproducts produced by the generating unit in or to which the compliance facility is incorporated or connected; 7625 7626 7627 7628 7629 7630

(e) A flue gas desulfurization system that is connected to a coal-fired electric generating unit and that either was placed in service prior to July 10, 1991, or construction of which was commenced prior to that date; 7631 7632 7633 7634

(f) Facilities or equipment acquired, constructed, or installed, and used, at a coal-fired electric generating unit primarily for the purpose of handling the byproducts produced by a compliance facility or other coal combustion byproducts produced by the generating unit in or to which the compliance facility is 7635 7636 7637 7638 7639

incorporated or connected. 7640

(2) "Ohio coal" has the same meaning as in section 4913.01 of 7641
the Revised Code. 7642

(3) "Sale and leaseback transaction" has the same meaning as 7643
in section 5727.01 of the Revised Code. 7644

(B) Beginning in tax year 2002, an electric company shall be 7645
allowed a nonrefundable credit against the tax imposed by section 7646
5733.06 of the Revised Code for Ohio coal used in any of its 7647
coal-fired electric generating units after April 30, 2001. Section 7648
5733.057 of the Revised Code shall apply when calculating the 7649
credit allowed by this section. The credit shall be claimed at the 7650
rate of one dollar per ton of Ohio coal burned in a coal-fired 7651
electric generating unit during the taxable year ending 7652
immediately preceding the tax year. The credit is allowed only if 7653
all of the following conditions are met during such taxable year: 7654

(1) The coal-fired electric generating unit is owned and used 7655
by the company claiming the credit or leased and used by that 7656
company under a sale and leaseback transaction. 7657

(2) A compliance facility is attached to, incorporated in, or 7658
used in conjunction with the coal-fired generating unit. 7659

(3) Either of the following applies: 7660

(a) In the case of a coal-fired electric generating unit that 7661
burns coal in combination with another fuel for the purpose of 7662
complying with Phase I acid rain control requirements under Title 7663
IV of the "Clean Air Act Amendments of 1990," 104 Stat. 2584, 42 7664
U.S.C.A. 7651, at least eighty per cent of the heat input during 7665
the taxable year is from Ohio coal. 7666

(b) In the case of any other coal-fired electric generating 7667
unit, at least ninety per cent of the heat input during the 7668
taxable year is from Ohio coal. 7669

(C) The credit shall be claimed in the order required under 7670
section 5733.98 of the Revised Code. If the credit exceeds the tax 7671
imposed by section 5733.06 of the Revised Code after all other 7672
nonrefundable credits for the tax year as set forth in section 7673
5733.98 of the Revised Code, the excess shall not be allowed as a 7674
credit either against the taxes due for any other year or against 7675
any other tax or fee. Nothing herein shall be construed to provide 7676
for carryover or carryback of any unused credit provided by any 7677
other section of the Revised Code or for the application of any 7678
unused credit provided by any other section of the Revised Code 7679
against any other tax or fee if such section does not expressly 7680
provide either for a carryover or carryback of any unused credit 7681
or for the application of an unused credit against any other tax 7682
or fee. 7683

(D) The sum of the credits allowed for all years under 7684
section 5727.391 of the Revised Code for coal burned in each 7685
coal-fired electric generating unit and the sum of the credits 7686
allowed for all tax years under this section shall not exceed 7687
twenty per cent of the cost of the compliance facility attached 7688
to, incorporated in, or used in conjunction with the unit. If a 7689
compliance facility is used in conjunction with more than one 7690
generating unit, the tax commissioner shall prorate its cost among 7691
the units. 7692

(E) The director of environmental protection, upon the 7693
request of the tax commissioner, shall certify whether a facility 7694
is a compliance facility. In the case of a compliance facility 7695
owned by an electric company, the public utilities commission 7696
shall certify to the tax commissioner the cost of the facility as 7697
of the date it was placed in service. In the case of a compliance 7698
facility owned by a person other than an electric company, the tax 7699
commissioner shall determine the cost of the facility as of the 7700
date it was placed in service. If the owner of such a facility 7701

fails to furnish the information necessary to make that 7702
determination, no credit shall be allowed. 7703

Sec. 5733.98. (A) To provide a uniform procedure for 7704
calculating the amount of tax imposed by section 5733.06 of the 7705
Revised Code that is due under this chapter, a taxpayer shall 7706
claim any credits to which it is entitled in the following order, 7707
except as otherwise provided in section 5733.058 of the Revised 7708
Code: 7709

(1) The credit for taxes paid by a qualifying pass-through 7710
entity allowed under section 5733.0611 of the Revised Code; 7711

(2) The credit for qualifying affiliated groups under section 7712
5733.068 of the Revised Code; 7713

(3) The subsidiary corporation credit under section 5733.067 7714
of the Revised Code; 7715

(4) The savings and loan assessment credit under section 7716
5733.063 of the Revised Code; 7717

(5) The credit for recycling and litter prevention donations 7718
under section 5733.064 of the Revised Code; 7719

(6) The credit for employers that enter into agreements with 7720
child day-care centers under section 5733.36 of the Revised Code; 7721

(7) The credit for employers that reimburse employee child 7722
day-care expenses under section 5733.38 of the Revised Code; 7723

(8) The credit for manufacturing investments under section 7724
5733.061 of the Revised Code; 7725

(9) The credit for purchases of new manufacturing machinery 7726
and equipment under section 5733.31 or section 5733.311 of the 7727
Revised Code; 7728

(10) The second credit for purchases of new manufacturing 7729
machinery and equipment under section 5733.33 of the Revised Code; 7730

(11) The enterprise zone credit under section 5709.66 of the Revised Code;	7731 7732
(12) The credit for the eligible costs associated with a voluntary action under section 5733.34 of the Revised Code;	7733 7734
(13) The credit for employers that establish on-site child day-care under section 5733.37 of the Revised Code;	7735 7736
(14) The credit for purchases of qualifying grape production property under section 5733.32 of the Revised Code;	7737 7738
(15) The export sales credit under section 5733.069 of the Revised Code;	7739 7740
(16) The credit for research and development and technology transfer investors under section 5733.35 of the Revised Code;	7741 7742
(17) The enterprise zone credits under section 5709.65 of the Revised Code;	7743 7744
(18) <u>The credit for using Ohio coal under section 5733.39 of the Revised Code;</u>	7745 7746
(19) The refundable jobs creation credit under section 5733.0610 of the Revised Code.	7747 7748
(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.	7749 7750 7751 7752 7753 7754
Sec. 5739.011. (A) As used in this section:	7755
(1) "Manufacturer" means a person who is engaged in manufacturing, processing, assembling, or refining a product for sale.	7756 7757 7758

(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 7789
temporarily stores the product during the manufacturing operation; 7790
or, excluding motor vehicles licensed to operate on public 7791
highways, equipment used in intraplant or interplant transfers of 7792
work in process where the plant or plants between which such 7793
transfers occur are manufacturing facilities operated by the same 7794
person; 7795

(3) Catalysts, solvents, water, acids, oil, and similar 7796
consumables that interact with the product and that are an 7797
integral part of the manufacturing operation; 7798

(4) Machinery, equipment, and other tangible personal 7799
property used during the manufacturing operation that control, 7800
physically support, produce power for, lubricate, or are otherwise 7801
necessary for the functioning of production machinery and 7802
equipment and the continuation of the manufacturing operation; 7803

(5) Machinery, equipment, fuel, power, material, parts, and 7804
other tangible personal property used to manufacture machinery, 7805
equipment, or other tangible personal property used in 7806
manufacturing a product for sale; 7807

(6) Machinery, equipment, and other tangible personal 7808
property used by a manufacturer to test raw materials, the product 7809
being manufactured, or the completed product; 7810

(7) Machinery and equipment used to handle or temporarily 7811
store scrap that is intended to be reused in the manufacturing 7812
operation at the same manufacturing facility; 7813

(8) ~~Electricity, coke~~ Coke, gas, water, steam, and similar 7814
substances used in the manufacturing operation; machinery and 7815
equipment used for, and fuel consumed in, producing or extracting 7816
those substances; ~~and~~ machinery, equipment, and other tangible 7817
personal property used to treat, filter, pump, ~~alter voltage~~, or 7818
otherwise make the substance suitable for use in the manufacturing 7819

operation; and machinery and equipment used to produce electricity 7820
for use in the manufacturing operation; 7821

(9) Machinery, equipment, and other tangible personal 7822
property used to transport or transmit electricity, coke, gas, 7823
water, steam, or similar substances used in the manufacturing 7824
operation from the point of generation, if produced by the 7825
manufacturer, or from the point where the substance enters the 7826
manufacturing facility, if purchased by the manufacturer, to the 7827
manufacturing operation; 7828

(10) Machinery, equipment, and other tangible personal 7829
property that treats, filters, cools, refines, or otherwise 7830
renders water, steam, acid, oil, solvents, or similar substances 7831
used in the manufacturing operation reusable, provided that the 7832
substances are intended for reuse and not for disposal, sale, or 7833
transportation from the manufacturing facility; 7834

(11) Parts, components, and repair and installation services 7835
for items described in division (B) of this section. 7836

(C) For purposes of division (E)(9) of section 5739.01 of the 7837
Revised Code, the "thing transferred" does not include any of the 7838
following: 7839

(1) Tangible personal property used in administrative, 7840
personnel, security, inventory control, record-keeping, ordering, 7841
billing, or similar functions; 7842

(2) Tangible personal property used in storing raw materials 7843
or parts prior to the commencement of the manufacturing operation 7844
or used to handle or store a completed product, including storage 7845
that actively maintains a completed product in a marketable state 7846
or form; 7847

(3) Tangible personal property used to handle or store scrap 7848
or waste intended for disposal, sale, or other disposition, other 7849
than reuse in the manufacturing operation at the same 7850

manufacturing facility;	7851
(4) Tangible personal property that is or is to be	7852
incorporated into realty;	7853
(5) Machinery, equipment, and other tangible personal	7854
property used for ventilation, dust, or gas collection, humidity	7855
or temperature regulation, or similar environmental control,	7856
except machinery, equipment, and other tangible personal property	7857
that totally regulates the environment in a special and limited	7858
area of the manufacturing facility where the regulation is	7859
essential for production to occur;	7860
(6) Tangible personal property used for the protection and	7861
safety of workers, unless the property is attached to or	7862
incorporated into machinery and equipment used in a continuous	7863
manufacturing operation;	7864
(7) Tangible personal property used to store fuel, water,	7865
solvents, acid, oil, or similar items consumed in the	7866
manufacturing operation;	7867
(8) Machinery, equipment, and other tangible personal	7868
property used for research and development;	7869
(9) Machinery, equipment, and other tangible personal	7870
property used to clean, repair, or maintain real or personal	7871
property in the manufacturing facility;	7872
(10) Motor vehicles registered for operation on the public	7873
highways.	7874
(D) For purposes of division (E)(9) of section 5739.01 of the	7875
Revised Code, if the "thing transferred" is a machine used by a	7876
manufacturer in both a taxable and an exempt manner, it shall be	7877
totally taxable or totally exempt from taxation based upon its	7878
quantified primary use. If the "things transferred" are fungibles,	7879
they shall be taxed based upon the proportion of the fungibles	7880

used in a taxable manner. 7881

Sec. 5739.02. For the purpose of providing revenue with which 7882
to meet the needs of the state, for the use of the general revenue 7883
fund of the state, for the purpose of securing a thorough and 7884
efficient system of common schools throughout the state, for the 7885
purpose of affording revenues, in addition to those from general 7886
property taxes, permitted under constitutional limitations, and 7887
from other sources, for the support of local governmental 7888
functions, and for the purpose of reimbursing the state for the 7889
expense of administering this chapter, an excise tax is hereby 7890
levied on each retail sale made in this state. 7891

(A) The tax shall be collected pursuant to the schedules in 7892
section 5739.025 of the Revised Code. 7893

The tax applies and is collectible when the sale is made, 7894
regardless of the time when the price is paid or delivered. 7895

In the case of a sale, the price of which consists in whole 7896
or in part of rentals for the use of the thing transferred, the 7897
tax, as regards such rentals, shall be measured by the 7898
installments thereof. 7899

In the case of a sale of a service defined under division 7900
(MM) or (NN) of section 5739.01 of the Revised Code, the price of 7901
which consists in whole or in part of a membership for the receipt 7902
of the benefit of the service, the tax applicable to the sale 7903
shall be measured by the installments thereof. 7904

(B) The tax does not apply to the following: 7905

(1) Sales to the state or any of its political subdivisions, 7906
or to any other state or its political subdivisions if the laws of 7907
that state exempt from taxation sales made to this state and its 7908
political subdivisions; 7909

(2) Sales of food for human consumption off the premises 7910

where sold; 7911

(3) Sales of food sold to students only in a cafeteria, 7912
dormitory, fraternity, or sorority maintained in a private, 7913
public, or parochial school, college, or university; 7914

(4) Sales of newspapers, and of magazine subscriptions 7915
shipped by second class mail, and sales or transfers of magazines 7916
distributed as controlled circulation publications; 7917

(5) The furnishing, preparing, or serving of meals without 7918
charge by an employer to an employee provided the employer records 7919
the meals as part compensation for services performed or work 7920
done; 7921

(6) Sales of motor fuel upon receipt, use, distribution, or 7922
sale of which in this state a tax is imposed by the law of this 7923
state, but this exemption shall not apply to the sale of motor 7924
fuel on which a refund of the tax is allowable under section 7925
5735.14 of the Revised Code; and the tax commissioner may deduct 7926
the amount of tax levied by this section applicable to the price 7927
of motor fuel when granting a refund of motor fuel tax pursuant to 7928
section 5735.14 of the Revised Code and shall cause the amount 7929
deducted to be paid into the general revenue fund of this state; 7930

(7) Sales of natural gas by a natural gas company, ~~of~~ 7931
~~electricity by an electric company,~~ of water by a water-works 7932
company, or of steam by a heating company, if in each case the 7933
thing sold is delivered to consumers through ~~wires,~~ pipes, or 7934
conduits, and all sales of communications services by a telephone 7935
or telegraph company, all terms as defined in section 5727.01 of 7936
the Revised Code; 7937

(8) Casual sales by a person, or auctioneer employed directly 7938
by the person to conduct such sales, except as to such sales of 7939
motor vehicles, watercraft or outboard motors required to be 7940
titled under section 1548.06 of the Revised Code, watercraft 7941

documented with the United States coast guard, snowmobiles, and 7942
all-purpose vehicles as defined in section 4519.01 of the Revised 7943
Code; 7944

(9) Sales of services or tangible personal property, other 7945
than motor vehicles, mobile homes, and manufactured homes, by 7946
churches or by nonprofit organizations operated exclusively for 7947
charitable purposes as defined in division (B)(12) of this 7948
section, provided that the number of days on which such tangible 7949
personal property or services, other than items never subject to 7950
the tax, are sold does not exceed six in any calendar year. If the 7951
number of days on which such sales are made exceeds six in any 7952
calendar year, the church or organization shall be considered to 7953
be engaged in business and all subsequent sales by it shall be 7954
subject to the tax. In counting the number of days, all sales by 7955
groups within a church or within an organization shall be 7956
considered to be sales of that church or organization, except that 7957
sales made by separate student clubs and other groups of students 7958
of a primary or secondary school, and sales made by a 7959
parent-teacher association, booster group, or similar organization 7960
that raises money to support or fund curricular or extracurricular 7961
activities of a primary or secondary school, shall not be 7962
considered to be sales of such school, and sales by each such 7963
club, group, association, or organization shall be counted 7964
separately for purposes of the six-day limitation. This division 7965
does not apply to sales by a noncommercial educational radio or 7966
television broadcasting station. 7967

(10) Sales not within the taxing power of this state under 7968
the Constitution of the United States; 7969

(11) The transportation of persons or property, unless the 7970
transportation is by a private investigation and security service; 7971

(12) Sales of tangible personal property or services to 7972

churches, to organizations exempt from taxation under section 7973
501(c)(3) of the Internal Revenue Code of 1986, and to any other 7974
nonprofit organizations operated exclusively for charitable 7975
purposes in this state, no part of the net income of which inures 7976
to the benefit of any private shareholder or individual, and no 7977
substantial part of the activities of which consists of carrying 7978
on propaganda or otherwise attempting to influence legislation; 7979
sales to offices administering one or more homes for the aged or 7980
one or more hospital facilities exempt under section 140.08 of the 7981
Revised Code; and sales to organizations described in division (D) 7982
of section 5709.12 of the Revised Code. 7983

"Charitable purposes" means the relief of poverty; the 7984
improvement of health through the alleviation of illness, disease, 7985
or injury; the operation of an organization exclusively for the 7986
provision of professional, laundry, printing, and purchasing 7987
services to hospitals or charitable institutions; the operation of 7988
a home for the aged, as defined in section 5701.13 of the Revised 7989
Code; the operation of a radio or television broadcasting station 7990
that is licensed by the federal communications commission as a 7991
noncommercial educational radio or television station; the 7992
operation of a nonprofit animal adoption service or a county 7993
humane society; the promotion of education by an institution of 7994
learning that maintains a faculty of qualified instructors, 7995
teaches regular continuous courses of study, and confers a 7996
recognized diploma upon completion of a specific curriculum; the 7997
operation of a parent-teacher association, booster group, or 7998
similar organization primarily engaged in the promotion and 7999
support of the curricular or extracurricular activities of a 8000
primary or secondary school; the operation of a community or area 8001
center in which presentations in music, dramatics, the arts, and 8002
related fields are made in order to foster public interest and 8003
education therein; the production of performances in music, 8004

dramatics, and the arts; or the promotion of education by an 8005
organization engaged in carrying on research in, or the 8006
dissemination of, scientific and technological knowledge and 8007
information primarily for the public. 8008

Nothing in this division shall be deemed to exempt sales to 8009
any organization for use in the operation or carrying on of a 8010
trade or business, or sales to a home for the aged for use in the 8011
operation of independent living facilities as defined in division 8012
(A) of section 5709.12 of the Revised Code. 8013

(13) Building and construction materials and services sold to 8014
construction contractors for incorporation into a structure or 8015
improvement to real property under a construction contract with 8016
this state or a political subdivision thereof, or with the United 8017
States government or any of its agencies; building and 8018
construction materials and services sold to construction 8019
contractors for incorporation into a structure or improvement to 8020
real property that are accepted for ownership by this state or any 8021
of its political subdivisions, or by the United States government 8022
or any of its agencies at the time of completion of such 8023
structures or improvements; building and construction materials 8024
sold to construction contractors for incorporation into a 8025
horticulture structure or livestock structure for a person engaged 8026
in the business of horticulture or producing livestock; building 8027
materials and services sold to a construction contractor for 8028
incorporation into a house of public worship or religious 8029
education, or a building used exclusively for charitable purposes 8030
under a construction contract with an organization whose purpose 8031
is as described in division (B)(12) of this section; building and 8032
construction materials sold for incorporation into the original 8033
construction of a sports facility under section 307.696 of the 8034
Revised Code; and building and construction materials and services 8035
sold to a construction contractor for incorporation into real 8036

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, 8068
agriculture, horticulture, or floriculture; or material and parts 8069
for incorporation into any such tangible personal property for use 8070
or consumption in production; and of tangible personal property 8071
for such use or consumption in the conditioning or holding of 8072
products produced by and for such use, consumption, or sale by 8073
persons engaged in farming, agriculture, horticulture, or 8074
floriculture, except where such property is incorporated into real 8075
property; 8076

(18) Sales of drugs dispensed by a licensed pharmacist upon 8077
the order of a licensed health professional authorized to 8078
prescribe drugs to a human being, as the term "licensed health 8079
professional authorized to prescribe drugs" is defined in section 8080
4729.01 of the Revised Code; insulin as recognized in the official 8081
United States pharmacopoeia; urine and blood testing materials 8082
when used by diabetics or persons with hypoglycemia to test for 8083
glucose or acetone; hypodermic syringes and needles when used by 8084
diabetics for insulin injections; epoetin alfa when purchased for 8085
use in the treatment of persons with end-stage renal disease; 8086
hospital beds when purchased for use by persons with medical 8087
problems for medical purposes; and oxygen and oxygen-dispensing 8088
equipment when purchased for use by persons with medical problems 8089
for medical purposes; 8090

(19) Sales of artificial limbs or portion thereof, breast 8091
prostheses, and other prosthetic devices for humans; braces or 8092
other devices for supporting weakened or nonfunctioning parts of 8093
the human body; wheelchairs; devices used to lift wheelchairs into 8094
motor vehicles and parts and accessories to such devices; crutches 8095
or other devices to aid human perambulation; and items of tangible 8096
personal property used to supplement impaired functions of the 8097
human body such as respiration, hearing, or elimination. No 8098
exemption under this division shall be allowed for nonprescription 8099

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 8131
for cleaning, sanitizing, preserving, grading, sorting, and 8132
classifying by size; packages, including material and parts for 8133
packages, and machinery, equipment, and material for use in 8134
packaging eggs for sale; and handling and transportation equipment 8135
and parts therefor, except motor vehicles licensed to operate on 8136
public highways, used in intraplant or interplant transfers or 8137
shipment of eggs in the process of preparation for sale, when the 8138
plant or plants within or between which such transfers or 8139
shipments occur are operated by the same person. "Packages" 8140
includes containers, cases, baskets, flats, fillers, filler flats, 8141
cartons, closure materials, labels, and labeling materials, and 8142
"packaging" means placing therein. 8143

(25)(a) Sales of water to a consumer for residential use, 8144
except the sale of bottled water, distilled water, mineral water, 8145
carbonated water, or ice; 8146

(b) Sales of water by a nonprofit corporation engaged 8147
exclusively in the treatment, distribution, and sale of water to 8148
consumers, if such water is delivered to consumers through pipes 8149
or tubing. 8150

(26) Fees charged for inspection or reinspection of motor 8151
vehicles under section 3704.14 of the Revised Code; 8152

(27) Sales of solar, wind, or hydrothermal energy systems 8153
that meet the guidelines established under division (B) of section 8154
1551.20 of the Revised Code, components of such systems that are 8155
identified under division (B) or (D) of that section, or charges 8156
for the installation of such systems or components, made during 8157
the period from August 14, 1979, through December 31, 1985; 8158

(28) Sales to persons licensed to conduct a food service 8159
operation pursuant to section 3732.03 of the Revised Code, of 8160
tangible personal property primarily used directly for the 8161

following:	8162
(a) To prepare food for human consumption for sale;	8163
(b) To preserve food that has been or will be prepared for	8164
human consumption for sale by the food service operator, not	8165
including tangible personal property used to display food for	8166
selection by the consumer;	8167
(c) To clean tangible personal property used to prepare or	8168
serve food for human consumption for sale.	8169
(29) Sales of animals by nonprofit animal adoption services	8170
or county humane societies;	8171
(30) Sales of services to a corporation described in division	8172
(A) of section 5709.72 of the Revised Code, and sales of tangible	8173
personal property that qualifies for exemption from taxation under	8174
section 5709.72 of the Revised Code;	8175
(31) Sales and installation of agricultural land tile, as	8176
defined in division (B)(5)(a) of section 5739.01 of the Revised	8177
Code;	8178
(32) Sales and erection or installation of portable grain	8179
bins, as defined in division (B)(5)(b) of section 5739.01 of the	8180
Revised Code;	8181
(33) The sale, lease, repair, and maintenance of the parts	8182
for the or items attached to or incorporated in the motor vehicles that	8183
are primarily used for transporting tangible personal property by	8184
a person engaged in highway transportation for hire;	8185
(34) Sales to the state headquarters of any veterans'	8186
organization in Ohio that is either incorporated and issued a	8187
charter by the congress of the United States or is recognized by	8188
the United States veterans administration, for use by the	8189
headquarters;	8190
(35) Sales to a telecommunications service vendor of tangible	8191

personal property and services used directly and primarily in 8192
transmitting, receiving, switching, or recording any interactive, 8193
two-way electromagnetic communications, including voice, image, 8194
data, and information, through the use of any medium, including, 8195
but not limited to, poles, wires, cables, switching equipment, 8196
computers, and record storage devices and media, and component 8197
parts for the tangible personal property. The exemption provided 8198
in division (B)(35) of this section shall be in lieu of all other 8199
exceptions under division (E)(2) of section 5739.01 of the Revised 8200
Code to which a telecommunications service vendor may otherwise be 8201
entitled based upon the use of the thing purchased in providing 8202
the telecommunications service. 8203

(36) Sales of investment metal bullion and investment coins. 8204
"Investment metal bullion" means any elementary precious metal 8205
that has been put through a process of smelting or refining, 8206
including, but not limited to, gold, silver, platinum, and 8207
palladium, and which is in such state or condition that its value 8208
depends upon its content and not upon its form. "Investment metal 8209
bullion" does not include fabricated precious metal that has been 8210
processed or manufactured for one or more specific and customary 8211
industrial, professional, or artistic uses. "Investment coins" 8212
means numismatic coins or other forms of money and legal tender 8213
manufactured of gold, silver, platinum, palladium, or other metal 8214
under the laws of the United States or any foreign nation with a 8215
fair market value greater than any statutory or nominal value of 8216
such coins. 8217

(37)(a) Sales where the purpose of the consumer is to use or 8218
consume the things transferred in making retail sales and 8219
consisting of newspaper inserts, catalogues, coupons, flyers, gift 8220
certificates, or other advertising material that prices and 8221
describes tangible personal property offered for retail sale. 8222

(b) Sales to direct marketing vendors of preliminary 8223

materials such as photographs, artwork, and typesetting that will 8224
be used in printing advertising material; of printed matter that 8225
offers free merchandise or chances to win sweepstake prizes and 8226
that is mailed to potential customers with advertising material 8227
described in division (B)(37)(a) of this section; and of equipment 8228
such as telephones, computers, facsimile machines, and similar 8229
tangible personal property primarily used to accept orders for 8230
direct marketing retail sales. 8231

(c) Sales of automatic food vending machines that preserve 8232
food with a shelf life of forty-five days or less by refrigeration 8233
and dispense it to the consumer. 8234

For purposes of division (B)(37) of this section, "direct 8235
marketing" means the method of selling where consumers order 8236
tangible personal property by United States mail, delivery 8237
service, or telecommunication and the vendor delivers or ships the 8238
tangible personal property sold to the consumer from a warehouse, 8239
catalogue distribution center, or similar fulfillment facility by 8240
means of the United States mail, delivery service, or common 8241
carrier. 8242

(38) Sales to a person engaged in the business of 8243
horticulture or producing livestock of materials to be 8244
incorporated into a horticulture structure or livestock structure; 8245

(39) The sale of a motor vehicle that is used exclusively for 8246
a vanpool ridesharing arrangement to persons participating in the 8247
vanpool ridesharing arrangement when the vendor is selling the 8248
vehicle pursuant to a contract between the vendor and the 8249
department of transportation; 8250

(40) Sales of personal computers, computer monitors, computer 8251
keyboards, modems, and other peripheral computer equipment to an 8252
individual who is licensed or certified to teach in an elementary 8253
or a secondary school in this state for use by that individual in 8254

preparation for teaching elementary or secondary school students; 8255
8256

(41) Sales to a professional racing team of any of the 8257
following: 8258

(a) Motor racing vehicles; 8259

(b) Repair services for motor racing vehicles; 8260

(c) Items of property that are attached to or incorporated in 8261
motor racing vehicles, including engines, chassis, and all other 8262
components of the vehicles, and all spare, replacement, and 8263
rebuilt parts or components of the vehicles; except not including 8264
tires, consumable fluids, paint, and accessories consisting of 8265
instrumentation sensors and related items added to the vehicle to 8266
collect and transmit data by means of telemetry and other forms of 8267
communication. 8268

(42) Sales of used manufactured homes and used mobile homes, 8269
as defined in section 5739.0210 of the Revised Code, made on or 8270
after January 1, 2000; 8271

(43) Sales of tangible personal property and services to a 8272
provider of electricity used or consumed directly and primarily in 8273
generating, transmitting, or distributing electricity for use by 8274
others, including property that is or is to be incorporated into 8275
and will become a part of the consumer's production, transmission, 8276
or distribution system and that retains its classification as 8277
tangible personal property after incorporation; fuel or power used 8278
in the production, transmission, or distribution of electricity; 8279
and tangible personal property and services used in the repair and 8280
maintenance of the production, transmission, or distribution 8281
system, including only those motor vehicles as are specially 8282
designed and equipped for such use. The exemption provided in this 8283
division shall be in lieu of all other exceptions in division 8284
(E)(2) of section 5739.01 of the Revised Code to which a provider 8285

of electricity may otherwise be entitled based on the use of the 8286
tangible personal property or service purchased in generating, 8287
transmitting, or distributing electricity. 8288

For the purpose of the proper administration of this chapter, 8289
and to prevent the evasion of the tax, it is presumed that all 8290
sales made in this state are subject to the tax until the contrary 8291
is established. 8292

As used in this section, except in division (B)(16) of this 8293
section, "food" includes cereals and cereal products, milk and 8294
milk products including ice cream, meat and meat products, fish 8295
and fish products, eggs and egg products, vegetables and vegetable 8296
products, fruits, fruit products, and pure fruit juices, 8297
condiments, sugar and sugar products, coffee and coffee 8298
substitutes, tea, and cocoa and cocoa products. It does not 8299
include: spirituous or malt liquors; soft drinks; sodas and 8300
beverages that are ordinarily dispensed at bars and soda fountains 8301
or in connection therewith, other than coffee, tea, and cocoa; 8302
root beer and root beer extracts; malt and malt extracts; mineral 8303
oils, cod liver oils, and halibut liver oil; medicines, including 8304
tonics, vitamin preparations, and other products sold primarily 8305
for their medicinal properties; and water, including mineral, 8306
bottled, and carbonated waters, and ice. 8307

(C) The levy of an excise tax on transactions by which 8308
lodging by a hotel is or is to be furnished to transient guests 8309
pursuant to this section and division (B) of section 5739.01 of 8310
the Revised Code does not prevent any of the following: 8311

(1) A municipal corporation or township from levying an 8312
excise tax for any lawful purpose not to exceed three per cent on 8313
transactions by which lodging by a hotel is or is to be furnished 8314
to transient guests in addition to the tax levied by this section. 8315
If a municipal corporation or township repeals a tax imposed under 8316

division (C)(1) of this section and a county in which the 8317
municipal corporation or township has territory has a tax imposed 8318
under division (C) of section 5739.024 of the Revised Code in 8319
effect, the municipal corporation or township may not reimpose its 8320
tax as long as that county tax remains in effect. A municipal 8321
corporation or township in which a tax is levied under division 8322
(B)(2) of section 351.021 of the Revised Code may not increase the 8323
rate of its tax levied under division (C)(1) of this section to 8324
any rate that would cause the total taxes levied under both of 8325
those divisions to exceed three per cent on any lodging 8326
transaction within the municipal corporation or township. 8327

(2) A municipal corporation or a township from levying an 8328
additional excise tax not to exceed three per cent on such 8329
transactions pursuant to division (B) of section 5739.024 of the 8330
Revised Code. Such tax is in addition to any tax imposed under 8331
division (C)(1) of this section. 8332

(3) A county from levying an excise tax pursuant to division 8333
(A) of section 5739.024 of the Revised Code. 8334

(4) A county from levying an excise tax not to exceed three 8335
per cent of such transactions pursuant to division (C) of section 8336
5739.024 of the Revised Code. Such a tax is in addition to any tax 8337
imposed under division (C)(3) of this section. 8338

(5) A convention facilities authority, as defined in division 8339
(A) of section 351.01 of the Revised Code, from levying the excise 8340
taxes provided for in division (B) of section 351.021 of the 8341
Revised Code. 8342

(6) A county from levying an excise tax not to exceed one and 8343
one-half per cent of such transactions pursuant to division (D) of 8344
section 5739.024 of the Revised Code. Such tax is in addition to 8345
any tax imposed under division (C)(3) or (4) of this section. 8346

8347

(7) A county from levying an excise tax not to exceed one and 8348
one-half per cent of such transactions pursuant to division (E) of 8349
section 5739.024 of the Revised Code. Such a tax is in addition to 8350
any tax imposed under division (C)(3), (4), or (6) of this 8351
section. 8352

(D) The levy of this tax on retail sales of recreation and 8353
sports club service shall not prevent a municipal corporation from 8354
levying any tax on recreation and sports club dues or on any 8355
income generated by recreation and sports club dues. 8356

Section 2. That existing sections 113.061, 133.04, 715.013, 8357
718.01, 1551.33, 1551.35, 3317.028, 4905.01, 4905.02, 4905.03, 8358
4905.10, 4905.14, 4905.34, 4905.40, 4905.42, 4905.70, 4906.10, 8359
4909.01, 4909.05, 4909.15, 4909.161, 4911.18, 4933.33, 4933.81, 8360
4935.04, 5117.01, 5117.02, 5117.03, 5117.04, 5117.05, 5117.07, 8361
5117.08, 5117.09, 5117.10, 5117.12, 5701.03, 5703.052, 5703.053, 8362
5703.14, 5705.34, 5727.01, 5727.02, 5727.05, 5727.06, 5727.11, 8363
5727.111, 5727.15, 5727.30, 5727.31, 5727.311, 5727.32, 5727.33, 8364
5727.38, 5727.42, 5727.45, 5727.47, 5727.53, 5727.60, 5727.61, 8365
5727.72, 5727.99, 5733.04, 5733.05, 5733.06, 5733.09, 5733.98, 8366
5739.011, and 5739.02 and sections 4905.301, 4905.66, 4905.67, 8367
4905.68, 4905.69, 4909.157, 4909.158, 4909.159, 4909.191, 8368
4909.192, 4909.193, 4913.01, 4913.02, 4913.03, 4913.04, 4913.05, 8369
4913.06, 4913.07, 4933.27, 4933.34, 5727.231, and 5727.73 of the 8370
Revised Code are hereby repealed. 8371

Section 3. Sections 5727.111 and 5727.15 of the Revised Code, 8372
as amended by this act, shall first apply to tax year 2001. 8373

Section 4. Sections 4933.33, 5727.30, 5727.32, 5727.33, and 8374
5727.38 of the Revised Code, as amended by this act, shall first 8375
apply to the excise tax assessed by the Tax Commissioner for tax 8376
year 2002. 8377

Section 5. Sections 1551.33, 1551.35, 4905.01, 4905.02, 8378
4905.03, 4905.10, 4905.14, 4905.34, 4905.40, 4905.42, 4905.70, 8379
4906.10, 4909.01, 4909.05, 4909.15, 4909.161, 4935.04, and 5703.14 8380
of the Revised Code, as amended by this act, shall take effect on 8381
January 1, 2001, but if the Public Utilities Commission issues an 8382
order under division (C) of section 4928.01 of the Revised Code, 8383
as enacted by this act, the amendments to such sections shall be 8384
applied accordingly. In addition, the amendment of division 8385
(A)(4)(b) of section 4909.15 of the Revised Code, as amended by 8386
this act, shall not be applied until January 1, 2002. 8387

Section 6. Section 5727.45 of the Revised Code, as amended by 8388
this act, shall take effect January 1, 2002. 8389

Section 7. Sections 5117.01, 5117.02, 5117.03, 5117.04, 8390
5117.05, 5117.07, 5117.08, 5117.09, 5117.10, and 5117.12 of the 8391
Revised Code, as amended by this act, shall take effect on July 1, 8392
2000. 8393

Section 8. Section 5727.391 of the Revised Code is hereby 8394
repealed effective January 1, 2002. 8395

Section 9. Sections 4905.301, 4905.66, 4905.67, 4905.68, 8396
4905.69, 4909.157, 4909.158, 4909.159, 4909.191, 4909.192, 8397
4909.193, 4913.01, 4913.02, 4913.03, 4913.04, 4913.05, 4913.06, 8398
4913.07, 4933.27, and 4933.34 of the Revised Code, as repealed by 8399
this act, shall take effect on January 1, 2001, but if the Public 8400
Utilities Commission issues an order under division (C) of section 8401
4928.01 of the Revised Code, as enacted by this act, the repeal of 8402
such sections shall be applied accordingly. 8403

Section 10. The Public Utilities Commission, Consumers' 8404

Counsel, and the Attorney General shall develop a memorandum of 8405
understanding not later than January 1, 2000, to establish a 8406
system to respond effectively and efficiently to residential 8407
consumer inquiries and complaints and shall provide a joint report 8408
to the General Assembly on the efforts of the three agencies not 8409
later than June 30, 2002. 8410

Section 11. (A) As used in this section: 8411

(1) "Electric company" and "rural electric company" have the 8412
same meanings as in section 5727.01 of the Revised Code. 8413

(2) "Gross receipts" means gross receipts determined in 8414
accordance with section 5727.33 of the Revised Code. 8415

(B) Each electric company and rural electric company shall 8416
pay the public utility excise tax imposed by section 5727.30 of 8417
the Revised Code on the company's gross receipts received during 8418
the period of May 1, 2000, through May 1, 2001. Notwithstanding 8419
section 5727.31 of the Revised Code, each electric company and 8420
rural electric company shall make tax payments toward that 8421
liability. The first payment must be made on or before October 15, 8422
2000, and shall equal one-third of the estimated liability shown 8423
in the report filed on or before August 1, 2000. The second 8424
payment must be made on or before March 1, 2001, and shall equal 8425
one-third of the tax assessed by the Tax Commissioner on or before 8426
the first Monday in November, 2000. The last payment must be made 8427
on or before June 1, 2001, and shall equal one-fourth of the tax 8428
assessed by the commissioner. The final report for the period of 8429
May 1, 2000, through May 1, 2001, shall be filed by an electric 8430
company or a rural electric company on or before August 1, 2001, 8431
in accordance with division (A) of section 5727.31 and section 8432
5727.32 of the Revised Code. 8433

On or before the first Monday of November 2001, the Tax 8434

Commissioner shall assess an excise tax equal to four and 8435
three-quarters per cent of the gross receipts received by electric 8436
companies and rural electric companies during the period of May 1, 8437
2000, through May 1, 2001. Except as provided in section 5727.03 8438
of the Revised Code, as enacted by this act, after payment of this 8439
assessment, electric companies and rural electric companies are 8440
not subject to the excise tax imposed by section 5727.30 of the 8441
Revised Code. 8442

Section 12. Electric companies, as defined in section 5727.01 8443
of the Revised Code, shall first be subject to the corporation 8444
franchise tax under Chapter 5733. of the Revised Code for tax year 8445
2002, as "tax year" is defined in section 5733.04 of the Revised 8446
Code. For tax year 2002, an electric company shall pay two-thirds 8447
of its total corporation franchise tax liability under Chapter 8448
5733. of the Revised Code. The amendments in this act to sections 8449
4909.15, 5733.04, 5733.05, 5733.06, 5733.09, and 5733.98 of the 8450
Revised Code, and the enactment in this act of section 5733.39 of 8451
the Revised Code, first apply for tax year 2002. 8452

8453

Section 13. An electric company that is entitled to carry 8454
forward a credit against its public utility excise tax liability 8455
under section 5727.391 of the Revised Code before the repeal of 8456
that section under this act, is not entitled to carry forward any 8457
amount remaining after its last public utility excise tax payment 8458
and claim that amount as a credit against its corporation 8459
franchise tax liability under section 5733.39 of the Revised Code, 8460
as enacted by this act. The credit granted under section 5727.391 8461
of the Revised Code only applies through the last assessment 8462
issued by the Tax Commissioner under Section 11 of this act. 8463

Section 14. The tax levied under section 5727.81 of the 8464

Revised Code first applies on and after May 1, 2001. Before that 8465
date, any electric distribution company shall register with the 8466
Tax Commissioner in accordance with section 5727.93 of the Revised 8467
Code, as enacted by this act. 8468

Section 15. Notwithstanding section 4933.81, as amended by 8469
this act, sections 4933.82 to 4933.90 of the Revised Code, and any 8470
provision of this act, the Public Utilities Commission by order 8471
may establish a residential market pilot program prior to the 8472
starting date of competitive retail electric service as defined in 8473
section 4928.01 of the Revised Code, as enacted by this act. The 8474
program shall enable the commission and the General Assembly to 8475
make an initial evaluation of the effect of competitive retail 8476
electric service on the residential market. The program shall 8477
allow at least five per cent but not more than fifteen per cent of 8478
the residential customers of electric utilities in this state to 8479
select their electric generation supplier. Every residential 8480
customer shall be eligible to participate in a lottery or similar 8481
arrangement, as prescribed in the order, for the final selection 8482
of customer participants. In the order, the commission shall 8483
establish transition charges as contemplated under sections 8484
4928.31 to 4928.40 of the Revised Code, as enacted by this act, to 8485
be in effect for the duration of the program, with shopping 8486
incentives sufficient to allow for market development during the 8487
program. The commission shall report to the General Assembly not 8488
later than November 1, 2000, its findings and recommendations 8489
about the program and the effect of competitive retail electric 8490
service on the residential market. 8491

Section 16. The intent of division (C) of section 5727.81 of 8492
the Revised Code, as enacted by this act, is to craft a revenue 8493
neutral solution for all customer classes, with any margin of 8494

error being resolved in favor of residential customers. 8495

Section 17. Section 5727.47 of the Revised Code is presented 8496
in this act as a composite of the section as amended by both Am. 8497
Sub. H.B. 904 and Am. S.B. 358 of the 119th General Assembly, with 8498
the new language of neither of the acts shown in capital letters. 8499
This is in recognition of the principle stated in division (B) of 8500
section 1.52 of the Revised Code that such amendments are to be 8501
harmonized where not substantively irreconcilable and constitutes 8502
a legislative finding that such is the resulting version in effect 8503
prior to the effective date of this act. 8504

Section 18. If any provision of law that constitutes the 8505
whole or part of a codified or uncoded section of law contained 8506
in this act, or if any application of any provision of law that 8507
constitutes the whole or part of a codified or uncoded section 8508
of law contained in this act, is held invalid, the invalidity does 8509
not affect other provisions of law or applications of provisions 8510
of law that can be given effect without the invalid provision of 8511
law or application. To this end, the provisions of law of which 8512
the codified and uncoded sections contained in this act are 8513
composed, and their applications, are independent and severable. 8514