

**As Reported by House Public Utilities Committee**

**123rd General Assembly**

**Regular Session**

**1999-2000**

**Sub. S. B. No. 3**

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

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**Representatives Mead, Olman, Trakas, Schuler, Goodman, Hoops, Cates**

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**A B I L L**

To amend sections 113.061, 133.04, 715.013, 718.01,	1
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5733.06, 5733.09, 5733.33, 5733.98, 5739.011,	15
5739.02, 5747.31, and 5747.98; to enact sections	16
4928.01 to 4928.20, 4928.31 to 4928.43, 4928.431,	17
4928.44, 4928.51 to 4928.58, 4928.61 to 4928.63,	18
4928.67, 5727.03, 5727.80 to 5727.95, 5733.059,	19
5733.0510, and 5733.39; and to repeal sections	20
4905.301, 4905.66, 4905.67, 4905.68, 4905.69,	21

4909.157, 4909.158, 4909.159, 4909.191, 4909.192,	22
4909.193, 4913.01, 4913.02, 4913.03, 4913.04,	23
4913.05, 4913.06, 4913.07, 4933.27, 4933.34,	24
5727.231, 5727.391, and 5727.73 of the Revised	25
Code to provide for competition in retail electric	26
service, including provisions regarding market	27
structure, consumer protection, and transition	28
revenues; to levy a kilowatt-hour excise tax on	29
electric distribution companies; to revise taxes	30
for electric companies and rural electric	31
companies; to reduce tax assessment rates on	32
certain electric company and rural electric	33
company tangible personal property; and to	34
terminate the Electric Employee Assistance	35
Advisory Board on December 31, 2005, by repealing	36
section 4928.431 of the Revised Code on that date.	37

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

<b>Section 1.</b> That sections 113.061, 133.04, 715.013, 718.01,	38
1551.33, 1551.35, 3317.028, 4905.01, 4905.02, 4905.03, 4905.10,	39
4905.14, 4905.34, 4905.40, 4905.402, 4905.42, 4905.46, 4905.70,	40
4906.10, 4909.01, 4909.05, 4909.15, 4909.161, 4911.18, 4933.14,	41
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5727.311, 5727.32, 5727.33, 5727.38, 5727.42, 5727.45, 5727.47,	46
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5733.051, 5733.057, 5733.06, 5733.09, 5733.33, 5733.98, 5739.011,	48
5739.02, 5747.31, and 5747.98 be amended and sections 4928.01,	49
4928.02, 4928.03, 4928.04, 4928.05, 4928.06, 4928.07, 4928.08,	50

4928.09, 4928.10, 4928.11, 4928.12, 4928.13, 4928.14, 4928.15, 51  
4928.16, 4928.17, 4928.18, 4928.19, 4928.20, 4928.31, 4928.32, 52  
4928.33, 4928.34, 4928.35, 4928.36, 4928.37, 4928.38, 4928.39, 53  
4928.40, 4928.41, 4928.42, 4928.43, 4928.431, 4928.44, 4928.51, 54  
4928.52, 4928.53, 4928.54, 4928.55, 4928.56, 4928.57, 4928.58, 55  
4928.61, 4928.62, 4928.63, 4928.67, 5727.03, 5727.80, 5727.81, 56  
5727.82, 5727.83, 5727.84, 5727.85, 5727.86, 5727.87, 5727.88, 57  
5727.89, 5727.90, 5727.91, 5727.92, 5727.93, 5727.94, 5727.95, 58  
5733.059, 5733.0510, and 5733.39 of the Revised Code be enacted to 59  
read as follows: 60

**Sec. 113.061.** The treasurer of state shall adopt rules in 61  
accordance with Chapter 119. of the Revised Code governing the 62  
remittance of taxes by electronic funds transfer as required under 63  
sections 5727.311, 5727.83, 5733.022, 5735.062, 5739.032, 64  
5739.122, 5741.121, and 5747.072 of the Revised Code and any other 65  
section of the Revised Code under which a person is required to 66  
remit taxes by electronic funds transfer. The rules shall govern 67  
the modes of electronic funds transfer acceptable to the treasurer 68  
of state and under what circumstances each mode is acceptable, the 69  
content and format of electronic funds transfers, the coordination 70  
of payment by electronic funds transfer and filing of associated 71  
tax reports and returns, the remittance of taxes by means other 72  
than electronic funds transfer by persons otherwise required to do 73  
so but relieved of the requirement by the treasurer of state, and 74  
any other matter that in the opinion of the treasurer of state 75  
facilitates payment by electronic funds transfer in a manner 76  
consistent with those sections. 77

Upon failure by a person, if so required, to remit taxes by 78  
electronic funds transfer in the manner prescribed under section 79  
5727.83, 5733.022, 5735.062, 5739.032, 5739.122, 5741.121, or 80  
5747.072 of the Revised Code and rules adopted under this section, 81

the treasurer of state shall notify the tax commissioner of such 82  
failure if the treasurer of state determines that such failure was 83  
not due to reasonable cause or was due to willful neglect, and 84  
shall provide the tax commissioner with any information used in 85  
making that determination. The tax commissioner may assess an 86  
additional charge as specified in the respective section of the 87  
Revised Code governing the requirement to remit taxes by 88  
electronic funds transfer. 89

The treasurer of state may implement means of acknowledging, 90  
upon the request of a taxpayer, receipt of tax remittances made by 91  
electronic funds transfer, and may adopt rules governing 92  
acknowledgments. The cost of acknowledging receipt of electronic 93  
remittances shall be paid by the person requesting acknowledgment. 94

The treasurer of state, not the tax commissioner, is 95  
responsible for resolving any problems involving electronic funds 96  
transfer transmissions. 97

**Sec. 133.04.** (A) As used in this chapter, "net indebtedness" 98  
means, as determined pursuant to this section, the principal 99  
amount of the outstanding securities of a subdivision less the 100  
amount held in a bond retirement fund to the extent such amount is 101  
not taken into account in determining the principal amount 102  
outstanding under division (AA) of section 133.01 of the Revised 103  
Code. For purposes of this definition, the principal amount of 104  
outstanding securities includes the principal amount of 105  
outstanding securities of another subdivision apportioned to the 106  
subdivision as a result of acquisition of territory, and excludes 107  
the principal amount of outstanding securities of the subdivision 108  
apportioned to another subdivision as a result of loss of 109  
territory and the payment or reimbursement obligations of the 110  
subdivision under credit enhancement facilities relating to 111  
outstanding securities. 112

(B) In calculating the net indebtedness of a subdivision, 113  
none of the following securities, including anticipatory 114  
securities issued in anticipation of their issuance, shall be 115  
considered: 116

(1) Securities issued in anticipation of the levy or 117  
collection of special assessments, either in original or refunded 118  
form; 119

(2) Securities issued in anticipation of the collection of 120  
current revenues for the fiscal year or other period not to exceed 121  
twelve consecutive months, or securities issued in anticipation of 122  
the collection of the proceeds from a specifically identified 123  
voter-approved tax levy; 124

(3) Securities issued for purposes described in section 125  
133.12 of the Revised Code; 126

(4) Securities issued under Chapter 122., 140., 165., 725., 127  
or 761.7 or section 131.23 of the Revised Code; 128

(5) Securities issued to pay final judgments or 129  
court-approved settlements under authorizing laws and securities 130  
issued under section 2744.081 of the Revised Code; 131

(6) Securities issued to pay costs of permanent improvements 132  
to the extent they are issued in anticipation of the receipt of, 133  
and are payable as to principal from, federal or state grants or 134  
distributions for, or legally available for, that principal or for 135  
the costs of those permanent improvements; 136

(7) Securities issued to evidence loans from the state 137  
capital improvements fund pursuant to Chapter 164. of the Revised 138  
Code or from the state infrastructure bank pursuant to section 139  
5531.09 of the Revised Code; 140

(8) Securities issued in an amount equal to the property tax 141  
replacement payments received under section 5727.85 or 5727.86 of 142

<u>the Revised Code;</u>	143
(9) Other securities, including self-supporting securities, excepted by law from the calculation of net indebtedness or from the application of this chapter;	144 145 146
<del>(9)</del> (10) Any other securities outstanding on October 30, 1989, and then excepted from the calculation of net indebtedness or from the application of this chapter, and securities issued at any time to fund or refund those securities.	147 148 149 150
<b>Sec. 715.013.</b> Except as otherwise expressly authorized by the Revised Code, no municipal corporation shall levy a tax that is the same as or similar to a tax levied under Chapter 322., 3734., 3769., 4123., 4141., 4301., 4303., 4305., 4307., 4309., 5707., 5725., 5727., 5728., 5729., 5731., 5735., 5737., 5739., 5741., 5743., or 5749. of the Revised Code.	151 152 153 154 155 156
This section does not prohibit a municipal corporation from levying a tax on amounts received for admission to any place <u>or,</u> <u>on and after January 1, 2002, on the income of an electric company</u> <u>or combined company, as defined in section 5727.01 of the Revised</u> <u>Code.</u>	157 158 159 160 161
<b>Sec. 718.01.</b> (A) As used in this chapter:	162
(1) "Internal Revenue Code" means the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended.	163 164
(2) "Schedule C" means internal revenue service schedule C filed by a taxpayer pursuant to the Internal Revenue Code.	165 166
(3) "Form 2106" means internal revenue service form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.	167 168
(4) "Intangible income" means income of any of the following types: income yield, interest, dividends, or other income arising from the ownership, sale, exchange, or other disposition of	169 170 171

intangible property including, but not limited to, investments, 172  
deposits, money, or credits as those terms are defined in Chapter 173  
5701. of the Revised Code. 174

(B) No municipal corporation with respect to that income 175  
~~which~~ that it may tax shall tax such income at other than a 176  
uniform rate. 177

(C) No municipal corporation shall levy a tax on income at a 178  
rate in excess of one per cent without having obtained the 179  
approval of the excess by a majority of the electors of the 180  
municipality voting on the question at a general, primary, or 181  
special election. The legislative authority of the municipal 182  
corporation shall file with the board of elections at least 183  
seventy-five days before the day of the election a copy of the 184  
ordinance together with a resolution specifying the date the 185  
election is to be held and directing the board of elections to 186  
conduct the election. The ballot shall be in the following form: 187  
"Shall the Ordinance providing for a... per cent levy on income 188  
for (Brief description of the purpose of the proposed levy) be 189  
passed? 190

FOR THE INCOME TAX 191

AGAINST THE INCOME TAX" 192

In the event of an affirmative vote, the proceeds of the levy 193  
may be used only for the specified purpose. 194

(D)(1) Except as otherwise provided in division (D)(2) of 195  
this section, no municipal corporation shall exempt from a tax on 196  
income, compensation for personal services of individuals over 197  
eighteen years of age or the net profit from a business or 198  
profession. 199

(2) The legislative authority of a municipal corporation may, 200  
by ordinance or resolution, exempt from a tax on income any 201

compensation arising from the grant, sale, exchange, or other  
disposition of a stock option; the exercise of a stock option; or  
the sale, exchange, or other disposition of stock purchased under  
a stock option.

(E) Nothing in this section shall prevent a municipal  
corporation from permitting lawful deductions as prescribed by  
ordinance. If a taxpayer's taxable income includes income against  
which the taxpayer has taken a deduction for federal income tax  
purposes as reportable on the taxpayer's form 2106, and against  
which a like deduction has not been allowed by the municipal  
corporation, the municipal corporation shall deduct from the  
taxpayer's taxable income an amount equal to the deduction shown  
on such form allowable against such income, to the extent not  
otherwise so allowed as a deduction by the municipal corporation.  
In the case of a taxpayer who has a net profit from a business or  
profession that is operated as a sole proprietorship, no municipal  
corporation may tax or use as the base for determining the amount  
of the net profit that shall be considered as having a taxable  
situs in the municipal corporation, a greater amount than the net  
profit reported by the taxpayer on schedule C filed in reference  
to the year in question as taxable income from such sole  
proprietorship, except as otherwise specifically provided by  
ordinance or regulation.

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

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

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

activities;	233
(3) Except as otherwise provided in division (G) of this section, intangible income;	234 235
(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.	236 237 238 239 240 241 242
(5) Compensation paid to an employee of a transit authority, regional transit authority, or regional transit commission created under Chapter 306. of the Revised Code for operating a transit bus or other motor vehicle for the authority or commission in or through the municipal corporation, unless the bus or vehicle is operated on a regularly scheduled route, the operator is subject to such a tax by reason of residence or domicile in the municipal corporation, or the headquarters of the authority or commission is located within the municipal corporation.	243 244 245 246 247 248 249 250 251
(6) The income of a public utility when that public utility is subject to the tax levied under section 5727.30 of the Revised Code, <u>except starting January 1, 2002, the income of an electric company or combined company, as defined in section 5727.01 of the Revised Code, may be taxed by a municipal corporation. For a combined company, only the income attributed from the activity of an electric company shall be subject to taxation by a municipal corporation. The income of an electric company or combined company subject to taxation by a municipal corporation shall be computed by taking into account the adjustments provided by division (I)(16) of section 5733.04 of the Revised Code.</u>	252 253 254 255 256 257 258 259 260 261 262
(G) Any municipal corporation that taxes any type of	263

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

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

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

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

(1) Biennially prepare and maintain the Ohio coal development  
agenda required under section 1551.34 of the Revised Code;

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

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

(4) Initiate, undertake, and support projects to carry out	294
the office's purposes and ensure that the projects are consistent	295
with and meet the selection criteria established by the Ohio coal	296
development agenda;	297
(5) Actively encourage joint participation in and, when	298
feasible, joint funding of the office's projects with governmental	299
agencies, electric utilities, universities and colleges, other	300
public or private interests, or any other person;	301
(6) Establish a table of organization for and employ such	302
employees and agents as are necessary for the administration and	303
operation of the office;	304
(7) Appoint specified members of and convene the technical	305
advisory committee established under section 1551.35 of the	306
Revised Code;	307
(8) Review, with the assistance of the technical advisory	308
committee, proposed coal research and development projects as	309
defined in section 1555.01 of the Revised Code, and coal	310
development projects, submitted to the office by public utilities	311
for the <del>purposes</del> <u>purpose</u> of <del>sections 4905.301,</del> <u>section</u> 4905.304,	312
<del>and 4909.191</del> of the Revised Code. If the director and the advisory	313
committee determine that any such facility or project has as its	314
purpose the enhanced use of Ohio coal in an environmentally	315
acceptable, cost effective manner, promotes energy conservation,	316
is cost effective, and is environmentally sound, the director	317
shall submit to the public utilities commission a report	318
recommending that the commission allow the recovery of costs	319
associated with the facility or project under section <del>4905.301,</del>	320
4905.304, <del>or 4909.191</del> of the Revised Code and including the	321
reasons for the recommendation;	322
(9) Establish such policies, procedures, and guidelines as	323
are necessary to achieve the office's purposes.	324

(C) With the approval of the director of development, the 325  
director of the office may exercise any of the powers and duties 326  
of the director of development as the directors consider 327  
appropriate or desirable to achieve the office's purposes, 328  
including, but not limited to, the powers and duties enumerated in 329  
sections 1551.11, 1551.12, 1551.13, and 1551.15 of the Revised 330  
Code. 331

Additionally, the director of the office may make loans to 332  
governmental agencies or persons for projects to carry out the 333  
office's purposes. Fees, charges, rates of interest, times of 334  
payment of interest and principal, and other terms, conditions, 335  
and provisions of the loans shall be such as the director of the 336  
office determines to be appropriate and in furtherance of the 337  
purposes for which the loans are made. The mortgage lien securing 338  
any moneys lent by the director of the office may be subordinate 339  
to the mortgage lien securing any moneys lent or invested by a 340  
financial institution, but shall be superior to that securing any 341  
moneys lent or expended by any other person. The moneys used in 342  
making the loans shall be disbursed upon order of the director of 343  
the office. 344

**Sec. 1551.35.** (A) There is hereby established a technical 345  
advisory committee to assist the director of the Ohio coal 346  
development office established under section 1551.32 of the 347  
Revised Code in achieving the office's purposes. The director 348  
shall appoint to the committee one member of the public utilities 349  
commission ~~of Ohio~~ and one representative each of coal production 350  
companies, the united mine workers of America, electric utilities, 351  
manufacturers that use Ohio coal, and environmental organizations, 352  
as well as two people with a background in coal research and 353  
development technology, one of whom is employed at the time of the 354  
member's appointment by a state university, as defined in section 355

3345.011 of the Revised Code. In addition, the committee shall 356  
include four legislative members. The speaker and minority leader 357  
of the house of representatives each shall appoint one member of 358  
the house of representatives, and the president and minority 359  
leader of the senate each shall appoint one member of the senate, 360  
to the committee. The director of environmental protection, 361  
representing the environmental protection agency, the Ohio air 362  
quality development authority, and the Ohio water development 363  
authority, shall serve on the committee as members ex officio. Any 364  
member of the committee may designate in writing a substitute to 365  
serve in the member's absence on the committee. The director of 366  
environmental protection may designate in writing the chief of the 367  
air pollution control division of the agency to represent the 368  
agency. Members shall serve on the committee at the pleasure of 369  
their appointing authority. Members of the committee appointed by 370  
the director of the office and, notwithstanding section 101.26 of 371  
the Revised Code, legislative members of the committee, when 372  
engaged in their official duties as members of the committee, 373  
shall be compensated on a per diem basis in accordance with 374  
division (J) of section 124.15 of the Revised Code, except that 375  
the member of the public utilities commission ~~of Ohio~~ and, while 376  
employed by a state university, the member with a background in 377  
coal research, shall not be so compensated. Members shall receive 378  
their actual and necessary expenses incurred in the performance of 379  
their duties. 380

(B) The technical advisory committee shall review and make 381  
recommendations concerning the Ohio coal development agenda 382  
required under section 1551.34 of the Revised Code, project 383  
proposals, research and development projects submitted to the 384  
office by public utilities for the ~~purposes~~ purpose of ~~sections~~ 385  
~~4905.301~~, section 4905.304, ~~and 4909.191~~ of the Revised Code, 386  
proposals for grants, loans, and loan guarantees for purposes of 387

sections 1555.01 to 1555.06 of the Revised Code, and such other 388  
topics as the director of the office considers appropriate. 389

(C) The technical advisory committee may hold an executive 390  
session at any regular or special meeting for the purpose of 391  
considering research and development project proposals or 392  
applications for assistance submitted to the Ohio coal development 393  
office under section 1551.33, or sections 1555.01 to 1555.06, of 394  
the Revised Code, to the extent that such proposals or 395  
applications consist of trade secrets or other proprietary 396  
information. 397

Any materials or data submitted to, made available to, or 398  
received by the director of development or the director of the 399  
Ohio coal development office in connection with agreements for 400  
assistance entered into under this chapter or Chapter 1555. of the 401  
Revised Code, or any information taken from such materials or data 402  
for any purpose, to the extent that the materials or data consist 403  
of trade secrets or other proprietary information, are not public 404  
records for the purposes of section 149.43 of the Revised Code. 405

As used in this division, "trade secrets" has the same 406  
meaning as in section 1333.61 of the Revised Code. 407

**Sec. 3317.028.** (A) On or before the fifteenth day of May in 408  
each calendar year, the tax commissioner shall determine for each 409  
school district whether the taxable value of all tangible personal 410  
property, including utility tangible personal property, subject to 411  
taxation by the district in the preceding tax year was less or 412  
greater than the taxable value of such property during the second 413  
preceding tax year. If any such decrease exceeds five per cent of 414  
the district's tangible personal property taxable value included 415  
in the total taxable value used in the district's state aid 416  
computation for the fiscal year that ends in the current calendar 417  
year, or if any such increase exceeds five per cent of the 418

district's total taxable value used in the district's state aid 419  
computation for the fiscal year that ends in the current calendar 420  
year, the tax commissioner shall certify both of the following to 421  
the department of education: 422

~~(A)(1)~~ The taxable value of the tangible personal property 423  
increase or decrease, including utility tangible personal property 424  
increase or decrease, which shall be considered a change in 425  
valuation; ~~and~~ 426

~~(B)(2)~~ The decrease or increase in taxes charged and payable 427  
on such change in taxable value calculated in the same manner as 428  
in division (A)(3) of section 3317.021 of the Revised Code. 429

(B) Notwithstanding division (A) of this section, when 430  
determining under that division in calendar year 2002 whether the 431  
taxable value of tangible personal property subject to taxation by 432  
each school district in the preceding tax year was less or greater 433  
than the taxable value of such property during the second 434  
preceding tax year, the Tax Commissioner shall exclude from the 435  
taxable value for both years the tax value loss, as defined in 436  
section 5727.84 of the Revised Code. 437

(C) Upon receipt of such certification, the department of 438  
education shall reduce or increase by the respective amounts 439  
certified, the taxable value and the taxes charged and payable 440  
that were used in the district's state aid computation under 441  
section 3317.022 of the Revised Code for the fiscal year that ends 442  
in the current calendar year and shall recompute the state aid for 443  
such fiscal year. During the last six months of the fiscal year, 444  
the department shall pay the district a sum equal to one-half of 445  
the recomputed payments in lieu of the payments otherwise required 446  
under such sections. 447

**Sec. 4905.01.** As used in this chapter: 448

(A) "Railroad" has the meaning set forth in section 4907.02 449  
of the Revised Code. 450

(B) "Motor transportation company" has the meaning set forth 451  
in sections 4905.03 and 4921.02 of the Revised Code. 452

(C) "Trailer," "public highway," "fixed termini," "regular 453  
route," and "irregular route" have the meanings set forth in 454  
section 4921.02 of the Revised Code. 455

(D) "Private motor carrier," "contract carrier by motor 456  
vehicle," "motor vehicle," and "charter party trip" have the 457  
meanings set forth in section 4923.02 of the Revised Code. 458

~~(E) "Delivery cost" means the cost of delivery of fuel, to be 459  
used for the generation of electricity, from the site of 460  
production directly to the site of an electric generating 461  
facility. 462~~

~~(F) "Acquisition cost" means the cost to an electric light 463  
company of acquiring fuel for generation of electricity. In the 464  
case of a fuel supply owned by the company, such term shall also 465  
include the cost of legally extracting the fuel and its handling 466  
prior to its shipment to the company. In the case of a coal supply 467  
owned or controlled in whole or in part by the company, such term 468  
shall not exceed a price that is, in the judgment of the public 469  
utilities commission, reasonable when compared to the average cost 470  
per million British thermal units of similar quality coal 471  
purchased from all independent like mining operations under 472  
similar term contracts during the same period. In determining a 473  
reasonable price for coal from a coal supply owned or controlled 474  
in whole or in part by the company, the public utilities 475  
commission shall consider the use of: 476~~

~~(1) Capital by the developer of the mining operation in a 477  
manner that did not: 478~~

~~(a) Take into account intermediate or long term trends in the coal mining industry; or~~ 479  
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~~(b) Incorporate a design consistent with long term dependability; and~~ 481  
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~~(c) Take into account the intermediate or long term cost and reliable energy supply interests of the company's customers; or~~ 483  
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~~(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.~~ 485  
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~~(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.~~ 495  
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~~(H) "Base period" means the most recent six month period for which the public utilities commission has determined either the amount of the fuel component or the fuel cost per kilowatt hour included in the base rates of an electric light company, whichever is last determined.~~ 500  
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~~(I) "Current period" means the six month period immediately succeeding the base period for which the public utilities commission has determined the amount of the fuel component in the base rate of an electric light company.~~ 505  
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~~(J)~~ "Ohio coal research and development costs" means all 509  
reasonable costs associated with a facility or project undertaken 510  
by a public utility for which a recommendation to allow the 511  
recovery of costs associated therewith has been made under 512  
division (B)(8) of section 1551.33 of the Revised Code, including, 513  
but not limited to, capital costs, such as costs of debt and 514  
equity; construction and operation costs; termination and 515  
retirement costs; costs of feasibility and marketing studies 516  
associated with the project; and the acquisition and delivery 517  
costs of Ohio coal used in the project, less any expenditures of 518  
grant moneys. 519

~~(K) "Compliance facility" means property that is designed, 520  
constructed, or installed, and used, at a coal fired electric 521  
generating facility for the primary purpose of complying with 522  
Phase I acid rain control requirements under Title IV of the 523  
"Clean Air Act Amendments of 1990," 104 Stat. 2584, 42 U.S.C.A. 524  
7651, and that controls or limits emissions of sulfur or nitrogen 525  
compounds resulting from the combustion of coal through the 526  
removal or reduction of those compounds before, during, or after 527  
the combustion of the coal, but before the combustion products are 528  
emitted into the atmosphere. "Compliance facility" also includes 529  
any of the following: 530~~

~~(1) A facility that removes sulfur compounds from coal before 531  
the combustion of the coal and that is located off the premises of 532  
the electric generating facility where the coal processed by the 533  
compliance facility is burned; 534~~

~~(2) Modifications to the electric generating facility where 535  
the compliance facility is constructed or installed that are 536  
necessary to accommodate the construction or installation, and 537  
operation, of the compliance facility; 538~~

~~(3) A byproduct disposal facility, as defined in section 539~~

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

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

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

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

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

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

(D) Railroads as defined in sections 4907.02 and 4907.03 of the Revised Code; 570  
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(E) Electric light companies that supply only competitive retail electric service as defined in section 4928.01 of the Revised Code and that do not supply noncompetitive retail electric service as defined in that section. 572  
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**Sec. 4905.03.** As used in this chapter: 576

(A) Any person, firm, copartnership, voluntary association, joint-stock association, company, or corporation, wherever organized or incorporated, is: 577  
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(1) A telegraph company, when engaged in the business of transmitting telegraphic messages to, from, through, or in this state; 580  
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(2) A telephone company, when engaged in the business of transmitting telephonic messages to, from, through, or in this state and as such is a common carrier; 583  
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(3) A motor transportation company, when engaged in the business of carrying and transporting persons or property or the business of providing or furnishing such transportation service, for hire, in or by motor-propelled vehicles of any kind, including trailers, for the public in general, over any public street, road, or highway in this state, except as provided in section 4921.02 of the Revised Code; 586  
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(4) An electric light company, when engaged in the business of supplying electricity for light, heat, or power purposes to consumers within this state, including supplying electric transmission service for electricity delivered to consumers in this state, but excluding a regional transmission organization approved by the federal energy regulatory commission; 593  
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(5) A gas company, when engaged in the business of supplying 599

artificial gas for lighting, power, or heating purposes to 600  
consumers within this state or when engaged in the business of 601  
supplying artificial gas to gas companies or to natural gas 602  
companies within this state, but a producer engaged in supplying 603  
to one or more gas or natural gas companies, only such artificial 604  
gas as is manufactured by that producer as a by-product of some 605  
other process in which the producer is primarily engaged within 606  
this state is not thereby a gas company. All rates, rentals, 607  
tolls, schedules, charges of any kind, or agreements between any 608  
gas company and any other gas company or any natural gas company 609  
providing for the supplying of artificial gas and for compensation 610  
for the same are subject to the jurisdiction of the public 611  
utilities commission. 612

(6) A natural gas company, when engaged in the business of 613  
supplying natural gas for lighting, power, or heating purposes to 614  
consumers within this state. Notwithstanding the above, neither 615  
the delivery nor sale of Ohio-produced natural gas by a producer 616  
or gatherer under a public utilities commission-ordered exemption, 617  
adopted before, as to producers, or after, as to producers or 618  
gatherers, January 1, 1996, or the delivery or sale of 619  
Ohio-produced natural gas by a producer or gatherer of 620  
Ohio-produced natural gas, either to a lessor under an oil and gas 621  
lease of the land on which the producer's drilling unit is 622  
located, or the grantor incident to a right-of-way or easement to 623  
the producer or gatherer, shall cause the producer or gatherer to 624  
be a natural gas company for the purposes of this section. 625

All rates, rentals, tolls, schedules, charges of any kind, or 626  
agreements between a natural gas company and other natural gas 627  
companies or gas companies providing for the supply of natural gas 628  
and for compensation for the same are subject to the jurisdiction 629  
of the public utilities commission. The commission, upon 630  
application made to it, may relieve any producer or gatherer of 631

natural gas, defined in this section as a gas company or a natural  
gas company, of compliance with the obligations imposed by this  
chapter and Chapters 4901., 4903., 4907., 4909., 4921., and 4923.  
of the Revised Code, so long as the producer or gatherer is not  
affiliated with or under the control of a gas company or a natural  
gas company engaged in the transportation or distribution of  
natural gas, or so long as the producer or gatherer does not  
engage in the distribution of natural gas to consumers.

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

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

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

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

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

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

(12) A suburban railroad company, when engaged in the 662  
business of operating as a common carrier, whether wholly or 663  
partially within this state, a part of a street railway 664  
constructed or extended beyond the limits of a municipal 665  
corporation, and not a part of an interurban railroad; 666

(13) An interurban railroad company, when engaged in the 667  
business of operating a railroad, wholly or partially within this 668  
state, with one or more tracks from one municipal corporation or 669  
point in this state to another municipal corporation or point in 670  
this state, whether constructed upon the public highways or upon 671  
private rights-of-way, outside of municipal corporations, using 672  
electricity or other motive power than steam power for the 673  
transportation of passengers, packages, express matter, United 674  
States mail, baggage, and freight. Such an interurban railroad 675  
company is included in the term "railroad" as used in section 676  
4907.02 of the Revised Code. 677

(14) A sewage disposal system company, when engaged in the 678  
business of sewage disposal services through pipes or tubing, and 679  
treatment works, or in a similar manner, within this state. 680

(B) "Motor-propelled vehicle" means any automobile, 681  
automobile truck, motor bus, or any other self-propelled vehicle 682  
not operated or driven upon fixed rails or tracks. 683

~~Nothing in this section shall be construed to mean that an 684  
electric light company operated not for profit, owned and operated 685  
exclusively by and solely for its customers, or owned or operated 686  
by a municipal corporation, is subject to sections 4905.66, 687  
4905.67, 4905.68, and 4905.69 of the Revised Code. 688~~

**Sec. 4905.10.** (A) For the sole purpose of maintaining and 689  
administering the public utilities commission and exercising its 690  
supervision and jurisdiction over the railroads and public 691

utilities of the state, an amount equivalent to the appropriation 692  
from the public utilities fund created under division (B) of this 693  
section to the public utilities commission for railroad and public 694  
utilities regulation in each fiscal year shall be apportioned 695  
among and assessed against ~~the railroads~~ each railroad and public 696  
~~utilities~~ utility within the state by the commission by first 697  
computing an assessment as though it were to be made in proportion 698  
to the intrastate gross earnings or receipts, excluding earnings 699  
or receipts from sales to other public utilities for resale, of 700  
the ~~railroads and~~ railroad or public utilities utility for the 701  
calendar year next preceding that in which the ~~assessments are~~ 702  
assessment is made. The commission may include in that first 703  
computation any amount of a railroad's or public utility's 704  
intrastate gross earnings or receipts that were underreported in a 705  
prior year. in addition to whatever penalties apply under the 706  
Revised Code to such underreporting, the commission shall assess 707  
the railroad or public utility interest at the rate stated in 708  
division (A) of section 1343.01 of the Revised Code. the 709  
commission shall deposit any interest so collected into the public 710  
utilities fund. 711

The final computation of the assessment shall consist of 712  
imposing upon each railroad and public utility whose assessment 713  
under the first computation would have been fifty dollars or less 714  
an assessment of fifty dollars and recomputing the ~~assessment~~ 715  
assessments of the remaining railroads and public utilities by 716  
apportioning an amount equal to the appropriation to the public 717  
utilities commission for administration of the utilities division 718  
in each fiscal year less the total amount to be recovered from 719  
those paying the minimum assessment, in proportion to the 720  
intrastate gross earnings or receipts of the remaining railroads 721  
and public utilities for the calendar year next preceding that in 722  
which the assessments are made. 723

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

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

(C) Within five days after the beginning of each fiscal year, the director of budget and management shall transfer from the general revenue fund to the public utilities fund an amount sufficient for maintaining and administering the public utilities commission and exercising its supervision and jurisdiction over the railroads and public utilities of the state during the first four months of the fiscal year. The director shall transfer the same amount back to the general revenue fund from the public

utilities fund at such time as the director determines that the 756  
balance of the public utilities fund is sufficient to support the 757  
appropriations from the fund for the fiscal year. The director may 758  
transfer less than that amount if the director determines that the 759  
revenues of the public utilities fund during the fiscal year will 760  
be insufficient to support the appropriations from the fund for 761  
the fiscal year, in which case the amount not paid back to the 762  
general revenue fund shall be payable to the general revenue fund 763  
in future fiscal years. 764

~~(C)~~(D) For the purpose of this section only, "public utility" 765  
includes, in addition to an electric utility as defined in section 766  
4928.01 of the Revised Code, an electric services company, an 767  
electric cooperative, or a governmental aggregator subject to 768  
certification under section 4928.08 of the Revised Code, to the 769  
extent of the company's, cooperative's, or aggregator's engagement 770  
in the business of supplying or arranging for the supply in this 771  
state of any retail electric service for which it must be so 772  
certified. 773

(E) Each public utilities commissioner shall receive a salary 774  
fixed at the level set by pay range 49 under schedule E-2 of 775  
section 124.152 of the Revised Code. 776

**Sec. 4905.14.** (A) Every public utility shall file an annual 777  
report with the public utilities commission. The report shall be 778  
filed at the time and in the form prescribed by the commission, 779  
shall be duly verified, and shall cover the yearly period fixed by 780  
the commission. The commission shall prescribe the character of 781  
the information to be embodied in the annual report, and shall 782  
furnish to each public utility a blank form for it. Every public 783  
utility also shall file a copy of the annual report with the 784  
office of consumers' counsel; the copy shall be filed at the same 785  
time that the original is filed with the commission. If any annual 786

report filed with the commission is defective or erroneous, the 787  
commission may order that it be amended within a prescribed time. 788  
Any amendments made pursuant to such an order shall be filed with 789  
the commission and with the office of consumers' counsel. Each 790  
annual report filed with the commission shall be preserved in the 791  
office of the commission. The commission may, at any time, require 792  
specific answers to questions upon which it desires information. 793

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(B) On the first day of July and the first day of November of 795  
each year, each gas company, and natural gas company, ~~and electric~~ 796  
~~light company~~ shall file with the commission a report in 797  
quintuplicate stating: 798

(1) The total demand, stated in terms of ~~kilowatt hours or~~ 799  
cubic feet, that the company projects will be expected of the 800  
company for the following twelve months; 801

~~(2) With respect to electric light companies, the supply of~~ 802  
~~fuel for the generation of electricity that they will possess as~~ 803  
~~of the first day of July and the first day of November;~~ 804

~~(3) With respect to gas companies and natural gas companies,~~ 805  
The pertinent details of supply contracts with pipeline 806  
companies and producers for the following twelve months that they 807  
have executed and the quantity of the gas that they will possess 808  
in storage and will be available for delivery as of the first day 809  
of July and the first day of November; 810

~~(4)~~(3) Where it appears from a comparison of the information 811  
reported in division (B)(1) of this section with that reported in 812  
division (B)(2) ~~or (3)~~ of this section that the total demand 813  
projected by the company for the twelve months following the date 814  
of the report will exceed the ability of the company to furnish 815  
it, the means which the company intends to employ in order to 816  
prevent any interruption or curtailment of service. 817

(C) The public utilities commission may require any telephone company to file with its annual report, supplementary reports of each exchange area owned or operated by it, in such detail as the commission may prescribe. Upon request of fifteen per cent of the subscribers of any telephone exchange, the public utilities commission shall require the report for such exchange area.

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

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

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

(2) For reorganization or readjustment of its indebtedness 848  
and capitalization, for the discharge or lawful refunding of its 849  
obligation, or for the reimbursement of moneys actually expended 850  
for such purposes from income or from any other moneys in the 851  
treasury of the public utility or railroad not secured or obtained 852  
from the issue of stocks, bonds, notes, or other evidences of 853  
indebtedness of such public utility or railroad. No reimbursement 854  
of moneys expended for such purposes from income or other moneys 855  
in the treasury shall be authorized unless the applicant has kept 856  
its accounts and vouchers of such expenditures in such manner as 857  
to enable the commission to ascertain the amount and purposes of 858  
such expenditures. 859

(B) Any public utility, subject to the jurisdiction of the 860  
commission, may, when authorized by the commission, issue shares 861  
of common capital stock to acquire or pay for shares of common 862  
capital stock of a public utility of this or an adjoining state 863  
whose property is so located as to permit the operation of the 864  
properties of such utilities as an integrated system if the 865  
applicant owns, or by this issue will acquire, not less than 866  
sixty-five per cent of the issued and outstanding common capital 867  
shares of the company whose shares are to be acquired, and if the 868  
consideration to be capitalized by the acquiring company does not 869  
exceed the par or stated value at which the shares so acquired 870  
were issued. 871

(C) Any bonds, notes, or other evidences of indebtedness 872  
payable at periods of more than twelve months after their date may 873  
be issued as provided in sections 4905.40 to 4905.43 of the 874  
Revised Code, regardless of the amount of the capital stock of the 875  
public utility or railroad, subject to the approval of the 876  
commission of the excess of such bonds, notes, or other evidences 877  
of indebtedness above the amount of the capital stock of such 878  
public utility or railroad. 879

(D) The commission shall authorize on the best terms 880  
obtainable such issues of stocks, bonds, and other evidences of 881  
indebtedness as are necessary to enable any public utility to 882  
comply with any contract made between such public utility and any 883  
municipal corporation prior to June 30, 1911. 884

(E) The commission may authorize a public utility that is an 885  
electric light company to issue equity securities, or debt 886  
securities having a term of more than twelve months from the date 887  
of issuance, for the purpose of yielding to the company the 888  
capacity to acquire a facility that produces fuel for the 889  
generation of electricity. 890

(F) In any proceeding under division (A)(1) of this section 891  
initiated by a public utility, the commission shall determine and 892  
set forth in its order: 893

(1) Whether the purpose to which the issue or any proceeds of 894  
it shall be applied was or is reasonably required by the utility 895  
to meet its present and prospective obligations to provide utility 896  
service; 897

(2) Whether the amount of the issue and the probable cost of 898  
such stocks, bonds, notes, or other evidences of indebtedness is 899  
just and reasonable; 900

(3) What effect, if any, the issuance of such stocks, bonds, 901  
notes, or other evidences of indebtedness and the cost thereof 902  
will have upon the present and prospective revenue requirements of 903  
the utility. 904

(G) Sections 4905.40 to 4905.42 of the Revised Code do not 905  
apply to stocks, bonds, notes, or other evidence of indebtedness 906  
issued for the purpose of financing oil or natural gas drilling, 907  
producing, gathering, and associated activities and facilities by 908  
a producer which supplies to no more than twenty purchasers only 909  
such gas as is produced, gathered, or purchased by such producer 910

within this state. 911

(H) Each public utility seeking authorization from the 912  
commission for the issuance of securities to finance the 913  
installation, construction, extension, or improvement of an air 914  
quality facility, as defined in section 3706.01 of the Revised 915  
Code, shall consider the availability of financing therefor from 916  
the Ohio air quality development authority and shall demonstrate 917  
to the commission that the proposed financing will be obtained on 918  
the best terms obtainable. 919

**Sec. 4905.402.** (A) As used in this section: 920

(1) "Control" means the possession of the power to direct the 921  
management and policies of a domestic telephone company or a 922  
holding company of a domestic telephone company, or the management 923  
and policies of a domestic electric utility or a holding company 924  
of a domestic electric utility, through the ownership of voting 925  
securities, by contract, or otherwise, but does not include the 926  
power that results from holding an official position or the 927  
possession of corporate office with the domestic ~~telephone~~ company 928  
or utility or the holding company. Control is presumed to exist if 929  
any person, directly or indirectly, owns, controls, holds the 930  
power to vote, or holds with the power to vote proxies ~~which~~ that 931  
constitute, twenty per cent or more of the total voting power of 932  
the domestic ~~telephone~~ company or utility or the holding company. 933

(2) "Electric utility" has the same meaning as in section 934  
4928.07 of the Revised Code. 935

(3) "Holding company" excludes any securities broker 936  
performing the usual and customary broker's function. 937

~~(3)~~(4) "Telephone company" means any company described in 938  
division (A)(2) of section 4905.03 of the Revised Code that is a 939  
public utility under section 4905.02 of the Revised Code and 940

provides basic local exchange service, as defined in section 941  
4927.01 of the Revised Code. 942

(B) No person shall acquire control, directly or indirectly, 943  
of a domestic telephone company or a holding company controlling a 944  
domestic telephone company or of a domestic electric utility or a 945  
holding company controlling a domestic electric utility unless 946  
that person obtains the prior approval of the public utilities 947  
commission under this section. To obtain approval the person shall 948  
file an application with the commission demonstrating that the 949  
acquisition will promote public convenience and result in the 950  
provision of adequate service for a reasonable rate, rental, toll, 951  
or charge. The application shall contain such information as the 952  
commission may require. If the commission considers a hearing 953  
necessary, it may fix a time and place for hearing. If, after 954  
review of the application and after any necessary hearing, the 955  
commission is satisfied that approval of the application will 956  
promote public convenience and result in the provision of adequate 957  
service for a reasonable rate, rental, toll, or charge, the 958  
commission shall approve the application and make such order as it 959  
considers proper. If the commission fails to issue an order within 960  
thirty days of the filing of the application, or within twenty 961  
days of the conclusion of a hearing, if one is held, the 962  
application shall be deemed approved by operation of law. 963

(C) The ~~public utilities~~ commission shall adopt such rules as 964  
it finds necessary to carry out this section. 965

(D) If it appears to the ~~public utilities~~ commission or to 966  
any person ~~who~~ that may be adversely affected that any person is 967  
engaged in or about to engage in any acts or practices that would 968  
violate this section, the attorney general, when directed to do so 969  
by the commission, or the person claiming to be adversely affected 970  
may bring an action in any court of common pleas that has 971  
jurisdiction and venue to enjoin such acts or practices and 972

enforce compliance with this section. Upon a proper showing, the 973  
court shall grant, without bond, a restraining order or temporary 974  
or permanent injunction. 975

(E) The courts of this state have jurisdiction over every 976  
person not a resident of or domiciled or authorized to do business 977  
in this state ~~who~~ that files, or is prohibited from acting without 978  
first filing, an application under division (B) of this section, 979  
and over all actions involving such person arising out of 980  
violations of this section. The secretary of state shall be the 981  
agent for service of process for any such person in any action, 982  
suit, or proceeding arising out of violations of this section. 983  
Copies of all such lawful process shall be served upon the 984  
secretary of state and transmitted by certified mail, with return 985  
receipt requested, by the secretary of state to such person at ~~his~~ 986  
the person's last known address. 987

**Sec. 4905.42.** To determine whether it should issue the order 988  
referred to in section 4905.40 of the Revised Code, the public 989  
utilities commission shall hold such hearings, make such inquiries 990  
or investigations, and examine such witnesses, books, papers, 991  
documents, and contracts as it deems proper. ~~Within forty five~~ 992  
~~days after an electric light company submits an application under~~ 993  
~~that section pertaining to the issuance of stocks, bonds, notes,~~ 994  
~~or other evidence of indebtedness to acquire, construct, or~~ 995  
~~install a compliance facility, the commission shall complete its~~ 996  
~~review and shall render a decision on the application.~~ 997

An order issued under this section shall fix the amount, 998  
character, and terms of any issue of stocks, bonds, notes, or 999  
other evidence of indebtedness, and the purposes to which the 1000  
issue or any proceeds of it shall be applied, shall recite that 1001  
the money, property, consideration, or labor procured or to be 1002  
procured or paid for by such issue was or is reasonably required 1003

for the purposes specified in the order, and shall recite the  
value of any property, consideration, or service, as found by the  
commission, for which in whole or in part such issue is proposed  
to be made.

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

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

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

territory of the United States, any foreign country, or otherwise. 1036

No company that is both a pipe\_line company engaged as such 1037  
in the business of transporting natural gas through pipes or 1038  
tubing in interstate commerce, wholly or partly within this state, 1039  
and a natural gas company engaged as such in this state solely in 1040  
the business of supplying natural gas to gas companies or to 1041  
natural gas companies shall be required to apply to the commission 1042  
for authority to issue stocks, bonds, notes, or other evidence of 1043  
indebtedness. 1044

**Sec. 4905.46.** (A) No public utility or railroad shall declare 1045  
any stock, bond, or scrip dividend or distribution, or divide the 1046  
proceeds of the sale of any stock, bond, or scrip among its 1047  
stockholders, unless it is authorized to do so by the public 1048  
utilities commission. 1049

(B) ~~Unless it is authorized to do so by the commission:~~ 1050

~~(1) No public utility which is a part of an electric utility 1051  
holding company system exempt under section 3(a)(1) or (2) of the 1052  
"Public Utility Holding Company Act of 1935," 49 Stat. 803, 15 1053  
U.S.C. 79c, and the rules and regulations promulgated thereunder, 1054  
shall invest in, lend funds to, guarantee the obligations of, 1055  
otherwise finance, or transfer assets to any company which is not 1056  
a public utility as defined by Ohio law or the law of any other 1057  
state, and which is affiliated or associated with it in the same 1058  
holding company system. This limitation on investments, loans, 1059  
guarantees, or other financing does not apply to transactions in 1060  
the ordinary course of the companies' public utilities business 1061  
operations in which one entity acts on behalf of, or with respect 1062  
to, another within the holding company system. 1063~~

~~(2) No electric utility holding company exempt under section 1064  
3(a)(1) or (2) of the "Public Utility Holding Company Act of 1065  
1935," 49 Stat. 803, 15 U.S.C. 79c, and the rules and regulations 1066~~

~~promulgated thereunder, which directly owns, controls or holds  
with the power to vote ten per cent or more of the outstanding  
voting securities of an electric light company, or is itself an  
electric light company, shall make any investment, including  
loans, in any subsidiary, affiliate, or associate that is not a  
public utility as defined by Ohio law or the law of another state,  
that would cause the company's capital investments in all such  
non utility subsidiaries, affiliates, and associates to exceed, at  
the time such proposed investment is made, fifteen per cent or  
more of the aggregate capitalization of the holding company on a  
consolidated basis. This limitation, however, does not extend to  
investments made with funds provided from nonutility subsidiaries,  
affiliates, or associates.~~

~~(C) The commission shall not approve a transfer of assets  
subject to division (B)(1) of this section for at least forty five  
days after an application for approval has been filed with it, in  
order to afford interested persons the opportunity to submit  
objections to approval of the application and to request a public  
hearing. If the commission, after such forty five day period but  
within one hundred thirty five days after the application was  
filed, does not disapprove the application, the application shall  
be deemed approved.~~

~~(D) Nothing in division (B) or (C) of this section affects  
the authority of a public utility or railroad to declare and pay  
interest or dividends on, or otherwise act with respect to,  
stocks, bonds, notes, or other evidences of indebtedness once  
issued pursuant to sections 4905.40 to 4905.42 of the Revised  
Code.~~

~~(E) No telephone company shall declare any cash, stock, bond,  
or scrip dividend or distribution, or divide the proceeds of the  
sale of any stock, bond, or scrip among its common or voting  
shareholders, while such telephone company is in violation of any~~

order of the commission, or against which telephone company there 1099  
exists a finding of inadequate service, except when the public 1100  
utilities commission makes a finding after hearing and notice, as 1101  
provided in section 4905.26 of the Revised Code, that such 1102  
dividend or distribution will in no way postpone compliance with 1103  
any order or affect the adequacy of service rendered or to be 1104  
rendered by such telephone company. ~~Provided that if~~ If a 1105  
telephone company, while in violation of any order of the 1106  
commission, or against which there exists a finding of inadequate 1107  
service, desires to declare a cash dividend or distribution 1108  
without the consent of the commission, it shall set aside in a 1109  
special reserve fund a sum of money equivalent to the amount 1110  
necessary to pay the proposed dividend or distribution, which, 1111  
while said company is in violation of said order or against which 1112  
such finding exists, may be expended only with the consent of the 1113  
commission. 1114

**Sec. 4905.70.** The public utilities commission shall initiate 1115  
programs that will promote and encourage conservation of energy 1116  
and a reduction in the growth rate of energy consumption, promote 1117  
economic efficiencies, and take into account long-run incremental 1118  
costs. Notwithstanding sections 4905.31, 4905.33, 4905.35, and 1119  
4909.151 of the Revised Code, the ~~public utilities~~ commission 1120  
shall examine and issue written findings on the declining block 1121  
rate structure, lifeline rates, long-run incremental pricing, peak 1122  
load and off-peak pricing, time of day and seasonal pricing, 1123  
interruptible load pricing, and single rate pricing where rates do 1124  
not vary because of classification of customers or amount of 1125  
usage. ~~The public utilities commission shall establish criteria~~ 1126  
~~for the investigation, identification, and remedy of the existence~~ 1127  
~~of any excess capacity, exclusive of capacity used primarily for~~ 1128  
~~Ohio coal research and development, as defined in section 1555.01~~ 1129  
~~of the Revised Code, the costs of which have been allowed for~~ 1130

~~recovery under section 4905.301 or 4909.15 of the Revised Code, in~~ 1131  
~~the generating systems of electric light companies. The public~~ 1132  
~~utilities~~ commission, by a rule adopted no later than October 1, 1133  
1977, and effective and applicable no later than November 1, 1977, 1134  
shall require each electric light company to offer to such of 1135  
their residential customers whose residences are primarily heated 1136  
by electricity the option of their usage being metered by a demand 1137  
or load meter. A under the rule, a customer who selects such 1138  
option may, ~~under the rule,~~ be required by the company, where no 1139  
such meter is already installed, to pay for such meter and its 1140  
installation. The rule shall require each company to bill such of 1141  
its customers who select such option for those kilowatt hours in 1142  
excess of a prescribed number of kilowatt hours per kilowatt of 1143  
billing demand, at a rate per kilowatt hour that reflects the 1144  
lower cost of providing service during off-peak periods. 1145

**Sec. 4906.10.** (A) The power siting board shall render a 1146  
decision upon the record either granting or denying the 1147  
application as filed, or granting it upon such terms, conditions, 1148  
or modifications of the construction, operation, or maintenance of 1149  
the major utility facility as the board considers appropriate. The 1150  
certificate shall be conditioned upon the facility being in 1151  
compliance with standards and rules adopted under sections 1152  
1501.33, 1501.34, and 4561.32 and Chapters 3704., 3734., and 6111. 1153  
of the Revised Code. The period of initial operation under a 1154  
certificate shall expire two years after the date on which 1155  
electric power is first generated by the facility. During the 1156  
period of initial operation, the facility shall be subject to the 1157  
enforcement and monitoring powers of the director of environmental 1158  
protection under Chapters 3704., 3734., and 6111. of the Revised 1159  
Code and to the emergency provisions under those chapters. If a 1160  
major utility facility constructed in accordance with the terms 1161

and conditions of its certificate is unable to operate in 1162  
compliance with all applicable requirements of state laws, rules, 1163  
and standards pertaining to air pollution, the facility may apply 1164  
to the director of environmental protection for a conditional 1165  
operating permit under division (G) of section 3704.03 of the 1166  
Revised Code and the rules adopted thereunder. The operation of a 1167  
major utility facility in compliance with a conditional operating 1168  
permit is not in violation of its certificate. After the 1169  
expiration of the period of initial operation of a major utility 1170  
facility, the facility shall be under the jurisdiction of the 1171  
environmental protection agency and shall comply with all laws, 1172  
rules, and standards pertaining to air pollution, water pollution, 1173  
and solid and hazardous waste disposal. 1174

The board shall not grant a certificate for the construction, 1175  
operation, and maintenance of a major utility facility, either as 1176  
proposed or as modified by the board, unless it finds and 1177  
determines all of the following: 1178

(1) The basis of the need for the facility~~r~~. In the case of a 1179  
major utility facility described in division (B)(1) of section 1180  
4906.01 of the Revised Code to be constructed on or after the 1181  
effective date of this amendment, the board shall presume the need 1182  
for the facility as that need is stated in an application pursuant 1183  
to division (A)(3) of section 4906.06 of the Revised Code. 1184

(2) The nature of the probable environmental impact; 1185

(3) That the facility represents the minimum adverse 1186  
environmental impact, considering the state of available 1187  
technology and the nature and economics of the various 1188  
alternatives, and other pertinent considerations; 1189

(4) In the case of an electric transmission line, that the 1190  
facility is consistent with regional plans for expansion of the 1191  
electric power grid of the electric systems serving this state and 1192

interconnected utility systems and that the facility will serve 1193  
the interests of electric system economy and reliability; 1194

(5) That the facility will comply with Chapters 3704., 3734., 1195  
and 6111. of the Revised Code and all rules and standards adopted 1196  
under those chapters and under sections 1501.33, 1501.34, and 1197  
4561.32 of the Revised Code. In determining whether the facility 1198  
will comply with all rules and standards adopted under section 1199  
4561.32 of the Revised Code, the board shall consult with the 1200  
office of aviation of the division of multi-modal planning and 1201  
programs of the department of transportation under section 1202  
4561.341 of the Revised Code. 1203

(6) That the facility will serve the public interest, 1204  
convenience, and necessity; 1205

(7) In addition to the provisions contained in divisions 1206  
(A)(1) to (6) of this section and rules adopted under those 1207  
divisions, what its impact will be on the viability as 1208  
agricultural land of any land in an existing agricultural district 1209  
established under Chapter 929. of the Revised Code that is located 1210  
within the site and alternative site of the proposed major utility 1211  
facility. Rules adopted to evaluate impact under division (A)(7) 1212  
of this section shall not require the compilation, creation, 1213  
submission, or production of any information, document, or other 1214  
data pertaining to land not located within the site and 1215  
alternative site. 1216

(8) That the facility incorporates maximum feasible water 1217  
conservation practices as determined by the board, considering 1218  
available technology and the nature and economics of the various 1219  
alternatives. 1220

(B) If the board determines that the location of all or a 1221  
part of the proposed facility should be modified, it may condition 1222  
its certificate upon that modification, provided that the 1223

municipal corporations and counties, and persons residing therein, 1224  
affected by the modification shall have been given reasonable 1225  
notice thereof. 1226

(C) A copy of the decision and any opinion issued therewith 1227  
shall be served upon each party. 1228

**Sec. 4909.01.** As used in this chapter: 1229

(A) "Public utility" has the meaning set forth in section 1230  
4905.02 of the Revised Code. 1231

(B) "Telegraph company," "telephone company," "electric light 1232  
company," "gas company," "natural gas company," "pipeline 1233  
company," "water-works company," "sewage disposal system company," 1234  
"heating or cooling company," "messenger company," "street railway 1235  
company," "suburban railroad company," "interurban railroad 1236  
company," and "motor-propelled vehicle" have the meanings set 1237  
forth in section 4905.03 of the Revised Code. 1238

(C) "Railroad" has the meaning set forth in section 4907.02 1239  
of the Revised Code. 1240

(D) "Motor transportation company" has the meaning set forth 1241  
in sections 4905.03 and 4921.02 of the Revised Code. 1242

(E) "Trailers," "public highway," "fixed termini," "regular 1243  
route," and "irregular route" have the meanings set forth in 1244  
section 4921.02 of the Revised Code. 1245

(F) "Private motor carrier," "contract carrier by motor 1246  
vehicle," "motor vehicle," and "charter party trip" have the 1247  
meanings set forth in section 4923.02 of the Revised Code. 1248

~~(G) "Delivery cost" and "acquisition cost" have the meanings 1249  
set forth in section 4905.01 of the Revised Code. 1250~~

~~(H) "Compliance facility" has the meaning set forth in 1251  
section 4905.01 of the Revised Code. 1252~~

~~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: 1257

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

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

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

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

(D) The actual acquisition cost, not including periodic rental fees, of rights-of-way, trailways, or other land rights

held by virtue of easements, leases, or other forms of grants of 1283  
rights as to usage; 1284

(E) The original cost of all other kinds and classes of 1285  
property used and useful in the rendition of service to the 1286  
public. Such original costs of property, other than land owned in 1287  
fee, shall be the cost, as determined to be reasonable by the 1288  
commission, to the person that first dedicated the property to the 1289  
public use and shall be set forth in property accounts and 1290  
subaccounts as prescribed by the commission. To the extent that 1291  
the costs of property comprising a coal research and development 1292  
facility, as defined in section 1555.01 of the Revised Code, or a 1293  
coal development project, as defined in section 1551.30 of the 1294  
Revised Code, have been allowed for recovery as Ohio coal research 1295  
and development costs under section ~~4905.301~~, 4905.304, ~~or~~ 1296  
~~4909.191~~ of the Revised Code, none of those costs shall be 1297  
included as a cost of property under this division. 1298

(F) The cost of property constituting all or part of a 1299  
project leased to or used by the utility under Chapter 165., 1300  
3706., 6121., or 6123. of the Revised Code and not included under 1301  
division (E) of this section exclusive of any interest directly or 1302  
indirectly paid by the utility with respect thereto whether or not 1303  
capitalized; 1304

(G) In the discretion of the commission, the cost to a 1305  
utility, in an amount determined to be reasonable by the 1306  
commission, of property constituting all or part of a project 1307  
leased to the utility under a lease purchase agreement or a 1308  
leaseback and not included under division (E) of this section 1309  
exclusive of any interest directly or indirectly paid by the 1310  
utility with respect thereto whether or not capitalized; 1311

(H) The proper and adequate reserve for depreciation, as 1312  
determined to be reasonable by the commission; 1313

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

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

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

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

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

The commission ~~may~~, in its discretion, may include in the valuation a reasonable allowance for construction work in progress but, in no event, may such an allowance be made by the commission until it has determined that the particular construction project

is at least seventy-five per cent complete. 1344

~~In the case of a construction project involving the 1345  
installation, renovation, or maintenance of pollution control 1346  
equipment, the commission may include the project in the valuation 1347  
as construction work in progress as of the date that the 1348  
particular construction project is at least seventy five per cent 1349  
complete. 1350~~

~~As used in this division, "pollution control equipment" means 1351  
any construction project undertaken, in whole or in part, to 1352  
reduce sulfur or nitrous oxide emissions to levels established by 1353  
federal, state, or local statute, law, ordinance, regulation, or 1354  
order. The commission shall determine by rule what projects 1355  
qualify as pollution control equipment. 1356~~

In determining the percentage completion of a particular 1357  
construction project, the commission shall consider, among other 1358  
relevant criteria, the per cent of time elapsed in construction; 1359  
the per cent of construction funds, excluding allowance for funds 1360  
used during construction, expended, or obligated to such 1361  
construction funds budgeted where all such funds are adjusted to 1362  
reflect current purchasing power; and any physical inspection 1363  
performed by or on behalf of any party, including the commission's 1364  
staff. 1365

A reasonable allowance for construction work in progress 1366  
~~other than for construction projects involving the installation, 1367  
renovation, or maintenance of pollution control equipment shall 1368  
not exceed ten per cent of the total valuation as stated in this 1369  
division, not including such allowance for construction work in 1370  
progress. 1371~~

~~The allowance for construction work in progress for 1372  
construction projects involving the installation, renovation, or 1373  
maintenance of pollution control equipment shall be the dollar 1374~~

~~value of the project and shall not exceed, together with any other  
allowance for construction work in progress granted under this  
division, twenty per cent of the total valuation as stated in this  
division, not including such allowance for construction work in  
progress.~~

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

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

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

~~consecutive months commencing on the date the initial rates  
reflecting such allowance become effective, or for a period  
commencing on the date the initial rates reflecting such allowance  
become effective and ending on the projected in service date  
previously submitted to the commission, whichever period expires  
first.~~

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

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

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

In the event that a construction work in progress project  
previously included in the valuation is removed from the valuation  
pursuant to this division, any revenues collected by the utility  
from its customers after April 10, 1985, ~~which~~ that resulted from  
such prior inclusion shall be offset against future revenues over

the same period of time as the project was included in the 1438  
valuation as construction work in progress. The total revenue 1439  
effect of such offset shall not exceed the total revenues 1440  
previously collected. 1441

In no event shall the total revenue effect of any offset or 1442  
offsets provided ~~herein~~ under division (A)(1) of this section 1443  
exceed the total revenue effect of any construction work in 1444  
progress allowance. 1445

(2) A fair and reasonable rate of return to the utility on 1446  
the valuation as determined in division (A)(1) of this section; 1447

(3) The dollar annual return to which the utility is entitled 1448  
by applying the fair and reasonable rate of return as determined 1449  
under division (A)(2) of this section to the valuation of the 1450  
utility determined under division (A)(1) of this section; 1451

(4) The cost to the utility of rendering the public utility 1452  
service for the test period less the total of any interest on cash 1453  
or credit refunds paid, pursuant to section 4909.42 of the Revised 1454  
Code, by the utility during the test period. 1455

~~(a) Any depreciation expense of a compliance facility shall 1456  
be calculated under division (A)(4) of this section on the basis 1457  
of the useful service life of the compliance facility or the 1458  
remaining useful life of the electric generating unit in 1459  
connection with which the compliance facility was acquired,  
constructed, or installed, whichever is the shorter time. Division 1460  
(A)(4)(a) of this section applies only to depreciation expense of 1461  
a compliance facility contained in the environmental compliance 1462  
plan of the electric light company approved under Chapter 4913. of 1463  
the Revised Code or in its compliance strategy examined under 1464  
section 4909.158 of the Revised Code. 1465  
section 4909.158 of the Revised Code. 1466~~

~~(b) Federal, state, and local taxes imposed on or measured by 1467  
net income may, in the discretion of the commission, be computed 1468~~

by the normalization method of accounting, provided the utility 1469  
maintains accounting reserves that reflect differences between 1470  
taxes actually payable and taxes on a normalized basis, provided 1471  
that no determination as to the treatment in the rate-making 1472  
process of such taxes shall be made that will result in loss of 1473  
any tax depreciation or other tax benefit to which the utility 1474  
would otherwise be entitled, and further provided that such tax 1475  
benefit as redounds to the utility as a result of such a 1476  
computation may not be retained by the company, used to fund any 1477  
dividend or distribution, or utilized for any purpose other than 1478  
the defrayal of the operating expenses of the utility and the 1479  
defrayal of the expenses of the utility in connection with 1480  
construction work. 1481

~~(e)~~(b) The amount of any tax credits granted to an electric 1482  
light company under section ~~5727.391~~ 5733.39 of the Revised Code 1483  
shall not be retained by the company, used to fund any dividend or 1484  
distribution, or utilized for any purposes other than the defrayal 1485  
of the allowable operating expenses of the company and the 1486  
defrayal of the allowable expenses of the company in connection 1487  
with the installation, acquisition, construction, or use of a 1488  
compliance facility. The amount of the tax credits granted to an 1489  
electric light company under that section shall be returned to its 1490  
customers within three years after initially claiming the credit 1491  
through an offset to the company's rates or fuel component, as 1492  
determined by the commission, as set forth in schedules filed by 1493  
the company under section 4905.30 of the Revised Code. As used in 1494  
division (A)(4)(c) of this section, "compliance facility" has the 1495  
same meaning as in section ~~5727.391~~ 5733.39 of the Revised Code. 1496

(B) The ~~public utilities~~ commission shall compute the gross 1497  
annual revenues to which the utility is entitled by adding the 1498  
dollar amount of return under division (A)(3) of this section to 1499  
the cost of rendering the public utility service for the test 1500

period under division (A)(4) of this section. 1501

(C) The test period, unless otherwise ordered by the ~~public~~ 1502  
~~utilities~~ commission, shall be the twelve-month period beginning 1503  
six months prior to the date the application is filed and ending 1504  
six months subsequent to that date. In no event shall the test 1505  
period end more than nine months subsequent to the date the 1506  
application is filed. The revenues and expenses of the utility 1507  
shall be determined during the test period. The date certain shall 1508  
be not later than the date of filing. 1509

(D) When the ~~public-utilities~~ commission is of the opinion, 1510  
after hearing and after making the determinations under divisions 1511  
(A) and (B) of this section, that any rate, fare, charge, toll, 1512  
rental, schedule, classification, or service, or any joint rate, 1513  
fare, charge, toll, rental, schedule, classification, or service 1514  
rendered, charged, demanded, exacted, or proposed to be rendered, 1515  
charged, demanded, or exacted, is, or will be, unjust, 1516  
unreasonable, unjustly discriminatory, unjustly preferential, or 1517  
in violation of law, that the service is, or will be, inadequate, 1518  
or that the maximum rates, charges, tolls, or rentals chargeable 1519  
by any such public utility are insufficient to yield reasonable 1520  
compensation for the service rendered, and are unjust and 1521  
unreasonable, the commission shall: 1522

(1) With due regard among other things to the value of all 1523  
property of the public utility actually used and useful for the 1524  
convenience of the public as determined under division (A)(1) of 1525  
this section, excluding from such value the value of any franchise 1526  
or right to own, operate, or enjoy the same in excess of the 1527  
amount, exclusive of any tax or annual charge, actually paid to 1528  
any political subdivision of the state or county, as the 1529  
consideration for the grant of such franchise or right, and 1530  
excluding any value added to such property by reason of a monopoly 1531  
or merger, with due regard in determining the dollar annual return 1532

under division (A)(3) of this section to the necessity of making 1533  
reservation out of the income for surplus, depreciation, and 1534  
contingencies, and; 1535

(2) With due regard to all such other matters as are proper, 1536  
according to the facts in each case, 1537

(a) Including a fair and reasonable rate of return determined 1538  
by the commission with reference to a cost of debt equal to the 1539  
actual embedded cost of debt of such public utility, 1540

(b) But not including the portion of any periodic rental or 1541  
use payments representing that cost of property ~~which~~ that is 1542  
included in the valuation report under divisions (F) and (G) of 1543  
section 4909.05 of the Revised Code, fix and determine the just 1544  
and reasonable rate, fare, charge, toll, rental, or service to be 1545  
rendered, charged, demanded, exacted, or collected for the 1546  
performance or rendition of the service that will provide the 1547  
public utility the allowable gross annual revenues under division 1548  
(B) of this section, and order such just and reasonable rate, 1549  
fare, charge, toll, rental, or service to be substituted for the 1550  
existing one. After such determination and order no change in the 1551  
rate, fare, toll, charge, rental, schedule, classification, or 1552  
service shall be made, rendered, charged, demanded, exacted, or 1553  
changed by such public utility without the order of the 1554  
commission, and any other rate, fare, toll, charge, rental, 1555  
classification, or service is prohibited. 1556

(E) Upon application of any person or any public utility, and 1557  
after notice to the parties in interest and opportunity to be 1558  
heard as provided in Chapters 4901., 4903., 4905., 4907., 4909., 1559  
4921., and 4923. of the Revised Code for other hearings, has been 1560  
given, the commission may rescind, alter, or amend an order fixing 1561  
any rate, fare, toll, charge, rental, classification, or service, 1562  
or any other order made by the commission. Certified copies of 1563

such orders shall be served and take effect as provided for 1564  
original orders. 1565

**Sec. 4909.161. (A)** Notwithstanding the provisions of Chapters 1566  
4905. and 4909. of the Revised Code, the payment of any type of 1567  
increased excise tax levy shall be considered to be a normal 1568  
expense incurred by a public utility in the course of rendering 1569  
service to the public, and may be recovered as such in accordance 1570  
with an order of the public utilities commission. Any public 1571  
utility required to pay any such increased excise tax levy may 1572  
file with the public utilities commission revised rate schedules 1573  
~~which~~ that will permit full recovery on an interim or permanent 1574  
basis in its rates, of the amount of any resultant increased tax 1575  
payments and the commission shall promptly act to approve such 1576  
schedules. 1577

(B) Notwithstanding Chapters 4905. and 4909. of the Revised 1578  
Code, the payment of the kilowatt-hour tax imposed by section 1579  
5727.81 of the Revised Code shall be considered a normal expense 1580  
incurred by an electric distribution utility, as defined in 1581  
section 4928.01 of the Revised Code, in the course of rendering 1582  
service to the public, and may be recovered as such in accordance 1583  
with an order of the commission. An electric distribution utility 1584  
required to pay the kilowatt-hour tax may file with the commission 1585  
revised rate schedules, CONSISTENT WITH CHAPTERS 4905. AND 4909. 1586  
AND DIVISION (A)(6) OF SECTION 4928.34 OF THE REVISED CODE, that 1587  
will permit full recovery on a permanent basis in its rates, of 1588  
the amount of any resultant tax payments, after taking into 1589  
account any reductions of taxes in its rates resulting from Sub. 1590  
S.B. No. 3 of the 123rd general assembly, and the commission shall 1591  
act promptly to approve those schedules. 1592

**Sec. 4911.18. (A)** For the sole purpose of maintaining and 1593

administering the office of the consumers' counsel and exercising 1594  
the powers of the consumers' counsel under this chapter, an amount 1595  
equal to the appropriation to the office of the consumers' counsel 1596  
in each fiscal year shall be apportioned among and assessed 1597  
against ~~the each~~ public ~~utilities~~ utility within the state, as 1598  
defined in section 4911.01 of the Revised Code, by first computing 1599  
an assessment as though it were to be made in proportion to the 1600  
intrastate gross earnings or receipts of the public ~~utilities~~ 1601  
~~companies~~ utility for the calendar year next preceding that in 1602  
which the ~~assessments are~~ assessment is made, excluding earnings 1603  
or receipts from sales to other public utilities for resale. The 1604  
office may include in that first computation any amount of a 1605  
railroad's or public utility's intrastate gross earnings or 1606  
receipts underreported in a prior year. in addition to whatever 1607  
penalties apply under the Revised Code to such underreporting, the 1608  
office shall assess the railroad or public utility interest at the 1609  
rate stated in division (A) of section 1343.01 of the Revised 1610  
Code. the office shall deposit any interest so collected into the 1611  
consumers' counsel operating fund. 1612

The final computation of the assessment shall consist of 1613  
imposing upon each ~~company~~ public utility whose assessment under 1614  
the first computation would have been fifty dollars or less an 1615  
assessment of fifty dollars and recomputing the assessment of the 1616  
remaining companies by apportioning an amount equal to the 1617  
appropriation to the office of consumers' counsel in each fiscal 1618  
year less the total amount to be recovered from those paying the 1619  
minimum assessment, in proportion to the intrastate gross earnings 1620  
or receipts of the remaining companies for the calendar year next 1621  
preceding that in which the assessments are made, excluding 1622  
earnings or receipts from sales to other public utilities for 1623  
resale. 1624

In the case of an assessment based on intrastate gross 1625

receipts under this section against a public utility that is an 1626  
electric utility as defined in section 4928.01 of the Revised 1627  
Code, or an electric services company, electric cooperative, or 1628  
governmental aggregator subject to certification under section 1629  
4928.08 of the Revised Code, such receipts shall be those 1630  
specified in the utility's, company's, COOPERATIVE'S, OR 1631  
aggregator's most recent report of intrastate gross receipts and 1632  
sales of kilowatt hours of electricity, filed with the public 1633  
utilities commission pursuant to division (F) of section 4928.06 1634  
of the Revised Code, AND VERIFIED BY THE COMMISSION. 1635

(B) On or before the first day of October in each year, the 1636  
office of consumers' counsel shall notify each public utility 1637  
~~company~~ of the sum assessed against it, whereupon payment shall be 1638  
made to the counsel, who shall deposit it into the state treasury 1639  
to the credit of the consumers' counsel operating fund, which is 1640  
hereby created. Any such amounts paid into the fund but not 1641  
expended by the ~~counsel~~ office shall be credited ratably by the 1642  
~~counsel office~~ to the public ~~utility companies which~~ utilities 1643  
that pay more than the minimum assessment, according to the 1644  
respective portions of such sum assessable against them for the 1645  
ensuing calendar year, after first deducting any deficits 1646  
accumulated from prior years. The assessments for such calendar 1647  
year shall be reduced correspondingly. 1648

(C) Within five days after the beginning of each fiscal year, 1649  
the director of budget and management shall transfer from the 1650  
general revenue fund to the consumers' counsel operating fund an 1651  
amount sufficient for maintaining and administering the office of 1652  
the consumers' counsel and exercising the powers of the consumers' 1653  
counsel under this chapter during the first four months of the 1654  
fiscal year. Not later than the thirty-first day of December of 1655  
the fiscal year, the same amount shall be transferred back to the 1656  
general revenue fund from the consumers' counsel operating fund. 1657

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

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

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

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(2) "Billing and collection agent" means a fully independent agent, not affiliated with or otherwise controlled by an electric utility, electric services company, electric cooperative, or governmental aggregator subject to certification under section 4928.08 of the Revised Code, to the extent that the agent is under contract with such utility, company, cooperative, or aggregator solely to provide billing and collection for retail electric service on behalf of the utility company, cooperative, or aggregator.

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(3) "Certified territory" means the certified territory

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established for an electric supplier under sections 4933.81 to 1689  
4933.90 of the Revised Code as amended by Sub. S.B. No. 3 of the 1690  
123rd general assembly. 1691

(4) "Competitive retail electric service" means a component 1692  
of retail electric service that is competitive as provided under 1693  
division (B) of this section. 1694

(5) "Electric cooperative" means a not-for-profit electric 1695  
light company that both is or has been financed in whole or in 1696  
part under the "Rural Electrification Act of 1936," 49 Stat. 1363, 1697  
7 U.S.C. 901, and owns or operates facilities IN THIS STATE to 1698  
generate, transmit, or DISTRIBUTE electricity, or a not-for-profit 1699  
successor of such company. 1700

(6) "ELECTRIC DISTRIBUTION UTILITY" MEANS AN ELECTRIC UTILITY 1701  
THAT SUPPLIES AT LEAST retail ELECTRIC DISTRIBUTION SERVICE. 1702  
1703

(7) "Electric light company" has the same meaning as in 1704  
section 4905.03 of the Revised Code and includes an electric 1705  
services company, BUT EXCLUDES ANY customer-GENERATOR TO THE 1706  
EXTENT IT CONSUMES ELECTRICITY IT SO PRODUCES OR TO THE EXTENT IT 1707  
SELLS FOR RESALE ELECTRICITY IT SO PRODUCES. 1708

(8) "Electric load center" has the same meaning as in section 1709  
4933.81 of the Revised Code. 1710

(9) "Electric services company" means an electric light 1711  
company that is engaged on a for-profit or not-for-profit basis in 1712  
the business of supplying or arranging for the supply of only a 1713  
competitive retail electric service in this state. "Electric 1714  
services company" includes a power marketer, power broker, 1715  
aggregator, or independent power producer but excludes an electric 1716  
cooperative, municipal electric utility, governmental AGGREGATOR, 1717  
or billing and collection agent. 1718

(10) "Electric supplier" has the same meaning as in section 1719

4933.81 of the Revised Code. 1720

(11) "Electric utility" means an electric light company that 1721  
is engaged on a for-profit basis in the business of supplying a 1722  
noncompetitive retail electric service in this state or in the 1723  
businesses of supplying both a noncompetitive and a competitive 1724  
retail electric service in this state. "Electric utility" excludes 1725  
a municipal electric utility or a billing and collection agent. 1726  
1727

(12) "FIRM ELECTRIC SERVICE" MEANS ELECTRIC SERVICE OTHER 1728  
THAN NONFIRM ELECTRIC SERVICE. 1729

(13) "Governmental aggregator" means a legislative AUTHORITY 1730  
of a municipal corporation, a board of township trustees, or a 1731  
board of county commissioners acting as an aggregator for the 1732  
provision of a competitive retail electric service under AUTHORITY 1733  
conferred under section 4928.20 of the Revised Code. 1734

(14) A PERSON ACTS "KNOWINGLY," REGARDLESS OF THE PERSON'S 1735  
PURPOSE, WHEN THE PERSON IS AWARE THAT THE PERSON'S CONDUCT WILL 1736  
PROBABLY CAUSE A CERTAIN RESULT OR WILL PROBABLY BE OF A CERTAIN 1737  
NATURE. A PERSON HAS KNOWLEDGE OF CIRCUMSTANCES WHEN THE PERSON IS 1738  
AWARE THAT SUCH CIRCUMSTANCES PROBABLY EXIST. 1739

(15) "LEVEL OF FUNDING FOR LOW-INCOME CUSTOMER ENERGY 1740  
EFFICIENCY PROGRAMS PROVIDED THROUGH ELECTRIC UTILITY RATES" MEANS 1741  
THE LEVEL OF FUNDS specifically included in an electric utility's 1742  
rates on the effective date of this section PURSUANT TO AN ORDER 1743  
OF THE PUBLIC UTILITIES COMMISSION ISSUED UNDER CHAPTER 4905. OR 1744  
4909. OF THE REVISED CODE AND IN EFFECT ON THE DAY BEFORE THE 1745  
EFFECTIVE DATE OF THIS SECTION, FOR THE PURPOSE OF IMPROVING THE 1746  
ENERGY EFFICIENCY OF HOUSING FOR THE UTILITY'S LOW-INCOME 1747  
CUSTOMERS. THE TERM EXCLUDES THE LEVEL OF ANY SUCH FUNDS COMMITTED 1748  
TO A SPECIFIC NONPROFIT ORGANIZATION OR ORGANIZATIONS PURSUANT TO 1749  
A STIPULATION OR CONTRACT. 1750

(16) "Low-income customer assistance programs" means the 1751  
percentage of income payment plan program as PRESCRIBED IN RULEs 1752  
4901:1-18-02(B) TO (G) and 4901:1-18-04(B) OF THE OHIO 1753  
ADMINISTRATIVE CODE IN EFFECT on the effective date of this 1754  
section or, if modified pursuant to AUTHORITY under section 1755  
4928.53 of the Revised Code, THE PROGRAM AS MODIFIED; the home 1756  
energy assistance program AS PRESCRIBED IN section 5117.21 of the 1757  
Revised Code and IN EXECUTIVE ORDER 97-1023-V or, if modified 1758  
pursuant to AUTHORITY under section 4928.53 of the Revised Code, 1759  
THE PROGRAM AS MODIFIED; the home weatherization assistance 1760  
program AS PRESCRIBED in division (A)(6) of section 122.011 and in 1761  
section 122.02 of the Revised Code or, if modified pursuant to 1762  
AUTHORITY under section 4928.53 of the Revised Code, THE PROGRAM 1763  
AS MODIFIED; THE OHIO ENERGY CREDIT PROGRAM AS PRESCRIBED IN 1764  
sections 5117.01 to 5117.05, 5117.07 to 5117.12, and 5117.99 OF 1765  
THE REVISED CODE or, if modified pursuant to AUTHORITY under 1766  
section 4928.53 of the Revised Code, THE PROGRAM AS MODIFIED; and 1767  
the TARGETED energy EFFICIENCY and WEATHERIZATION PROGRAM 1768  
established under section 4928.55 of the Revised Code. 1769

(17) "Market development period" for an electric utility 1770  
means the period of time beginning on the starting date of 1771  
competitive retail electric service and ending on the applicable 1772  
date for that utility as specified in section 4928.40 of the 1773  
Revised Code, irrespective of whether the utility applies to 1774  
receive transition revenues under this chapter. 1775

(18) "Market power" means the ability to impose on customers 1776  
a sustained price for a product or service ABOVE the price that 1777  
would prevail in a COMPETITIVE market. 1778

(19) "MERCANTILE COMMERCIAL CUSTOMER" MEANS A COMMERCIAL OR 1779  
INDUSTRIAL CUSTOMER IF THE ELECTRICITY CONSUMED IS FOR 1780  
NONRESIDENTIAL USE AND THE CUSTOMER CONSUMES MORE THAN SEVEN 1781  
HUNDRED THOUSAND KILOWATT HOURS PER YEAR OR IS PART OF A NATIONAL 1782

<u>ACCOUNT INVOLVING MULTIPLE FACILITIES IN ONE OR MORE STATES.</u>	1783
(20) <u>"Municipal electric utility" means a municipal corporation that owns or operates facilities to generate, transmit, or distribute electricity.</u>	1784 1785 1786
(21) <u>"Noncompetitive retail electric service" means a component of retail electric service that is noncompetitive as provided under division (B) of this section.</u>	1787 1788 1789
(22) "NONFIRM ELECTRIC SERVICE" MEANS ELECTRIC SERVICE PROVIDED PURSUANT TO A SCHEDULE FILED UNDER SECTION 4905.30 OF THE REVISED CODE OR PURSUANT TO AN ARRANGEMENT UNDER SECTION 4905.31 OF THE REVISED CODE, WHICH SCHEDULE OR ARRANGEMENT INCLUDES CONDITIONS THAT MAY REQUIRE THE CUSTOMER TO CURTAIL OR INTERRUPT ELECTRIC USAGE DURING NONEMERGENCY CIRCUMSTANCES UPON NOTIFICATION BY AN ELECTRIC UTILITY.	1790 1791 1792 1793 1794 1795 1796
(23) <u>"Percentage of income payment plan arrears" means funds eligible for collection through the percentage of income payment plan rider, but uncollected as of July 1, 2000.</u>	1797 1798 1799
(24) <u>"Person" has the same meaning as in section 1.59 of the Revised Code.</u>	1800 1801
(25) <u>"Project" means any real or personal property connected with all or part of an industrial, distribution, commercial, or research facility, not-for-profit facility, or residence that is to be acquired, constructed, RECONSTRUCTED, enlarged, improved, furnished, or equipped, or any combination of those activities, with aid furnished pursuant to sections 4928.61 to 4928.63 of the Revised Code for the purposes of not-for-profit, industrial, commercial, distribution, residential, and research development in this state. "Project" includes, but is not limited to, any small-scale renewables project.</u>	1802 1803 1804 1805 1806 1807 1808 1809 1810 1811
(26) "REGULATORY ASSETS" MEANS THE UNAMORTIZED NET REGULATORY ASSETS THAT ARE CAPITALIZED OR DEFERRED ON THE REGULATORY BOOKS OF	1812 1813

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

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

(28) "SMALL ELECTRIC GENERATION FACILITY" MEANS AN ELECTRIC  
GENERATION PLANT AND ASSOCIATED FACILITIES DESIGNED FOR, OR  
CAPABLE OF, OPERATION AT A CAPACITY OF LESS THAN TWO MEGAWATTS.

(29) "Starting date of competitive retail electric service" 1846  
means January 1, 2001, except as provided in division (C) of this 1847  
section. 1848

(30) "Customer-generator" means a user of a net metering 1849  
system. 1850

(31) "Net metering" means measuring the difference in an 1851  
applicable billing period between the electricity supplied by an 1852  
electric service provider and the electricity generated by a 1853  
customer-generator which is fed back to the electric service 1854  
provider. 1855

(32) "Net metering system" means a facility for the 1856  
production of electrical energy that does all of the following: 1857

(a) Uses as its fuel either solar, wind, biomass, or 1858  
hydropower, or uses a microturbine or a fuel cell; 1859

(b) Is located on a customer-generator's premises; 1860

(c) Operates in parallel with the electric utility's 1861  
transmission and distribution facilities; 1862

(d) Is intended primarily to offset part or all of the 1863  
customer-generator's requirements for electricity. 1864

(B) For the purposes of this chapter, a retail electric 1865  
service component shall be deemed a competitive retail electric 1866  
service if the service component is competitive pursuant to a 1867  
declaration by a provision of the Revised Code or pursuant to an 1868  
order of the public utilities commission authorized under division 1869  
(A) of section 4928.04 of the Revised Code. Otherwise, the service 1870  
component shall be deemed a noncompetitive retail electric 1871  
service. 1872

(C) Prior to January 1, 2001, and after application by an 1873  
electric utility, notice, and an opportunity to be heard, the 1874  
public utilities commission may issue an order delaying the 1875

january 1, 2001, starting date of competitive retail electric 1876  
service for the electric utility for a specified number of days 1877  
not to exceed six months, but only for extreme technical 1878  
conditions precluding the start of competitive retail electric 1879  
service on January 1, 2001. 1880

Sec. 4928.02. It is the policy of this state to do the 1881  
following throughout this state beginning on the starting date of 1882  
competitive retail electric service: 1883

(A) Ensure the availability to consumers of adequate, 1884  
reliable, safe, efficient, nondiscriminatory, and reasonably 1885  
priced retail electric service; 1886

(B) Ensure the availability of unbundled and comparable 1887  
retail electric service that provides consumers with the supplier, 1888  
price, terms, conditions, and quality options they elect to meet 1889  
their respective needs; 1890

(C) Ensure diversity of electricity supplies and suppliers, 1891  
by giving consumers effective choices over the selection of those 1892  
supplies and suppliers and by encouraging the development of 1893  
distributed and small generation facilities; 1894

(D) Encourage innovation and market access for cost-effective 1895  
supply- and demand-side retail electric service; 1896

(E) Encourage cost-effective and efficient access to 1897  
information regarding the operation of the transmission and 1898  
distribution systems of electric utilities in order to promote 1899  
effective customer choice of retail electric service; 1900

(F) Recognize the continuing emergence of competitive 1901  
electricity markets through the development and implementation of 1902  
flexible regulatory treatment; 1903

(G) Ensure effective competition in the provision of retail 1904  
electric service by avoiding anticompetitive subsidies flowing 1905

from a noncompetitive retail electric service to a competitive 1906  
retail electric service or to a product or service other than 1907  
retail electric service, and vice versa; 1908

(H) Ensure retail electric service consumers protection 1909  
against unreasonable sales practices, market deficiencies, and 1910  
market power; 1911

(I) Facilitate the state's effectiveness in the global 1912  
economy. 1913

**Sec. 4928.03.** Beginning on The starting date of competitive 1914  
retail electric service, retail electric generation, aggregation, 1915  
power marketing, and power brokerage services supplied to 1916  
consumers within the certified territory of an electric utility 1917  
are competitive retail electric services that the consumers may 1918  
obtain subject to this chapter from any supplier or suppliers. In 1919  
accordance with a filing under division (F) of section 4933.81 of 1920  
the Revised Code, retail electric generation, aggregation, power 1921  
marketing, or power brokerage services supplied to consumers 1922  
within the certified territory of an electric cooperative that has 1923  
made the filing are competitive retail electric services that the 1924  
consumers may obtain subject to this chapter from any supplier or 1925  
suppliers. 1926

Beginning on The starting date of competitive retail electric 1927  
service and Notwithstanding any other provision of law, each 1928  
consumer in this state and the suppliers to a consumer shall have 1929  
comparable and nondiscriminatory access to noncompetitive retail 1930  
electric services of an electric utility in this state within its 1931  
certified territory for the purpose of satisfying the consumer's 1932  
electricity requirements in keeping with the policy specified in 1933  
section 4928.02 of the Revised Code. 1934

**Sec. 4928.04.** (A) The public utilities commission by order 1935

may declare that retail ancillary, metering, or billing and 1936  
collection service supplied to consumers within the certified 1937  
territory of an electric utility on or after the starting date of 1938  
competitive retail electric service is a competitive retail 1939  
electric service that the consumers may obtain from any supplier 1940  
or suppliers subject to this chapter. The commission may issue 1941  
such order, after investigation and public hearing, only if it 1942  
first determines either of the following: 1943

(1) There will be effective competition with respect to the 1944  
service. 1945

(2) The customers of the service have reasonably available 1946  
alternatives. 1947

The commission shall initiate a proceeding on or before march 1948  
31, 2003, on the question of the desirability, feasibility, and 1949  
timing of any such competition. 1950

(B) In carrying out division (A) of this section, the 1951  
commission may prescribe different classifications, procedures, 1952  
terms, or conditions for different electric utilities and for the 1953  
retail electric services they provide that are declared 1954  
competitive pursuant to that division, provided the 1955  
classifications, procedures, terms, or conditions are reasonable 1956  
and do not confer any undue economic, competitive, or market 1957  
advantage or preference upon any electric utility. 1958

**Sec. 4928.05.** (A)(1) On and after the starting date of 1959  
competitive retail electric service, a competitive retail electric 1960  
service supplied by an electric utility shall not be subject to 1961  
supervision and regulation by a municipal corporation under 1962  
Chapter 743. of the Revised Code or by the public utilities 1963  
commission under Chapters 4901. to 4909., 4933., 4935., or 4963. 1964  
of the Revised Code, except sections 4905.10, 4905.33, 4905.35, 1965

and 4933.81 to 4933.90; except sections 4905.06, 4935.03, 4963.40, 1966  
and 4963.41 of the Revised Code regarding service reliability and 1967  
public safety; and except as otherwise provided in this chapter. 1968  
The commission's AUTHORITY to enforce those excepted provisions 1969  
with respect to a COMPETITIVE retail electric service shall be 1970  
such AUTHORITY as is provided for their enforcement under Chapters 1971  
4901. to 4909., 4933., 4935., and 4963. of the Revised Code and 1972  
this chapter. 1973

On and after the starting date of competitive retail electric 1974  
service, a competitive retail electric service supplied by an 1975  
electric cooperative shall not be subject to supervision and 1976  
regulation by the commission under Chapters 4901. to 4909., 4933., 1977  
4935., or 4963. of the Revised Code, except as otherwise expressly 1978  
provided in sections 4928.01 to 4928.10 and 4928.16 of the Revised 1979  
Code. 1980

(2) On and after the starting date of competitive retail 1981  
electric service, a noncompetitive retail electric service 1982  
supplied by an electric utility shall be subject to supervision 1983  
and regulation by the commission under Chapters 4901. to 4909., 1984  
4933., 4935., and 4963. of the Revised Code and this chapter, to 1985  
the extent that AUTHORITY is not preempted by federal law. The 1986  
commission's AUTHORITY to enforce those provisions with respect to 1987  
a noncompetitive retail electric service shall be the AUTHORITY 1988  
provided under those chapters and this chapter, to the extent the 1989  
AUTHORITY is not preempted by federal law. 1990

The commission shall exercise its jurisdiction with respect 1991  
to the delivery of electricity by an electric utility in this 1992  
state on or after The starting date of competitive retail electric 1993  
service so as to ensure that no aspect of the delivery of 1994  
electricity by the utility to consumers in this state that 1995  
consists of a noncompetitive retail electric service is 1996

<u>unregulated.</u>	1997
<u>On and after that starting date, a noncompetitive retail</u>	1998
<u>electric service supplied by an electric cooperative shall not be</u>	1999
<u>subject to supervision and regulation by the commission under</u>	2000
<u>Chapters 4901. to 4909., 4933., 4935., and 4963. of the Revised</u>	2001
<u>Code, except sections 4933.81 to 4933.90 and 4935.03 of the</u>	2002
<u>Revised Code. The commission's authority to enforce those excepted</u>	2003
<u>sections with respect to a noncompetitive retail electric service</u>	2004
<u>of an electric cooperative shall be such authority as is provided</u>	2005
<u>for their enforcement under Chapters 4933. and 4935. of the</u>	2006
<u>Revised Code.</u>	2007
<u>(B) Nothing in this chapter affects the authority of the</u>	2008
<u>commission under Title XLIX of the Revised Code to regulate an</u>	2009
<u>electric light company in this state or an electric service</u>	2010
<u>supplied in this state prior to the starting date of COMPETITIVE</u>	2011
<u>retail electric SERVICE.</u>	2012
<b>Sec. 4928.06.</b> <u>(A) Beginning on the starting date of</u>	2013
<u>competitive retail electric service, the public utilities</u>	2014
<u>commission shall ensure that the policy specified in section</u>	2015
<u>4928.02 of the Revised Code is effectuated. To the extent</u>	2016
<u>necessary, the commission shall adopt rules to carry out this</u>	2017
<u>chapter. Initial rules necessary for the commencement of the</u>	2018
<u>competitive retail electric service under this chapter shall be</u>	2019
<u>adopted within one hundred eighty days after the effective date of</u>	2020
<u>this section. Except as otherwise provided in this chapter, the</u>	2021
<u>proceedings and orders of the commission under the chapter shall</u>	2022
<u>be subject to and governed by Chapter 4903. of the Revised Code.</u>	2023
<u>(B) If the commission determines, on or after The starting</u>	2024
<u>date of competitive retail electric service, that there is a</u>	2025
<u>decline or loss of effective competition with respect to a</u>	2026
<u>competitive retail electric service of an electric utility, which</u>	2027

service was declared competitive by commission order issued 2028  
pursuant to division (A) of section 4928.04 of the Revised Code, 2029  
the commission shall ensure that that service is provided at 2030  
compensatory, fair, and nondiscriminatory prices and terms and 2031  
conditions. 2032

(C) In addition to its authority under section 4928.04 of the 2033  
Revised Code and divisions (A) and (B) of this section, the 2034  
commission, on an ongoing basis, shall monitor and evaluate the 2035  
provision of retail electric service in this state for the purpose 2036  
of discerning any noncompetitive retail electric service that 2037  
should be available on a competitive basis on or after The 2038  
starting date of competitive retail electric service pursuant to a 2039  
declaration in the revised code, and for the purpose of discerning 2040  
any competitive retail electric service that is no longer subject 2041  
to effective competition on or after that date. Upon such 2042  
evaluation, the commission periodically shall report its findings 2043  
and any recommendations for legislation to the standing committees 2044  
of both houses of the general assembly that have primary 2045  
jurisdiction regarding public utility legislation. Until 2008, the 2046  
commission and the consumer's counsel also shall provide BIENNIAL 2047  
reports to those standing committees, regarding the effectiveness 2048  
of competition in the supply of competitive retail electric 2049  
services in this state. In addition, until the end of all market 2050  
development periods as determined or extended by the commission 2051  
under section 4928.40 of the Revised Code, those standing 2052  
committees shall meet at least biennially to consider the effect 2053  
on this state of electric service restructuring and to receive 2054  
reports from the commission, consumers' counsel, and director of 2055  
development. 2056

(D) In determining, for purposes of division (B) or (C) of 2057  
this section, whether there is effective competition in the 2058  
provision of a retail electric service or reasonably available 2059

alternatives for that service, the commission shall consider 2060  
factors including, but not limited to, all of the following: 2061

(1) The number and size of alternative providers of that 2062  
service; 2063

(2) The extent to which the service is available from 2064  
alternative suppliers in the relevant market; 2065

(3) The ability of alternative suppliers to make functionally 2066  
equivalent or substitute services readily available at competitive 2067  
prices, terms, and conditions; 2068

(4) Other indicators of market power, which may include 2069  
market share, growth in market share, ease of entry, and the 2070  
affiliation of suppliers of services. 2071

the burden of proof shall be on Any entity requesting, under 2072  
division (b) or (c) of this section, a determination by the 2073  
commission of the existence of or a lack of effective competition 2074  
or reasonably available alternatives. 2075

(E)(1) beginning on The starting date of competitive retail 2076  
electric service, The commission has authority under Chapters 2077  
4901. to 4909. of the Revised Code, and shall exercise that 2078  
authority, to resolve abuses of market power by any electric 2079  
utility that interfere with effective competition in the provision 2080  
of retail electric service. 2081

(2) In addition to the commission's AUTHORITY under division 2082  
(E)(1) of this section, THE COMMISSION, BEGINNING THE FIRST YEAR 2083  
AFTER THE MARKET DEVELOPMENT PERIOD OF A PARTICULAR ELECTRIC 2084  
UTILITY AND AFTER REASONABLE NOTICE AND OPPORTUNITY FOR HEARING, 2085  
MAY TAKE SUCH MEASURES WITHIN A TRANSMISSION CONSTRAINED AREA IN 2086  
THE UTILITY'S CERTIFIED TERRITORY as are necessary TO ENSURE THAT 2087  
RETAIL ELECTRIC GENERATION SERVICE IS PROVIDED AT REASONABLE RATES 2088  
within that area. THE COMMISSION MAY EXERCISE THIS AUTHORITY ONLY 2089  
UPON FINDINGS THAT an electric UTILITY is or has engaged in the 2090

abuse of MARKET POWER AND THAT that abuse IS NOT ADEQUATELY 2091  
MITIGATED BY RULES AND PRACTICES OF ANY INDEPENDENT TRANSMISSION 2092  
ENTITY CONTROLLING THE TRANSMISSION FACILITIES. ANY SUCH MEASURE 2093  
SHALL BE TAKEN ONLY TO THE EXTENT NECESSARY TO PROTECT CUSTOMERS 2094  
IN THE AREA FROM THE particular abuse of MARKET POWER AND TO THE 2095  
EXTENT the COMMISSION'S AUTHORITY IS NOT PREEMPTED BY FEDERAL LAW. 2096  
THE measure SHALL REMAIN in effect UNTIL THE COMMISSION, AFTER 2097  
reasonable NOTICE AND OPPORTUNITY FOR HEARING, DETERMINES THAT THE 2098  
particular abuse of MARKET POWER HAS BEEN MITIGATED. 2099

(F) An electric utility, electric services company, electric 2100  
cooperative, or governmental aggregator subject to certification 2101  
under section 4928.08 of the Revised code shall provide the 2102  
commission with such information, regarding a competitive retail 2103  
electric service for which it is subject to certification, as the 2104  
commission considers necessary to carry out this chapter. An 2105  
electric utility shall provide the commission with such 2106  
information as the commission considers necessary to carry out 2107  
divisions (B) to (E) of this section. The commission shall take 2108  
such measures as it considers necessary to protect the 2109  
confidentiality of any such information. 2110

The commission shall require each electric utility to file 2111  
with the commission on and after the starting date of competitive 2112  
retail electric service an annual report of its intrastate gross 2113  
receipts and sales of kilowatt hours of electricity, and shall 2114  
require each electric services company, electric cooperative, and 2115  
governmental aggregator subject to certification to file an annual 2116  
report on and after that starting date of such receipts and sales 2117  
from the provision of those retail electric services for which it 2118  
is subject to certification. for the purpose of the reports, sales 2119  
of kilowatt hours of electricity are deemed to occur at the meter 2120  
of the retail customer. 2121

Sec. 4928.07. To the maximum extent practicable on or after 2122  
The starting date of competitive retail electric service, an 2123  
electric utility, electric services company, electric cooperative, 2124  
or governmental aggregator subject to certification under section 2125  
4928.08 of the Revised Code shall separately price competitive 2126  
retail electric services, and the PRICES SHALL BE ITEMIZED on the 2127  
bill of a customer or otherwise disclosed to the customer. 2128  
Although a competitive retail electric service shall be supplied 2129  
to any consumer on such a basis, such an electric utility, 2130  
electric services company, electric cooperative, or governmental 2131  
AGGREGATOR may repackage the service on or after The starting date 2132  
and offer it on a bundled basis with other retail electric 2133  
services to meet consumer preferences. Such repackaging by an 2134  
electric utility shall be subject to sections 4905.33 to 4905.35 2135  
of the Revised Code. repackaging by such an electric services 2136  
company, electric cooperative, or governmental aggregator shall be 2137  
subject to the limitation that no such entity, as to a competitive 2138  
retail electric service for which the company, cooperative, or 2139  
aggregator is subject to certification, shall furnish free service 2140  
or service for less than actual cost for the purpose of destroying 2141  
competition. 2142

Sec. 4928.08. (A) This section applies to an electric 2143  
cooperative, or to a governmental AGGREGATOR that is a municipal 2144  
electric utility, only to the extent of a competitive retail 2145  
electric service it provides to a customer to whom it does not 2146  
provide a noncompetitive retail electric service through 2147  
transmission or distribution facilities it singly or jointly owns 2148  
or operates. 2149

(B) No electric utility, electric services company, electric 2150  
cooperative, or governmental aggregator shall provide a 2151  
competitive retail electric service to a consumer in this state on 2152

and after the starting date of competitive retail electric service 2153  
without first being certified by the public utilities commission 2154  
regarding its managerial, technical, and financial capability to 2155  
provide that service and providing a financial guarantee 2156  
sufficient to protect customers and electric distribution 2157  
utilities from default. Certification shall be granted pursuant to 2158  
procedures and standards the commission shall prescribe in 2159  
accordance with division (C) of this section, except that 2160  
certification or certification renewal shall be deemed approved 2161  
thirty days after the filing of an application with the commission 2162  
unless the commission suspends that approval for good cause shown. 2163  
In the case of such a suspension, the commission shall act to 2164  
approve or deny certification or certification renewal to the 2165  
applicant not later than ninety days after the date of the 2166  
suspension 2167

(C) Capability standards adopted in rules under division (B) 2168  
of this section shall be sufficient to ensure compliance with the 2169  
minimum service requirements established under section 4928.10 of 2170  
the Revised Code and with section 4928.09 of the Revised Code. The 2171  
standards shall allow flexibility for voluntary aggregation, to 2172  
encourage market creativity in responding to consumer needs and 2173  
demands, AND SHALL ALLOW FLEXIBILITY FOR ELECTRIC SERVICES 2174  
COMPANIES THAT EXCLUSIVELY PROVIDE INSTALLATION OF SMALL ELECTRIC 2175  
GENERATION FACILITIES, TO PROVIDE EASE OF MARKET ACCESS. The rules 2176  
shall include procedures for biennially renewing certification. 2177

(d) The commission may suspend, rescind, or conditionally 2179  
rescind the certification of any electric utility, electric 2180  
services company, electric cooperative, or governmental aggregator 2181  
issued under this section if the commission determines, after 2182  
reasonable notice and opportunity for hearing, that the utility, 2183  
company, cooperative, or AGGREGATOR has failed to comply with any 2184

applicable certification standards or has engaged in 2185  
anticompetitive or unfair, deceptive, or unconscionable acts or 2186  
practices in this state. 2187

(e) no electric distribution utility on and after the 2188  
starting date of competitive retail electric service shall 2189  
knowingly distribute electricity, to a retail consumer in this 2190  
state, for any supplier of electricity that has not been certified 2191  
by the commission pursuant to this section. 2192

**Sec. 4928.09.** (A)(1) No person shall operate in this state as 2193  
an electric utility, an electric services company, or a billing 2194  
and collection agent on and after the starting date of competitive 2195  
retail electric service unless that person first does both of the 2196  
following: 2197

(a) Consents irrevocably to the jurisdiction of the courts of 2198  
this state and service of process in this state, including, 2199  
without limitation, service of summonses and subpoenas, for any 2200  
civil or criminal proceeding arising out of or relating to such 2201  
operation, by providing that irrevocable consent in ACCORDANCE 2202  
with division (A)(4) of this section; 2203

(b) Designates an agent authorized to receive that service of 2204  
process in this state, by filing with the commission a document 2205  
designating that agent. 2206

(2) No person shall continue to operate as such an electric 2207  
utility, electric services company, or billing and collection 2208  
agent unless that person continues to consent to such jurisdiction 2209  
and service of process in this state and continues to designate an 2210  
agent as provided under this division, by refileing in accordance 2211  
with division (A)(4) of this section the appropriate documents 2212  
filed under division (A)(1) of this section or, as applicable, the 2213  
appropriate amended documents filed under division (A)(3) of this 2214  
section. Such refileing shall occur during the month of December of 2215

every fourth year after the initial filing of a document under 2216  
division (A)(1) of this section. 2217

(3) If the address of the person filing a document under 2218  
division (A)(1) or (2) of this section changes, or if a person's 2219  
agent or the address of the agent changes, from that listed on the 2220  
most recently filed of such documents, the person shall file an 2221  
amended document containing the new information. 2222

(4) The consent and designation required by divisions (A)(1) 2223  
to (3) of this section shall be in writing, on forms prescribed by 2224  
the public utilities commission. The original of each such 2225  
document or amended document shall be legible and shall be filed 2226  
with the commission, with a copy filed with the office of the 2227  
consumers' counsel and with the attorney general's office. 2228

(B) A person who enters this state pursuant to a summons, 2229  
subpoena, or other form of process authorized by this section is 2230  
not subject to arrest or service of process, whether civil or 2231  
criminal, in connection with other matters that arose before the 2232  
person's entrance into this state pursuant to such summons, 2233  
subpoena, or other form of process. 2234

(C) Divisions (A) and (B) of this section do not apply to any 2235  
of the following: 2236

(1) A corporation incorporated under the laws of this state 2237  
that has appointed a statutory agent pursuant to section 1701.07 2238  
or 1702.06 of the Revised Code; 2239

(2) A foreign corporation licensed to transact business in 2240  
this state that has appointed a designated agent pursuant to 2241  
section 1703.041 of the Revised Code; 2242

(3) Any OTHER person that is a resident of this state or that 2243  
files consent to service of process and designates a statutory 2244  
agent pursuant to other laws of this state. 2245

Sec. 4928.10. For the protection of consumers in this state, 2246  
the public utilities commission shall adopt rules under division 2247  
(A) of section 4928.06 of the Revised Code specifying the 2248  
necessary minimum service requirements, on or after The starting 2249  
date of competitive retail electric service, of an electric 2250  
utility, electric services company, electric cooperative, or 2251  
governmental aggregator subject to certification under section 2252  
4928.08 of the Revised Code regarding the provision directly or 2253  
through its billing and collection agent of competitive retail 2254  
electric services for which it is subject to certification. Rules 2255  
adopted under this section shall include a prohibition against 2256  
unfair, deceptive, and unconscionable acts and practices in the 2257  
marketing, solicitation, and sale of such a competitive retail 2258  
electric service and in the administration of any contract for 2259  
service, and also shall include additional consumer protections 2260  
concerning all of the following: 2261

(A) Contract disclosure. The rules shall include requirements 2262  
that an electric utility, electric services company, electric 2263  
cooperative, or governmental aggregator subject to certification 2264  
under section 4928.08 of the Revised Code do both of the 2265  
following: 2266

(1) Provide consumers with adequate, accurate, and 2267  
understandable pricing and terms and conditions of service, 2268  
including any switching fees, and with a document containing the 2269  
terms and conditions of pricing and service before the consumer 2270  
enters into the contract for service; 2271

(2) Disclose the conditions under which a customer may 2272  
rescind a contract without penalty. 2273

(B) Service termination. The rules shall include disclosure 2274  
of the terms identifying how customers may switch or terminate 2275  
service, including any required notice and any penalties. 2276

<u>(C) Minimum content of customer bills. The rules shall</u>	2277
<u>include all of the following requirements, which shall be</u>	2278
<u>standardized:</u>	2279
<u>(1) Price disclosure and Disclosures of total billing units</u>	2280
<u>for the billing period and historical annual usage;</u>	2281
<u>(2) To the maximum extent practicable, separate listing of</u>	2282
<u>each service component to enable a customer to recalculate its</u>	2283
<u>bill for accuracy;</u>	2284
<u>(3) Identification of the supplier of each service;</u>	2285
<u>(4) Statement of where and how payment may be made and</u>	2286
<u>provision of a toll-free or local customer assistance and</u>	2287
<u>complaint number for the electric utility, electric services</u>	2288
<u>company, electric cooperative, or governmental aggregator, as well</u>	2289
<u>as a consumer assistance telephone number or numbers for state</u>	2290
<u>agencies, such as the commission, the office of the consumers'</u>	2291
<u>counsel, and the attorney general's office, with the available</u>	2292
<u>hours noted;</u>	2293
<u>(5) Other than for the first billing after the starting date</u>	2294
<u>of competitive retail electric service, highlighting and clear</u>	2295
<u>explanation on each customer bill, for two consecutive billing</u>	2296
<u>periods, of any changes in the rates, terms, and conditions of</u>	2297
<u>service.</u>	2298
<u>(D) Disconnection and service termination, including</u>	2299
<u>requirements with respect to master-metered buildings. The rules</u>	2300
<u>shall include policies and procedures that are consistent with</u>	2301
<u>sections 4933.121 and 4933.122 of the Revised Code and the</u>	2302
<u>commission's rules adopted under those sections, and that provide</u>	2303
<u>for all of the following:</u>	2304
<u>(1) Coordination between suppliers for the purpose of</u>	2305
<u>maintaining service;</u>	2306

(2) <u>The allocation of partial payments between suppliers when service components are jointly billed;</u>	2307 2308
(3) <u>A prohibition against blocking, or authorizing the blocking of, customer access to a noncompetitive retail electric service when a customer is delinquent in payments to the electric utility or electric services company for a competitive retail electric service;</u>	2309 2310 2311 2312 2313
(4) <u>A prohibition against switching, or authorizing the switching of, a customer's supplier of competitive retail electric service without the prior consent of the customer in accordance with appropriate confirmation practices, which may include independent, third-party verification procedures.</u>	2314 2315 2316 2317 2318
(5) <u>A requirement of disclosure of the conditions under which a customer may rescind a decision to switch its supplier without penalty;</u>	2319 2320 2321
(6) <u>Specification of any required notice and any penalty for early termination of contract.</u>	2322 2323
(E) <u>Minimum service quality, safety, and reliability. However, service quality, SAFETY, and reliability requirements for electric generation service shall be determined primarily through market expectations and contractual relationships.</u>	2324 2325 2326 2327
(f) <u>Generation resource mix and environmental characteristics of power supplies. the rules shall include requirements for determination of the approximate generation resource mix and environmental characteristics of the power supplies and disclosure to the customer prior to the customer entering into a contract to purchase and four times per year under the contract. The rules also shall require that the electric utility, electric services company, electric cooperative, or governmental AGGREGATOR provide, or cause its billing and collection agent to provide, a customer with standardized information comparing the projected, with the</u>	2328 2329 2330 2331 2332 2333 2334 2335 2336 2337

actual and verifiable, resource mix and environmental 2338  
characteristics. This disclosure shall occur not less than 2339  
annually or not less than once during the contract period if the 2340  
contract period is less than one year, and prior to any renewal of 2341  
a contract. 2342

(g) Customer information. The rules shall include 2343  
requirements that the electric utility, electric services company, 2344  
electric cooperative, or governmental aggregator make generic 2345  
customer load pattern information available to other electric 2346  
light companies on a comparable and nondiscriminatory basis, and 2347  
make customer-specific information available to other electric 2348  
light companies on a comparable and nondiscriminatory basis 2349  
unless, as to customer-specific information, the customer objects. 2350  
The rules shall ensure that each such utility, company, 2351  
cooperative, or aggregator provide clear and frequent notice to 2352  
its customers of the right to object and of applicable procedures. 2353  
The rules shall establish the exact language that shall be used in 2354  
all such notices. 2355

**Sec. 4928.11.** (A) For the protection of consumers in this 2356  
state, the public utilities commission shall adopt rules under 2357  
division (A) of section 4928.06 of the Revised Code that specify 2358  
minimum service quality, safety, and reliability requirements for 2359  
NONCOMPETITIVE retail electric services supplied by an electric 2360  
utility in this state, to the extent such AUTHORITY is not 2361  
preempted by federal law. The rules shall include prescriptive 2362  
standards for inspection, maintenance, repair, and replacement of 2363  
the transmission and distribution systems of electric utilities; 2364  
shall apply to each substantial type of transmission or 2365  
distribution equipment or facility; shall establish uniform 2366  
interconnection standards to ensure transmission and distribution 2367  
system safety and reliability and shall otherwise provide for high 2368  
quality, safe, and reliable electric service; shall include 2369

standards for operation, reliability, and SAFETY during periods of 2370  
emergency and disaster; and shall include voltage standards for 2371  
efficient operation of single-phase motors. The rules regarding 2372  
interconnection shall seek to prevent barriers to new technology 2373  
and shall not make compliance unduly burdensome or expensive. when 2374  
questions arise about specific equipment to meet interconnection 2375  
standards, the commission shall initiate proceedings open to the 2376  
public to solicit comments from all interested parties. 2377  
additionally, rules under this division shall include 2378  
nondiscriminatory metering standards. 2379

(B) The commission shall require each electric utility to 2380  
report annually to the commission on and after the starting date 2381  
of competitive retail electric service, regarding its compliance 2382  
with the rules required under division (A) of this section. the 2383  
commission shall make the filed reports available to the public. 2384  
Periodically as determined by commission rule under division (A) 2385  
of section 4928.06 of the Revised Code and in a proceeding 2386  
initiated under division (B) of section 4928.16 of the Revised 2387  
Code, the commission shall review a utility's report to determine 2388  
the utility's compliance and may act pursuant to DIVISION (B) of 2389  
section 4928.16 of the Revised Code to enforce compliance. 2390

**Sec. 4928.12.** (A) Except as otherwise provided in sections 2391  
4928.31 to 4928.40 of the Revised Code, no entity shall own or 2392  
control transmission facilities as defined under federal law and 2393  
located in this state on or after the starting date of competitive 2394  
retail electric service unless that entity is a member of, and 2395  
transfers control of those facilities to, one or more qualifying 2396  
transmission entities, as described in division (B) of this 2397  
section, that are operational. 2398

(B) An entity that owns or controls TRANSMISSION FACILITIES 2399  
LOCATED IN THIS STATE complies with division (A) of this section 2400

if each transmission entity of which it is a member meets all of 2401  
the following specifications: 2402

(1) The transmission entity is APPROVED BY THE FEDERAL ENERGY 2403  
REGULATORY COMMISSION. 2404

(2) the transmission entity effects SEPARATE CONTROL OF 2405  
TRANSMISSION FACILITIES FROM CONTROL OF GENERATION FACILITIES. 2406

(3) The transmission entity implements, to the extent 2407  
reasonably possible, policies and procedures designed to minimize 2408  
pancaked transmission rates within this state. 2409

(4) The transmission entity IMPROVES SERVICE RELIABILITY 2410  
WITHIN THIS STATE. 2411

(5) the transmission entity achieves the objectives of an 2412  
open and competitive electric generation marketplace, elimination 2413  
of barriers to market entry, and preclusion of control of 2414  
bottleneck electric transmission facilities in the provision of 2415  
retail electric service. 2416

(6) The TRANSMISSION entity is of sufficient scope or 2417  
otherwise operates to substantially increase economical supply 2418  
options for consumers. 2419

(7) the governance structure or control of the transmission 2420  
entity is independent of the users of the TRANSMISSION facilities, 2421  
and no member of its board of directors has an affiliation, with 2422  
such a user or with an affiliate of a user during the member's 2423  
tenure on the board, such as to unduly affect the transmission 2424  
entity's performance. FOR THE PURPOSE OF DIVISION (B)(7) OF THIS 2425  
SECTION, A "USER" IS ANY ENTITY OR AFFILIATE OF THAT ENTITY THAT 2426  
BUYS OR SELLS ELECTRIC ENERGY IN THE TRANSMISSION ENTITY'S REGION 2427  
OR IN A NEIGHBORING REGION. 2428

(8) The transmission entity operates under policies that 2429  
promote positive performance designed to satisfy the electricity 2430

<u>requirements of customers.</u>	2431
(9) <u>The transmission entity is capable of maintaining</u>	2432
<u>real-time reliability of the electric transmission system,</u>	2433
<u>ensuring comparable and nondiscriminatory transmission access and</u>	2434
<u>necessary services, minimizing system congestion, and further</u>	2435
<u>addressing real or potential transmission constraints.</u>	2436
(C) <u>to the extent that a transmission entity under division</u>	2437
<u>(A) of this section is authorized to build transmission</u>	2438
<u>facilities, that TRANSMISSION entity has the powers provided in</u>	2439
<u>and is subject to sections 1723.01 to 1723.08 of the Revised Code.</u>	2440
(D) <u>For the purpose of forming or participating in a regional</u>	2441
<u>regulatory oversight body or mechanism developed for any</u>	2442
<u>transmission entity under division (A) of this section that is of</u>	2443
<u>regional scope and operates within this state:</u>	2444
(1) <u>The commission shall make joint investigations, hold</u>	2445
<u>joint hearings, within or outside this state, and issue joint or</u>	2446
<u>concurrent orders in conjunction or concurrence with any official</u>	2447
<u>or agency of any state or of the United States, whether in the</u>	2448
<u>holding of those investigations or hearings, or in the making of</u>	2449
<u>those orders, the commission is functioning under agreements or</u>	2450
<u>compacts between states, under the concurrent power of states to</u>	2451
<u>regulate interstate commerce, as an agency of the United States,</u>	2452
<u>or otherwise.</u>	2453
(2) <u>The commission shall negotiate and enter into agreements</u>	2454
<u>or compacts with agencies of other states for cooperative</u>	2455
<u>regulatory efforts and for the enforcement of the respective state</u>	2456
<u>laws regarding the transmission entity.</u>	2457
(E) <u>If a qualifying transmission entity is not operational as</u>	2458
<u>contemplated in division (A) of this section, division (A)(13) of</u>	2459
<u>section 4928.34 of the Revised Code, or division (G) of section</u>	2460
<u>4928.35 of the Revised Code, the commission by rule or order shall</u>	2461

take such measures or impose such requirements on all for-profit 2462  
entities that own or control electric transmission FACILITIES 2463  
located in this state as the commission determines necessary and 2464  
proper to achieve independent, nondiscriminatory operation of, and 2465  
separate ownership and control of, such electric transmission 2466  
facilities on or after the starting date of competitive retail 2467  
electric service. 2468

**Sec. 4928.13.** through a periodic filing with the public 2469  
utilities commission in such form as the commission shall 2470  
prescribe by rule under division (A) of section 4928.06 of the 2471  
Revised Code, each electric utility that owns nuclear generation 2472  
facilities located in this state shall demonstrate compliance with 2473  
DECOMMISSIONING requirements of the nuclear regulatory commission 2474  
and public utilities commission and shall demonstrate adequate 2475  
financing mechanisms to fund facility DECOMMISSIONING. 2476

**Sec. 4928.14.** (A) After its market development period, an 2477  
ELECTRIC DISTRIBUTION utility in this state shall provide 2478  
consumers, on a comparable and nondiscriminatory basis within its 2479  
certified territory, a market-based standard service offer of all 2480  
competitive retail electric services necessary to maintain 2481  
essential electric service to consumers, including a firm supply 2482  
of electric generation service. such offer shall be filed with the 2483  
public utilities commission under section 4909.18 of the Revised 2484  
Code. 2485

(B) AFTER THAT MARKET DEVELOPMENT PERIOD, EACH ELECTRIC 2486  
DISTRIBUTION UTILITY ALSO SHALL OFFER CUSTOMERS WITHIN ITS 2487  
CERTIFIED TERRITORY AN OPTION TO PURCHASE COMPETITIVE RETAIL 2488  
ELECTRIC SERVICE THE PRICE OF WHICH IS DETERMINED THROUGH A 2489  
COMPETITIVE BIDDING PROCESS. PRIOR TO JANUARY 1, 2004, THE 2490  
COMMISSION SHALL ADOPT RULES CONCERNING THE CONDUCT OF THE 2491  
COMPETITIVE BIDDING PROCESS, INCLUDING THE INFORMATION 2492

REQUIREMENTS NECESSARY FOR CUSTOMERS TO CHOOSE THIS OPTION AND THE 2493  
REQUIREMENTS TO EVALUATE QUALIFIED BIDDERS. THE COMMISSION MAY 2494  
REQUIRE THAT THE COMPETITIVE BIDDING PROCESS BE REVIEWED BY AN 2495  
INDEPENDENT THIRD PARTY. NO GENERATION SUPPLIER SHALL BE 2496  
PROHIBITED FROM PARTICIPATING IN THE BIDDING PROCESS, PROVIDED 2497  
THAT ANY WINNING BIDDER SHALL BE CONSIDERED A CERTIFIED SUPPLIER 2498  
FOR PURPOSES OF OBLIGATIONS TO CUSTOMERS. AT THE ELECTION OF THE 2499  
ELECTRIC DISTRIBUTION UTILITY, AND APPROVAL OF THE COMMISSION, THE 2500  
COMPETITIVE BIDDING OPTION UNDER THIS DIVISION MAY BE USED AS THE 2501  
MARKET-BASED STANDARD OFFER REQUIRED BY DIVISION (A) OF THIS 2502  
SECTION. THE COMMISSION MAY DETERMINE AT ANY TIME THAT A 2503  
COMPETITIVE BIDDING PROCESS IS NOT REQUIRED, IF OTHER MEANS TO 2504  
ACCOMPLISH GENERALLY THE SAME OPTION FOR CUSTOMERS IS READILY 2505  
AVAILABLE IN THE MARKET AND A REASONABLE MEANS FOR CUSTOMER 2506  
PARTICIPATION IS DEVELOPED. 2507

(C) After the market development period, the failure of a 2508  
supplier to provide retail electric generation service to 2509  
customers within the certified territory of the electric 2510  
distribution utility shall result in the supplier's customers, 2511  
after reasonable notice, defaulting to the utility's standard 2512  
service offer filed under division (A) of this section until the 2513  
customer chooses an alternative supplier. A supplier is deemed 2514  
under this division to have failed to provide such service if the 2515  
commission finds, after reasonable notice and opportunity for 2516  
hearing, that any of the following conditions are MET: 2517

(1) the supplier has defaulted on its contracts with 2518  
customers, is in receivership, or has filed for bankruptcy. 2519

(2) the supplier is no longer capable of providing the 2520  
service. 2521

(3) the supplier is unable to provide delivery to 2522  
transmission or distribution facilities for such period of time as 2523  
may be reasonably specified by commission rule adopted under 2524

division (A) of section 4928.06 of the Revised Code. 2525

(4) The supplier's certification has been suspended, 2526  
conditionally rescinded, or rescinded under division (D) of 2527  
section 4928.08 of the Revised Code. 2528

**Sec. 4928.15.** (A) Except as otherwise provided in sections 2529  
4928.31 to 4928.40 of the Revised Code, no electric utility shall 2530  
supply noncompetitive retail electric DISTRIBUTION service in this 2531  
state on or after The starting date of competitive retail electric 2532  
service except pursuant to a schedule for that service that is 2533  
consistent with the state policy specified in section 4928.02 of 2534  
the Revised Code and filed with the public utilities COMMISSION 2535  
under section 4909.18 of the Revised Code. the schedule shall 2536  
provide that electric distribution service under the schedule is 2537  
available to all consumers within the utility's certified 2538  
territory and to any supplier to those consumers on a 2539  
nondiscriminatory and comparable basis. distribution service rates 2540  
and charges under the schedule shall be established in accordance 2541  
with Chapters 4905. and 4909. of the Revised Code. The schedule 2542  
shall include an obligation to build distribution facilities when 2543  
necessary to provide adequate distribution service, provided that 2544  
a customer requesting that service may be required to pay all or 2545  
part of the reasonable incremental cost of the new facilities, in 2546  
accordance with rules, policy, precedents, or orders of the 2547  
commission. 2548

(B) Except as otherwise provided in sections 4928.31 to 2549  
4928.40 of the Revised Code and except as preempted by federal 2550  
law, no electric utility shall supply the transmission service or 2551  
ancillary service component of noncompetitive retail electric 2552  
service in this state on or after The starting date of competitive 2553  
retail electric service except pursuant to a schedule for that 2554  
service component that is consistent with the state policy 2555

specified in section 4928.02 of the Revised Code and filed with 2556  
the COMMISSION under section 4909.18 of the Revised Code. The 2557  
schedule shall provide that transmission or ancillary service 2558  
under the schedule is available to all consumers and to any 2559  
supplier to those consumers on a nondiscriminatory and comparable 2560  
basis. Service rates and charges under the schedule shall be 2561  
established in accordance with Chapters 4905. and 4909. of the 2562  
Revised Code. 2563

(C) A customer-generator shall have access to backup 2564  
electricity supply from its competitive electric generation 2565  
service provider at a rate to be determined by contract. 2566

**Sec. 4928.16.** (A)(1) The public utilities commission has 2567  
jurisdiction under section 4905.26 of the Revised Code, upon 2568  
complaint of any person or upon complaint or initiative of the 2569  
commission on or after the starting date of competitive retail 2570  
electric service, regarding the provision by an electric utility, 2571  
electric services company, electric cooperative, or governmental 2572  
aggregator subject to certification under section 4928.08 of the 2573  
Revised Code of any service for which it is subject to 2574  
certification. 2575

(2) The commission also has jurisdiction under section 2576  
4905.26 of the Revised Code, upon complaint of any person or upon 2577  
complaint or initiative of the commission on or after the starting 2578  
date of competitive retail electric service, to determine whether 2579  
an electric utility has violated or failed to comply with any 2580  
provision of sections 4928.01 to 4928.15, any provision of 2581  
divisions (A) to (D) of section 4928.35 of the Revised Code, or 2582  
any rule or order adopted or issued under those sections; or 2583  
whether an electric services company, electric cooperative, or 2584  
governmental aggregator subject to certification under section 2585  
4928.08 of the Revised Code has violated or failed to comply with 2586

any provision of sections 4928.01 to 4928.10 of the Revised Code 2587  
regarding a competitive retail electric service for which it is 2588  
subject to certification or any rule or order adopted or issued 2589  
under those sections. 2590

(3) If a contract between a mercantile commercial customer 2591  
and an electric services company states that the forum for a 2592  
commercial dispute involving that company is through a certified 2593  
commercial arbitration process, that process set forth in the 2594  
contract and agreed to by the signatories shall be the exclusive 2595  
forum unless all parties to the contract agree in writing to an 2596  
amended process. the company shall notify the commission for 2597  
informational purposes of all matters for which a contract remedy 2598  
is invoked to resolve a dispute. 2599

(4) The commission, by rule adopted pursuant to division (A) 2600  
of section 4928.06 of the Revised Code, shall adopt alternative 2601  
dispute resolution procedures for complaints by nonmercantile, 2602  
nonresidential customers, including arbitration through a 2603  
certified commercial arbitration process and at the commission. 2604  
the commission also by such rule may adopt alternative dispute 2605  
resolution procedures for complaints by residential customers. 2606

(B) In addition to its authority under division (C) of 2607  
section 4928.08 of the Revised Code and to any other remedies 2608  
provided by law, the commission, after reasonable notice and 2609  
opportunity for hearing in accordance with section 4905.26 of the 2610  
Revised Code, may do any of the following: 2611

(1) Order rescission of a contract, or restitution to 2612  
customers including damages due to electric power fluctuations, in 2613  
any complaint brought pursuant to division (A)(1) or (2) of this 2614  
section; 2615

(2) Order any remedy or forfeiture provided under sections 2616  
4905.54 to 4905.60 and 4905.64 of the Revised Code upon a finding 2617

under division (A)(2) of this section that the electric utility 2618  
has violated or failed to comply with any provision of sections 2619  
4928.01 to 4928.15, any provision of divisions (A) to (D) of 2620  
section 4928.35 of the Revised Code, or any rule or order adopted 2621  
or issued under those sections. in addition, the commission may 2622  
order any remedy provided under section 4905.22, 4905.37, or 2623  
4905.38 of the Revised Code if the violation or failure to comply 2624  
by an electric utility related to the provision of a 2625  
noncompetitive retail electric service. 2626

(3) Order any remedy or forfeiture provided under sections 2627  
4905.54 to 4905.60 and 4905.64 of the Revised Code upon a finding 2628  
under division (A)(2) of this section that the electric services 2629  
company, electric cooperative, or governmental aggregator subject 2630  
to certification under section 4928.08 of the Revised Code has 2631  
violated or failed to comply, regarding a competitive retail 2632  
electric service for which it is subject to certification, with 2633  
any provision of sections 4928.01 to 4928.10 of the Revised Code 2634  
or any rule or order adopted or issued under those sections. 2635

(C)(1) In addition to the authority conferred under section 2636  
4911.15 of the Revised Code, the consumers' counsel may file a 2637  
complaint under division (A)(1) or (2) of this section on behalf 2638  
of residential consumers in this state or appear before the 2639  
commission as a representative of those consumers pursuant to any 2640  
complaint filed under division (A)(1) or (2) of this section. 2641

(2) In addition to the authority conferred under section 2642  
4911.19 of the Revised Code, the consumers' counsel, upon 2643  
reasonable grounds on and after the starting date of competitive 2644  
retail electric service, may file with the commission under 2645  
section 4905.26 of the Revised Code a complaint for discovery if 2646  
the recipient of an inquiry under section 4911.19 of the Revised 2647  
Code fails to provide a response within the time specified in that 2648  
section. 2649

(D) Section 4905.61 of the Revised Code applies to a 2650  
violation by an electric utility of, or to a failure of an 2651  
electric utility to comply with, any provision of sections 4928.01 2652  
to 4928.15, any provision of divisions (A) to (D) of section 2653  
4928.35 of the Revised Code, or any rule or order adopted or 2654  
issued under those sections. 2655

**Sec. 4928.17.** (A) except as otherwise provided in sections 2656  
4928.31 to 4928.40 of the Revised Code and beginning on The 2657  
starting date of competitive retail electric service, no electric 2658  
utility shall engage in this state, either directly or through an 2659  
affiliate, in the businesses of supplying a noncompetitive retail 2660  
electric service and supplying a competitive retail electric 2661  
service, or in the businesses of supplying a noncompetitive retail 2662  
electric service and supplying a product or service other than 2663  
retail electric service, unless the utility implements and 2664  
operates under a corporate separation plan that is approved by the 2665  
public utilities commission under this section, is consistent with 2666  
the policy specified in section 4928.02 of the Revised Code, and 2667  
achieves all of the following: 2668

(1) The plan provides, at minimum, for the provision of the 2669  
competitive retail electric service or the nonelectric product or 2670  
service through a fully separated affiliate or functionally 2671  
separate organization of the utility, and the plan includes 2672  
separate accounting requirements, and includes the code of conduct 2673  
as ordered by the commission pursuant to a rule it shall adopt 2674  
under division (A) of section 4928.06 of the Revised Code, 2675  
consistent with the policy specified in section 4928.02 of the 2676  
Revised Code. 2677

(2) The plan satisfies the public interest in preventing 2678  
unfair competitive advantage and preventing the abuse of market 2679  
power. 2680

(3) The plan is sufficient to ensure that the utility will 2681  
not extend any undue preference or advantage to any affiliate, 2682  
division, or part of its own business engaged in the business of 2683  
supplying the competitive retail electric service or NONELECTRIC 2684  
product or service, including, but not limited to, utility 2685  
resources such as trucks, tools, office equipment, office space, 2686  
supplies, customer and marketing information, advertising, billing 2687  
and mailing systems, personnel, and training, without compensation 2688  
based upon fully loaded embedded costs charged to the affiliate; 2689  
and to ensure that any such affiliate, division, or part will not 2690  
receive undue preference or advantage from any affiliate, 2691  
division, or part of the business engaged in business of supplying 2692  
the noncompetitive retail electric service. No such utility, 2693  
affiliate, division, or part shall extend such undue preference. 2694  
Notwithstanding any other division of this section, a utility's 2695  
obligation under division (A)(3) of this section shall be 2696  
effective January 1, 2000. 2697

(B) The commission may approve, modify and approve, or 2698  
disapprove a corporate separation plan filed with the commission 2699  
under division (A) of this section. As part of the code of conduct 2700  
required under division (A)(1) of this section, the commission 2701  
shall adopt rules pursuant to division (A) of section 4928.06 of 2702  
the Revised Code regarding corporate separation AND procedures for 2703  
plan filing and approval. The rules shall include limitations on 2704  
affiliate practices solely for the purpose of maintaining a 2705  
separation of the affiliate's business from the business of the 2706  
utility to prevent unfair competitive advantage by VIRTUE of that 2707  
relationship. The rules also shall include an opportunity for any 2708  
person having a real and substantial interest in the corporate 2709  
separation plan to file specific objections to the plan and 2710  
propose specific responses to issues raised in the objections, 2711  
which objections and responses the commission shall address in its 2712

final order. Prior to commission approval of the plan, the 2713  
commission shall afford a hearing upon those aspects of the plan 2714  
that the commission determines reasonably require a hearing. the 2715  
commission may reject and require refiling of a substantially 2716  
inadequate plan under this section. 2717

(C) The commission shall issue an order approving or 2718  
modifying and approving a corporate separation plan under this 2719  
section, to be effective on the date specified in the order, only 2720  
upon findings that the plan reasonably complies with the 2721  
requirements of division (A) of this section and will provide for 2722  
ongoing compliance with the policy specified in section 4928.02 of 2723  
the Revised Code. 2724

(D) Any party may seek an amendment to a CORPORATE separation 2725  
plan approved under this section, and the commission, pursuant to 2726  
a request from any party or on its own initiative, may order as it 2727  
considers necessary the filing of an amended CORPORATE separation 2728  
plan to reflect changed circumstances. 2729

(E) Notwithstanding section 4905.20, 4905.21, 4905.46, or 2730  
4905.48 of the Revised Code, an electric utility may divest itself 2731  
of any generating asset at any time without commission approval, 2732  
subject to the provisions of Title XLIX of the Revised Code 2733  
relating to the transfer of transmission, distribution, or 2734  
ancillary service provided by such generating asset. 2735

**Sec. 4928.18.** (A) Notwithstanding division (D)(2)(a) of 2736  
section 4909.15 of the Revised Code, nothing in this chapter 2737  
prevents the public utilities commission from exercising its 2738  
AUTHORITY under Title XLIX of the Revised Code to protect 2739  
customers of retail electric service supplied by an electric 2740  
utility FROM any adverse effect of the utility's provision of a 2741  
product or service other than retail electric service. 2742

(B) The commission has jurisdiction under section 4905.26 of 2743

the Revised Code, upon complaint of any person or upon complaint 2744  
or initiative of the commission on or after the starting date of 2745  
competitive retail electric service, to determine whether an 2746  
electric utility or its affiliate has violated any provision of 2747  
section 4928.17 of the Revised Code or an order issued or rule 2748  
adopted under that section. for this purpose, the commission may 2749  
examine such books, accounts, or other records kept by an electric 2750  
utility or its affiliate as may relate to the businesses for which 2751  
corporate separation is required under section 4928.17 of the 2752  
Revised Code, and may investigate such utility or affiliate 2753  
operations as may relate to those businesses and investigate the 2754  
interrelationship of those operations. any such examination or 2755  
investigation by the commission shall be governed by chapter 4903. 2756  
OF the revised code. 2757

(C) In addition to any remedies otherwise provided by law, 2758  
the commission, regarding a determination of a violation pursuant 2759  
to division (B) of this section, may do any of the following: 2760

(1) Issue an order directing the utility or affiliate to 2761  
comply; 2762

(2) Modify an order as the commission finds reasonable and 2763  
appropriate and order the utility or affiliate to comply with the 2764  
modified order; 2765

(3) Suspend or abrogate an order, in whole or in part; 2766

(4) Issue an order that the utility or affiliate pay 2767  
restitution to any person injured by the violation or failure to 2768  
comply. 2769

(D) Section 4905.61 of the Revised Code applies in the CASE 2770  
OF any violation of section 4928.17 of the Revised Code or of any 2771  
rule adopted or order issued under that section. 2772

**Sec. 4928.19.** As part of their ongoing consumer education 2773

efforts, the public utilities commission and the office of the 2774  
consumers' counsel shall ENGAGE in cooperative agency efforts to 2775  
educate consumers in this state regarding electric industry 2776  
restructuring under this chapter. 2777

**Sec. 4928.20.** (A) on or after the starting date of 2778  
competitive retail electric service, the legislative authority of 2779  
a municipal corporation may adopt an ordinance, or the board of 2780  
township trustees of a township or the board of county 2781  
commissioners of a county may adopt a resolution, under which it 2782  
may aggregate in accordance with this section the retail 2783  
electrical loads located, RESPECTIVELY, within THE MUNICIPAL 2784  
CORPORATION, TOWNSHIP, OR UNINCORPORATED AREA OF THE COUNTY and, 2785  
for that purpose, may enter into service agreements to facilitate 2786  
for those loads the sale and purchase of electricity. the 2787  
legislative authority or board also may exercise such authority 2788  
jointly with any other such legislative authority or board. an 2789  
ordinance or resolution under this division shall specify whether 2790  
the aggregation will occur only with the prior consent of each 2791  
person owning, occupying, controlling, or using an electric load 2792  
center proposed to be aggregated or will occur automatically for 2793  
all such persons pursuant to the opt-out requirements of division 2794  
(D) of this section. nothing in this division, however, AUTHORIZES 2795  
the aggregation of such retail electric loads of an electric load 2796  
center, as defined in section 4933.81 of the Revised Code, that is 2797  
located in the certified territory of a nonprofit electric 2798  
supplier under sections 4933.81 to 4933.90 of the Revised Code or 2799  
an electric load center served by transmission or distribution 2800  
facilities of a municipal electric utility. 2801

(B) if an ordinance or resolution adopted under division (A) 2802  
of this section specifies that aggregation will occur 2803  
automatically as described in that division, the ordinance or 2804

resolution SHALL direct the board of elections to submit the 2805  
question of the AUTHORITY to aggregate to the electors of the 2806  
respective municipal corporation, township, or UNINCORPORATED AREA 2807  
OF A county at a special election on the day of the next primary 2808  
or general election in the municipal corporation, township, or 2809  
county. the legislative authority or board shall certify a copy of 2810  
the ordinance or resolution to the board of elections not less 2811  
than seventy-five days before the day of the special election. no 2812  
ordinance or resolution adopted under division (A) of this section 2813  
that provides for an election under this division shall take 2814  
effect unless approved by a majority of the electors voting upon 2815  
the ordinance or resolution at the election held pursuant to this 2816  
division. 2817

(C) upon the applicable requisite authority under divisions 2818  
(A) and (b) of this section, the legislative authority or board 2819  
shall develop a plan of operation and governance for the 2820  
aggregation program so authorized. before adopting a plan under 2821  
this division, the legislative authority or board shall hold at 2822  
least two public hearings on the plan. before the first hearing, 2823  
the legislative authority or board shall publish notice of the 2824  
hearings once a week for two consecutive weeks in a newspaper of 2825  
general circulation in the jurisdiction. the notice shall 2826  
summarize the plan and state the date, time, and location of each 2827  
hearing. 2828

(D) no legislative authority or board, pursuant to an 2829  
ordinance or resolution under divisions (a) and (b) of this 2830  
section that provides for automatic aggregation as described in 2831  
division (a) of this section, shall aggregate the electrical load 2832  
of any electric load center located within its jurisdiction unless 2833  
it in advance clearly DISCLOSES to the person owning, occupying, 2834  
controlling, or using the load center that the person will be 2835  
enrolled automatically in the aggregation program and will remain 2836

so enrolled unless the person affirmatively elects by a stated 2837  
procedure not to be so enrolled. the disclosure shall state 2838  
prominently the rates, charges, and other terms and conditions of 2839  
enrollment. The stated procedure shall allow any person enrolled 2840  
in the aggregation program the opportunity to opt out of the 2841  
program every two years, without paying a switching fee. Any such 2842  
person that opts out of the aggregation program pursuant to the 2843  
stated procedure shall default to the standard service offer 2844  
provided under division (A) of section 4928.14 or division (D) of 2845  
section 4928.35 of the Revised Code until the person chooses an 2846  
alternative supplier. 2847

(E)(1) with respect to a governmental aggregation for a 2848  
municipal corporation that is authorized pursuant to DIVISION (A) 2849  
to (D) of this section, resolutions may be proposed by initiative 2850  
or referendum petitions in accordance with sections 731.28 to 2851  
731.41 of the Revised Code. 2852

(2) with respect to a governmental aggregation for a township 2853  
or the unincorporated area of a county, which aggregation is 2854  
authorized pursuant to DIVISION (A) to (D) of this section, 2855  
resolutions may be proposed by initiative or referendum petitions 2856  
in accordance with sections 731.28 to 731.40 of the Revised Code, 2857  
except that: 2858

(a) the petitions shall be filed, respectively, with the 2859  
township clerk or the board of county commissioners, who shall 2860  
perform those duties imposed under those sections upon the city 2861  
auditor or village clerk. 2862

(b) the PETITIONS shall contain the signatures of not less 2863  
than ten per cent of the total number of ELECTORS in, 2864  
respectively, the township or the unincorporated area of the 2865  
county who voted for the office of governor at the preceding 2866  
general election for that office in that area. 2867

(F) a governmental aggregator under division (A) of this section is not a public utility engaging in the WHOLESALE purchase and resale of electricity, and provision of the AGGREGATED service is not a wholesale utility transaction. a governmental aggregator shall be subject to supervision and regulation by the public utilities commission only to the extent of any competitive retail electric service it provides and commission authority under this chapter. 2868  
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(G) This section does not apply in the case of a municipal corporation that supplies such aggregated service to electric load centers to which its municipal electric utility also supplies a noncompetitive retail electric service through transmission or distribution facilities the utility singly or jointly owns or operates. 2876  
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**Sec. 4928.31.** (A) Not later than ninety days after the effective date of this section, an electric utility supplying retail electric service in this state on that date shall file with the public utilities commission a plan for the utility's provision of retail electric service in this state during the market development period. this transition plan shall be in such form as the commission shall prescribe by rule adopted under division (A) of section 4928.06 of the Revised Code and shall include all of the following: 2882  
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(1) A RATE UNBUNDLING PLAN that specifies, consistent with divisions (A)(1) to (7) of section 4928.34 of the Revised Code and any rules adopted by the commission under division (A) of section 4928.06 of the Revised Code, THE UNBUNDLED COMPONENTS FOR ELECTRIC GENERATION, TRANSMISSION, AND DISTRIBUTION SERVICE AND SUCH OTHER UNBUNDLED service COMPONENTS AS THE COMMISSION requires, to BE CHARGED BY THE UTILITY beginning on THE STARTING DATE OF COMPETITIVE RETAIL ELECTRIC SERVICE and that includes information 2891  
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<u>the commission requires to fix and determine those components;</u>	2899
<u>(2) A corporate separation plan consistent with section</u>	2900
<u>4928.17 of the Revised Code and any rules adopted by the</u>	2901
<u>commission under division (A) of section 4928.06 of the Revised</u>	2902
<u>Code;</u>	2903
<u>(3) Such plan or plans as the commission requires to address</u>	2904
<u>operational support systems and any other technical implementation</u>	2905
<u>issues pertaining to COMPETITIVE retail electric service</u>	2906
<u>consistent with any rules adopted by the commission under division</u>	2907
<u>(A) of section 4928.06 of the Revised Code;</u>	2908
<u>(4) An employee assistance plan for providing severance,</u>	2909
<u>retraining, early retirement, retention, outplacement, and other</u>	2910
<u>assistance for the utility's employees whose employment is</u>	2911
<u>affected by electric industry restructuring under this chapter;</u>	2912
<u>(5) A consumer education plan consistent with section 4928.42</u>	2913
<u>of the Revised Code and any rules adopted by the commission under</u>	2914
<u>division (A) of section 4928.06 of the Revised Code.</u>	2915
	2916
<u>Additionally, a transition plan under this SECTION MAY</u>	2917
<u>include An application for the opportunity to receive transition</u>	2918
<u>revenues as authorized under sections 4928.31 to 4928.40 of the</u>	2919
<u>Revised Code, which application shall be consistent with those</u>	2920
<u>sections and any rules adopted by the commission under division</u>	2921
<u>(A) of section 4928.06 of the Revised Code. The transition plan</u>	2922
<u>also may include a plan for the independent operation of THE</u>	2923
<u>UTILITY'S transmission facilities consistent with section 4928.12</u>	2924
<u>of the Revised Code, division (A)(13) of section 4928.34 of the</u>	2925
<u>Revised Code, and any rules adopted by the commission under</u>	2926
<u>division (A) of section 4928.06 of the Revised Code.</u>	2927
<u>The commission may reject and require refiling, in whole or</u>	2928
<u>in part, of any substantially inadequate transition plan.</u>	2929

(B) The electric utility shall provide public notice of its 2930  
filing under division (A) of this section, in a form and manner 2931  
that the commission shall prescribe by rule adopted under division 2932  
(A) of section 4928.06 of the Revised Code. however, the adoption 2933  
of rules regarding the public notice under this division, 2934  
regarding the form of the transition plan under division (A) of 2935  
this section, and regarding procedures for expedited discovery 2936  
under division (A) of section 4928.32 of the Revised Code are not 2937  
subject to division (D) of section 111.15 of the Revised Code. 2938

**Sec. 4928.32.** (A) the public utilities commission shall 2939  
establish reasonable procedures for expedited discovery in any 2940  
proceeding initiated to consider a transition plan filed under 2941  
section 4928.31 of the Revised Code. 2942

(B) Not later than forty-five days after the date on which an 2943  
electric utility files a transition plan under section 4928.31 of 2944  
the Revised Code, any person having a real and substantial 2945  
interest in the transition plan may file with the commission 2946  
preliminary objections to the transition plan, which shall 2947  
identify with specificity issues pertaining to any aspect of the 2948  
transition plan, and any such person may propose specific 2949  
responses to those issues. The commission shall address THOSE 2950  
OBJECTIONS and RESPONSES in its final order. 2951

In addition, not later than ninety days after the plan's 2952  
filing, the commission staff shall file with the commission a 2953  
report of its recommendations with respect to the plan. Prior to 2954  
commission approval of the plan, the commission shall afford a 2955  
hearing upon those aspects of the plan that the commission 2956  
determines reasonably require a hearing. 2957

(C) The commission shall maintain a complete record of all 2958  
proceedings relative to a transition plan filed under section 2959  
4928.31 of the Revised Code and shall issue and file with the 2960

record of the case findings of fact and written opinions setting 2961  
forth the reasons for any modification to or its approval of a 2962  
transition plan. 2963

**Sec. 4928.33.** (A) Not later than two hundred seventy-five 2964  
days after the date an electric utility files a transition plan 2965  
under section 4928.31 of the Revised Code, but, in any event, not 2966  
later THAN october 31, 2000, the public utilities commission shall 2967  
issue a final order approving the transition plan as filed under 2968  
section 4928.31 of the Revised Code or an order modifying and 2969  
approving that plan. The order is subject to section 4903.15 of 2970  
the Revised Code and is subject to review and appeal under chapter 2971  
4903. of the Revised Code. 2972

(B) If the COMMISSION fails to issue, by october 31, 2000, a 2973  
final order approving a transition plan, or such a final order has 2974  
been enjoined in whole or in part pending appeal to a court, the 2975  
commission shall issue an interim order prescribing a transition 2976  
plan, to have effect on an interim basis only, and containing the 2977  
plan components required by division (A) of section 4928.31 of the 2978  
Revised Code and providing for the opportunity for transition 2979  
revenue receipt if such an application were included in the plan 2980  
filed by the utility under that section. the interim order is 2981  
subject to section 4903.15 of the Revised Code but is not subject 2982  
to review and appeal under Chapter 4903. of the Revised Code. 2983

An interim plan prescribed under the interim order shall be 2984  
effective for the electric utility beginning on the starting date 2985  
of competitive retail electric service and shall continue in 2986  
effect until such time as any other replacement transition plan 2987  
takes effect pursuant to a final commission order or resolution of 2988  
an appeal. any interim plan so prescribed shall comply with THE 2989  
APPLICABLE provisions of section 4928.34 of the revised Code. A 2990  
final commission order shall provide for a reconciliation of those 2991

amounts determined in the final order relative to division (A) of 2992  
section 4928.31 of the Revised Code as compared to the interim 2993  
amounts as determined under this division. 2994

(C) No electric utility required to file a transition plan 2995  
under section 4928.31 of the Revised Code shall fail to implement 2996  
a transition plan approved or prescribed for the utility by a 2997  
commission order issued under division (a) or (b) of this section. 2998  
No electric utility shall provide retail electric service in this 2999  
state during the market development period except pursuant to such 3000  
an approved or prescribed transition plan. 3001

**Sec. 4928.34.** (A) The public utilities commission shall not 3002  
approve or prescribe a transition plan under division (A) or (B) 3003  
of section 4928.33 of the Revised Code unless the commission first 3004  
makes all of the following determinations: 3005

(1) The unbundled components for the electric transmission 3006  
component of retail electric service, as specified in the 3007  
utility's rate unbundling plan required by division (A)(1) of 3008  
section 4928.31 of the Revised Code, equal the tariff rates 3009  
determined by the federal energy regulatory commission that are in 3010  
effect on the date of the approval of the transition plan under 3011  
sections 4928.31 to 4928.40 of the Revised Code, as each such rate 3012  
is determined applicable to each particular customer class and 3013  
rate schedule by the commission. THE UNBUNDLED TRANSMISSION 3014  
COMPONENT SHALL INCLUDE A SLIDING SCALE OF CHARGES UNDER DIVISION 3015  
(B) OF SECTION 4905.31 OF THE REVISED CODE TO ENSURE THAT REFUNDS 3016  
DETERMINED OR APPROVED BY THE FEDERAL ENERGY REGULATORY COMMISSION 3017  
ARE FLOWED THROUGH TO RETAIL ELECTRIC CUSTOMERS. 3018

(2) the unbundled components for retail electric distribution 3019  
service in the rate unbundling plan equal the difference between 3020  
the costs ATTRIBUTABLE to the utility's transmission and 3021  
distribution rates and charges under its schedule of rates and 3022

charges in effect on the effective date of this section, based 3023  
upon the record in the most recent rate proceeding of the utility 3024  
for which the utility's schedule was established, and the tariff 3025  
rates for electric transmission service determined by the federal 3026  
energy regulatory commission as described in division (A)(1) of 3027  
this section. 3028

(3) all other unbundled components required by the commission 3029  
in the rate unbundling plan equal the costs attributable to the 3030  
particular service as reflected in the utility's schedule of rates 3031  
and charges in effect on the effective date of this section. 3032

(4) the unbundled components for retail electric generation 3034  
service in the rate unbundling plan equal the residual amount 3035  
remaining after the determination of the transmission, 3036  
distribution, and other unbundled components, and after any 3037  
adjustments necessary to reflect the effects of the amendment of 3038  
section 5727.111 of the Revised Code by Sub. S. B. No. 3 of the 3039  
123rd general assembly. 3040

(5) all unbundled components in the rate unbundling plan have 3041  
been adjusted to reflect any base rate reductions on file with the 3042  
commission and as scheduled to be in effect during the market 3043  
development period under rate settlements in effect on the 3044  
effective date of this section. All such base rate reductions 3045  
shall be included in the unbundled generation component. However, 3046  
all earnings obligations, RESTRICTIONS, other requirements, or 3047  
caps imposed on an electric utility in a commission order prior to 3048  
the effective date of this section are void. 3049

(6) Subject to division (A)(5) of this section, the total of 3050  
all unbundled components in the rate UNBUNDLING plan are capped 3051  
and shall equal during the market development period, except as 3052  
specifically provided in this chapter, the total of all rates and 3053

charges in effect under the applicable bundled schedule of the 3054  
electric utility PURSUANT TO SECTION 4905.30 OF THE REVISED CODE 3055  
in effect on the day before the effective date of this section, 3056  
including the transition charge determined under section 4928.40 3057  
of the Revised Code, adjusted for any changes in the taxation of 3058  
electric UTILITIES and retail electric service under Sub. S.B. No. 3059  
3 of the 123rd General Assembly, the universal service rider 3060  
authorized by section 4928.51 of the Revised Code, and the 3061  
temporary rider authorized by section 4928.61 of the Revised Code. 3062  
for the purpose of this division, the rate cap applicable to a 3063  
customer receiving electric service pursuant to an arrangement 3064  
approved by the commission under section 4905.31 of the Revised 3065  
Code is, for the term of the arrangement, the total of all rates 3066  
and charges in effect under the arrangement. 3067

(7) The rate unbundling plan complies with any rules adopted 3068  
by the commission under division (A) of section 4928.06 of the 3069  
Revised Code. 3070

(8) The corporate separation plan required by division (a)(2) 3071  
of section 4928.31 of the Revised Code complies with section 3072  
4928.17 of the Revised Code and any rules adopted by the 3073  
commission under division (A) of section 4928.06 of the Revised 3074  
Code. 3075

(9) any plan or plans the commission requires to address 3076  
operational support systems and any other technical implementation 3077  
issues pertaining to COMPETITIVE retail electric service COMPLY 3078  
WITH any rules adopted by the commission under division (A) of 3079  
section 4928.06 of the Revised Code. 3080

(10) The employee assistance plan required by division (A)(4) 3081  
of section 4928.31 of the Revised Code sufficiently provides 3082  
severance, retraining, early retirement, retention, outplacement, 3083  
and other assistance for the utility's employees whose employment 3084

is affected by electric industry restructuring under this chapter. 3085

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(11) The consumer education plan required under division 3087  
(A)(5) of section 4928.31 of the Revised Code complies with 3088  
section 4928.42 of the Revised Code and any rules adopted by the 3089  
commission under division (A) of section 4928.06 of the Revised 3090  
Code. 3091

(12) The TRANSITION REVENUES FOR WHICH AN ELECTRIC UTILITY IS 3092  
AUTHORIZED A REVENUE OPPORTUNITY UNDER SECTIONS 4928.31 TO 4928.40 3093  
OF THE REVISED CODE ARE THE ALLOWABLE TRANSITION COSTS OF THE 3094  
UTILITY AS SUCH COSTS ARE DETERMINED BY THE COMMISSION PURSUANT TO 3095  
SECTION 4928.39 OF THE REVISED CODE, AND THE transition charges 3096  
for the customer classes and rate schedules of the utility are the 3097  
charges determined pursuant to section 4928.40 of the Revised 3098  
Code. 3099

(13) Any independent transmission plan included in the 3100  
transition plan filed under section 4928.31 of the Revised Code 3101  
reasonably complies with section 4928.12 of the Revised Code and 3102  
any rules adopted by the commission under division (A) of section 3103  
4928.06 of the Revised Code, unless the commission, for good cause 3104  
shown, authorizes the utility to defer compliance until an order 3105  
is issued under division (G) of section 4928.35 of the Revised 3106  
Code. 3107

(14) The utility is in compliance with sections 4928.01 to 3108  
4928.11 of the Revised Code and any rules or orders of the 3109  
commission adopted or issued under those sections. 3110

(15) All unbundled components in the rate unbundling plan 3111  
have been adjusted to reflect the elimination of the tax on gross 3112  
receipts imposed by section 5727.30 of the Revised Code. 3113

In addition, a transition plan approved by the commission 3114  
under section 4928.33 of the Revised Code but not containing an 3115

approved independent transmission plan shall contain the express 3116  
conditions that the utility will comply with an order issued under 3117  
division (G) of section 4928.35 of the Revised Code. 3118

(B) Subject to division (E) of section 4928.17 of the Revised 3119  
Code, if the commission finds that any part of the transition plan 3120  
would constitute an abandonment under sections 4905.20 and 4905.21 3121  
of the Revised Code, the commission shall not approve that part of 3122  
the transition plan unless it makes the finding required for 3123  
approval of an abandonment application under section 4905.21 of 3124  
the Revised Code. sections 4905.20 and 4905.21 of the Revised Code 3125  
otherwise shall not apply to a transition plan under sections 3126  
4928.31 to 4928.40 of the Revised Code. 3127

**Sec. 4928.35.** (A) Upon approval of its transition plan under 3128  
sections 4928.31 to 4928.40 of the Revised Code, an electric 3129  
utility shall file in accordance with section 4905.30 of the 3130  
Revised Code schedules containing the unbundled rate components 3131  
set in the approved plan in accordance with section 4928.34 of the 3132  
Revised Code. the schedules shall be in effect for the duration of 3133  
the utility's market development period, shall be subject to the 3134  
cap specified in division (A)(6) of section 4928.34 of the Revised 3135  
Code, and shall not be adjusted during that period by the public 3136  
UTILITIES commission except as otherwise AUTHORIZED by division 3137  
(B) of this section or as otherwise AUTHORIZED by federal law or 3138  
except to reflect any change in tax law or tax regulation that has 3139  
a material effect on the electric utility. 3140

(B) Efforts shall be made to reach agreements with electric 3141  
UTILITIES in matters of LITIGATION regarding property valuation 3142  
issues. Irrespective of those efforts, the unbundled components 3143  
for an electric utility's retail electric generation service and 3144  
distribution service, as provided in division (A) of this section, 3145  
are not subject to adjustment for the utility's market development 3146

period, except that the commission shall order an equitable 3147  
reduction in those components for all customer classes to reflect 3148  
any refund a utility receives as a result of the resolution of 3149  
utility personal property tax valuation litigation that is 3150  
resolved on or after the effective date of this section and prior 3151  
to the end of the market development period. immediately upon the 3152  
issuance of that order, the electric utility shall file revised 3153  
rate schedules under section 4909.18 of the Revised Code to effect 3154  
the order. 3155

(C) The schedule under division (A) of this section 3156  
containing the unbundled distribution components shall provide 3157  
that electric distribution service under the schedule will be 3158  
available to all retail electric service customers in the electric 3159  
utility's certified territory and their suppliers on a 3160  
nondiscriminatory and comparable basis on and after the starting 3161  
date of competitive retail electric service. The schedule also 3162  
shall include an obligation to build distribution facilities when 3163  
necessary to provide adequate distribution service, provided that 3164  
a customer requesting that service may be required to pay all or 3165  
part of the reasonable incremental cost of the new facilities, in 3166  
accordance with rules, policy, precedents, or orders of the 3167  
commission. 3168

(D) during the market development period, an electric 3169  
distribution utility shall provide consumers on a comparable and 3170  
nondiscriminatory basis within its certified territory a standard 3171  
service offer of all competitive retail electric services 3172  
necessary to maintain essential electric service to CONSUMERS, 3173  
including a firm supply of electric generation service priced in 3174  
accordance with the schedule containing the utility's UNBUNDLED 3175  
generation service component. IMMEDIATELY upon approval of its 3176  
transition plan, the utility shall file the standard service offer 3177  
with the commission under section 4909.18 of the Revised Code. 3178

during the market development period, the failure of a supplier to 3179  
deliver retail electric generation service shall result in the 3180  
supplier's customers, after reasonable notice, defaulting to the 3181  
utility's standard service offer filed under this division until 3182  
the customer chooses an alternative supplier. a supplier is deemed 3183  
under this section to have failed to deliver such service if any 3184  
of the conditions specified in divisions (b)(1) to (4) of section 3185  
4928.14 of the Revised Code is met. 3186

(E) An amendment of a corporate separation plan contained in 3187  
a transition plan approved by the commission under section 4928.33 3188  
of the Revised Code shall be filed and approved as a corporate 3189  
separation plan pursuant to section 4928.17 of the Revised Code. 3190

(F) Any change to an electric utility's opportunity to 3191  
receive transition revenues under a transition plan approved in 3192  
accordance with section 4928.33 of the Revised Code shall be 3193  
authorized only as provided in sections 4928.31 to 4928.40 of the 3194  
Revised Code. 3195

(G) The commission, by order, shall require each electric 3196  
utility whose approved transition plan did not include an 3197  
independent transmission plan as described in division (A)(13) of 3198  
section 4928.34 of the Revised Code to be a member of, and 3199  
transfer control of transmission facilities it owns or controls in 3200  
this state to, one or more qualifying transmission entities, as 3201  
described in division (B) of section 4928.12 of the Revised Code, 3202  
that are planned to be operational on and after december 31, 2003. 3203  
HOWEVER, THE COMMISSION MAY EXTEND THAT DATE IF, FOR REASONS 3204  
BEYOND THE CONTROL OF THE UTILITY, A QUALIFYING TRANSMISSION 3205  
ENTITY IS NOT PLANNED TO BE OPERATIONAL ON THAT DATE. The 3206  
commission's order may specify an earlier date on which the 3207  
transmission entity or entities are planned to be operational if 3208  
the commission considers it necessary to carry out the policy 3209  
specified in section 4928.02 of the Revised Code or to encourage 3210

effective competition in retail electric service in this state. 3211

Upon the issuance of the order, each such utility shall file 3212  
with the commission a plan for such independent operation of the 3213  
utility's transmission facilities consistent with this division. 3214  
the commission may reject and require refiling of any 3215  
substantially inadequate plan submitted under this division. 3216

after REASONABLE notice and opportunity for hearing, the 3217  
commission shall approve the plan upon a finding that the plan 3218  
will result in the utility's COMPLIANCE with the order, this 3219  
division, and any rules adopted under division (A) of section 3220  
4928.06 of the Revised Code. the approved independent transmission 3221  
plan shall be deemed a part of the utility's transition plan for 3222  
purposes of sections 4928.31 to 4928.40 of the Revised Code. 3223

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**Sec. 4928.36.** The public utilities commission has 3225  
jurisdiction under section 4905.26 of the Revised Code, upon 3226  
complaint by any person or upon complaint or initiative of the 3227  
commission on or after the starting date of competitive retail 3228  
electric service, to determine whether an electric utility has 3229  
failed to implement, in conformance with an order under section 3230  
4928.33 of the Revised Code or in ongoing compliance with 3231  
applicable provisions of the policy specified in section 4928.02 3232  
of the Revised Code, a transition plan approved under section 3233  
4928.33 of the Revised Code. If, after reasonable notice and 3234  
opportunity for hearing as provided in section 4905.26 of the 3235  
Revised Code, the commission determines that the utility has 3236  
failed to so comply, the commission, in addition to any other 3237  
remedies provided by law, may use the remedies specified in 3238  
divisions (C)(1) to (3) of section 4928.18 of the Revised Code to 3239  
enforce compliance. 3240

Sec. 4928.37. (A)(1) Sections 4928.31 to 4928.40 of the 3241  
Revised Code provide an electric utility the opportunity to 3242  
receive transition revenues that may assist it in making the 3243  
transition to a fully competitive retail electric generation 3244  
market. An electric Utility for which transition revenues are 3245  
approved pursuant to sections 4928.31 to 4928.40 of the Revised 3246  
Code shall receive those revenues through both of the following 3247  
mechanisms beginning on the starting date of competitive retail 3248  
electric service and ending on the expiration date of its market 3249  
development period as determined under section 4928.40 of the 3250  
Revised Code: 3251

(a) payment of unbundled rates for retail electric services 3252  
by each customer that is supplied retail electric generation 3253  
service during the market development period by the customer's 3254  
electric distribution utility, which rates shall be specified in 3255  
schedules filed under section 4928.35 of the Revised Code; 3256

(b) Payment of a nonbypassable and competitively neutral 3257  
transition charge by each customer that is supplied retail 3258  
electric generation service during the market development period 3259  
by an entity other than the customer's electric distribution 3260  
utility, as such transition charge is determined under section 3261  
4928.40 of the Revised Code. the transition charge shall be 3262  
payable by each such retail electric distribution service customer 3263  
in the certified territory of the electric utility for which the 3264  
transition revenues are approved and shall be billed on each 3265  
kilowatt hour of electricity delivered to the customer by the 3266  
electric distribution utility as registered on the customer's 3267  
meter during the utility's market development period as kilowatt 3268  
hour is defined in section 4909.161 of the Revised Code or, if no 3269  
meter is used, as based on an estimate of kilowatt hours used or 3270  
consumed by the customer. The transition charge for each customer 3271

class shall reflect the cost allocation to that class as provided 3272  
under bundled rates and charges in effect on the day before the 3273  
effective date of this section. Additionally, as reflected in 3274  
section 4928.40 of the Revised Code, the transition charges shall 3275  
be structured to provide shopping incentives to customers 3276  
sufficient to encourage the development of effective competition 3277  
in the supply of retail electric generation service. TO THE EXTENT 3278  
POSSIBLE, THE LEVEL AND STRUCTURE OF THE TRANSITION CHARGE SHALL 3279  
BE DESIGNED TO AVOID REVENUE RESPONSIBILITY SHIFTS AMONG THE 3280  
UTILITY'S CUSTOMER CLASSES AND RATE SCHEDULES. 3281

(2)(a) Notwithstanding division (A)(1)(b) of this section, 3282  
the transition charge shall not be payable on electricity supplied 3283  
by a municipal electric utility to a retail electric distribution 3284  
service customer in the certified territory of the electric 3285  
utility for which the transition revenues are approved, if the 3286  
municipal electric utility provides electric transmission or 3287  
distribution service, or both services, through transmission or 3288  
distribution facilities singly or jointly owned or operated by the 3289  
municipal electric utility, and if the municipal electric utility 3290  
was in existence, operating, and providing service as of January 3291  
1, 1999. 3292

(b) The transition charge shall not be payable on electricity 3293  
supplied or consumed in this state except such electricity as is 3294  
delivered to a retail customer by an electric distribution utility 3295  
and is registered on the customer's meter during the utility's 3296  
market development period. 3297

(3) the transition charge shall not be discounted by any 3298  
party unless there is a determination by the Department of 3299  
Development that such a discount is part of an approved economic 3300  
development package involving state or local funding and is 3301  
necessary for economic development to occur within this state 3302  
instead of another state. 3303

(4) Nothing prevents payment of all or part of the transition charge by another party on a customer's behalf if that payment does not contravene sections 4905.33 to 4905.35 of the Revised Code or this chapter. 3304  
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(B) The electric utility shall separately itemize and disclose, or cause its billing and collection agent to separately itemize and disclose, the transition charge on the customer's bill in accordance with reasonable SPECIFICATIONS the commission shall prescribe by rule under division (A) of section 4928.06 of the Revised Code. 3308  
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**Sec. 4928.38.** Pursuant to a transition plan approved under section 4928.33 of the Revised Code, An electric utility in this state may receive transition revenues under sections 4928.31 to 4928.40 of the Revised Code, beginning on The starting date of competitive retail electric service. Except as provided in sections 4905.33 to 4905.35 of the Revised Code and this Chapter, an electric utility that receives such transition revenues shall be wholly responsible for how to use those revenues and wholly responsible for whether it is in a competitive position after the market development period. The utility's receipt of transition revenues shall terminate at the end of the market development period. With the termination of that approved revenue source, the utility shall be fully on its own in the competitive market. The commission shall not authorize the receipt of transition revenues or any equivalent revenues by an electric utility except as expressly authorized in sections 4928.31 to 4928.40 of the Revised Code. 3314  
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**Sec. 4928.39.** Upon the filing of an application by an electric utility under section 4928.31 of the Revised Code for the opportunity to receive transition revenues under sections 4928.31 3331  
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to 4928.40 of the Revised Code, the public utilities commission, 3334  
by order under section 4928.33 of the Revised Code, shall 3335  
determine the total allowable amount of the transition costs of 3336  
the utility to be received as transition revenues under those 3337  
sections. such amount shall be the just and reasonable transition 3338  
COSTS of the utility, which costs the commission finds meet all of 3339  
the following criteria: 3340

(A) The costs were prudently incurred. 3341

(B) the costs are LEGITIMATE, net, verifiable, and directly 3342  
assignable or allocable to retail electric service provided to 3343  
electric consumers in this state. 3344

(C) The costs are unrecoverable in a competitive market. 3345

(D) The utility would OTHERWISE be entitled to recover the 3346  
costs. 3347

Transition costs under this section shall include the costs 3348  
of employee assistance under the employee assistance plan included 3349  
in the utility's approved transition plan under section 4928.33 of 3350  
the Revised Code, which costs exceed those costs contemplated in 3351  
labor contracts in effect on the effective date of this section. 3352

Further, the commission's order under this section shall 3353  
separately identify regulatory assets of the utility that are a 3354  
part of the total allowable amount of transition costs determined 3355  
under this section and separately identify that portion of a 3356  
transition charge determined under section 4928.40 of the Revised 3357  
Code that is allocable to those assets, WHICH PORTION OF A 3358  
TRANSITION CHARGE SHALL BE SUBJECT TO ADJUSTMENT ONLY 3359  
PROSPECTIVELY AND AFTER December 31, 2004. 3360

The electric utility shall have the burden of demonstrating 3361  
allowable transition costs as AUTHORIZED under this section. the 3362  
commission may impose reasonable commitments upon the utility's 3363

collection of the transition revenues to ensure that those 3364  
revenues are used to eliminate the allowable transition costs of 3365  
the utility during the market development period and are not 3366  
available for use by the utility to achieve an undue competitive 3367  
advantage, or to impose an undue disadvantage, in the provision by 3368  
the utility of regulated or unregulated products or services. 3369

**Sec. 4928.40.** (A) UPON determining under section 4928.39 of 3370  
the Revised Code the allowable transition costs of an electric 3371  
utility AUTHORIZED for collection as transition revenues under 3372  
sections 4928.31 to 4928.40 of the Revised Code, the public 3373  
utilities commission, by order under section 4928.33 of the 3374  
Revised Code, shall establish the transition charge for each 3375  
customer class of the electric utility and, to the extent 3376  
possible, each rate schedule within each such customer class, with 3377  
all such transition charges being collected as provided in 3378  
division (A)(1)(b) of section 4928.37 of the Revised Code during a 3379  
market development period for the utility, ending on such date as 3380  
the commission shall reasonably prescribe. The market development 3381  
period shall end not later than December 31, 2005. HOWEVER, THE 3382  
COMMISSION MAY SET THE UTILITY'S RECOVERY OF THE REVENUE 3383  
REQUIREMENTS ASSOCIATED WITH REGULATORY ASSETS TO END NOT LATER 3384  
THAN DECEMBER 31, 2010, BUT SHALL NOT INCREASE THE CHARGE 3385  
RECOVERING SUCH REVENUE REQUIREMENTS ASSOCIATED WITH REGULATORY 3386  
ASSETS. 3387

factors the commission shall consider in prescribing the 3388  
expiration date of the utility's market development period and the 3389  
transition charge for each customer class and rate schedule of the 3390  
utility include, but are not limited to, the total allowable 3391  
amount of transition costs of the electric utility as determined 3392  
under section 4928.39 of the Revised Code; the relevant market 3393  
price for the delivered supply of electricity to customers in that 3394

customer class and, to the extent possible, in each rate schedule 3395  
as determined by the commission; and such shopping incentives by 3396  
customer class as are considered necessary to induce, at the 3397  
minimum, a twenty per cent load switching rate by customer class 3398  
halfway through the utility's market development period but not 3399  
later than December 31, 2003. In no case shall the commission 3400  
establish a shopping incentive in an amount exceeding the 3401  
unbundled component for retail electric generation service set in 3402  
the utility's approved transition plan under section 4928.33 of 3403  
the Revised Code, and in no case shall the commission establish a 3404  
transition charge in an amount less than zero. 3405

(B) THE COMMISSION may CONDUCT A PERIODIC REVIEW no more 3406  
often than annually AND, AS IT DETERMINES NECESSARY, ADJUST THE 3407  
TRANSITION CHARGES OF THE ELECTRIC UTILITY as INITIALLY 3408  
established under division (A) of this section or subsequently 3409  
adjusted under this division. any such adjustment shall be in 3410  
accordance with division (A) of this section and may reflect 3411  
changes in the relevant market. 3412

(C) Notwithstanding any provision of this chapter, the 3413  
commission shall issue an order under section 4928.33 of the 3414  
Revised Code approving a transition plan for an electric utility 3415  
that contains a rate reduction for residential customers of that 3416  
utility, provided that the rate reduction shall not increase the 3417  
rates or transition cost RESPONSIBILITY of any other customer 3418  
class of the utility. the rate reduction shall be in effect only 3419  
for such portion of the UTILITY'S market development period as the 3420  
commission shall specify AND shall be applied to the unbundled 3421  
generation component for retail electric generation service as set 3422  
in the utility's approved transition plan under section 4928.33 of 3423  
the Revised Code subject to the price cap for residential 3424  
customers required under division (A)(6) of section 4928.34 of the 3425  
Revised Code. The amount of the rate reduction shall be FIVE PER 3426

CENT OF THE AMOUNT OF THAT UNBUNDLED GENERATION COMPONENT, but 3427  
shall not unduly discourage market entry by alternative suppliers 3428  
seeking to serve the residential market in this state. THE 3429  
COMMISSION, AFTER REASONABLE NOTICE AND OPPORTUNITY FOR HEARING, 3430  
may terminate the rate reduction by order UPON A FINDING THAT THE 3431  
RATE REDUCTION IS UNDULY DISCOURAGING MARKET ENTRY BY SUCH 3432  
ALTERNATIVE SUPPLIERS. No such termination of the rate reduction 3433  
shall take effect prior to the midpoint of the utility's market 3434  
development period. 3435

(D) Beginning on the starting date of competitive retail 3436  
electric service, no electric utility in this state SHALL prohibit 3437  
the resale of electric generation service OR impose unreasonable 3438  
or discriminatory conditions or limitations on the resale of 3439  
electric generation service. 3440

(E) NOTWITHSTANDING ANY PROVISION OF TITLE XLIX OF THE 3441  
REVISED CODE TO THE CONTRARY, ANY CUSTOMER THAT RECEIVES A 3442  
NONCOMPETITIVE RETAIL ELECTRIC SERVICE FROM AN ELECTRIC 3443  
DISTRIBUTION UTILITY SHALL BE A RETAIL ELECTRIC DISTRIBUTION 3444  
SERVICE CUSTOMER, IRRESPECTIVE OF THE VOLTAGE LEVEL AT WHICH 3445  
SERVICE IS TAKEN. 3446

Sec. 4928.41. The transition revenue authority provided under 3447  
sections 4928.31 to 4928.40 of the Revised Code for electric 3448  
utilities does not affect the authority of an electric cooperative 3449  
in this state to receive transition revenues. 3450

Sec. 4928.42. PRIOR TO THE STARTING DATE OF COMPETITIVE 3451  
RETAIL ELECTRIC SERVICE, THE public utilities COMMISSION, IN 3452  
CONSULTATION WITH THE CONSUMERS' COUNSEL AND WITH OTHER STATE 3453  
AGENCIES AS CONSIDERED NECESSARY, SHALL PRESCRIBE AND ADOPT BY 3454  
ORDER A GENERAL PLAN BY WHICH EACH ELECTRIC UTILITY shall PROVIDE 3455  
DURING ITS MARKET DEVELOPMENT PERIOD CONSUMER EDUCATION ON 3456

ELECTRIC RESTRUCTURING UNDER this chapter. THE GENERAL PLAN SHALL 3457  
REQUIRE the UTILITIES TO SPEND ON SUCH CONSUMER EDUCATION WITHIN 3458  
their respective CERTIFIED SERVICE TERRITORIES IN THE AGGREGATE UP 3459  
TO SIXTEEN MILLION DOLLARS IN THE FIRST YEAR OF THAT PERIOD AND AN 3460  
ADDITIONAL SEVENTEEN MILLION DOLLARS IN THE AGGREGATE IN 3461  
DECREASING AMOUNTS OVER THE REMAINING YEARS OF each utility's 3462  
MARKET DEVELOPMENT PERIOD, WITH THE AGGREGATE AMOUNTS DIVIDED 3463  
AMONG THE UTILITIES BASED ON THEIR RESPECTIVE NUMBER OF CUSTOMERS 3464  
AS OF DECEMBER 31, 1997. THE GENERAL PLAN SHALL PROHIBIT SUCH 3465  
CONSUMER EDUCATION FROM OCCURRING IN COMBINATION WITH MARKETING 3466  
FOR THE UTILITY'S OR ITS AFFILIATE'S RETAIL ELECTRIC SERVICES. 3467

**Sec. 4928.43.** (A) Each state agency that provides employment 3468  
assistance and job training programs, including the bureau of 3469  
employment services and the department of development, shall 3470  
provide concentrated attention through those programs to assisting 3471  
employees whose employment is affected by electric industry 3472  
restructuring under this chapter. 3473

(B) TO THE EXTENT NOT PROHIBITED BY FEDERAL LAW OR ANY LAW OF 3474  
THIS STATE AND EXCEPT AS OTHERWISE PROVIDED IN A LABOR CONTRACT OR 3475  
OTHER AGREEMENT, NO UNENCUMBERED MONEY IN A PENSION FUND FOR 3476  
EMPLOYEES OF ELECTRIC UTILITIES SHALL BE USED FOR ANY PURPOSE 3477  
OTHER THAN TO PAY ALLOWABLE PENSIONS OR EARLY RETIREMENT BUYOUTS 3478  
FOR THE EMPLOYEES. 3479

**Sec. 4928.431.** (A)(1) there is hereby created an electric 3480  
EMPLOYEE assistance advisory board, CONSISTING of twelve members, 3481  
as follows: two members of the house of representatives appointed 3482  
by the speaker of the house of representatives, neither of the 3483  
same political party; two members of the senate appointed by the 3484  
president of the senate, neither of the same political party; and 3485  
four representatives of electric utilities in this state and four 3486

representatives of electric industry employees, all appointed by 3487  
the governor. initial APPOINTMENTS shall be made not later than 3488  
december 31, 1999. 3489

(2) initial terms of the members appointed by the governor 3490  
shall end on december 31, 2001. thereafter, terms of APPOINTED 3491  
members shall be for two years with each term ending on the same 3492  
day OF the same month as the term it succeeds. each member shall 3493  
hold office from the date of the member's appointment UNTIL the 3494  
end of the term for which the member was appointed. members may be 3495  
reappointed. 3496

Vacancies shall be filled in the manner provided for original 3497  
appointments. any member appointed to fill a vacancy occurring 3498  
prior to the expiration date of the term for which the member's 3499  
predecessor was appointed shall hold office as a member for the 3500  
remainder of that term. a member shall continue in office after 3501  
the expiration date of the member's term UNTIL the member's 3502  
successor takes office or UNTIL A period of SIXTY days has 3503  
elapsed, whichever occurs first. Board members shall receive no 3504  
compensation or REIMBURSEMENT for expenses. 3505

(3) The advisory board shall select a chairperson from among 3506  
its members. Only board members appointed by the governor shall be 3507  
VOTING members of the board; each shall have one vote in all 3508  
deliberations of the board. A majority of the VOTING members 3509  
constitutes a quorum. 3510

(B) The duties of the advisory board shall be to make 3511  
recommendations to the public utilities commission regarding its 3512  
approval of an Employee assistance plan filed in accordance with 3513  
section 4928.31 of the Revised Code and regarding general 3514  
eligibility standards applicable to benefits under the plan for 3515  
affected EMPLOYEES. 3516

Sec. 4928.44. (A) The public utilities commission may 3517  
determine, by order and after reasonable notice and opportunity 3518  
for hearing, that CUSTOMERS THAT ARE NONFIRM ELECTRIC SERVICE 3519  
customers of electric UTILITIES ON THE EFFECTIVE DATE OF THIS 3520  
SECTION would be assisted by the implementation by each such 3521  
utility of a service schedule that complies with division (C) of 3522  
this section. in the order, the commission shall specify the 3523  
period of time, ending not later than december 31, 2005, during 3524  
which the service OFFERING would be available to ANY SUCH NONFIRM 3525  
ELECTRIC SERVICE customers or A group of such customers. upon the 3526  
issuance of the order, ANY SUCH NONFIRM ELECTRIC SERVICE customer 3527  
or A group of SUCH customers shall be, for the purposes of this 3528  
section, eligible customers in each electric utility's 3529  
transmission tariff subject to the JURISDICTION of the federal 3530  
energy regulatory commission FOR THE PERIOD SPECIFIED IN THE 3531  
ORDER, and each electric UTILITY with nonfirm customers shall file 3532  
a service schedule pursuant to section 4909.18 of the Revised Code 3533  
to effectuate this service offering. 3534

(b) the service schedule AUTHORIZED under division (A) of 3535  
this section, FOR THE PERIOD ENDING NOT LATER THAN DECEMBER 31, 3536  
2005, AS SPECIFIED IN THE COMMISSION'S ORDER UNDER THAT DIVISION, 3537  
shall PROVIDE for direct, comparable and nondiscriminatory access 3538  
to the transmission and distribution services, capacities, 3539  
functions, and facilities of the electric UTILITY BY any CUSTOMER 3540  
THAT IS A nonFIRM ELECTRIC SERVICE customer ON THE EFFECTIVE DATE 3541  
OF THIS SECTION or BY A group of ANY SUCH customers, for the 3542  
purpose of securing from a supplier or suppliers of the customer's 3543  
or group's choice all or a portion of the customer's or group's 3544  
electric power and energy requirements not served by an electric 3545  
utility during a time of nonemergency curtailment or interruption. 3546

the failure of an electric UTILITY to file such schedule 3547

constitutes inadequate service under title XLIX of the Revised Code. 3548  
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(C) the service offering authorized pursuant to this section shall be in addition to any service options otherwise available to A NONFIRM ELECTRIC SERVICE customer or group of NONFIRM ELECTRIC SERVICE customers. if a CUSTOMER THAT IS A NONFIRM ELECTRIC SERVICE customer ON THE EFFECTIVE DATE OF THIS SECTION or A group of SUCH customers elects to meet all or a portion of the customer's or group's electric power and energy requirements not served by an electric utility during a time of nonemergency curtailment or interruption, by purchasing electricity and related services from a supplier or suppliers other than that electric utility, any existing service arrangement under section 4905.31 of the Revised Code or any existing schedule under section 4905.30 of the Revised Code shall be modified to permit this election to occur without economic penalty and to facilitate the customer's or group's access to the electric market for the purpose of managing supply and price volatility risks. 3550  
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(d) NOTHING IN DIVISIONS (a) TO (c) OF THIS SECTION AFFECTS ANY OBLIGATION OF an electric utility TO curtail or interrupt electric transmission or distribution service to the extent required to protect the interests of firm ELECTRIC SERVICE customers from an injury that is otherwise unavoidable but for the curtailment or interruption. Nothing in those divisions shall be construed or applied to increase rates and charges for firm electric service customers including residential firm electric service customers. 3566  
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**Sec. 4928.51.** (A) There is hereby established in the state treasury a universal service fund, into which shall be deposited all universal service revenues remitted to the director of development under this section, for the exclusive purposes of 3575  
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providing funding for the low-income customer assistance programs 3579  
and for the consumer education program authorized under section 3580  
4928.56 of the Revised Code, and paying the administrative costs 3581  
of the low-income customer assistance programs and the consumer 3582  
education program. Interest on the fund shall be credited to the 3583  
fund. Disbursements from the fund shall be made to any supplier 3584  
that provides a competitive retail electric service or a 3585  
noncompetitive retail electric service to a customer who is 3586  
approved to receive assistance under a specified low-income 3587  
customer assistance program and to any authorized provider of 3588  
weatherization or energy efficiency service to a customer approved 3589  
to receive such assistance under a specified low-income customer 3590  
ASSISTANCE program. 3591

(B) universal service revenues shall include all of the 3592  
following: 3593

(1) Revenues remitted to the director after collection by an 3594  
electric distribution utility beginning July 1, 2000, attributable 3595  
to the collection from customers of the universal service rider 3596  
prescribed under section 4928.52 of the Revised Code; 3597

(2) Revenues remitted to the director that have been 3598  
collected by an electric distribution utility beginning July 1, 3599  
2000, as customer payments under the percentage of income payment 3600  
plan program, including revenues remitted under division (c) of 3601  
this section; 3602

(3) adequate revenues remitted to the director after 3603  
collection by a MUNICIPAL electric utility or electric cooperative 3604  
in this state not earlier than July 1, 2000, upon the utility's or 3605  
cooperative's decision to participate in the low-income customer 3606  
assistance programs. 3607

(C)(1) Beginning July 1, 2000, an electric distribution 3608  
utility shall transfer to the director the right to collect all 3609

arrearage payments of a customer for percentage of income payment 3610  
plan program debt owed to the utility on the day before that date 3611  
or retain the right to collect that debt but remit to the director 3612  
all program revenues received by the utility for that customer. 3613

(2) A CURRENT OR PAST PERCENTAGE OF INCOME PAYMENT PLAN 3614  
PROGRAM CUSTOMER IS RELIEVED OF ANY PAYMENT OBLIGATION UNDER THE 3615  
PERCENTAGE OF INCOME PAYMENT PROGRAM FOR ANY UNPAID ARREARS 3616  
ACCRUED BY THE CUSTOMER UNDER THE PROGRAM AS OF THE EFFECTIVE DATE 3617  
OF THIS SECTION IF THE CUSTOMER, AS DETERMINED BY THE DIRECTOR, 3618  
MEETS BOTH OF THE FOLLOWING CRITERIA: 3619

(a) THE CUSTOMER AS OF THAT DATE HAS COMPLIED WITH CUSTOMER 3620  
PAYMENT RESPONSIBILITIES UNDER THE PROGRAM. 3621

(b) THE CUSTOMER IS PERMANENTLY AND TOTALLY DISABLED AS 3622  
DEFINED IN SECTION 5117.01 OF THE REVISED CODE OR IS SIXTY-FIVE 3623  
YEARS OF AGE OR OLDER AS DEFINED IN THAT SECTION. 3624

(D) THE PUBLIC UTILITIES COMMISSION SHALL COMPLETE AN AUDIT 3625  
OF EACH ELECTRIC UTILITY BY JULY 1, 2000, FOR THE PURPOSE OF 3626  
ESTABLISHING A BASELINE FOR THE PERCENTAGE OF INCOME PAYMENT PLAN 3627  
PROGRAM COMPONENT OF THE LOW-INCOME ASSISTANCE PROGRAMS. 3628

**Sec. 4928.52.** (A) Beginning July 1, 2000, the universal 3629  
service rider shall replace the percentage of income payment plan 3630  
rider in existence on the effective date of this section and ANY 3631  
AMOUNT IN THE RATES OF AN ELECTRIC UTILITY FOR THE FUNDING OF 3632  
LOW-INCOME customer ENERGY EFFICIENCY PROGRAMS. THE UNIVERSAL 3633  
SERVICE RIDER shall be a rider on retail electric distribution 3634  
service rates as such rates are determined by the public utilities 3635  
commission pursuant to this chapter. the universal service rider 3636  
for the first five years after the starting date of competitive 3637  
retail electric service shall be the sum of all of the following: 3638

(1) the level of the percentage of income payment plan 3639

program rider in existence on the effective date of this section; 3640

(2) an amount equal to the level of funding for low-income 3641  
customer energy efficiency programs provided through electric 3642  
utility rates in effect on the effective date of this section; 3643

(3) any additional amount necessary and SUFFICIENT to fund 3644  
through the universal service rider the ADMINISTRATIVE costs of 3645  
the low-income customer ASSISTANCE programs and the consumer 3646  
education program created in section 4928.56 of the Revised Code. 3647

(B) If, during or after the five-year period specified in 3648  
division (a) of this section, the director of development, after 3649  
CONSULTATION with the public benefits advisory board created under 3650  
section 4928.58 of the Revised Code, determines that revenues in 3651  
the universal service fund and revenues from federal or other 3652  
sources of funding for those programs, including general revenue 3653  
fund appropriations for the ohio energy credit program, will be 3654  
insufficient to cover the administrative costs of the low-income 3655  
customer ASSISTANCE programs and the consumer education program 3656  
and provide adequate funding for THOSE PROGRAMS, the director 3657  
shall file a petition with the commission for an increase in the 3658  
universal service rider. the commission, after reasonable notice 3659  
and OPPORTUNITY for hearing, may adjust the universal service 3660  
rider by the minimum amount necessary to provide the additional 3661  
revenues. the commission shall not decrease the universal service 3662  
rider without the approval of the director, after consultation by 3663  
the director with the advisory board. 3664

(c) the universal service rider established under DIVISION 3665  
(A) or (B) of this section shall be set in such a manner so as not 3666  
to shift among the customer classes of electric distribution 3667  
utilities the costs of funding low-income customer ASSISTANCE 3668  
programs. 3669

Sec. 4928.53. (A) Beginning July 1, 2000, the director of development is hereby authorized to administer the low-income customer assistance programs. for that purpose, the public utilities commission shall cooperate with and provide such assistance as the director REQUIRES FOR ADMINISTRATION of the low-income customer assistance programs. The director shall consolidate the administration of and redesign and coordinate the operations of those programs within the department to provide, to the maximum extent possible, for efficient program administration and a one-stop application and ELIGIBILITY determination process at the local level for consumers.

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

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

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

suppliers and otherwise administering funds under the director's 3701  
jurisdiction, and requirements as to timely remittances of 3702  
revenues described in division (B) of section 4928.51 of the 3703  
Revised Code. The director's authority in division (B)(3) of this 3704  
section excludes authority to prescribe service disconnection and 3705  
customer billing policies and procedures and to address complaints 3706  
against suppliers under the percentage of payment plan program, 3707  
which excluded authority shall be exercised by the public 3708  
utilities commission, in coordination with the director. RULES 3709  
ADOPTED BY THE DIRECTOR UNDER THIS DIVISION FOR THE PERCENTAGE OF 3710  
INCOME PAYMENT PLAN PROGRAM SHALL SPECIFY A LEVEL OF PAYMENT 3711  
RESPONSIBILITY TO BE BORNE BY AN ELIGIBLE CUSTOMER BASED ON A 3712  
PERCENTAGE OF THE CUSTOMER'S INCOME. Rules initially adopted by 3713  
the director for the percentage of income payment plan program 3714  
shall incorporate the eligibility criteria and payment arrangement 3715  
and responsibility policies set forth in rule 4901:1-18-04(B) of 3716  
the Ohio Administrative Code in effect on the effective date of 3717  
this section. 3718

**Sec. 4928.54.** Beginning on the starting date of competitive 3719  
retail electric service, the director of development may aggregate 3720  
percentage of income payment plan program customers for the 3721  
purpose of competitively auctioning the supply of competitive 3722  
retail electric generation service to bidders certified under 3723  
section 4928.08 of the Revised Code and further qualified under 3724  
ELIGIBILITY criteria the director prescribes by rule under 3725  
division (b) of section 4928.53 of the Revised Code after 3726  
consultation with the commission and electric light companies 3727  
regarding any such rule. the objectives of the auction shall be to 3728  
provide reliable retail electric generation service to customers, 3729  
based on selection criteria that the winning bid provide the 3730  
lowest cost and best value to customers. The rules adopted by the 3731  
director under division (b) of section 4928.53 of the Revised Code 3732

shall ensure a fair and unbiased auction process and the 3733  
performance of any winning bidder. 3734

**Sec. 4928.55.** The director of development shall establish an 3735  
energy efficiency and weatherization program targeted, to the 3736  
extent practicable, to high-cost, high-volume use structures 3737  
occupied by customers eligible for the percentage of income 3738  
PAYMENT plan program, with the goal of reducing the energy bills 3739  
of the occupants. Acceptance of energy efficiency and 3740  
WEATHERIZATION services provided by the program shall be a 3741  
condition for the eligibility of any such customer to participate 3742  
in the percentage of income payment plan program. Any difference 3743  
between universal service fund revenues under section 4928.51 of 3744  
the Revised Code and any savings in percentage of income payment 3745  
plan program costs as a result of competitive auctioning under 3746  
section 4928.54 of the Revised Code shall be reinvested in the 3747  
targeted energy EFFICIENCY and WEATHERIZATION program. 3748

**Sec. 4928.56.** The director of development may adopt rules in 3749  
accordance with Chapter 119. of the Revised Code establishing an 3750  
education program for consumers eligible to participate in the 3751  
low-income customer assistance programs. the education program 3752  
shall provide information to consumers regarding energy efficiency 3753  
and energy conservation. 3754

**Sec. 4928.57.** On and after the starting date of competitive 3755  
retail electric service, the director of development shall provide 3756  
a report every two years until 2008 to the standing committees of 3757  
the general assembly that deal with public utility matters, 3758  
regarding the effectiveness of the low-income customer assistance 3759  
programs and the consumer education program, and the effectiveness 3760  
of the energy EFFICIENCY revolving loan program created under 3761  
sections 4928.61 to 4928.63 of the Revised Code. 3762

Sec. 4928.58. (A) there is hereby created the public benefits 3763  
ADVISORY board, WHICH HAS THE PURPOSE OF ENSURING THAT ENERGY 3764  
SERVICES BE PROVIDED TO LOW-INCOME CONSUMERS IN THIS STATE IN AN 3765  
AFFORDABLE MANNER CONSISTENT WITH THE POLICY SPECIFIED IN SECTION 3766  
4928.02 OF THE REVISED CODE. THE ADVISORY BOARD SHALL CONSIST of 3767  
twenty-one members as follows: the director of development, the 3768  
CHAIRPERSON of the public utilities commission, the consumers' 3769  
counsel, and the director of the air quality development 3770  
authority, each serving ex officio and represented by a designee 3771  
at the official's discretion; two members of the house of 3772  
representatives appointed by the speaker of the house of 3773  
representatives, NEITHER of the SAME POLITICAL party, and two 3774  
members of the senate appointed by the president of the senate, 3775  
neither of the same political party; and thirteen members 3776  
appointed by the governor with the advice and consent of the 3777  
senate, consisting of one representative of suppliers of 3778  
competitive retail electric service; one representative of the 3779  
residential class of electric utility customers; one 3780  
representative of the industrial class of electric utility 3781  
customers; one representative of the commercial class of electric 3782  
utility customers; one representative of agricultural or rural 3783  
customers of an electric utility; two customers RECEIVING 3784  
assistance under one or more of the low-income customer assistance 3785  
programs, to represent customers eligible for any such assistance, 3786  
including senior citizens; one representative of the general 3787  
public; one representative of local intake agencies; one 3788  
representative of a community-based organization serving 3789  
low-income customers; one representative of environmental 3790  
protection interests; one representative of lending institutions; 3791  
and one person considered an expert in energy efficiency or 3792  
renewables technology. Initial appointments shall be made not 3793  
later than November 1, 1999. 3794

(B) Initial terms of six of the appointed members shall end 3795  
on June 30, 2003, and initial terms of the remaining seven 3796  
appointed MEMBERS shall end on June 30, 2004. thereafter, terms of 3797  
appointed members shall be for three years, with each term ending 3798  
on the same day of the same month as the term it succeeds. each 3799  
member shall hold office from the date of the member's appointment 3800  
until the end of the term for which the member was appointed. 3801  
members may be reappointed. 3802

Vacancies shall be filled in the manner provided for original 3803  
appointments. Any member APPOINTED to fill a vacancy occurring 3804  
prior to the expiration date of the term for which the member's 3805  
predecessor was appointed shall hold office as a member for the 3806  
REMAINDER of that term. a member shall continue in office after 3807  
the expiration date of the member's term until the member's 3808  
successor takes office or until a period of sixty days has 3809  
elapsed, whichever occurs first. 3810

(C) Board members shall be reimbursed for their actual and 3811  
necessary expenses incurred in the performance of board duties. 3812  
such REIMBURSEMENTS constitute, as applicable, administrative 3813  
costs of the low-income customer assistance programs for the 3814  
purpose of division (A) of section 4928.51 of the Revised Code or 3815  
administrative costs of the energy efficiency revolving loan 3816  
program for the purpose of division (A) of section 4528.61 of the 3817  
Revised Code. 3818

(D) The advisory board shall select a chairperson from among 3819  
its members. only board members appointed by the governor with THE 3820  
advice and consent of the senate shall be voting members of the 3821  
board; each shall have one vote in all deliberations of the board. 3822  
a majority of the voting members constitute a quorum. 3823

(E) The duties of the advisory board shall be as follows: 3824

(1) Advise the director in the administration of the 3825

UNIVERSAL service fund and the low-income customer assistance 3826  
programs and advise the director on the director's recommendation 3827  
to the commission regarding the appropriate level of the universal 3828  
service rider; 3829

(2) Advise the director on the administration of the energy 3830  
efficiency revolving loan program and the energy efficiency 3831  
revolving loan program fund under sections 4928.61 to 4928.63 of 3832  
the Revised Code. 3833

(F) the advisory board is not an agency, as defined in 3834  
section 101.82 of the Revised Code, for purposes of divisions (A) 3835  
and (B) of section 101.84 of the Revised Code. 3836

**Sec. 4928.61.** (A) There is hereby established in the state 3837  
treasury an energy efficiency revolving loan fund, into which 3838  
shall be deposited all energy EFFICIENCY revenues remitted to the 3839  
director of development under division (B) of this section, for 3840  
the exclusive purposes of funding the energy efficiency revolving 3841  
loan program created under section 4928.62 of the Revised Code and 3842  
paying the program's administrative costs. Interest on the fund 3843  
shall be credited to the fund. 3844

(B) energy efficiency revenues shall include all of the 3845  
following: 3846

(1) Revenues remitted to the director after collection by 3847  
each electric DISTRIBUTION utility in this state of a temporary 3848  
rider on retail electric distribution service rates as such rates 3849  
are determined by the public utilities commission pursuant to this 3850  
chapter. The rider shall be a uniform amount statewide, determined 3851  
by the director of development, after consultation with the public 3852  
benefits advisory board created by section 4928.58 of the Revised 3853  
Code. The amount shall be determined by dividing an aggregate 3854  
revenue target for a given year as determined by the director, 3855  
after consultation with the advisory board, by the number of 3856

customers of electric distribution utilities in this state in the 3857  
prior year. Such aggregate revenue target shall not exceed more 3858  
than fifteen million dollars in any year through 2005 and shall 3859  
not exceed more than five million dollars in any year after 2005. 3860  
The rider shall be imposed beginning on the starting date of 3861  
competitive retail electric service and shall terminate at the end 3862  
of ten years following that starting date or until the energy 3863  
efficiency revolving loan fund, including interest, reaches one 3864  
hundred million dollars, whichever is first. 3865

(2) Revenues from energy efficiency revolving loan program 3866  
loan repayments and payments from energy efficiency revolving loan 3867  
program loan collections pursuant to section 4928.62 of the 3868  
Revised Code; 3869

(3) Adequate revenues remitted to the director after 3870  
collection by a MUNICIPAL electric utility or electric cooperative 3871  
in this state not earlier than the starting date of competitive 3872  
retail electric service upon the utility's or cooperative's 3873  
decision to participate in the energy efficiency revolving loan 3874  
PROGRAM. 3875

(C)(1) Each electric distribution utility in this state shall 3876  
remit to the director on a quarterly basis the revenues described 3877  
in divisions (B)(1) and (2) of this section. Such remittances 3878  
shall begin with the first quarter following the starting date of 3879  
competitive RETAIL ELECTRIC service. 3880

(2) Each participating electric cooperative and participating 3881  
municipal electric utility shall remit to the director on a 3882  
quarterly basis the revenues described in division (B)(3) of this 3883  
section. such remittances shall begin with the first quarter 3884  
following the participating cooperative's or utility's decision to 3885  
participate. 3886

(3) All remittances under divisions (C)(1) and (2) of this 3887

section shall continue only until the end of ten years following 3888  
that starting date or until the energy efficiency revolving loan 3889  
fund, including interest, reaches one hundred million dollars, 3890  
whichever is first. 3891

(D) Any moneys collected in rates for non-low-income customer 3892  
energy efficiency programs, as of the effective date of this 3893  
section and not contributed to the energy efficiency revolving 3894  
loan fund under division (B)(1) of this section, shall be used to 3895  
continue to fund cost-effective, residential energy efficiency 3896  
programs, be contributed into the universal service fund as a 3897  
supplement to that required under section 4928.53 of the Revised 3898  
Code, or be returned to ratepayers in the form of a rate reduction 3899  
at the option of the affected electric distribution utility. 3900

**Sec. 4928.62.** (A) Beginning on the starting date of 3902  
competitive retail electric service, there is hereby created the 3903  
energy EFFICIENCY revolving loan program, which shall be 3904  
administered by the director of development. Under the program, 3905  
the director may AUTHORIZE the use of moneys in the energy 3906  
efficiency revolving loan fund for financial assistance for 3907  
projects in this state. To the extent feasible given approved 3908  
applications for assistance, the assistance shall be distributed 3909  
among the certified territories of electric distribution utilities 3910  
and participating electric cooperatives, and among the service 3911  
areas of participating municipal electric utilities, in amounts 3912  
proportionate to the remittances of each utility and cooperative 3913  
under divisions (B)(1) and (3) of section 4928.61 of the Revised 3914  
Code. The assistance shall be made or provided through approved 3915  
lending institutions in the form of loans at below market rates, 3916  
loan GUARANTEES for such loans, and linked deposits for such 3917  
loans. the director shall not AUTHORIZE financial assistance under 3918  
the program unless the director first DETERMINES all of the 3919

<u>following:</u>	3920
<u>(1) the project will include an investment in products,</u>	3921
<u>technologies, or services, including energy efficiency for</u>	3922
<u>low-income housing, for residential, small commercial and small</u>	3923
<u>industrial business, local government, educational institution,</u>	3924
<u>nonprofit ENTITY, or agricultural customers of an electric</u>	3925
<u>distribution utility in this state or a participating MUNICIPAL</u>	3926
<u>electric utility or electric cooperative in this state.</u>	3927
<u>(2) the project will IMPROVE energy efficiency in a</u>	3928
<u>cost-efficient manner by using both the most appropriate national,</u>	3929
<u>federal, or other standards for products as determined by the</u>	3930
<u>director, and the best practices for use of technology, products,</u>	3931
<u>or services in the context of the total facility or building.</u>	3932
<u>(3) the project will benefit the economic and environmental</u>	3933
<u>welfare of the citizens of this state.</u>	3934
<u>(4) the receipt of financial assistance is a major factor in</u>	3935
<u>the applicant's decision to proceed with or invest in the project.</u>	3936
<u>(B) In carrying out sections 4928.61 to 4928.63 of the</u>	3937
<u>Revised Code, the director may do all of the following for THE</u>	3938
<u>PURPOSE of the energy efficiency revolving loan program:</u>	3939
<u>(1) acquire in the name of the director any property of any</u>	3940
<u>kind or character in accordance with this section, by purchase,</u>	3941
<u>purchase at foreclosure, or EXCHANGE, on such terms and in such</u>	3942
<u>manner as the director considers proper;</u>	3943
<u>(2) make and enter into all contracts and agreements</u>	3944
<u>necessary or incidental to the performance of the director's</u>	3945
<u>duties and the exercise of the director's powers under those</u>	3946
<u>sections;</u>	3947
<u>(3) employ or enter into contracts with financial</u>	3948
<u>consultants, marketing consultants, consulting engineers,</u>	3949

architects, managers, construction experts, attorneys, technical 3950  
MONITORS, energy evaluators, OR OTHER EMPLOYEES or agents as the 3951  
director considers necessary, and shall fix their compensation; 3952

(4) adopt rules prescribing the application procedures for 3953  
financial assistance under the program; the terms and conditions 3954  
of any loans, loan guarantees, linked deposits, and contracts; 3955  
criteria pertaining to the eligibility of participating lending 3956  
institutions; and any OTHER MATTERS necessary for the 3957  
implementation of the program; 3958

(5) do all things necessary and appropriate for the operation 3959  
of the program. 3960

(C) financial statements, financial data, and trade secrets 3961  
submitted to or received by the director from an applicant or 3962  
recipient of financial assistance under sections 4928.61 to 3963  
4928.63 of the Revised Code, or any INFORMATION taken from those 3964  
statements, data, or trade secrets for any purpose, are not public 3965  
records for the purpose of section 149.43 of the Revised Code. 3966

**Sec. 4928.63.** The director of development and the public 3967  
benefits advisory board have the powers and duties provided in 3968  
sections 4928.61 and 4928.62 of the Revised Code, in order to 3969  
promote the welfare of the people of this state, to stabilize the 3970  
economy, to ASSIST in the improvement and development within this 3971  
state of not-for-profit entity, industrial, commercial, 3972  
DISTRIBUTION, residential, and research buildings and activities 3973  
required for the people of this state, to improve the ECONOMIC 3974  
welfare of the people of this state, and also to ASSIST in the 3975  
improvement of air, water, or thermal POLLUTION control facilities 3976  
and SOLid waste disposal facilities. it is hereby determined that 3977  
the accomplishment of those purposes is essential so that the 3978  
people of this state may maintain their present high standards in 3979  
comparison with the people of other states and so that 3980

opportunities for improving the economic welfare of the people of 3981  
this state, for improving the housing of residents of this state, 3982  
and for favorable markets for the products of this state's natural 3983  
resources, agriculture, and manufacturing shall be improved; and 3984  
that it is necessary for this state to establish the program 3985  
authorized pursuant to sections 4928.61 and 4928.62 of the Revised 3986  
Code, to establish the energy efficiency revolving loan program 3987  
and program fund and the energy efficiency REVOLVING loan program 3988  
advisory board, and to vest the director and the board with the 3989  
powers and duties PROVIDED in sections 4928.61 and 4928.62 of the 3990  
Revised Code. 3991

**Sec. 4928.67.** (A)(1) Beginning on the starting date of 3992  
competitive retail electric service, a retail electric service 3993  
provider in this state shall develop a standard contract or tariff 3994  
providing for net energy metering. Any time that the total rated 3995  
generating capacity used by customer-generators is less than one 3996  
per cent of the provider's aggregate customer peak demand in this 3997  
state, the provider shall make this contract or tariff available 3998  
to customer-generators, upon request and on a first-come, 3999  
first-served basis. The contract or tariff shall be identical in 4000  
rate structure, all retail rate components, and any monthly 4001  
charges, to the contract or tariff to which the same customer 4002  
would be assigned if that customer were not a customer-generator. 4003

(2) Net metering under this section shall be accomplished 4004  
using a single meter capable of registering the flow of 4005  
electricity in each direction. If its existing electrical meter is 4006  
not capable of measuring the flow of electricity in two 4007  
directions, the customer-generator shall be responsible for all 4008  
expenses involved in purchasing and installing a meter that is 4009  
capable of measuring electricity flow in two directions. 4010

(3) Such an electric service provider, at its own expense and 4011

with the written consent of the customer-generator, may install 4012  
one or more additional meters to monitor the flow of electricity 4013  
in each direction. 4014

(B) Consistent with the other provisions of this section, the 4015  
measurement of net electricity supplied or generated shall be 4016  
calculated in the following manner: 4017

(1) The electric service provider shall measure the net 4018  
electricity produced or consumed during the billing period, in 4019  
accordance with normal metering practices. 4020

(2) If the electricity supplied by the electric service 4021  
provider exceeds the ELECTRICITY generated by the 4022  
customer-generator and fed back to the electric service provider 4023  
during the billing period, the customer-generator shall be billed 4024  
for the net ELECTRICITY SUPPLIED by the electric service provider, 4025  
in accordance with normal metering practices. If electricity is 4026  
provided to the electric service provider, the credits for that 4027  
electricity shall appear in the next billing cycle. 4028

(c)(1) A net metering system used by a customer-generator 4029  
shall meet all applicable safety and performance standards 4030  
established by the national electrical code, the institute of 4031  
electrical and ELECTRONICS engineers, and underwriters 4032  
LABORATORIES. 4033

(2) The public utilities commission shall adopt rules 4034  
relating to additional control and testing requirements for 4035  
customer-generators which the commission determines are necessary 4036  
to protect public and worker safety and system reliability. 4037

(D) An electric service provider shall not require a 4038  
customer-generator whose net metering system meets the standards 4039  
and requirements provided for in divisions (C)(1) and (D) of this 4040  
section to do any of the following: 4041

- (1) Comply with additional safety or performance standards; 4042
- (2) Perform or pay for additional tests; 4043
- (3) Purchase additional liability insurance. 4044

**Sec. 4933.14.** (A) Except section 4931.08 of the Revised Code 4045  
and except as otherwise provided in division (B) of this section, 4046  
sections 4931.01 to 4931.23, inclusive, and 4933.13 to 4933.16, 4047  
inclusive, of the Revised Code, apply to companies a company 4048  
organized for supplying public and private buildings, 4049  
manufacturing establishments, streets, alleys, lanes, lands, 4050  
squares, and public places with electric light and power, and to 4051  
an automatic package carrier. Except ~~as provided by~~ section 4052  
4931.08 of the Revised Code and except as otherwise provided in 4053  
division (B) of this section, every such company ~~shall have~~ has 4054  
the powers and ~~be~~ is subject to the restrictions prescribed for a 4055  
telegraph ~~companies~~ company by sections 4931.01 to 4931.23, 4056  
~~inclusive,~~ of the Revised Code. 4057

(B) Sections 4931.04, 4931.06, 4931.07, 4931.12, and 4931.13 4058  
of the Revised Code apply to a company organized for supplying 4059  
electricity only if the company transmits or distributes 4060  
electricity, and every such company has the powers and is subject 4061  
to the restrictions prescribed for a telegraph company by those 4062  
sections except for the purpose of erecting, operating, or 4063  
maintaining an electric generating station. 4064

**Sec. 4933.15.** ~~Any company organized for manufacturing,~~ 4065  
~~generating, selling, supplying, or transmitting electricity, for~~ 4066  
~~public and private use, may, for~~ For the purpose of making 4067  
preliminary examinations and surveys, any company transmitting or 4068  
distributing electricity in the state for public or private use 4069  
may enter upon any land held by any individual or corporation, 4070  
whether acquired by purchase, appropriation proceedings, or 4071

otherwise, unless such land is owned by and essential to the 4072  
purposes of another corporation possessing the power of eminent 4073  
domain, ~~and. The company also~~ may appropriate so much of such 4074  
land, or any right or interest ~~therein in the land,~~ including any 4075  
trees, edifices, or buildings ~~thereon on the land,~~ as is deemed 4076  
necessary for ~~the~~ either of the following purposes: 4077

(A) The erection, operation, or maintenance of an electric 4078  
plant, including its ~~generating stations,~~ substations, switching 4079  
stations, transmission and distribution lines, poles, towers, 4080  
piers, conduits, cables, and wires, ~~and other necessary structures~~ 4081  
and appliances, ~~or for rights but excluding its generating~~ 4082  
stations; 4083

(B) Rights-of-way over such land and adjacent lands for the 4084  
purpose of access to any part of such land. ~~The~~ 4085

The right of appropriation shall be exercised in the same 4086  
manner provided by sections 163.01 to 163.22, ~~inclusive,~~ of the 4087  
Revised Code. 4088

**Sec. 4933.33.** Annually, each electric ~~light distribution~~ 4089  
company as defined in section 5727.80 of the Revised Code shall 4090  
cause to appear on each customer bill, or shall distribute to each 4091  
of its customers, the following statement: 4092

"Under state law, the amount you are being billed includes: 4093

(1) ~~Gross receipts~~ Kilowatt-hour taxes that have been in 4094  
effect since ~~1969~~ 2001 and are currently at \$.....% (The 4095  
current ~~total percentage~~ dollar figure of the ~~total gross receipts~~ 4096  
kilowatt-hour taxes levied ~~in Chapter 5727. by section 5727.81~~ of 4097  
the Revised Code ~~and any other section of law~~ shall be placed in 4098  
the blank); and 4099

(2) Assessments to assist in the support of the operations of 4100  
the PUCO and the office of the consumers' counsel that have been 4101

in effect since 1912 and 1977, respectively." 4102

Nothing in this section shall be construed to mean either 4103  
that an electric light distribution company ~~operated not for~~ 4104  
~~profit or one that is owned or operated by a municipal corporation~~ 4105  
~~is subject to this section or that an electric light company~~ 4106  
subject to this section may not cause such appearance or 4107  
distribute such statement on a more frequent basis. 4108

**Sec. 4933.81.** As used in sections 4933.81 to 4933.90 of the 4109  
Revised Code: 4110

(A) "Electric supplier" means any electric light company as 4111  
defined in section 4905.03 of the Revised Code, including electric 4112  
light companies organized as nonprofit corporations, but not 4113  
including a municipal ~~corporation~~ corporations or other ~~unit~~ units 4114  
of local government that ~~provides~~ provide electric service. 4115

(B) "Adequate facilities" means distribution lines or 4116  
facilities having sufficient capacity to meet the maximum 4117  
estimated electric service requirements of its existing customers 4118  
and of any new customer occurring during the year following the 4119  
commencement of permanent electric service, and to assure all such 4120  
customers of reasonable continuity and quality of service. 4121  
Distribution facilities and lines of an electric supplier shall be 4122  
considered "adequate facilities" if such supplier offers to 4123  
undertake to make its distribution facilities and lines meet such 4124  
service requirements and ~~can~~, in the determination of the public 4125  
utilities commission, can do so within a reasonable time. 4126

(C) "Distribution line" means any electric line ~~having a~~ 4127  
~~design voltage below thirty five thousand volts phase to phase~~ 4128  
~~which~~ that is being or has been used primarily to provide electric 4129  
service directly to electric load centers by the owner of such 4130  
line. 4131

(D) "Existing distribution line" means any distribution line 4132  
of an electric supplier which was in existence on January 1, 1977, 4133  
or under ~~construction~~ CONSTRUCTION on ~~such~~ that date. 4134

(E) "Electric load center" means all the electric-consuming 4135  
facilities of any type or character owned, occupied, controlled, 4136  
or used by a person at a single location, which facilities have 4137  
been, are, or will be connected to and served at a metered point 4138  
of delivery and to which electric service has been, is, or will be 4139  
rendered. 4140

(F) "Electric service" means retail electric service 4141  
furnished to an electric load center for ultimate consumption ~~and~~ 4142  
~~does not include, but excludes~~ furnishing electric power or energy 4143  
at wholesale for resale. In the case of a for-profit electric 4144  
supplier and beginning on the starting date of competitive retail 4145  
electric service as defined in section 4928.01 of the Revised 4146  
Code, "electric service" also excludes a competitive retail 4147  
electric service. In the case of a not-for-profit electric 4148  
supplier and beginning on that starting date, "electric service" 4149  
also excludes any service component of competitive retail electric 4150  
service that is specified in an irrevocable filing the electric 4151  
supplier makes with the public utilities commission for 4152  
informational purposes only to eliminate permanently its certified 4153  
territory under sections 4933.81 to 4933.90 of the Revised Code as 4154  
to that service component. the filing shall specify the date on 4155  
which such territory is so eliminated. notwithstanding division 4156  
(B) of section 4928.01 of the Revised Code, such a service 4157  
component may include retail ancillary, metering, or billing and 4158  
collection service irrespective of whether that service component 4159  
has or has not been declared competitive under section 4928.04 of 4160  
the Revised Code. upon receipt of the filing by the commission, 4161  
the not-for-profit electric supplier's certified territory shall 4162  
be eliminated permanently as to the service component specified in 4163

the filing as of the date specified in the filing. As used in this 4164  
division, "competitive retail electric service" and "retail 4165  
electric service" have the same meanings as in section 4928.01 of 4166  
the Revised Code. 4167

(G) "Certified territory" means a geographical area the 4168  
boundaries of which have been established pursuant to sections 4169  
4933.81 to 4933.90 of the Revised Code within which an electric 4170  
supplier is authorized and required to provide electric service. 4171

(H) "Other unit of local government" means any governmental 4172  
unit or body that may come into existence after ~~the effective date~~ 4173  
~~of this section~~ July 12, 1978, with powers and authority similar 4174  
to those of a municipal corporation, or ~~which~~ that is created to 4175  
replace or exercise the relevant powers of any one or more 4176  
municipal corporations. 4177

**Sec. 4935.03.** (A) The public utilities commission shall 4178  
adopt, and may amend or rescind, rules in accordance with section 4179  
111.15 of the Revised Code, with the approval of the governor, 4180  
defining various foreseen types and levels of energy emergency 4181  
conditions for critical shortages or interruptions in the supply 4182  
of electric power, natural gas, coal, or individual petroleum 4183  
fuels and specifying appropriate measures to be taken at each 4184  
level or for each type of energy emergency as necessary to protect 4185  
the public health or safety or prevent unnecessary or avoidable 4186  
damage to property. The rules may prescribe different measures for 4187  
each different type or level of declared energy emergency, and for 4188  
any type or level shall empower the governor to: 4189

(1) Restrict the energy consumption of state and local 4190  
government offices and industrial and commercial establishments; 4191

(2) Restrict or curtail public or private transportation or 4192  
require or encourage the use of car pools or mass transit systems; 4193

(3) Order, during a declared energy emergency, any electric 4194  
light, natural gas or gas, or pipeline company; any supplier 4195  
subject to certification under section 4928.08 of the Revised 4196  
Code; electric power or gas utility that is owned by a municipal 4197  
corporation or not for profit; coal producer or supplier; electric 4198  
power producer or marketer; or petroleum fuel producer, refiner, 4199  
wholesale distributor, or retail dealer to sell electricity, gas, 4200  
coal, or petroleum fuel in order to alleviate hardship, or if 4201  
possible to acquire or produce emergency supplies to meet 4202  
emergency needs; 4203

(4) Order, during a declared energy emergency, other energy 4204  
conservation or emergency energy production or distribution 4205  
measures to be taken in order to alleviate hardship; 4206

(5) Mobilize emergency management, national guard, law 4207  
enforcement, or emergency medical services. 4208

The rules shall be designed to protect the public health and 4209  
safety and prevent unnecessary or avoidable damage to property. 4210  
They shall encourage the equitable distribution of available 4211  
electric power and fuel supplies among all geographic regions in 4212  
the state. 4213

(B) The governor may, after consultation with the chairman of 4214  
the commission, declare an energy emergency by filing with the 4215  
secretary of state a written declaration of an energy emergency at 4216  
any time he finds that the health, safety, or welfare of the 4217  
residents of this state or of one or more counties of this state 4218  
is so imminently and substantially threatened by an energy 4219  
shortage that immediate action of state government is necessary to 4220  
prevent loss of life, protect the public health or safety, and 4221  
prevent unnecessary or avoidable damage to property. The 4222  
declaration shall state the counties, utility service areas, or 4223  
fuel market areas affected, or its statewide effect, and what 4224

fuels or forms of energy are in critically short supply. An energy 4225  
emergency goes into immediate effect upon filing and continues in 4226  
effect for the period prescribed in the declaration, but not more 4227  
than thirty days. At the end of any thirty-day or shorter energy 4228  
emergency, the governor may issue another declaration extending 4229  
the emergency. The general assembly may by concurrent resolution 4230  
terminate any declaration of an energy emergency. The emergency is 4231  
terminated at the time of filing of the concurrent resolution with 4232  
the secretary of state. When an energy emergency is declared, the 4233  
commission shall implement the measures which it determines are 4234  
appropriate for the type and level of emergency in effect. 4235

(C) Energy emergency orders issued by the governor pursuant 4236  
to this section shall take effect immediately upon issuance, and 4237  
the person to whom the order is directed shall initiate compliance 4238  
measures immediately upon receiving the order. During an energy 4239  
emergency the attorney general or the prosecuting attorney of the 4240  
county where violation of a rule adopted or order issued under 4241  
this section occurs may bring an action for immediate injunction 4242  
or other appropriate relief to secure prompt compliance. The court 4243  
may issue an ex parte temporary order without notice which shall 4244  
enforce the prohibitions, restrictions, or actions that are 4245  
necessary to secure compliance with the rule or order. Compliance 4246  
with rules or orders issued under this section is a matter of 4247  
statewide concern. 4248  
4249

(D) During a declared energy emergency the governor may use 4250  
the services, equipment, supplies, and facilities of existing 4251  
departments, offices, and agencies of the state and of the 4252  
political subdivisions thereof to the maximum extent practicable 4253  
and necessary to meet the energy emergency, and the officers and 4254  
personnel of all such departments, offices, and agencies shall 4255  
cooperate with and extend such services and facilities to the 4256

governor upon request. 4257

(E) During an energy emergency declared under this section, 4258  
no person shall violate any rule adopted or order issued under 4259  
this section. Whoever violates this division is guilty of a minor 4260  
misdemeanor on a first offense, and a misdemeanor of the first 4261  
degree upon subsequent offenses or if the violation was purposely 4262  
committed. 4263

**Sec. 4935.04.** (A) As used in this chapter: 4264

(1) "Major utility facility" means: 4265

(a) ~~An electric generating plant and associated facilities 4266  
designed for, or capable of, operation at a capacity of fifty 4267  
megawatts or more;~~ 4268

~~(b)~~ An electric transmission line and associated facilities 4269  
of a design capacity of one hundred twenty-five kilovolts or more; 4270

~~(c)~~(b) A gas or natural gas transmission line and associated 4271  
facilities designed for, or capable of, transporting gas or 4272  
natural gas at pressures in excess of one hundred twenty-five 4273  
pounds per square inch. 4274

"Major utility facility" does not include electric, gas, or 4275  
natural gas distributing lines and gas or natural gas gathering 4276  
lines and associated facilities as defined by the public utilities 4277  
commission; facilities owned or operated by industrial firms, 4278  
persons, or institutions that produce or transmit gas, or natural 4279  
gas, or electricity primarily for their own use or as a byproduct 4280  
of their operations; gas or natural gas transmission lines and 4281  
associated facilities over which an agency of the United States 4282  
has certificate jurisdiction; facilities owned or operated by a 4283  
person furnishing gas or natural gas directly to fifteen thousand 4284  
or fewer customers within this state. 4285

(2) "Person" has the meaning set forth in section 4906.01 of 4286

the Revised Code.	4287
(B) Each person owning or operating a gas or natural gas transmission line and associated facilities within this state over which an agency of the United States has certificate jurisdiction shall furnish to the commission a copy of the energy information filed by the person with that agency of the United States.	4288 4289 4290 4291 4292
(C) Each person owning or operating a major utility facility within this state, or furnishing gas, natural gas, or electricity directly to more than fifteen thousand customers within this state annually shall furnish a report to the commission for its review. The report shall be termed the long-term forecast report and shall contain:	4293 4294 4295 4296 4297 4298
(1) A year-by-year, ten-year forecast of annual energy demand, peak load, reserves, and a general description of the resource plan to meet demand;	4299 4300 4301
(2) A range of projected loads during the period;	4302
(3) A description of major utility facilities planned to be added or taken out of service in the next ten years, including <del>prospective sites for generating plants and</del> , to the extent the information is available, <u>prospective sites</u> for transmission line locations;	4303 4304 4305 4306 4307
(4) For gas and natural gas, a projection of anticipated supply, supply prices, and sources of supply over the forecast period;	4308 4309 4310
(5) <del>For electricity, a range of projected loads and a projection of annual energy demand, anticipated generating capacity, and system seasonal peak demand for a twenty year period;</del>	4311 4312 4313 4314
<del>(6)</del> A description of proposed changes in the transmission system planned for the next five years;	4315 4316

~~(7)~~(6) A month-by-month forecast of both energy demand and 4317  
peak load for electric utilities, and gas sendout for gas and 4318  
natural gas utilities, for the next two years. The report shall 4319  
describe the major utility facilities that, in the judgment of 4320  
such person, will be required to supply system demands during the 4321  
forecast period. The report from a gas or natural gas utility 4322  
shall cover the ten- and five-year periods next succeeding the 4323  
date of the report, and the report from an electric utility shall 4324  
cover the twenty-, ten-, and five-year periods next succeeding the 4325  
date of the report. Each report shall be made available to the 4326  
public and furnished upon request to municipal corporations and 4327  
governmental agencies charged with the duty of protecting the 4328  
environment or of planning land use. The report shall be in such 4329  
form and shall contain such information as may be prescribed by 4330  
the commission. 4331

Each person not owning or operating a major utility facility 4332  
within this state and serving fifteen thousand or fewer gas, or 4333  
natural gas, or electric customers within this state shall furnish 4334  
such information as the commission ~~may require~~ requires. 4335

(D) The commission shall: 4336

(1) Review and comment on the reports filed under division 4337  
(C) of this section, and make the information contained ~~therein in~~ 4338  
the reports readily available to the public and other interested 4339  
government agencies; 4340

(2) Compile and publish each year the ~~general locations of~~ 4341  
~~the proposed power plant sites and~~ general locations of proposed 4342  
and existing transmission line routes within its jurisdiction as 4343  
identified in the reports filed under division (C) of this 4344  
section, identifying the general location of such sites and routes 4345  
and the approximate year when construction is expected to 4346  
commence, and to make such information readily available to the 4347

public, to each newspaper of daily or weekly circulation within 4348  
the area affected by the proposed site and route, and to 4349  
interested federal, state, and local agencies; 4350

(3) Hold a public hearing: 4351

(a) On the first long-term forecast report filed after 4352  
January 11, 1983; 4353

(b) At least once in every five years, on the latest report 4354  
furnished by any person subject to this section; 4355

(c) On the latest report furnished by any person subject to 4356  
this section if the report contains a substantial change from the 4357  
preceding report furnished by that person. "Substantial change" 4358  
includes, but is not limited to: 4359

~~(i) The addition or cancellation of a generating facility of 4360  
fifty megawatts or more in the report furnished pursuant to 4361  
division (C) of this section; 4362~~

~~(ii) A change in forecasted peak loads or energy consumption 4363  
over the forecast period of greater than an average of one-half of 4364  
one per cent per year; 4365~~

~~(iii)(ii) Demonstration of good cause to the commission by an 4366  
interested party. 4367~~

The commission shall fix a time for the hearing, which shall 4368  
be not later than ninety days after the report is filed, and 4369  
publish notice of the date, time of day, and location of the 4370  
hearing in a newspaper of general circulation in each county in 4371  
which the person furnishing the report has or intends to locate a 4372  
major utility facility and will provide service during the period 4373  
covered by the report. The notice shall be published not less than 4374  
fifteen nor more than thirty days before the hearing and shall 4375  
state the matters to be considered. 4376

Absent a showing of good cause, the commission shall not hold 4377

hearings under division (D)(3) of this section with respect to 4378  
persons who, as the primary purpose of their business, furnish 4379  
gas, or natural gas, or electricity directly to fifteen thousand 4380  
or fewer customers within this state solely for direct consumption 4381  
by those customers. 4382

(4) Require such information from persons subject to its 4383  
jurisdiction as necessary to assist in the conduct of hearings and 4384  
any investigation or studies it may undertake; 4385

(5) Conduct any studies or investigations that are necessary 4386  
or appropriate to carry out its responsibilities under this 4387  
section. 4388

(E)(1) The scope of the hearing held under division (D)(3) of 4389  
this section shall be limited to issues relating to forecasting. 4390  
The power siting board, the office of consumers' counsel, and all 4391  
other persons having an interest in the proceedings shall be 4392  
afforded the opportunity to be heard and to be represented by 4393  
counsel. The commission may adjourn the hearing from time to time. 4394  
4395

(2) The hearing shall include, but not be limited to, a 4396  
review of: 4397

(a) The projected loads and energy requirements for each year 4398  
of the period; 4399

(b) The estimated installed capacity and supplies to meet the 4400  
projected load requirements. 4401

(F) Based upon the report furnished pursuant to division (C) 4402  
of this section and the hearing record, the commission, within 4403  
ninety days from the close of the record in the hearing, shall 4404  
determine if: 4405

(1) All information relating to current activities, 4406  
facilities agreements, and published energy policies of the state 4407

has been completely and accurately represented; 4408

(2) The load requirements are based on substantially accurate 4409  
historical information and adequate methodology; 4410

(3) The forecasting methods consider the relationships 4411  
between price and energy consumption; 4412

(4) The report identifies and projects reductions in energy 4413  
demands due to energy conservation measures in the industrial, 4414  
commercial, residential, transportation, and energy production 4415  
sectors in the service area; 4416

(5) Utility company forecasts of loads and resources are 4417  
reasonable in relation to population growth estimates made by 4418  
state and federal agencies, transportation, and economic 4419  
development plans and forecasts, and make recommendations where 4420  
possible for necessary and reasonable alternatives to meet 4421  
forecasted electric power demand; 4422

(6) The report considers plans for expansion of the regional 4423  
power grid and the planned facilities of other utilities in the 4424  
state; 4425

(7) All assumptions made in the forecast are reasonable and 4426  
adequately documented. 4427

(G) The commission shall adopt rules under section 111.15 of 4428  
the Revised Code to establish criteria for evaluating the 4429  
long-term forecasts of needs for gas and electric ~~power~~ 4430  
transmission service, to conduct hearings held under this section, 4431  
to establish reasonable fees to defray the direct cost of the 4432  
hearings and the review process, and such other rules as are 4433  
necessary and convenient to implement this section. 4434

(H) The hearing record produced under this section and the 4435  
determinations of the commission shall be introduced into evidence 4436  
and shall be considered in determining the basis of need for power 4437

siting board deliberations under division (A)(1) of section 4438  
4906.10 of the Revised Code. The hearing record produced under 4439  
this section shall be introduced into evidence and shall be 4440  
considered by the public utilities commission in its initiation of 4441  
programs, examinations, and findings, ~~investigations, and remedies~~ 4442  
under section 4905.70 of the Revised Code, and shall be considered 4443  
in ~~their~~ the commission's determinations with respect to the 4444  
establishment of just and reasonable rates under section 4909.15 4445  
of the Revised Code and financing utility facilities and 4446  
authorizing issuance of all securities under sections 4905.40, 4447  
4905.401, 4905.41, and 4905.42 of the Revised Code. The forecast 4448  
findings also shall serve as the basis for all other energy 4449  
planning and development activities of the state government where 4450  
electric and gas data are required. 4451

(I)(1) No court other than the supreme court shall have power 4452  
to review, suspend, or delay any determination made by the 4453  
commission under this section, or enjoin, restrain, or interfere 4454  
with the commission in the performance of official duties. A writ 4455  
of mandamus shall not be issued against the commission by any 4456  
court other than the supreme court. 4457

(2) A final determination made by the commission shall be 4458  
reversed, vacated, or modified by the supreme court on appeal, if, 4459  
upon consideration of the record, such court is of the opinion 4460  
that such determination was unreasonable or unlawful. 4461

The proceeding to obtain such reversal, vacation, or 4462  
modification shall be by notice of appeal, filed with the 4463  
commission by any party to the proceeding before it, against the 4464  
commission, setting forth the determination appealed from and 4465  
errors complained of. The notice of appeal shall be served, unless 4466  
waived, upon the commission by leaving a copy at the office of the 4467  
~~chairman~~ chairperson of the commission at Columbus. The court may 4468  
permit an interested party to intervene by cross-appeal. 4469

(3) No proceeding to reverse, vacate, or modify a 4470  
determination of the commission is commenced unless the notice of 4471  
appeal is filed within sixty days after the date of the 4472  
determination. 4473

**Sec. 5117.01.** ~~(A)~~ As used in ~~this chapter~~ sections 5117.01 to 4474  
5117.12 of the Revised Code: 4475

~~(1)~~(A) "Credit" means the credit on utility heating bills 4476  
granted under division (A) of section 5117.09 of the Revised Code. 4477

~~(2)~~(B) "Current monthly bill" means the amount charged for 4478  
energy consumed in the most recent monthly billing period and does 4479  
not include any past due balance. 4480

~~(3)~~(C) "Current total income" means the adjusted gross income 4481  
of the head of household and the person's spouse for the six-month 4482  
period beginning the first day of January and ending the thirtieth 4483  
day of June of the year in which an application is made, as 4484  
determined under the "Internal Revenue Code of 1954," 68A Stat. 3, 4485  
26 U.S.C. 1, as amended, minus the amount of disability benefits 4486  
included in adjusted gross income but not to exceed twenty-six 4487  
hundred dollars, plus old age and survivors benefits received 4488  
pursuant to the "Social Security Act," retirement, pension, 4489  
annuity, or other retirement payments or benefits not included in 4490  
federal adjusted gross income; payments received pursuant to the 4491  
"Railroad Retirement Act," 50 Stat. 307, 45 U.S.C. 228, and 4492  
interest on federal, state, and local government obligations. 4493  
Disability benefits paid by the veterans administration or a 4494  
branch of the armed forces of the United States on account of an 4495  
injury or disability are not included in current total income. 4496  
4497

~~(4)~~(D) "Energy company" means every retail propane dealer 4498  
that distributes propane by pipeline, and every electric light, 4499

rural electric, gas, or natural gas company. 4500

~~(5)~~(E) "Energy dealer" means every retail dealer of fuel oil, 4501  
propane, coal, wood, and kerosene. 4502

~~(6)~~(F) "Head of household" means a person who occupies a 4503  
household as the person's homestead and who is financially 4504  
responsible for its other occupants, if any, or the spouse of such 4505  
a person if both occupy the same household. No person is a head of 4506  
household if the person occupies a household for the taxable year 4507  
prior to the year in which an application is filed and was claimed 4508  
as a dependent on the federal income tax return of another 4509  
occupant of the same household and was not the taxpayer's spouse 4510  
or if the person could have been claimed if such a return had been 4511  
filed for such year and was not the other occupant's spouse. 4512

~~(7)~~(G) "Household" means any dwelling unit, including a unit 4513  
in a multiple unit dwelling, a manufactured home, or a mobile 4514  
home, to which utility heating services or energy commodities are 4515  
provided. 4516

~~(8)~~(H) "Payment" means the one hundred twenty-five-dollar 4517  
payment provided under division (A) of section 5117.10 of the 4518  
Revised Code. 4519

~~(9)~~(I) "Permanently and totally disabled" refers to a person 4520  
who has, on the first day of July of the year an application is 4521  
made, some impairment in body or mind that makes the person unfit 4522  
to work at any substantially remunerative employment that the 4523  
person would otherwise be reasonably able to perform and that 4524  
will, with reasonable probability, continue for an indefinite 4525  
period of at least twelve months without any present indication of 4526  
recovery therefrom, or who has been certified as permanently and 4527  
totally disabled by a state or federal agency having the function 4528  
of so classifying persons. 4529

~~(10)~~(J) "Sixty-five years of age or older" refers to a person 4530

who has attained age sixty-four prior to the first day of January 4531  
of the year of an application for ~~reduction in utility charges~~ is 4532  
made. 4533

~~(11)~~(K) "Total income" means the adjusted gross income of the 4534  
head of household and the person's spouse for the year preceding 4535  
the year in which an application is made, as determined under the 4536  
"Internal Revenue Code of 1954," 68A Stat. 3, 26 U.S.C. 1, as 4537  
amended, minus the amount of disability benefits included in 4538  
adjusted gross income but not to exceed fifty-two hundred dollars, 4539  
plus old age and survivors benefits received pursuant to the 4540  
"Social Security Act," retirement, pension, annuity, or other 4541  
retirement payments or benefits not included in federal adjusted 4542  
gross income; payments received pursuant to the "Railroad 4543  
Retirement Act," 50 Stat. 307, 45 U.S.C. 228; and interest on 4544  
federal, state, and local government obligations. Disability 4545  
benefits paid by the ~~veteran's administration~~ department of 4546  
veterans affairs or a branch of the armed forces of the United 4547  
States on account of an injury or disability shall not be included 4548  
in total income. 4549

~~(B) As used in sections 5117.01 to 5117.12 of the Revised~~ 4550  
~~Code:~~ 4551

~~(1) "Applicant" means any person who has submitted an~~ 4552  
~~application under division (C) of section 5117.03 of the Revised~~ 4553  
~~Code.~~ 4554

~~(2) "Application" means the application in section 5117.03 of~~ 4555  
~~the Revised Code.~~ 4556

~~(3) "Program" means the Ohio energy credit program~~ 4557  
~~established under sections 5117.01 to 5117.12 of the Revised Code.~~ 4558

~~(4)~~(L) "Purchased power costs" means charges for the costs of 4559  
power purchased by an electric light company under Chapters 4905. 4560  
and 4909. of the Revised Code and includes charges resulting from 4561

the exchange of electric power. 4562

**Sec. 5117.02.** (A) The ~~tax commissioner~~ director of 4563  
development shall adopt rules, or amendments and rescissions of 4564  
rules, pursuant to section 4928.52 of the Revised Code, for the 4565  
administration of the Ohio energy credit program under sections 4566  
5117.01 to 5117.12 of the Revised Code. 4567

(B) As a means of efficiently administering the program 4568  
~~established by sections 5117.01 to 5117.12 of the Revised Code~~, 4569  
the ~~tax commissioner~~ director may extend, by as much as a total of 4570  
thirty days, any date specified in such sections for the 4571  
performance of a particular action by an individual or an officer. 4572

(C)(1) Except as provided in division (C)(2) of this section, 4573  
the ~~tax commissioner~~ director shall adopt, in accordance with 4574  
divisions (A), (B), (C), (D), (E), and (H) of section 119.03 and 4575  
section 119.04 of the Revised Code, ~~adopt~~ whatever rules, or 4576  
amendments or rescissions of rules are required by or are 4577  
otherwise necessary to implement sections 5117.01 to 5117.12 of 4578  
the Revised Code. A rule, amendment, or rescission adopted under 4579  
this division is not exempt from the hearing requirements of 4580  
section 119.03 of the Revised Code pursuant to division (G) of 4581  
that section, or subject to section 111.15 ~~or 5703.14~~ of the 4582  
Revised Code. 4583

(2) If an emergency necessitates the immediate adoption of a 4584  
rule, or the immediate adoption of an amendment or rescission of a 4585  
rule that is required by or otherwise necessary to implement 4586  
sections 5117.01 to 5117.12 of the Revised Code, the ~~tax~~ 4587  
~~commissioner may~~ director immediately may adopt the emergency 4588  
rule, amendment, or rescission without complying with division 4589  
(A), (B), (C), (D), (E), or (H) of section 119.03 of the Revised 4590  
Code so long as ~~he~~ the director states the reasons for the 4591  
necessity in the emergency rule, amendment, or rescission. The 4592

emergency rule, amendment, or rescission is effective on the day 4593  
copies of the emergency rule, amendment, or rescission, in final 4594  
form and in compliance with division (A)(2) of section 119.04 of 4595  
the Revised Code, are filed as follows: two certified copies of 4596  
the emergency rule, amendment, or rescission shall be filed with 4597  
both the secretary of state and the director of the legislative 4598  
service commission, and one certified copy of the emergency rule, 4599  
amendment, or rescission shall be filed with the joint committee 4600  
on agency rule review. If all copies are not filed on the same 4601  
day, the emergency rule, amendment, or rescission is effective on 4602  
the day on which the latest filing is made. An emergency rule, 4603  
amendment, or rescission adopted under this division is not 4604  
subject to section 111.15, division (F) of section 119.03, or 4605  
section 5703.14 of the Revised Code. An emergency rule, amendment, 4606  
or rescission adopted under this division continues in effect 4607  
until amended or rescinded by the ~~tax commissioner~~ director in 4608  
accordance with division (C)(1) or (2) of this section, except 4609  
that the rescission of an emergency rescission does not revive the 4610  
rule rescinded. 4611

(D) Except where otherwise provided, each form, application, 4612  
notice, and the like used in fulfilling the requirements of 4613  
sections 5117.01 to 5117.12 of the Revised Code shall be approved 4614  
by the ~~tax commissioner~~ director. 4615

**Sec. 5117.03.** (A)(1) The ~~tax commissioner~~ director of 4616  
development shall prescribe the form of the application for 4617  
assistance under the Ohio energy credit program. The application 4618  
shall be in the form of a signed statement, shall require no more 4619  
information than is necessary to establish an applicant's 4620  
eligibility under section 5117.07 of the Revised Code, and shall 4621  
be clear and concise in its format, requirements, and 4622  
instructions. The form shall request the following information: 4623

(a) The name and address of the applicant;	4624
(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;	4625 4626 4627
(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 <del>his</del> <u>the applicant's</u> energy from a company, the applicant's account number;	4628 4629 4630 4631 4632
(d) The applicant's total income or current total income;	4633
(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;	4634 4635 4636 4637 4638 4639
(f) The age of the applicant;	4640
(g) Any other information required to make eligibility determinations under section 5117.07 of the Revised Code.	4641 4642
Each form shall contain a statement that signing such application constitutes a delegation of authority by the applicant to the <del>commissioner</del> <u>director</u> to examine any financial records that relate to income earned by the applicant as stated on the application for the purpose of determining eligibility under section 5117.07 of the Revised Code and possible violation of division (B) of section 5117.11 of the Revised Code.	4643 4644 4645 4646 4647 4648 4649
(2) The <del>tax commissioner</del> <u>director</u> shall mail or otherwise provide an application form to each person requesting such form.	4650 4651
(B)(1) The <del>tax commissioner</del> <u>director</u> shall devise and prescribe an application renewal form on which the head of	4652 4653

household may indicate by check mark that ~~he~~ the head of household 4654  
received a credit or payment for the preceding heating season. 4655  
Application renewal forms shall seek from persons applying on such 4656  
basis a certification by the applicant attesting to ~~his~~ the 4657  
applicant's permanent and total disability and the name of a 4658  
physician, psychologist, or government agency willing to provide 4659  
an additional certification if so requested under division (D) of 4660  
section 5117.07 of the Revised Code. Such forms shall also include 4661  
such other information as the ~~tax commissioner~~ director requires 4662  
and shall be clear and concise in format, requirements, and 4663  
instructions. 4664

(2) On or before the fifteenth day of June, the ~~tax~~ 4665  
~~commissioner~~ director shall mail or otherwise provide an 4666  
application renewal form to each head of household who received a 4667  
credit or payment during the preceding heating season. 4668

(3) Application renewal forms shall be reviewed and disposed 4669  
of in the same manner provided for application forms in section 4670  
5117.07 of the Revised Code. 4671

(C) Applications and application renewal forms shall be 4672  
returned to the ~~tax commissioner~~ director no later than the first 4673  
day of September. If an applicant is determined eligible for a 4674  
credit under division (A)(1) of section 5117.07 of the Revised 4675  
Code and the applicant's account number is not provided on the 4676  
application form pursuant to division (A)(1)(c) of this section, 4677  
the ~~tax commissioner~~ director shall make a good faith effort to 4678  
acquire such number before certifying the applicant's eligibility 4679  
to an energy company under section 5117.08 of the Revised Code. 4680  
The ~~tax commissioner~~ director may request an energy company to 4681  
assist in efforts to acquire an applicant's account number and, if 4682  
so requested, a company shall cooperate in such efforts. 4683

**Sec. 5117.04.** (A) Every energy company and energy dealer 4684

~~shall~~, at least once during June, and once during August, shall 4685  
begin to distribute to each of its residential heating customers a 4686  
plain and clear notice, printed in ten-point type on a sheet or 4687  
card on which no other words appear on either the front or back, 4688  
that states the right of qualified residential customers to 4689  
receive a credit or payment under the Ohio energy credit program 4690  
and that explains in detail, in a fashion reasonably calculated to 4691  
inform, the relevant mechanisms established under sections 5117.01 4692  
to 5117.12 of the Revised Code to effectuate that right. The 4693  
notice shall also contain, in ten-point boldface type, the 4694  
following statement: "The right of eligible customers to receive a 4695  
credit against utility bills or a payment for energy bills is 4696  
provided in legislation (House Bill 657) passed by the General 4697  
Assembly and signed by the Governor." 4698

(B) The ~~tax commissioner~~ director of development shall cause 4699  
to be printed notices of the type specified in division (A) of 4700  
this section and application forms in sufficient quantity for 4701  
distribution. The ~~tax commissioner~~ director shall maintain a 4702  
system for distributing application forms to appropriate public 4703  
locations. The distribution system shall be designed to make 4704  
application forms available to as many qualified persons as 4705  
possible. 4706

(C) The ~~tax commissioner~~ director shall arrange for the 4707  
establishment of a toll-free telephone number to enable all 4708  
persons in this state to make inquiries and obtain information 4709  
concerning the credits or payments. 4710

**Sec. 5117.05.** The ~~tax commissioner~~ director of development, 4711  
in consultation with the commission on Hispanic-Latino affairs, 4712  
shall develop an outreach program, including Spanish-speaking 4713  
communication formats, designed to make all Spanish-speaking 4714  
persons who meet the eligibility requirements for participation in 4715

the Ohio energy credit program aware of the nature and extent of 4716  
available benefits and methods for acquiring and making 4717  
applications. The program shall include assistance to such persons 4718  
in making applications. The ~~commissioner~~ director shall implement 4719  
the program in cooperation with the commission ~~on Hispanic-Latino~~  
~~affairs~~. 4720  
4721

**Sec. 5117.07.** (A) On or before the first day of October, the 4722  
~~tax-commissioner~~ director of development shall review all 4723  
applications submitted under division (C) of section 5117.03 of 4724  
the Revised Code and shall determine the eligibility of each 4725  
applicant to receive a credit or payment. 4726

(1) An applicant is eligible for a credit of thirty per cent 4727  
if the applicant is a head of household, has a total income of 4728  
five thousand dollars or less or a current total income of two 4729  
thousand five hundred dollars or less, owns and occupies or rents 4730  
and occupies a household receiving the source of energy for its 4731  
primary heating system from an energy company and such energy is 4732  
separately metered, and is either of the following: 4733

(a) Sixty-five years of age or older; 4734

(b) Permanently and totally disabled. 4735

(2) An applicant is eligible for a credit of twenty-five per 4736  
cent if the applicant is a head of household, has a total income 4737  
of more than five thousand dollars but not more than nine thousand 4738  
dollars or a current total income of more than two thousand five 4739  
hundred dollars but not more than four thousand five hundred 4740  
dollars, is sixty-five years of age or older or permanently and 4741  
totally disabled, and owns and occupies or rents and occupies a 4742  
household receiving the source of energy for its primary heating 4743  
system from an energy company and such energy is separately 4744  
metered. 4745

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

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

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

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

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

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

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

(C) The ~~tax commissioner~~ director shall establish a procedure whereby ~~he~~ the director can verify total income and current total

income for the calendar year in which an applicant is determined 4776  
eligible for a payment or credit. If a person receives a credit or 4777  
payment that ~~he~~ the person is ineligible to receive under division 4778  
(A) of this section as determined by the director, that person 4779  
shall refund to the ~~tax commissioner~~ director the credit or 4780  
payment, or excess portion of a credit or payment, ~~he~~ that person 4781  
received. The sum refunded shall be deposited in the state 4782  
treasury to the credit of the ~~general revenue fund~~ universal 4783  
service fund created in section 4928.51 of the Revised Code. 4784

(D) The ~~tax commissioner~~ director may request an additional 4786  
certification of permanent and total disability for any applicant 4787  
claiming such status on an application renewal form submitted 4788  
under section 5117.03 of the Revised Code. Such certification 4789  
shall be requested from the person or agency named on the form 4790  
pursuant to division (B)(1) of section 5117.03 of the Revised 4791  
Code. If such additional certification is refused due to a 4792  
conclusion by the person or agency that the applicant is not 4793  
permanently and totally disabled, the ~~commissioner~~ director shall 4794  
determine the applicant ineligible for any credit or payment. If 4795  
such additional certification is unavailable or refused for any 4796  
other reason, the ~~tax commissioner~~ director may determine the 4797  
applicant to be eligible for a credit or payment provided ~~he~~ the 4798  
director has good cause to believe the applicant is permanently 4799  
and totally disabled. 4800

(E) On or before the first day of October, the ~~tax~~ 4801  
~~commissioner~~ director shall notify each applicant of the 4802  
disposition of ~~his~~ the applicant's application under divisions (A) 4803  
and (B) of this section. At the same time, ~~he~~ the director shall 4804  
notify the applicant, regardless of whether ~~his~~ the applicant's 4805  
application is approved or disapproved, that the applicant may be 4806  
eligible to participate in a state or federal weatherization 4807

program and should contact ~~his~~ the applicant's community action 4808  
agency for further information. If an application is disapproved, 4809  
the applicant may appeal to the ~~tax commissioner~~ director for a 4810  
hearing on the matter. A notice of disapproval shall include a 4811  
detailed explanation of the applicant's right of appeal under this 4812  
chapter. Any such appeal shall be on an appeal form prescribed by 4813  
the ~~tax commissioner~~ director and shall be filed with the ~~tax~~ 4814  
~~commissioner~~ director within twenty days of the receipt of the 4815  
notice of disapproval. 4816

**Sec. 5117.08.** (A)(1) On or before the tenth day of October, 4817  
the ~~tax commissioner~~ director of development shall begin to 4818  
prepare and certify to each energy company that provides energy 4819  
for home heating a list containing the name and account number of 4820  
each head of household determined eligible for a credit under 4821  
divisions (A) and (B) of section 5117.07 of the Revised Code and 4822  
served by that company, the address of the household, and the 4823  
source of the heat produced by the primary heating system in the 4824  
residence of the applicant. The ~~tax commissioner may~~ director, for 4825  
good cause, may certify addenda to such lists, containing the 4826  
names of any heads of household whose names were not included in 4827  
the earlier lists but who, except for failure to meet the deadline 4828  
requirements of sections 5117.01 to 5117.12 of the Revised Code, 4829  
would have been certified in the original lists. Within thirty 4830  
days of receipt of such list and in any month for which a credit 4831  
is required under sections 5117.01 to 5117.12 of the Revised Code, 4832  
the company may verify that each head of household on the 4833  
~~commissioner's~~ director's list receives energy for home heating at 4834  
the household address appearing on such list or that the source of 4835  
heat produced by the primary heating system in the household is 4836  
energy supplied by the company. If the company determines that a 4837  
person listed does not receive energy for home heating at such 4838  
address or that the source of the heat produced by the primary 4839

heating system in the residence of such person is not supplied by 4840  
the company, it shall notify the ~~commissioner~~ director of such 4841  
fact and may refuse to grant the credit provided under division 4842  
(A) of section 5117.07 of the Revised Code. Upon receipt of such 4843  
notice, the ~~commissioner~~ director shall determine the accuracy of 4844  
the determination of the company and, should ~~he~~ the director not 4845  
concur with the company, shall order the company to provide the 4846  
credit. 4847

(2) The good faith exercise by any company of any power of 4848  
refusal granted under division (A)(1) of this section does not 4849  
subject such company to any penalty or liability provided under 4850  
division (A) of section 5117.11 of the Revised Code. 4851

(B)(1) Nothing in sections 5117.01 to 5117.12 of the Revised 4852  
Code shall be construed to abridge the right of an otherwise 4853  
eligible applicant to receive a credit or payment because ~~he~~ the 4854  
applicant has either changed the location of ~~his~~ the applicant's 4855  
residence or the nature of the occupancy of ~~his~~ the applicant's 4856  
residence, as between a tenant or an owner, at a time that could, 4857  
as a result of the operation of sections 5117.01 to 5117.12 of the 4858  
Revised Code, cause ~~him~~ the applicant to be disqualified from 4859  
receiving, or continuing to receive, the credit or payment. 4860

(2) Where a person who submits a form or information required 4861  
under sections 5117.01 to 5117.10 of the Revised Code does so in a 4862  
timely fashion but, because of the occurrence of an error or 4863  
omission with respect to such form or information, either on ~~his~~ 4864  
the person's own part or on the part of those persons required by 4865  
sections 5117.01 to 5117.12 of the Revised Code to take 4866  
administrative, executive, or ministerial action regarding such 4867  
form or information, the certification of eligibility by the ~~tax~~ 4868  
~~commissioner~~ director to an energy company takes place after the 4869  
expiration of a deadline imposed under sections 5117.01 to 5117.12 4870

of the Revised Code, the company shall grant the credit within 4871  
thirty days and, whenever appropriate, grant the credit on a 4872  
retroactive basis. 4873

(3) The ~~tax commissioner~~ director shall adopt a rule ensuring 4874  
that the requirements of divisions (B)(1) and (2) of this section 4875  
are effectuated. 4876

**Sec. 5117.09.** (A) With respect to each of its residential 4877  
customers, every energy company shall, after receipt of a 4878  
certification list provided under division (A) of section 5117.08 4879  
of the Revised Code, cause the granting of a credit in accordance 4880  
with this section against the monthly billing of each household 4881  
appearing on the list except as provided in division (A) of 4882  
section 5117.08 of the Revised Code. In the case of an applicant 4883  
who has a total income of five thousand dollars or less or a 4884  
current total income of two thousand five hundred dollars or less, 4885  
the credit shall amount to thirty per cent of the current monthly 4886  
bill rendered to such household by the company for the billing 4887  
months of December, January, February, March, and April following 4888  
the receipt of a list on which the household appears. In the case 4889  
of an applicant who has a total income of more than five thousand 4890  
dollars but not more than nine thousand dollars or a current total 4891  
income of more than two thousand five hundred dollars but not more 4892  
than four thousand five hundred dollars, the credit shall amount 4893  
to twenty-five per cent of the current monthly bill rendered to 4894  
such household by the company for the billing months of December, 4895  
January, February, March, and April following the receipt of a 4896  
list on which the household appears. If purchased power costs are 4897  
incurred by an energy company during the billing month for which a 4898  
credit is provided under this division, the credit shall also be 4899  
applied to such costs, whether or not the costs are charged to a 4900  
current ~~monthly~~ MONTHLY bill for such months. 4901

(B) Every energy company shall read the meter of each of its 4902  
qualified residential customers who may receive a credit under 4903  
division (A) of this section at least one time for the service 4904  
period of November and at least one time in the service period for 4905  
the current monthly bill rendered for the billing month of April. 4906  
In the event a company is unable to read a meter because of 4907  
failure to gain access after a good faith effort or because a 4908  
certification list was supplied to the utility fewer than thirty 4909  
days prior to the normal date of meter reading, the company may 4910  
render a calculated bill. In such instances, the company shall 4911  
make an adjustment to the amount of the credit granted to the 4912  
customer based upon the next actual reading of the meter if the 4913  
reading shows the previous calculation to have been in error and 4914  
set forth the amount of such adjustments in the report required to 4915  
be filed with the ~~tax commissioner~~ director of development under 4916  
division (D) of this section. 4917

(C) On each billing that is subject to a credit under 4918  
division (A) of this section, there shall appear in ten-point type 4919  
both the amount of the credit and to the left of such amount "Ohio 4920  
Energy Credit." 4921

(D) On or before the fifteenth day of each month following 4922  
one in which credits were provided under division (A) of this 4923  
section, each energy company shall, on a form prescribed by the 4924  
~~tax commissioner~~ director and requesting information that ~~he~~ the 4925  
director determines is necessary for the purpose of verifying the 4926  
propriety of the payment of credits, certify to the ~~commissioner~~ 4927  
director the total amount of all credits it granted pursuant to 4928  
division (A) of this section during the preceding month. Not later 4929  
than thirty days after ~~his~~ receipt of such certification, the 4930  
~~commissioner~~ director shall pay the company the amount certified. 4931  
If the ~~commissioner~~ director determines that a company previously 4932  
received amounts greater than the amounts of credits properly 4933

granted, such company, upon notice from the ~~commissioner~~ director, 4934  
shall reimburse the ~~commissioner~~ director in the amount of the 4935  
overpayments. Such reimbursements shall be deposited in the 4936  
general revenue fund. 4937

(E)(1) Any energy company that purposely fails to grant the 4938  
credit provided under division (A) of this section is liable to 4939  
each person entitled to the credit and certified to the company by 4940  
the ~~tax commissioner~~ director pursuant to division (A) of section 4941  
5117.08 of the Revised Code in treble the amount of the total 4942  
credit not granted. The consumers' counsel ~~may~~, on behalf of any 4943  
person or persons not granted the credit, may bring an action to 4944  
recover such treble damages in the court of common pleas of the 4945  
county in which is located the office of the company nearest the 4946  
household of any such person or persons. The consumers' counsel 4947  
~~may~~ also, on behalf of any persons not granted the credit, may 4948  
bring a class action to recover such treble damages in the court 4949  
of common pleas of any county in which is located an office of the 4950  
company and, if feasible, in which is located a significant number 4951  
of members of the class. Any treble damage recovery under this 4952  
division does not, in any manner, diminish any other liability 4953  
provided under sections 5117.01 to 5117.12 of the Revised Code. 4954  
Clerical errors shall not be considered an offense or incur 4955  
liability under this division. 4956

(2) An action shall be brought by the consumers' counsel 4957  
under division (E)(1) of this section only after ~~he~~ the consumers' 4958  
counsel has made a good faith attempt to dispose of the claim by 4959  
settlement, including a good faith request for only such 4960  
information in the possession of an energy company as is needed to 4961  
determine the existence or extent of such a right of action. 4962

(3) Nothing in division (E)(1) of this section shall be 4963  
construed to prevent persons acting without the assistance of the 4964  
consumers' counsel from bringing an action or class action under 4965

such division.

4966

**Sec. 5117.10.** (A) On or before the fifteenth day of January, 4967  
the ~~tax commissioner~~ director of development shall pay each 4968  
applicant determined eligible for a payment under divisions (A) 4969  
and (B) of section 5117.07 of the Revised Code one hundred 4970  
twenty-five dollars. 4971

(B) The ~~tax commissioner~~ director may withhold from any 4972  
payment to which a person would otherwise be entitled under 4973  
division (A) of this section any amount that the ~~tax commissioner~~ 4974  
director determines was erroneously received by such person in a 4975  
preceding year under this or the program established under Am. 4976  
Sub. H.B. 230, as amended by Am. H.B. 937, Am. Sub. H.B. 1073, Am. 4977  
Sub. S.B. 493, and Am. Sub. S.B. 523 of the 112th general 4978  
assembly, provided the ~~tax commissioner~~ director has employed all 4979  
other legal methods reasonably available to obtain reimbursement 4980  
for the erroneous payment or credit prior to the commencement of 4981  
the current program year. 4982

(C) Payments made under this section and credits granted 4983  
under section 5117.09 of the Revised Code shall not be considered 4984  
income for the purpose of determining eligibility or the level of 4985  
benefits or assistance under section 329.042 or Chapters 5107., 4986  
5111., and 5115. of the Revised Code; supplemental security income 4987  
payments under Title XVI of the "Social Security Act," 49 Stat. 4988  
620 (1935), 42 U.S.C. 301, as amended; or any other program under 4989  
which eligibility or the level of benefits or assistance is based 4990  
upon need measured by income. 4991

**Sec. 5117.12.** (A) On or before the thirty-first day of August 4992  
of each year, each energy company shall file a written report with 4993  
the ~~tax commissioner~~ director of development regarding the impact, 4994  
if any, of the requirements of division (E) of section 5117.11 of 4995

the Revised Code on the number of uncollectible and past due 4996  
residential accounts for the twelve-month period ending on the 4997  
preceding thirty-first day of July. The report shall include such 4998  
information as is prescribed by the ~~tax commissioner~~ director. The 4999  
information shall be based on actual reviews of residential 5000  
customer accounts and shall be presented in verifiable form. The 5001  
~~tax commissioner~~ director may consult with the public utilities 5002  
commission and the consumers' counsel in prescribing the contents 5003  
of such reports and complying with the requirements of division 5004  
(C)(4) of this section. 5005

(B) Before the thirty-first day of January of each year, the 5006  
~~tax commissioner~~ director shall prepare a written report including 5007  
a final review of the Ohio energy credit program for which 5008  
applications were required to be mailed or provided by the 5009  
fifteenth day of June of the second preceding calendar year 5010  
pursuant to section 5117.03 of the Revised Code and an interim 5011  
review of the program for which applications were required to be 5012  
mailed or provided by the fifteenth day of June of the preceding 5013  
calendar year under such section. On or before the thirty-first 5014  
day of January of each year, the ~~commissioner~~ director shall 5015  
provide written copies of such report to the speaker of the house 5016  
of representatives, president of the senate, minority leaders of 5017  
the house of representatives and senate, chairpersons of the house 5018  
finance and appropriations committee and senate finance committee, 5019  
chairpersons of the committees of the house of representatives and 5020  
senate customarily entrusted with matters concerning public 5021  
utilities, clerk of the house of representatives, and clerk of the 5022  
senate. 5023

(C) Each report prepared under division (B) of this section 5024  
shall include a review of: 5025

(1) Program costs; 5026

(2) The number of persons receiving credits or payments under the program;	5027 5028
(3) Progress in the implementation of any changes in the program made by the general assembly within the period covered by the report;	5029 5030 5031
(4) The impact, if any, of the requirements of division (E) of section 5117.11 of the Revised Code on the number of uncollectible and past due residential accounts of energy companies for the twelve-month period ending on the preceding thirty-first day of July;	5032 5033 5034 5035 5036
(5) The impact of any federal energy assistance programs available to the same groups of people as are eligible for the energy credit program under sections 5117.01 to 5117.12 of the Revised Code, together with any recommendations on modifications that may, because of the federal programs, be needed in the energy credit program;	5037 5038 5039 5040 5041 5042
(6) Any suggestions for improving the program;	5043
(7) Any other matters considered appropriate by the <del>commissioner</del> <u>director</u> .	5044 5045
(D) The <del>tax commissioner</del> <u>director</u> shall consult with the auditor of state, energy companies, energy dealers, department of aging, and commission on Hispanic-Latino affairs in the preparation of any report under this section. The <del>commissioner</del> <u>director</u> may require information from such agencies for the purpose of preparing such report.	5046 5047 5048 5049 5050 5051
<b>Sec. 5701.03.</b> As used in Title LVII of the Revised Code:	5052
(A) "Personal property" includes every tangible thing that is the subject of ownership, whether animate or inanimate, including a business fixture, and that does not constitute real property as defined in section 5701.02 of the Revised Code. "Personal	5053 5054 5055 5056

property" also includes every share, portion, right, or interest, 5057  
either legal or equitable, in and to every ship, vessel, or boat, 5058  
used or designed to be used in business either exclusively or 5059  
partially in navigating any of the waters within or bordering on 5060  
this state, whether such ship, vessel, or boat is within the 5061  
jurisdiction of this state or elsewhere. "Personal property" does 5062  
not include money as defined in section 5701.04 of the Revised 5063  
Code, motor vehicles registered by the owner thereof, electricity, 5064  
or, for purposes of any tax levied on personal property, patterns, 5065  
jigs, dies, or drawings that are held for use and not for sale in 5066  
the ordinary course of business, except to the extent that the 5067  
value of the electricity, patterns, jigs, dies, or drawings is 5068  
included in the valuation of inventory produced for sale. 5069

(B) "Business fixture" means an item of tangible personal 5071  
property that has become permanently attached or affixed to the 5072  
land or to a building, structure, or improvement, and that 5073  
primarily benefits the business conducted by the occupant on the 5074  
premises and not the realty. "Business fixture" includes, but is 5075  
not limited to, machinery, equipment, signs, storage bins and 5076  
tanks, whether above or below ground, and broadcasting, 5077  
transportation, transmission, and distribution systems, whether 5078  
above or below ground. "Business fixture" also means those 5079  
portions of buildings, structures, and improvements that are 5080  
specially designed, constructed, and used for the business 5081  
conducted in the building, structure, or improvement, including, 5082  
but not limited to, foundations and supports for machinery and 5083  
equipment. "Business fixture" does not include fixtures that are 5084  
common to buildings, including, but not limited to, heating, 5085  
ventilation, and air conditioning systems primarily used to 5086  
control the environment for people or animals, tanks, towers, and 5087  
lines for potable water or water for fire control, electrical and 5088  
communication lines, and other fixtures that primarily benefit the 5089

realty and not the business conducted by the occupant on the 5090  
premises. 5091

**Sec. 5703.052.** There is hereby created in the state treasury 5092  
the tax refund fund, from which refunds shall be paid for taxes 5093  
illegally or erroneously assessed or collected, or for any other 5094  
reason overpaid, that are levied by Chapter 4301., 4305., 5728., 5095  
5729., 5733., 5735., 5739., 5741., 5743., 5747., 5748., 5749., or 5096  
5753., and sections 3737.71, 3905.35, 3905.36, 4303.33, 5707.03, 5097  
5725.18, 5727.38 ~~and former sections 5727.27, and 5727.40~~ 5727.81 5098  
of the Revised Code. Refunds for fees illegally or erroneously 5099  
assessed or collected, or for any other reason overpaid, that are 5100  
levied by sections 3734.90 to 3734.9014 of the Revised Code also 5101  
shall be paid from the fund. However, refunds for taxes levied 5102  
under section 5739.101 of the Revised Code shall not be paid from 5103  
the tax refund fund, but shall be paid as provided in section 5104  
5739.104 of the Revised Code. 5105

Upon certification by the tax commissioner to the treasurer 5106  
of state of a tax refund, fee refund, or tax credit due, or by the 5107  
superintendent of insurance of a domestic or foreign insurance tax 5108  
refund, the treasurer of state may place the amount certified to 5109  
the credit of the fund. The certified amount transferred shall be 5110  
derived from current receipts of the same tax or the fee for which 5111  
the refund arose or, in the case of a tax credit refund, from the 5112  
current receipts of the taxes levied by sections 5739.02 and 5113  
5741.02 of the Revised Code. 5114

If the tax refund arises from a tax payable to the general 5115  
revenue fund, and current receipts from that source are inadequate 5116  
to make the transfer of the amount so certified, the treasurer of 5117  
state may transfer such certified amount from current receipts of 5118  
the sales tax levied by section 5739.02 of the Revised Code. 5119

**Sec. 5703.053.** As used in this section, "postal service" 5120  
means the United States postal service. 5121

An application to the tax commissioner for a tax refund under 5122  
sections 4307.05, 4307.07, 5727.91, 5728.061, 5735.122, 5735.13, 5123  
5735.14, 5735.141, 5735.142, 5739.07, 5741.10, 5743.05, 5743.53, 5124  
5749.08, and 5753.06 of the Revised Code or division (B) of 5125  
section 5703.05 of the Revised Code, or a fee refunded under 5126  
section 3734.905 of the Revised Code, that is received after the 5127  
last day for filing under such section shall be considered to have 5128  
been filed in a timely manner if: 5129

(A) The application is delivered by the postal service and 5130  
the earliest postal service postmark on the cover in which the 5131  
application is enclosed is not later than the last day for filing 5132  
the application; 5133

(B) The application is delivered by the postal service, the 5134  
only postmark on the cover in which the application is enclosed 5135  
was affixed by a private postal meter, the date of that postmark 5136  
is not later than the last day for filing the application, and the 5137  
application is received within seven days of such last day; or 5138

(C) The application is delivered by the postal service, no 5139  
postmark date was affixed to the cover in which the application is 5140  
enclosed or the date of the postmark so affixed is not legible, 5141  
and the application is received within seven days of the last day 5142  
for making the application. 5143

**Sec. 5705.34.** When the budget commission has completed its 5144  
work with respect to a tax budget, it shall certify its action to 5145  
the taxing authority, together with an estimate by the county 5146  
auditor of the rate of each tax necessary to be levied by the 5147  
taxing authority within its subdivision or taxing unit, and what 5148  
part thereof is in excess of, and what part within, the ten-mill 5149

tax limitation. The certification shall also indicate the date on 5150  
which each tax levied by the taxing authority will expire. ~~Each~~ 5151

If a taxing authority levies a tax for a fixed sum of money 5152  
or to pay debt charges for the tax year for which the tax budget 5153  
is prepared, and the tax was levied in tax year 1998, the county 5154  
auditor, when estimating the rate at which the tax shall be levied 5155  
in the current year, shall estimate the rate necessary to raise 5156  
the required sum less the estimated amount of any payments made 5157  
for the tax year to a taxing unit under sections 5727.85 and 5158  
5727.86 of the Revised Code. The estimated rate shall be the rate 5159  
of the levy that the budget commission certifies with its action 5160  
under this section. 5161

Each taxing authority, by ordinance or resolution, shall 5162  
authorize the necessary tax levies and certify them to the county 5163  
auditor before the first day of October in each year, or at such 5164  
later date as is approved by the tax commissioner, except that the 5165  
certification by a board of education shall be made by the first 5166  
day of April or at such later date as is approved by the 5167  
commissioner, and except that a township board of park 5168  
commissioners that is appointed by the board of township trustees 5169  
and oversees a township park district that contains only 5170  
unincorporated territory shall authorize only those taxes approved 5171  
by, and only at the rate approved by, the board of township 5172  
trustees as required by division (C) of section 511.27 of the 5173  
Revised Code. If the levying of a tax to be placed on the 5174  
duplicate of the current year is approved by the electors of the 5175  
subdivision under sections 5705.01 to 5705.47 of the Revised Code; 5176  
if the rate of a school district tax is increased due to the 5177  
repeal of a school district income tax and property tax rate 5178  
reduction at an election held pursuant to section 5748.04 of the 5179  
Revised Code; or if refunding bonds to refund all or a part of the 5180  
principal of bonds payable from a tax levy for the ensuing fiscal 5181

year are issued or sold and in the process of delivery, the budget 5182  
commission shall reconsider and revise its action on the budget of 5183  
the subdivision or school library district for whose benefit the 5184  
tax is to be levied after the returns of such election are fully 5185  
canvassed, or after the issuance or sale of such refunding bonds 5186  
is certified to it. 5187

**Sec. 5727.01.** As used in this chapter: 5188

(A) "Public utility" means each person referred to as a 5189  
telephone company, telegraph company, electric company, natural 5190  
gas company, pipe-line company, water-works company, water 5191  
transportation company, heating company, rural electric company, 5192  
or railroad company. 5193

(B) "Gross receipts" means the entire receipts for business 5194  
done by any person from operation as a public utility, or 5195  
incidental thereto, or in connection therewith, including any 5196  
receipts received under Chapter 4928. of the Revised Code. The 5197  
gross receipts for business done by an incorporated company 5198  
engaged in operation as a public utility includes the entire 5199  
receipts for business done by such company under the exercise of 5200  
its corporate powers, whether from the operation as a public 5201  
utility or from any other business. 5202

(C) "Rural electric company" means any nonprofit corporation, 5203  
organization, association, or cooperative engaged in the business 5204  
of supplying electricity to its members or persons owning an 5205  
interest therein in an area the major portion of which is rural. 5206  
5207

(D) Any person: 5208

(1) Is a telegraph company when engaged in the business of 5209  
transmitting telegraphic messages to, from, through, or in this 5210  
state; 5211

(2) Is a telephone company when primarily engaged in the 5212  
business of providing local exchange telephone service, excluding 5213  
cellular radio service, in this state; 5214

(3) Is an electric company when engaged in the business of 5215  
generating, transmitting, or distributing electricity within this 5216  
state for use by others, but excludes a rural electric company; 5217

(4) Is a natural gas company when engaged in the business of 5218  
supplying natural gas for lighting, power, or heating purposes to 5219  
consumers within this state; 5220

(5) Is a pipe-line company when engaged in the business of 5221  
transporting natural gas, oil, or coal or its derivatives through 5222  
pipes or tubing, either wholly or partially within this state; 5223

(6) Is a water-works company when engaged in the business of 5224  
supplying water through pipes or tubing, or in a similar manner, 5225  
to consumers within this state; 5226

(7) Is a water transportation company when engaged in the 5227  
transportation of passengers or property, by boat or other 5228  
watercraft, over any waterway, whether natural or artificial, from 5229  
one point within this state to another point within this state, or 5230  
between points within this state and points without this state; 5231

(8) Is a heating company when engaged in the business of 5232  
supplying water, steam, or air through pipes or tubing to 5233  
consumers within this state for heating purposes; 5234

(9) Is a railroad company when engaged in the business of 5235  
owning or operating a railroad either wholly or partially within 5236  
this state on rights\_of\_way acquired and held exclusively by such 5237  
company, or otherwise, and includes a passenger, street, suburban, 5238  
or interurban railroad company. 5239

As used in division (D)(2) of this section, "local exchange 5240  
telephone service" means making available or furnishing access and 5241

a dial tone to all persons within a local calling area for use in 5242  
originating and receiving voice grade communications over a 5243  
switched network operated by the provider of the service within 5244  
the area and for gaining access to other telecommunication 5245  
services. 5246

(E) "Taxable property" means the property required by section 5247  
5727.06 of the Revised Code to be assessed by the tax 5248  
commissioner, but does not include either of the following: 5249

(1) An item of tangible personal property that for the period 5250  
subsequent to the effective date of an air, water, or noise 5251  
pollution control certificate and continuing so long as the 5252  
certificate is in force, has been certified as part of the 5253  
pollution control facility with respect to which the certificate 5254  
has been issued; 5255

(2) An item of tangible personal property that during the 5256  
construction of a plant or facility and until the item is first 5257  
capable of operation, whether actually used in operation or not, 5258  
is incorporated in or being held exclusively for incorporation in 5259  
that plant or facility. 5260

(F) "Taxing district" means a municipal corporation or 5261  
township, or part thereof, in which the aggregate rate of taxation 5262  
is uniform. 5263

(G) "Telecommunications service" has the same meaning as in 5264  
division (AA) of section 5739.01 of the Revised Code. 5265

(H) "Interexchange telecommunications company" means a person 5266  
that is engaged in the business of transmitting telephonic 5267  
messages to, from, through, or in this state, but that is not a 5268  
telephone company. 5269

(I) "Sale and leaseback transaction" means a transaction in 5270  
which a public utility or interexchange telecommunications company 5271

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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.

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(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.

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(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.

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(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.

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**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:

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(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.

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(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~~

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

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

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

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

(3) The taxable property to attribute to a natural gas 5333  
company shall be the taxable cost of the property that cannot be 5334  
directly attributed to a listed activity of a combined company 5335  
multiplied by a numerator that is the taxable cost of property 5336  
that can be directly attributed to the activity of a natural gas 5337  
company and a denominator that is the sum of the taxable cost that 5338  
can be directly attributed to all the listed activities of a 5339  
combined company. 5340

(C) Notwithstanding any other provision of the Revised Code, 5341  
a combined company shall continue to be subject to the excise tax 5342  
imposed by section 5727.30 of the Revised Code. From the report 5343  
filed by a combined company under section 5727.31 of the Revised 5344  
Code, the tax commissioner shall exclude the taxable gross 5345  
receipts directly ATTRIBUTABLE to the activity of an electric 5346  
company or a rural electric company. In addition, the tax 5347  
commissioner shall exclude the portion of taxable gross receipts 5348  
that cannot be attributed to a listed combined public utility 5349  
activity or another public utility activity subject to the excise 5350  
tax imposed by section 5727.30 of the Revised Code by multiplying 5351  
those taxable gross receipts by a numerator that is the taxable 5352  
gross receipts that can be attributed to an electric company or a 5353  
rural electric company activity, and a denominator that is the sum 5354  
of the taxable GROSS receipts that can be directly attributed to a 5355  
listed combined company activity or another public utility 5356  
activity subject to the excise tax imposed by section 5727.30 of 5357  
the Revised Code. For purposes of determining the taxable gross 5358  
receipts for providing electric company or rural electric company 5359  
service under this division, the taxable gross receipts as 5360  
reported under section 5727.32 of the Revised Code and determined 5361  
under section 5727.33 of the Revised Code, prior to the amendment 5362  
of those sections by Substitute Senate Bill No. 3 of the 123rd 5363  
general assembly, shall be used. 5364

~~Sec. 5727.05. This chapter does~~ Sections 5727.01 to 5727.61 5365  
of the Revised Code do not apply to either of the following: 5366

(A) Nonprofit corporations as defined in division (C) of 5367  
section 1702.01 of the Revised Code that are engaged exclusively 5368  
in the treatment, distribution, and sale of water to consumers; 5369

(B) Municipal corporations within this state. 5370

**Sec. 5727.06.** (A) Except as otherwise provided by law, the 5371  
following constitutes the taxable property of a public utility or 5372  
interexchange telecommunications company that shall be assessed by 5373  
the tax commissioner: 5374

(1) In the case of a railroad company, all real property and 5375  
tangible personal property owned or operated by the railroad 5376  
company in this state on the thirty-first day of December of the 5377  
preceding year; 5378

(2) In the case of a water transportation company, all 5379  
tangible personal property, except watercraft, owned or operated 5380  
by the water transportation company in this state on the 5381  
thirty-first day of December of the preceding year and all 5382  
watercraft owned or operated by the water transportation company 5383  
in this state during the preceding calendar year; 5384

(3) In the case of all other public utilities and 5385  
interexchange telecommunications companies, all tangible personal 5386  
property that on the thirty-first day of December of the preceding 5387  
year was both located in this state and: 5388

(a) Owned by the public utility or interexchange 5389  
telecommunications company; or 5390

(b) Leased by the public utility or interexchange 5391  
telecommunications company under a sale and leaseback transaction. 5392

(B) In the case of an interexchange telecommunications 5393

company, all taxable property shall be subject to the provisions  
of this chapter and shall be valued by the commissioner in  
accordance with division ~~(B)~~(A) of section 5727.11 of the Revised  
Code ~~and assessed by the commissioner in accordance with division~~  
~~(C) of section 5727.111 of the Revised Code~~ A person described by  
this division shall file the report required by section 5727.08 of  
the Revised Code. Persons described in this division shall not be  
considered taxpayers, as defined in division (B) of section  
5711.01 of the Revised Code, and shall not be required to file a  
return and list their taxable property under any provision of  
Chapter 5711. of the Revised Code.

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

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

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

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

~~(B)~~ Except as otherwise provided in ~~divisions (C), (D), (E),~~  
~~and (G) of this section,~~ the true value of all taxable property

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

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

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

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

(2) The true value of the production equipment of an electric company or rural electric company purchased, transferred, or placed into service after the effective date of this amendment is

the purchase price of the equipment as capitalized on the 5456  
company's books and records less composite annual allowances as 5457  
prescribed by the tax commissioner. 5458

~~(F)~~(E) The true value of taxable property described in 5459  
division (A)(2) or (3) of section 5727.06 of the Revised Code 5460  
shall not include the allowance for funds used during construction 5461  
or interest during construction ~~which~~ that has been capitalized on 5462  
the public utility's books and records as part of the total cost 5463  
of the taxable property. This division shall not apply to the 5464  
taxable property of an electric company or a rural electric 5465  
company, excluding transmission and distribution property, first 5466  
placed into service after December 31, 2000, or to the taxable 5467  
property a person purchases, which includes transfers, if that 5468  
property was used in business by the seller prior to the purchase. 5469

~~(G)~~(F) The true value of watercraft owned or operated by a 5470  
water transportation company shall be determined by multiplying 5471  
the true value of the watercraft as determined under division 5472  
~~(B)~~(A) of this section by a fraction, the numerator of which is 5473  
the number of revenue-earning miles traveled by the watercraft in 5474  
the waters of this state and the denominator of which is the 5475  
number of revenue-earning miles traveled by the watercraft in all 5476  
waters. 5477

(G) The cost of property subject to a sale and leaseback 5478  
transaction is the cost of the property as capitalized on the 5479  
books and records of the public utility owning the property 5480  
immediately prior to the sale and leaseback transaction. 5481

(H) THE DETERMINATION OF COST AS CAPITALIZED ON THE BOOKS AND 5482  
RECORDS OF A PUBLIC UTILITY INCLUDES, BUT IS NOT LIMITED TO, ANY 5483  
REGULATORY ASSETS ASSOCIATED WITH TAXABLE PERSONAL PROPERTY, THE 5484  
COST OF WHICH THE PUBLIC UTILITY IS ALLOWED AN OPPORTUNITY TO 5485  
RECOVER FROM ITS CUSTOMERS. 5486

Sec. 5727.111. The taxable property of each public utility, 5487  
except a railroad company, and of each interexchange 5488  
telecommunications company shall be assessed at the following 5489  
percentages of true value: 5490

(A) Fifty per cent in the case of the taxable transmission 5491  
and distribution property of a rural electric company, and 5492  
twenty-five per cent for all its other taxable property; 5493

(B) In the case of a telephone or telegraph company, ~~the~~ 5494  
~~percentage provided under division (E) of section 5711.22 of the~~ 5495  
~~Revised Code~~ twenty-five per cent for taxable property first 5496  
subject to taxation in this state for tax year 1995 or thereafter, 5497  
and eighty-eight per cent for all other taxable property; 5498

(C) Eighty-eight per cent in the case of a natural gas or 5499  
pipe-line company; 5500

(D) Eighty-eight per cent in the case of a water-works or 5501  
heating company; 5502

~~(E) One hundred per cent in the case of the taxable~~ 5503  
~~production equipment of an electric company;~~ 5504

~~(F) Eighty-eight~~ (1) Except as provided in division (E)(2) of 5505  
this section, eighty-eight per cent in the case of ~~all taxable~~ 5506  
~~personal~~ the taxable transmission and distribution property of an 5507  
electric company, ~~other than its production equipment and~~ 5508  
twenty-five per cent for all its other taxable property; 5509

(2) Property listed and assessed under divisions (B)(1) and 5510  
(2) of section 5711.22 of the Revised Code shall continue to be 5511  
assessed at one hundred per cent for production equipment and 5512  
eighty-eight per cent for all other taxable property until January 5513  
1, 2002. 5514

~~(G) The percentage provided under division (E) of section~~ 5515  
~~5711.22 of the Revised Code~~ (F) Twenty-five per cent in the case 5516

of an interexchange telecommunications company; 5517

~~(H)~~(G) Twenty-five per cent in the case of a water 5518  
transportation company. 5519

**Sec. 5727.15.** When all the taxable property of a public 5520  
utility is located in one taxing district, the tax commissioner 5521  
shall apportion the total taxable value thereof to that taxing 5522  
district. 5523

When taxable property of a public utility is located in more 5524  
than one taxing district, the commissioner shall apportion the 5525  
total taxable value thereof among the taxing districts as follows: 5526

(A)(1) In the case of a telegraph, interexchange 5527  
telecommunications, or telephone company that owns miles of wire 5528  
in this state, the value apportioned to each taxing district shall 5529  
be the same percentage of the total value apportioned to all 5530  
taxing districts as the miles of wire owned by the company within 5531  
the taxing district are to the total miles of wire owned by the 5532  
company within this state; 5533

(2) In the case of a telegraph, interexchange 5534  
telecommunications, or telephone company that does not own miles 5535  
of wire in this state, the value apportioned to each taxing 5536  
district shall be the same percentage of the total value 5537  
apportioned to all taxing districts as the cost of the taxable 5538  
property physically located in the taxing district is of the total 5539  
cost of all taxable property physically located in this state. 5540

(B) In the case of a railroad company: 5541

(1) The taxable value of real and personal property not used 5542  
in railroad operations shall be apportioned according to its 5543  
situs; 5544

(2) The taxable value of personal property used in railroad 5545  
operations shall be apportioned to each taxing district in 5546

proportion to the miles of track and trackage rights, weighted to 5547  
reflect the relative use of such personal property in each taxing 5548  
district; 5549

(3) The taxable value of real property used in railroad 5550  
operations shall be apportioned to each taxing district in 5551  
proportion to its relative value in each taxing district. 5552

(C) In the case of an electric company: 5553

(1) ~~Seventy per cent of the~~ The taxable value of all 5554  
production equipment ~~and of all station equipment that is not~~ 5555  
~~production equipment~~ shall be apportioned to the taxing district 5556  
in which such property is physically located; and 5557

(2) ~~The remaining value of such property, together with the~~ 5558  
value of all other taxable personal property, shall be apportioned 5559  
to each taxing district in the ~~per cent~~ proportion that the cost 5560  
of ~~all transmission and distribution~~ the taxable personal property 5561  
physically located in ~~the~~ each taxing district is of the total 5562  
cost of all ~~transmission and distribution~~ taxable personal 5563  
property physically located in this state. 5564

~~(3) If an electric company's taxable value for the current~~ 5565  
~~year includes the value of any production equipment at a plant at~~ 5566  
~~which the initial cost of the plant's production equipment~~ 5567  
~~exceeded one billion dollars, then prior to making the~~ 5568  
~~apportionments required for that company by divisions (C)(1) and~~ 5569  
~~(2) of this section, the tax commissioner shall do the following:~~ 5570

~~(a) Subtract four hundred twenty million dollars from the~~ 5571  
~~total taxable value of the production equipment at that plant for~~ 5572  
~~the current tax year.~~ 5573

~~(b) Multiply the difference thus obtained by a fraction, the~~ 5574  
~~numerator of which is the portion of the taxable value of that~~ 5575  
~~plant's production equipment included in the company's total value~~ 5576

~~for the current tax year, and the denominator of which is the~~ 5577  
~~total taxable value of such equipment included in the total~~ 5578  
~~taxable value of all electric companies for such year.~~ 5579

~~(c) Apportion the product thus obtained to taxing districts~~ 5580  
~~in the manner prescribed in division (C)(2) of this section.~~ 5581

~~(d) Deduct the amounts so apportioned from the taxable value~~ 5582  
~~of the company's production equipment at the plant, prior to~~ 5583  
~~making the apportionments required by divisions (C)(1) and (2) of~~ 5584  
~~this section.~~ 5585

~~For purposes of division (C) of this section, "initial cost"~~ 5586  
~~applies only to production equipment of plants placed in~~ 5587  
~~commercial operation on or after January 1, 1987, and means the~~ 5588  
~~cost of all production equipment at a plant for the first year the~~ 5589  
~~plant's equipment was subject to taxation.~~ 5590

(D) In the case of all other public utilities, the value of 5591  
the property to be apportioned shall be apportioned to each taxing 5592  
district in proportion to the entire value of such property within 5593  
this state. 5594

**Sec. 5727.30.** Each public utility, except electric companies, 5595  
rural electric companies, and railroad companies, shall be subject 5596  
to an annual excise tax, as provided by sections 5727.31 to 5597  
5727.62 of the Revised Code, for the privilege of owning property 5598  
in this state or doing business in this state during the 5599  
twelve-month period next succeeding the period upon which the tax 5600  
is based. The tax shall be imposed against each such public 5601  
utility ~~which~~ that, on the first day of such twelve-month period, 5602  
owns property in this state or is doing business in this state, 5603  
and the lien for the tax, including any penalties and interest 5604  
accruing thereon, shall attach on such day to the property of the 5605  
public utility in this state. 5606

Sec. 5727.31. (A) Each public utility, ~~except railroad~~ 5607  
~~companies, doing business or owning property in this state shall~~ 5608  
subject to the tax imposed under section 5727.30 of the Revised 5609  
Code, annually, on or before the first day of August, shall file 5610  
with the tax commissioner a statement in such form as the 5611  
commissioner prescribes. 5612

(B)(1) Annually, on or before the fifteenth day of October of 5613  
the current year, each public utility ~~subject to the excise taxes~~ 5614  
~~levied by this chapter~~ whose estimated excise taxes for the 5615  
current year as based upon the statement required to be filed in 5616  
that year by division (A) of this section are, in the case of a 5617  
public utility other than a natural gas company, one thousand 5618  
dollars or more, or are, in the case of a natural gas company, 5619  
three hundred twenty-five thousand dollars or more, shall file 5620  
with the treasurer of state a report, in such form as the tax 5621  
commissioner prescribes, showing the amount of excise tax 5622  
estimated to be charged or levied pursuant to law for the current 5623  
year upon the basis of such annual statement, and shall remit a 5624  
portion of the estimated excise taxes shown to be due by the 5625  
report. The portion of the estimated excise taxes due at the time 5626  
the report is filed shall be one-third of its total excise taxes 5627  
estimated to be charged or levied for the current year based upon 5628  
the annual statement filed under division (A) of this section. 5629

(2) Annually, on or before the first day of March and June, 5630  
each public utility ~~subject to the excise taxes levied by this~~ 5631  
~~chapter~~ whose excise taxes as based upon its last preceding annual 5632  
statement filed under division (A) of this section prior to the 5633  
first day of January were, in the case of a public utility other 5634  
than a natural gas company, one thousand dollars or more, or were, 5635  
in the case of a natural gas company, three hundred twenty-five 5636  
thousand dollars or more, shall file with the treasurer of state a 5637

report, in such form as the tax commissioner prescribes, showing 5638  
the amount of excise tax charged or levied pursuant to law upon 5639  
the basis of such annual statement, and shall remit a portion of 5640  
the excise taxes shown to be due by each such report. The portion 5641  
of the excise taxes due at the time each such report is filed 5642  
shall be one-third of its total excise taxes so charged or levied 5643  
based upon such annual statement. 5644

(C) Any public utility subject to the excise taxes imposed by 5645  
~~this chapter~~ section 5727.30 of the Revised Code whose tax as 5646  
certified under section 5727.38 of the Revised Code in a year 5647  
equals or exceeds the amount specified for that year in section 5648  
5727.311 of the Revised Code shall make the payments required 5649  
under this section in the second ensuing and each succeeding year 5650  
in the manner prescribed by section 5727.311 of the Revised Code, 5651  
except as otherwise prescribed by that section. 5652

(D)(1) For purposes of this section, a report required to be 5653  
filed under division (B) of this section is considered filed when 5654  
it is received by the treasurer of state. 5655

(2) For purposes of this section and sections 5727.311 and 5656  
5727.42 of the Revised Code, remittance of an excise tax required 5657  
to be made under this section is considered to be made when the 5658  
remittance is received by the treasurer of state, or when credited 5659  
to an account designated by the treasurer of state for the receipt 5660  
of tax remittances. 5661

**Sec. 5727.311.** (A) Any public utility subject to an excise 5662  
tax imposed by ~~this chapter~~ section 5727.30 of the Revised Code 5663  
whose tax as certified by the tax commissioner under section 5664  
5727.38 of the Revised Code ~~in the year indicated in the following~~ 5665  
~~schedule~~ equals or exceeds ~~the amount indicated for that year in~~ 5666  
~~the schedule~~ fifty thousand dollars shall make each payment 5667  
required under division (B) of section 5727.31 of the Revised Code 5668

for the second ensuing and each succeeding year by electronic 5669  
funds transfer as prescribed by division (B) of this section. 5670  
~~Year for which~~ 5671  
~~tax was certified~~      ~~1992~~                      ~~1993 and thereafter~~ 5672  
~~Amount of tax~~              ~~\$100,000~~                      ~~\$50,000~~ 5673  
~~certified~~

If the tax certified by the tax commissioner in each of two 5674  
consecutive years ~~beginning with 1993~~ is less than fifty thousand 5675  
dollars, the public utility is relieved of the requirement to 5676  
remit taxes by electronic funds transfer for the year that next 5677  
follows the second of the consecutive years in which the tax 5678  
certified is less than fifty thousand dollars, and is relieved of 5679  
that requirement for each succeeding year unless the tax certified 5680  
in a subsequent year equals or exceeds fifty thousand dollars. The 5681  
tax commissioner shall notify each public utility required to 5682  
remit taxes by electronic funds transfer of the public utility's 5683  
obligation to do so, shall maintain an updated list of those 5684  
public utilities, and shall timely certify the list and any 5685  
additions thereto or deletions therefrom to the treasurer of 5686  
state. Failure by the tax commissioner to notify a public utility 5687  
subject to this section to remit taxes by electronic funds 5688  
transfer does not relieve the public utility of its obligation to 5689  
remit taxes by electronic funds transfer. 5690

(B) Public utilities required by this section to remit 5691  
periodic payments by electronic funds transfer shall remit such 5692  
payments to the treasurer of state in the manner prescribed by 5693  
rules adopted by the treasurer of state under section 113.061 of 5694  
the Revised Code. The payment of public utility excise taxes by 5695  
electronic funds transfer does not affect a public utility's 5696  
obligation to file the annual statement and periodic reports in 5697  
the manner and at the times prescribed by section 5727.31 of the 5698  
Revised Code. 5699

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

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

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

**Sec. 5727.32.** The statement required by section 5727.31 of

the Revised Code for the purpose of the public utility excise tax	5731
shall contain:	5732
(A) The name of the company;	5733
(B) The nature of the company, whether a person, association, or corporation, and under the laws of what state or country organized;	5734 5735 5736
(C) The location of its principal office;	5737
(D) The name and post-office address of the president, secretary, auditor, treasurer, and superintendent or general manager;	5738 5739 5740
(E) The name and post-office address of the chief officer or managing agent of the company in this state;	5741 5742
(F) The amount of the excise taxes paid or to be paid with the reports made during the current calendar year as provided by section 5727.31 of the Revised Code;	5743 5744 5745
(G) In the case of telegraph and telephone companies:	5746
(1) The gross receipts from all sources, whether messages, telephone tolls, rentals, or otherwise, for business done within this state, including all sums earned or charged, whether actually received or not, for the year ending on the thirtieth day of June, and the company's proportion of gross receipts for business done by it within this state in connection with other companies, firms, corporations, persons, or associations, but excluding all of the following:	5747 5748 5749 5750 5751 5752 5753 5754
(a) All of the receipts derived wholly from interstate business or business done for or with the federal government;	5755 5756
(b) The receipts of amounts billed on behalf of other entities;	5757 5758
(c) The receipts from sales to other telephone companies for	5759

resale; 5760

(d) ~~For the year ending June 30, 1990, and each subsequent~~ 5761  
~~year, receipts~~ Receipts from sales to providers of 5762  
telecommunications service for resale, receipts from incoming or 5763  
outgoing wide area transmission service or wide area transmission 5764  
type service, including eight hundred or eight-hundred-type 5765  
service, and receipts from private communications service. 5766

As used in this division, "receipts from sales to other 5767  
telephone companies for resale" and "receipts from sales to 5768  
providers of telecommunications service for resale" include, but 5769  
are not limited to, receipts of carrier access charges. "Carrier 5770  
access charges" means compensation paid to the taxpayer telephone 5771  
company by another telephone company or by a provider of 5772  
telecommunications service for the use of the taxpayer's 5773  
facilities to originate or terminate telephone calls or 5774  
telecommunications service. 5775

(2) The total gross receipts for such period from business 5776  
done within this state. 5777

(H) In the case of all public utilities, except electric 5778  
companies, rural electric companies, telegraph companies, and 5779  
telephone companies: 5780

(1) The gross receipts of the company, actually received, 5781  
from all sources for business done within this state for the year 5782  
next preceding the first day of May, including the company's 5783  
proportion of gross receipts for business done by it within this 5784  
state in connection with other companies, firms, corporations, 5785  
persons, or associations, but excluding all of the following: 5786

(a) Receipts from interstate business or business done for 5787  
the federal government; 5788

(b) Receipts from sales to other public utilities for resale, 5789

provided such other public utility is required to file a statement 5790  
pursuant to section 5727.31 of the Revised Code; 5791

~~(c) For the year ending April 30, 1990, and each subsequent 5792  
year, receipts from the transmission or delivery of electricity to 5793  
or for a rural electric company, provided that the electricity 5794  
that has been so transmitted or delivered is for resale by the 5795  
rural electric company;~~ 5796

~~(d) Receipts of an electric company, derived from the 5797  
provision of electricity and other services to a qualified former 5798  
owner of the production facilities which generated the electricity 5799  
from which those receipts were derived. As used in this division, 5800  
a "qualified former owner" means a person who meets both of the 5801  
following conditions:~~ 5802

~~(i) On or before October 11, 1991, the person had sold to an 5803  
electric company part of the production facility at which the 5804  
electricity is generated, and, for at least twenty years prior to 5805  
that sale, the facility was used to generate electricity, but it 5806  
was not owned in whole or in part during that period by an 5807  
electric company.~~ 5808

~~(ii) At the time the electric company provided the 5809  
electricity or other services for which the exclusion is claimed, 5810  
the person, or a successor or assign of the person, owned not less 5811  
than a twenty per cent ownership of the production facility and 5812  
the rights to not less than twenty per cent of the production of 5813  
that facility; and the person, or a successor or assign of the 5814  
person, engaged primarily in a business other than providing 5815  
electricity to others.~~ 5816

~~(e) Receipts of a natural gas company of amounts billed on 5817  
behalf of other entities. Transportation and billing and 5818  
collection fees charged to other entities shall be included in the 5819  
gross receipts of a natural gas company.~~ 5820

(2) The total gross receipts of such company for such period 5821  
in this state from business done within the state. 5822

The reports required by section 5727.31 of the Revised Code 5823  
shall contain: 5824

(a) The name and principal mailing address of the company; 5825

(b) The total amount of the gross receipts excise taxes 5826  
charged or levied as based upon its last preceding annual 5827  
statement filed prior to the first day of January of the year in 5828  
which such report is filed; 5829

(c) The amount of the excise taxes due with the report as 5830  
provided by section 5727.31 of the Revised Code. 5831

**Sec. 5727.33.** (A) For the purpose of computing the public 5832  
utility excise tax, the tax commissioner shall ascertain and 5833  
determine the entire gross receipts actually received from all 5834  
sources, excluding the receipts described in divisions (B), (C), 5835  
~~and (D), and (E)~~ of this section, of each ~~electric, rural~~ 5836  
~~electric,~~ natural gas, pipe-line, water-works, heating, and water 5837  
transportation company for business done within this state for the 5838  
year ending on the thirtieth day of April, and of each telegraph 5839  
and telephone company for business done within this state for the 5840  
year ending on the thirtieth day of June. 5841

(B) In ascertaining and determining the gross receipts of 5842  
each of the companies named in this section, the commissioner 5843  
shall exclude all of the following: 5844

(1) All receipts derived wholly from interstate business; 5845

(2) All receipts derived wholly from business done for or 5846  
with the federal government; 5847

(3) ~~For the year ending April 30, 1990, and each subsequent~~ 5848  
~~year, all receipts derived wholly from the transmission or~~ 5849

~~delivery of electricity to or for a rural electric company,~~ 5850  
~~provided that the electricity that has been so transmitted or~~ 5851  
~~delivered is for resale by the rural electric company;~~ 5852

~~(4)~~ All receipts from the sale of merchandise; 5853

~~(5)~~(4) All receipts from sales to other public utilities, 5854  
except railroad, telegraph, and telephone companies, for resale, 5855  
provided the other public utility is required to file a statement 5856  
pursuant to section 5727.31 of the Revised Code. 5857

(C) In ascertaining and determining the gross receipts of a 5858  
telephone company, the commissioner shall exclude all of the 5859  
following: 5860

~~(1) For the year ending June 30, 1988, and each subsequent~~ 5861  
~~year, receipts~~ Receipts of amounts billed on behalf of other 5862  
entities; 5863

~~(2) For the year ending June 30, 1988, and each subsequent~~ 5864  
~~year, receipts~~ Receipts from sales to other telephone companies 5865  
for resale, as defined in division (G) of section 5727.32 of the 5866  
Revised Code; 5867

~~(3) For the year ending June 30, 1990, and each subsequent~~ 5868  
~~year, receipts~~ Receipts from incoming or outgoing wide area 5869  
transmission service or wide area transmission type service, 5870  
including eight hundred or eight-hundred-type service; 5871

~~(4) For the year ending June 30, 1990, and each subsequent~~ 5872  
~~year, receipts~~ Receipts from private communications service as 5873  
described in division (AA)(2) of section 5739.01 of the Revised 5874  
Code; 5875

~~(5) For the year ending June 30, 1990, and each subsequent~~ 5876  
~~year, receipts~~ Receipts from sales to providers of 5877  
telecommunications service for resale, as defined in division (G) 5878  
of section 5727.32 of the Revised Code. 5879

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

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

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

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

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

**Sec. 5727.38.** On or before the first Monday of November, annually, the tax commissioner shall assess an excise tax against

each public utility ~~except railroad companies~~ subject to the 5910  
excise tax under section 5727.30 of the Revised Code. The tax 5911  
shall be computed by multiplying the gross receipts as determined 5912  
by the commissioner under section 5727.33 of the Revised Code by 5913  
six and three-fourths per cent in the case of pipe-line companies 5914  
and four and three-fourths per cent in the case of all other 5915  
companies. The minimum tax for any such company for owning 5916  
property or doing business in this state shall be ~~ten~~ fifty 5917  
dollars. The assessment shall be certified to the taxpayer and 5918  
treasurer of state. 5919

**Sec. 5727.42.** (A) The treasurer of state shall maintain a 5920  
list of all ~~excise~~ taxes levied and payments made pursuant to ~~this~~ 5921  
~~chapter~~ the annual excise tax imposed by section 5727.30 of the 5922  
Revised Code. The treasurer of state shall collect and the 5923  
taxpayer shall pay all taxes and any penalties thereon. Payments 5924  
may be made by mail, in person, by electronic funds transfer if 5925  
required to do so by section 5727.311 of the Revised Code, or by 5926  
any other means authorized by the treasurer of state. The 5927  
treasurer of state may adopt rules concerning the methods and 5928  
timeliness of payment. 5929

(B) Each tax bill issued pursuant to this section shall 5930  
separately reflect the taxes due, due date, and any other 5931  
information considered necessary. Except as otherwise provided in 5932  
division (F) of this section, the last day on which payment may be 5933  
made without penalty shall be at least twenty but not more than 5934  
thirty days from the date of mailing the tax bill. The treasurer 5935  
of state shall mail the tax bill, and the mailing thereof shall be 5936  
prima-facie evidence of receipt thereof by the taxpayer. 5937

(C) The treasurer of state shall refund taxes as provided in 5938  
this section, but no refund shall be made to a taxpayer having a 5939  
delinquent claim certified pursuant to this section that remains 5940

unpaid. The treasurer of state may consult the attorney general 5941  
regarding such claims. 5942

(D) Within twenty days after receipt of any excise tax 5943  
assessment certified to ~~him~~ the treasurer of state, the treasurer 5944  
of state shall: 5945

(1) Ascertain the difference between the total taxes shown on 5946  
such assessment and the sum of all ~~advance~~ estimated payments, 5947  
exclusive of any penalties thereon, previously made for that year. 5948

(2) If the difference is a deficiency, the treasurer of state 5949  
shall issue a tax bill. 5950

(3) If the difference is an excess, the treasurer of state 5951  
shall certify the name of the taxpayer and the amount to be 5952  
refunded to the director of budget and management for payment to 5953  
the taxpayer. 5954

If the taxpayer has a deficiency for one tax year and an 5955  
excess for another tax year, or any combination thereof for more 5956  
than two years, the treasurer of state may determine the net 5957  
result and, depending on such result, proceed to mail a tax bill 5958  
or certify a refund. 5959

(E) If a taxpayer fails to pay all taxes on or before the due 5960  
date shown on the tax bill, or fails to make an ~~advance~~ estimated 5961  
payment on or before the due date prescribed in division (B) of 5962  
section 5727.31 of the Revised Code, but makes payment within ten 5963  
calendar days of such date, the treasurer of state shall add a 5964  
penalty equal to five per cent of the amount that should have been 5965  
timely paid. If payment is not made within ten days of such date, 5966  
the treasurer of state shall add a penalty equal to fifteen per 5967  
cent of the amount that should have been timely paid. The 5968  
treasurer of state shall prepare a delinquent claim for each tax 5969  
bill on which penalties were added and certify such claims to the 5970  
attorney general and tax commissioner. The attorney general shall 5971

proceed to collect the delinquent taxes and penalties thereon in 5972  
the manner prescribed by law and notify the treasurer of state and 5973  
tax commissioner of all collections. 5974

(F) The last day on which a natural gas company that is not 5975  
required to make payments under division (B) of section 5727.31 of 5976  
the Revised Code may pay its taxes without penalty shall be the 5977  
fifteenth day of March of the year following the year in which the 5978  
commissioner is required to certify ~~his~~ the assessment of the 5979  
company's tax under section 5727.38 of the Revised Code. The tax 5980  
due date shall be reflected on the tax bill. 5981

**Sec. 5727.45.** Four and two-tenths per cent of all excise 5982  
taxes and penalties collected under sections 5727.01 to 5727.62 of 5983  
the Revised Code shall be credited to the local government fund 5984  
for distribution in accordance with section 5747.50 of the Revised 5985  
Code, six-tenths of one per cent shall be credited to the local 5986  
government revenue assistance fund for distribution in accordance 5987  
with section 5747.61 of the Revised Code, and ninety-five and 5988  
two-tenths per cent shall be credited to the general revenue fund. 5989

~~On or before the first day of December, annually, the tax 5990  
commissioner shall certify to the treasurer of state the amounts 5991  
to be credited to the local government fund and local government 5992  
revenue assistance fund from the general revenue fund to ensure 5993  
that the sum of the amounts credited to the local government fund 5994  
and local government revenue assistance fund for the calendar year 5995  
equals the sum that would have been credited during that year if 5996  
the credit authorized by section 5727.391 of the Revised Code did 5997  
not exist. The treasurer shall credit any such additional amounts 5998  
to the two funds not later than the fifth day of December, 5999  
annually. 6000~~

**Sec. 5727.47.** A copy of each assessment certified pursuant to 6001

section 5727.23, ~~5727.231~~, or 5727.38 of the Revised Code shall be 6002  
mailed to the public utility, and its mailing shall be prima-facie 6003  
evidence of its receipt by the public utility to which it is 6004  
addressed. If a public utility objects to any assessment certified 6005  
to it pursuant to such sections, it may file a petition for 6006  
reassessment with the tax commissioner. The petition must be made 6007  
in writing, signed by the authorized agent of the utility having 6008  
knowledge of the facts, and filed with the commissioner, in person 6009  
or by certified mail, within thirty days from the date that the 6010  
assessment was mailed. If the petition is filed by certified mail, 6011  
the date of the United States postmark placed on the sender's 6012  
receipt by the postal employee to whom the petition is presented 6013  
shall be treated as the date of filing. A true copy of the 6014  
assessment objected to shall be attached to the petition and shall 6015  
be incorporated by reference into the petition, but the failure to 6016  
attach a copy of the assessment and incorporate it by reference 6017  
does not invalidate the petition. The petition also shall indicate 6018  
the utility's objections, but additional objections may be raised 6019  
in writing if received prior to the date shown on the final 6020  
determination by the commissioner. 6021

Notwithstanding the fact that a petition has been filed, the 6022  
tax with respect to the assessment objected to shall be paid as 6023  
required by law. The acceptance of the tax payment by the 6024  
treasurer of state or any county treasurer shall not prejudice any 6025  
claim for taxes on final determination by the commissioner or 6026  
final decision by the board of tax appeals or any court. 6027

Upon receipt of a properly filed petition, the commissioner 6028  
shall notify the treasurer of state or the auditor of each county 6029  
to which the assessment objected to has been certified. 6030

Unless the petitioner waives a hearing, the commissioner 6031  
shall assign a time and place for the hearing on the petition and 6032

notify the petitioner of the time and place of the hearing by 6033  
personal service or certified mail, but the commissioner may 6034  
continue the hearing from time to time if necessary. 6035

The commissioner may make such correction to the assessment 6036  
as ~~he~~ the commissioner finds proper. The commissioner shall serve 6037  
a copy of ~~his~~ the commissioner's final determination on the 6038  
petitioner by personal service or certified mail, and ~~his~~ the 6039  
commissioner's decision in the matter shall be final, subject to 6040  
appeal as provided in section 5717.02 of the Revised Code. The 6041  
commissioner also shall transmit a copy of ~~his~~ the final 6042  
determination to the treasurer of state or applicable county 6043  
auditor. In the absence of any further appeal, or when a decision 6044  
of the board of tax appeals or of any court to which the decision 6045  
has been appealed becomes final, the commissioner shall notify the 6046  
public utility and, as appropriate, the treasurer of state who 6047  
shall proceed under section 5727.42 of the Revised Code, or the 6048  
applicable county auditor who shall proceed under section 5727.471 6049  
of the Revised Code. The notification is not subject to further 6050  
appeal. 6051

**Sec. 5727.53.** The taxes, fees, and penalties provided by 6052  
~~sections 5727.01 to 5727.62, inclusive, of the Revised Code, this~~ 6053  
~~chapter that are remitted to the treasurer of state~~ may be 6054  
recovered by an action brought in the name of the state in the 6055  
court of common pleas of Franklin ~~County~~ county, or of any county 6056  
in which such public utility is doing business, or in which the 6057  
line of any ~~street, suburban, or interurban railroad company or~~ 6058  
railroad company is located, and such court of common pleas shall 6059  
have jurisdiction of ~~such~~ the action regardless of the amount 6060  
involved. The attorney general, on request of the tax 6061  
commissioner, shall institute such action in the court of common 6062  
pleas of Franklin ~~County~~ county or of any of such counties the 6063

commissioner directs. In any such action it shall be sufficient to 6064  
allege that the tax, fee, or penalty sought to be recovered stands 6065  
charged on the delinquent duplicate of the treasurer of state, and 6066  
that the same has been unpaid for a period of thirty days after 6067  
having been placed thereon. Sums recovered in any such action 6068  
shall be paid into the state treasury ~~to the credit of the general~~ 6069  
~~revenue fund~~ in the same manner as the tax. 6070

**Sec. 5727.60.** If a ~~public utility required to file a report~~ 6071  
~~with the tax commissioner by sections 5727.02 to 5727.62,~~ 6072  
~~inclusive, of the Revised Code, person~~ fails to make such file a 6073  
~~report, it shall be subject to a penalty of ten dollars per day~~ 6074  
~~for each day's omission after the time limited for making such~~ 6075  
~~report~~ within the time prescribed by section 5727.08 or 5727.31 of 6076  
the Revised Code, including any extensions of time granted by the 6077  
tax commissioner, a penalty of fifty dollars per month, not to 6078  
exceed five hundred dollars, may be imposed for each month or 6079  
fraction of a month elapsing between the due date of the report, 6080  
including any extensions, and the date the report was filed. The 6081  
penalty under this section for failing to file a report required 6082  
by section 5727.08 of the Revised Code shall be paid into the 6083  
state general revenue fund. If the penalty is not paid within 6084  
fifteen days after notice of the penalty is mailed to the person 6085  
who failed to timely file the report, the tax commissioner shall 6086  
certify the penalty as a claim to the attorney general for 6087  
collection. The penalty under this section for failing to file the 6088  
report required by section 5727.31 of the Revised Code shall be 6089  
deposited into the state treasury in the same manner as the tax is 6090  
deposited, and the commissioner may collect the penalty by 6091  
assessment pursuant to section 5727.38 of the Revised Code. The 6092  
tax commissioner may abate this penalty in full or in part. 6093

**Sec. 5727.61.** Every public utility required by law to make 6094  
returns, statements, or reports to the tax commissioner under 6095  
sections 5727.01 to 5727.62 of the Revised Code shall file 6096  
therewith, in such form as the commissioner prescribes, an 6097  
affidavit subscribed and sworn to by a person or officer having 6098  
knowledge of the facts setting forth that such public utility has 6099  
not, during the preceding year, except as permitted by sections 6100  
3517.082, 3599.03, and 3599.031 of the Revised Code, directly or 6101  
indirectly paid, used or offered, consented, or agreed to pay or 6102  
use any of its money or property for or in aid of or opposition to 6103  
a political party, a candidate for election or nomination to 6104  
public office, or a political action committee, legislative 6105  
campaign fund, or organization that supports or opposes any such 6106  
candidate or in any manner used any of its money or property for 6107  
any partisan political purpose whatever, or for the reimbursement 6108  
or indemnification of any person for money or property so used. 6109  
Such forms of affidavit as the commissioner prescribes shall be 6110  
attached to or made a part of the return, statement, or report 6111  
required to be made by such public utility under sections 5727.01 6112  
to 5727.62 of the Revised Code. 6113

**Sec. 5727.72.** No officer, employee, or agent of a ~~telegraph~~ 6114  
~~or telephone company~~ person subject to this chapter shall refuse 6115  
to attend before a ~~lawful board of appraisers and assessors~~ the 6116  
department of taxation when required to do so, or refuse to bring 6117  
with ~~him~~ the officer, employee, or agent and submit for inspection 6118  
any books or papers of such ~~company~~ person in ~~his~~ the officer's, 6119  
employee's, or agent's possession, custody, or control, or refuse 6120  
to answer any questions put to ~~him~~ the officer, employee, or agent 6121  
concerning the organization, business, or property of such ~~company~~ 6122  
person. 6123

Sec. 5727.80. As used in sections 5727.80 to 5727.95 of the 6124  
Revised Code: 6125

(A) "Electric distribution company" means either of the 6126  
following: 6127

(1) A person who distributes electricity through a meter of 6128  
an end user in this state; 6129

(2) The end user of electricity in this state, if the end 6130  
user obtains electricity that is not distributed or transmitted to 6131  
the end user by an electric distribution company that is required 6132  
to remit the tax imposed by section 5727.81 of the Revised Code. 6133  
"Electric distribution company" does not include the end user of 6134  
electricity in this state who self-generates electricity that is 6135  
used directly by that end user on the same site that the 6136  
electricity is generated. 6137

(B) "Kilowatt hour" means one thousand watt hours of 6138  
electricity. 6139

(C) "Meter of an end user in this state" means the last meter 6140  
used to measure the kilowatt hours distributed by an electric 6141  
distribution company to a location in this state, the last meter 6142  
located outside of this state that is used to measure the kilowatt 6143  
hours consumed at a location in this state, or, if no meter is 6144  
used, the estimated kilowatt hours distributed to an unmetered 6145  
location in this state. 6146

(D) "Person" has the same meaning as in section 5701.01 of 6147  
the Revised Code, but also includes a political subdivision of the 6148  
state. 6149

(E) "Municipal electric utility" means a municipal 6150  
corporation that owns or operates a system for the distribution of 6151  
electricity. 6152

(F) "Qualified end user" means an end user of electricity 6153

that uses more than three million kilowatt hours of electricity at 6154  
one manufacturing location in this state for a calendar day for 6155  
use in a manufacturing process that features an electrochemical 6156  
reaction in which electrons from direct current electricity remain 6157  
a part of the product being manufactured. 6158

(G) "Self-assessing purchaser" means a purchaser that meets 6159  
all the requirements of, and pays the excise tax in accordance 6160  
with, division (C) of section 5727.81 of the Revised Code. 6161

(H) "SIX MONTH REVENUE DIFFERENTIAL FOR SELF-ASSESSING 6162  
PURCHASERS" MEANS THIRTY-ONE MILLION SIX HUNDRED FIFTY THOUSAND 6163  
DOLLARS LESS THE AMOUNT PAID UNDER DIVISION (C)(1)(a) OF SECTION 6164  
5727.81 OF THE REVISED CODE BY ALL SELF-ASSESSING PURCHASERS FOR 6165  
THE SIX-MONTH PERIOD ENDING IN THE MONTH PRIOR TO THE DATE OF THE 6166  
CALCULATIONS REQUIRED UNDER DIVISIONS (C)(1)(b) AND (c) OF SECTION 6167  
5727.81 OF THE REVISED CODE. 6168

(I) "TWELVE MONTH REVENUE DIFFERENTIAL FOR SELF-ASSESSING 6169  
PURCHASERS" MEANS SIXTY-THREE MILLION THREE HUNDRED THOUSAND 6170  
DOLLARS LESS THE AMOUNT PAID UNDER DIVISION (C)(1)(a) OF SECTION 6171  
5727.81 OF THE REVISED CODE BY ALL SELF-ASSESSING PURCHASERS FOR 6172  
THE TWELVE-MONTH PERIOD ENDING IN THE MONTH PRIOR TO THE DATE OF 6173  
THE CALCULATION REQUIRED UNDER DIVISION (C)(1)(d) OF SECTION 6174  
5727.81 OF THE REVISED CODE. 6175

**Sec. 5727.81.** (A) For the purpose of raising revenue for 6176  
public education and state and local government operations, an 6177  
excise tax is hereby levied and imposed on an electric 6178  
distribution company for all electricity distributed by such 6179  
company that has May 1, 2001, as part of its measurement period, 6180  
at the following rates per kilowatt hour of electricity 6181  
distributed in a thirty-day period by the company through a meter 6182  
of an end user in this state: 6183

KILOWATT HOURS DISTRIBUTED TO RATE PER 6184

<u>AN END USER</u>	<u>KILOWATT HOUR</u>	
<u>For the first 2,000</u>	<u>\$.00465</u>	6186
<u>For the next 2,001 to 15,000</u>	<u>\$.00419</u>	6187
<u>For 15,001 and above</u>	<u>\$.00363</u>	6188

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

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

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

(3) Multiplying \$0.00363 for the remaining kilowatt hours distributed using a daily average.

Except as provided in division (C) of this section, the electric distribution company shall pay the tax to the treasurer of state in accordance with section 5727.82 of the Revised Code.

Only the distribution of electricity through a meter of an end user in this state shall be used by the electric distribution company to compute the amount or estimated amount of tax due. In the event a meter is not actually read for a measurement period, the estimated kilowatt hours distributed by an electric distribution company to collect its distribution charges may be used.

(B) Except as provided in division (C) of this section, each electric distribution company shall pay the tax imposed by this

section in all of the following circumstances: 6216

(1) The electricity is distributed by the company through a meter of an end user in this state; 6217  
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(2) the company is distributing electricity through a meter located in another state, but the electricity is consumed in this state in the manner prescribed by the tax commissioner; 6219  
6220  
6221

(3) the company is distributing electricity in this state without the use of a meter, but the electricity is consumed in this state as estimated and in the manner prescribed by the tax commissioner. 6222  
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(C)(1)(a) A commercial or industrial purchaser that receives electricity through a meter of an end user in this state and consumes on the average, over the course of the previous calendar year, more than one hundred twenty million kilowatt hours of electricity during a thirty-day period may elect to self-assess the excise tax imposed by this section at the rate of \$.00075 per kilowatt hour and four per cent of the total price of electricity delivered through a meter of an end user in this state. Payment of the tax shall be made directly to the treasurer of state in accordance with divisions (A)(3) and (4) of section 5727.82 of the Revised Code or, if the electric distribution company serving the self-assessing purchaser is a municipal electric utility and the purchaser is within the municipal corporation's corporate limits, to such municipal corporation's general fund in accordance with division (a)(2) of section 5727.82 of the Revised Code, and upon paying in this manner, the self-assessing purchaser shall not be required to pay the excise tax to the electric distribution company from which its electricity is delivered. 6226  
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(b) ON OR BEFORE DECEMBER 10, 2001, THE TAX COMMISSIONER SHALL CALCULATE THE SIX MONTH REVENUE DIFFERENTIAL FOR SELF-ASSESSING PURCHASERS. IF THE SIX MONTH REVENUE DIFFERENTIAL 6244  
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6246

IS GREATER THAN FIVE HUNDRED THOUSAND DOLLARS, THE TAX 6247  
COMMISSIONER SHALL INCREASE THE PERCENTAGE OF TOTAL PRICE TAX RATE 6248  
TO BE CHARGED FOR THE SIX-MONTH PERIOD BEGINNING IN THE MONTH 6249  
FOLLOWING THAT IN WHICH THE CALCULATION IS DONE. THE NEW TAX RATE 6250  
SHALL BE THE RATE IN EFFECT DURING THE CURRENT PERIOD MULTIPLIED 6251  
BY THE SUM OF ONE PLUS THE PRODUCT OF (i) A FRACTION, THE 6252  
NUMERATOR OF WHICH IS THE SIX MONTH REVENUE DIFFERENTIAL 6253  
MULTIPLIED BY TWO AND THE DENOMINATOR OF WHICH IS THE AMOUNT PAID 6254  
DURING THE PERIOD BY ALL SELF-ASSESSING PURCHASERS ON THE 6255  
PERCENTAGE OF TOTAL PRICE BASIS AND (ii) A FRACTION, THE NUMERATOR 6256  
OF WHICH IS TOTAL KILOWATT HOURS CONSUMED DURING THE PERIOD BY 6257  
SELF-ASSESSING PURCHASERS AND THE DENOMINATOR OF WHICH IS ELEVEN 6258  
BILLION TWENTY-FIVE MILLION. 6259

IF THE SIX MONTH REVENUE DIFFERENTIAL IS LESS THAN NEGATIVE 6260  
FIVE HUNDRED THOUSAND DOLLARS, THE TAX COMMISSIONER SHALL DECREASE 6261  
THE PERCENTAGE OF TOTAL PRICE TAX RATE TO BE CHARGED FOR THE SIX 6262  
MONTH PERIOD BEGINNING IN THE MONTH FOLLOWING THAT IN WHICH THE 6263  
CALCULATION IS MADE. THE NEW TAX RATE SHALL BE THE RATE IN EFFECT 6264  
DURING THE CURRENT PERIOD MULTIPLIED BY THE SUM OF ONE PLUS THE 6265  
PRODUCT OF (i) A FRACTION, THE NUMERATOR OF WHICH IS THE SIX MONTH 6266  
REVENUE DIFFERENTIAL MULTIPLIED BY TWO AND THE DENOMINATOR OF 6267  
WHICH IS THE AMOUNT PAID DURING THE PERIOD BY ALL SELF-ASSESSING 6268  
PURCHASERS ON THE PERCENTAGE OF TOTAL PRICE BASIS AND (ii) A 6269  
FRACTION, THE NUMERATOR OF WHICH IS ELEVEN BILLION TWENTY-FIVE 6270  
MILLION AND THE DENOMINATOR OF WHICH IS TOTAL KILOWATT HOURS 6271  
CONSUMED DURING THE PERIOD BY SELF-ASSESSING PURCHASERS. 6272

(c) ON OR BEFORE JUNE 10, 2002, THE TAX COMMISSIONER SHALL 6273  
CALCULATE THE SIX MONTH REVENUE DIFFERENTIAL FOR SELF-ASSESSING 6274  
PURCHASERS. IF THE SIX MONTH REVENUE DIFFERENTIAL IS GREATER THAN 6275  
FIVE HUNDRED THOUSAND DOLLARS, THE TAX COMMISSIONER SHALL INCREASE 6276  
THE PERCENTAGE OF TOTAL PRICE TAX RATE TO BE CHARGED FOR THE 6277  
TWELVE MONTH PERIOD BEGINNING IN THE MONTH FOLLOWING THAT IN WHICH 6278

THE CALCULATION IS MADE. THE NEW TAX RATE SHALL BE THE RATE IN 6279  
EFFECT DURING THE CURRENT PERIOD MULTIPLIED BY THE SUM OF ONE PLUS 6280  
THE PRODUCT OF (i) A FRACTION, THE NUMERATOR OF WHICH IS THE SIX 6281  
MONTH REVENUE DIFFERENTIAL AND THE DENOMINATOR OF WHICH IS THE 6282  
AMOUNT PAID DURING THE PERIOD BY ALL SELF-ASSESSING PURCHASERS ON 6283  
THE PERCENTAGE OF TOTAL PRICE BASIS AND (ii) A FRACTION, THE 6284  
NUMERATOR OF WHICH IS TOTAL KILOWATT HOURS CONSUMED DURING THE 6285  
PERIOD BY SELF-ASSESSING PURCHASERS AND THE DENOMINATOR OF WHICH 6286  
IS ELEVEN BILLION TWENTY-FIVE MILLION. 6287

IF THE SIX MONTH REVENUE DEFERENTIAL IS LESS THAN NEGATIVE 6288  
FIVE HUNDRED THOUSAND DOLLARS, THE TAX COMMISSIONER SHALL DECREASE 6289  
THE PERCENTAGE OF TOTAL PRICE TAX RATE TO BE CHARGED FOR THE 6290  
TWELVE MONTH PERIOD BEGINNING IN THE MONTH FOLLOWING THAT IN WHICH 6291  
THE CALCULATION IS MADE. THE NEW TAX RATE SHALL BE THE RATE IN 6292  
EFFECT DURING THE CURRENT PERIOD MULTIPLIED BY THE SUM OF ONE PLUS 6293  
THE PRODUCT OF (i) A FRACTION, THE NUMERATOR OF WHICH IS THE SIX 6294  
MONTH REVENUE DIFFERENTIAL AND THE DENOMINATOR OF WHICH IS THE 6295  
AMOUNT PAID DURING THE PERIOD BY ALL SELF-ASSESSING PURCHASERS ON 6296  
THE PERCENTAGE OF TOTAL PRICE BASIS AND (ii) A FRACTION, THE 6297  
NUMERATOR OF WHICH IS ELEVEN BILLION TWENTY-FIVE MILLION AND THE 6298  
DENOMINATOR OF WHICH IS TOTAL KILOWATT HOURS CONSUMED DURING THE 6299  
PERIOD BY SELF-ASSESSING PURCHASERS. 6300

(d) ON OR BEFORE JUNE 10, 2003, 2004, 2005, 2006, AND 2007, 6301  
THE TAX COMMISSIONER SHALL CALCULATE THE TWELVE MONTH REVENUE 6302  
DIFFERENTIAL FOR SELF-ASSESSING PURCHASERS. IF THE TWELVE MONTH 6303  
REVENUE DIFFERENTIAL IS GREATER THAN ONE MILLION DOLLARS, THE TAX 6304  
COMMISSIONER SHALL INCREASE THE PERCENTAGE OF TOTAL PRICE TAX RATE 6305  
TO BE CHARGED FOR THE TWELVE MONTH PERIOD BEGINNING IN THE MONTH 6306  
FOLLOWING THAT IN WHICH THE CALCULATION IS MADE, EXCEPT THAT THE 6307  
RATE CALCULATED IN 2007 SHALL BECOME THE PERMANENT TAX RATE. IN 6308  
EACH YEAR, THE NEW TAX RATE SHALL BE THE RATE IN EFFECT DURING THE 6309  
CURRENT PERIOD MULTIPLIED BY THE SUM OF ONE PLUS A FRACTION, THE 6310

NUMERATOR OF WHICH IS THE TWELVE MONTH REVENUE DIFFERENTIAL AND 6311  
THE DENOMINATOR OF WHICH IS THE AMOUNT PAID DURING THE PERIOD BY 6312  
ALL SELF-ASSESSING PURCHASERS ON THE PERCENTAGE OF TOTAL PRICE 6313  
BASIS. 6314

IF THE REVENUE DIFFERENTIAL IS LESS THAN NEGATIVE ONE MILLION 6315  
DOLLARS, THE TAX COMMISSIONER SHALL DECREASE THE PERCENTAGE OF 6316  
TOTAL PRICE TAX RATE TO BE CHARGED FOR THE TWELVE MONTH PERIOD 6317  
BEGINNING IN THE MONTH FOLLOWING THAT IN WHICH THE CALCULATION IS 6318  
MADE, EXCEPT THAT THE RATE CALCULATED IN 2007 SHALL BECOME THE 6319  
PERMANENT TAX RATE. IN EACH YEAR, THE NEW TAX RATE SHALL BE THE 6320  
RATE IN EFFECT DURING THE CURRENT PERIOD MULTIPLIED BY THE SUM OF 6321  
ONE PLUS A FRACTION, THE NUMERATOR OF WHICH IS THE TWELVE MONTH 6322  
REVENUE DIFFERENTIAL AND THE DENOMINATOR OF WHICH IS THE AMOUNT 6323  
PAID DURING THE PERIOD BY ALL SELF-ASSESSING PURCHASERS ON THE 6324  
PERCENTAGE OF PRICE BASIS. 6325

(2) Application for registration as a self-assessing 6326  
purchaser shall be made on a form prescribed by the tax 6327  
commissioner. At the time of making the application and by the 6328  
first day of May of each year, excluding May 1, 2000, a 6329  
self-assessing purchaser shall pay a fee of five hundred dollars 6330  
to the Treasurer of State for deposit to the kilowatt hour excise 6331  
tax administration fund, which is hereby created in the state 6332  
treasury. Money in the fund shall be used to defray the tax 6333  
commissioner's cost in administering the tax owed under section 6334  
5727.81 of the Revised Code by self-assessing purchasers. After 6335  
the application is approved by the tax commissioner, the 6336  
registration shall remain in effect until canceled by the 6337  
registrant upon written notification to the commissioner of the 6338  
election to pay the tax in accordance with division (A) of this 6339  
section, or by the tax commissioner for not paying the tax or fee 6340  
under division (C) of this section, or meeting the qualifications 6341  
in division (C)(1) of this section. The tax commissioner shall 6342

give written notice to the electric distribution company from 6343  
which electricity is delivered to a self-assessing purchaser of 6344  
the purchaser's self-assessing status, and the electric 6345  
distribution company is relieved of the obligation to pay the tax 6346  
imposed by division (A) of this section for electricity 6347  
distributed to that self-assessing purchaser until it is notified 6348  
by the tax commissioner that the self-assessing purchaser's 6349  
registration is CANCELED. Within fifteen days of notification of 6350  
the CANCELED registration, the electric distribution company shall 6351  
be responsible for payment of the tax imposed by division (A) of 6352  
this section on electricity distributed to a purchaser that is no 6353  
longer registered as a self-ASSESSING purchaser. A self-assessing 6354  
purchaser with a CANCELED registration must file a report and 6355  
remit the tax imposed by division (A) of this section on all 6356  
electricity it receives for any measurement period prior to the 6357  
tax being reported and paid by the electric distribution company. 6358  
A self-assessing purchaser whose registration is CANCELED by the 6359  
tax commissioner is not eligible to register as a self-assessing 6360  
purchaser for two years after the registration is CANCELED. 6361

(D) The tax imposed by this section does not apply to the 6362  
distribution of any kilowatt hours of electricity to the federal 6363  
government, to an end user located at a federal facility that uses 6364  
electricity for the enrichment of uranium, or to an end user for 6365  
any day the end user is a qualified end user. The exemption under 6366  
this division for a qualified end user only applies to the 6367  
manufacturing location where the qualified end user uses more than 6368  
three million kilowatt hours per day. 6369

**Sec. 5727.82.** (A)(1) Except as provided in divisions (A)(2) 6370  
and (D) of this section, by the twentieth day of each month, each 6371  
electric distribution company required to pay the tax imposed by 6372  
section 5727.81 of the Revised Code shall file with the treasurer 6373

of state a return as prescribed by the tax commissioner and shall 6374  
make payment of the full amount of tax due for the preceding 6375  
month. The first payment of this tax shall be made on or before 6376  
June 20, 2001. 6377

(2) If the electric distribution company required to pay the 6378  
tax imposed by section 5727.81 of the Revised Code is a municipal 6379  
electric utility, it may retain in its general fund that portion 6380  
of the tax on the kilowatt hours distributed to end users located 6381  
within the boundaries of the municipal corporation. However, the 6382  
municipal electric utility shall make payment in accordance with 6383  
division (A)(1) of this section of the tax due on the kilowatt 6384  
hours distributed to end users located outside the boundaries of 6385  
the municipal corporation. 6386

(3) By the twentieth day of each month, each self-assessing 6387  
purchaser that under division (C) of section 5727.81 of the 6388  
Revised Code pays directly to the treasurer of state the tax 6389  
imposed by section 5727.81 of the Revised Code shall file with the 6390  
treasurer of state a return as prescribed by the tax commissioner 6391  
and shall make payment of the full amount of the tax due for the 6392  
preceding month. 6393

(4) As prescribed by the tax commissioner, the return shall 6394  
be signed by the company or self-assessing purchaser required to 6395  
file it, or an authorized employee, officer, or agent of the 6396  
company or purchaser. The treasurer of state shall mark on the 6397  
return the date it was received and indicate payment or nonpayment 6398  
of the tax shown to be due on the return. The treasurer of state 6399  
immediately shall transmit all returns to the tax commissioner. 6400  
The return shall be deemed filed when received by the treasurer of 6401  
state. 6402

(B) Any electric distribution company or self-assessing 6403  
purchaser required by this section to file a return who fails to 6404

file it and pay the tax within the period prescribed shall pay an 6405  
additional charge of fifty dollars or ten per cent of the tax 6406  
required to be paid for the reporting period, whichever is 6407  
greater. The tax commissioner may collect the additional charge by 6408  
assessment pursuant to section 5727.89 of the Revised Code. The 6409  
commissioner may abate all or a portion of the additional charge 6410  
and may adopt rules governing such abatements. 6411

(C) If any tax due is not paid timely in accordance with this 6412  
section, the electric distribution company or self-assessing 6413  
purchaser liable for the tax shall pay interest, calculated at the 6414  
rate per annum prescribed by section 5703.47 of the Revised Code, 6415  
from the date the tax payment was due to the date of payment or to 6416  
the date an assessment is issued, whichever occurs first. Interest 6417  
shall be paid in the same manner as the tax, and the commissioner 6418  
may collect the interest by assessment pursuant to section 5727.89 6419  
of the Revised Code. 6420

(D) Not later than the tenth day of each month, a qualified 6421  
end user shall report in writing to the electric distribution 6422  
company that distributes electricity to the end user the kilowatt 6423  
hours that were consumed as a qualified end user for the prior 6424  
month and the number of days, if any, on which the end user was 6425  
not a qualified end user. For each calendar day the end user was 6426  
not a qualified end user, the end user shall report in writing to 6427  
the electric distribution company the number of kilowatt hours 6428  
used on that day, and the electric distribution company shall pay 6429  
the tax imposed under section 5727.81 of the Revised Code on each 6430  
kilowatt hour that was not distributed to a qualified end user. 6431  
The electric distribution company may rely in good faith on a 6432  
qualified end user's report filed under this division. If it is 6433  
determined that the end user was not a qualified end user for any 6434  
calendar day or the quantity of electricity used by the qualified 6435  
end user was overstated, the tax commissioner shall assess and 6436

collect any tax imposed under section 5727.81 of the Revised Code 6437  
directly from the qualified end user. As requested by the 6438  
commissioner, each end user reporting to an electric distribution 6439  
company that it is a qualified end user shall provide 6440  
documentation to the commissioner that establishes the volume of 6441  
electricity consumed daily by the qualified end user. 6442

**Sec. 5727.83.** (A) an electric distribution company or 6443  
self-assessing purchaser shall remit each monthly tax payment by 6444  
electronic funds transfer as prescribed by divisions (B) and (C) 6445  
of this section. 6446

The tax commissioner shall notify each electric distribution 6447  
company and self-assessing purchaser of the obligation to remit 6448  
taxes by electronic funds transfer, shall maintain an updated list 6449  
of those companies and purchasers, and shall timely certify to the 6450  
treasurer of state the list and any additions thereto or deletions 6451  
therefrom. Failure by the tax commissioner to notify a company or 6452  
self-assessing purchaser subject to this section to remit taxes by 6453  
electronic funds transfer does not relieve the company or 6454  
self-assessing purchaser of its obligation to remit taxes in that 6455  
manner. 6456

(B) An electric distribution company or self-assessing 6457  
purchaser required by this section to remit payments by electronic 6458  
funds transfer shall remit such payments to the treasurer of state 6459  
in the manner prescribed by rules adopted by the treasurer of 6460  
state under section 113.061 of the Revised Code, and on or before 6461  
the dates specified under section 5727.82 of the Revised Code. The 6462  
payment of taxes by electronic funds transfer does not affect a 6463  
company's or self-assessing purchaser's obligation to file the 6464  
monthly return as required under section 5727.82 of the Revised 6465  
Code. 6466

(C) An electric distribution company or self-assessing 6467

purchaser required by this section to remit taxes by electronic 6468  
funds transfer may apply to the treasurer of state in the manner 6469  
prescribed by the treasurer of state to be excused from that 6470  
requirement. The treasurer of state may excuse the company or 6471  
self-assessing purchaser from remittance by electronic funds 6472  
transfer for good cause shown for the period of time requested by 6473  
the company or self-assessing purchaser or for a portion of that 6474  
period. The treasurer of state shall notify the tax commissioner 6475  
and the company or self-assessing purchaser of the treasurer of 6476  
state's decision as soon as is practicable. 6477

(D) If an electric distribution company or self-assessing 6478  
purchaser required by this section to remit taxes by electronic 6479  
funds transfer remits those taxes by some means other than by 6480  
electronic funds transfer as prescribed by this section and the 6481  
rules adopted by the treasurer of state, and the treasurer of 6482  
state determines that such failure was not due to reasonable cause 6483  
or was due to willful neglect, the treasurer of state shall notify 6484  
the tax commissioner of the failure to remit by electronic funds 6485  
transfer and shall provide the commissioner with any information 6486  
used in making that determination. The tax commissioner may 6487  
collect an additional charge by assessment in the manner 6488  
prescribed by section 5727.89 of the Revised Code. The additional 6489  
charge shall equal five per cent of the amount of the taxes 6490  
required to be paid by electronic funds transfer, but shall not 6491  
exceed five thousand dollars. Any additional charge assessed under 6492  
this section is in addition to any other penalty or charge imposed 6493  
under this chapter, and shall be considered as revenue arising 6494  
from the tax imposed under this chapter. The tax commissioner may 6495  
abate all or a portion of such a charge and may adopt rules 6496  
governing such abatements. 6497

No additional charge shall be assessed under this division 6498  
against an electric distribution company or self-assessing 6499

purchaser that has been notified of its obligation to remit taxes 6500  
under this section and that remits its first two tax payments 6501  
after such notification by some means other than electronic funds 6502  
transfer. The additional charge may be assessed upon the 6503  
remittance of any subsequent tax payment that the company or 6504  
purchaser remits by some means other than electronic funds 6505  
transfer. 6506

**Sec. 5727.84.** (A) As used in this section and sections 6507  
5727.85, 5727.86, and 5727.87 of the Revised Code: 6508

(1) "School district" means a city, local, or exempted 6509  
village school district. 6510

(2) "Joint vocational school district" means a joint 6511  
vocational school district created under section 3311.16 of the 6512  
Revised Code, and includes a cooperative education school district 6513  
created under section 3311.52 or 3311.521 of the Revised Code and 6514  
a county school financing district created under section 3311.50 6515  
of the Revised Code. 6516

(3) "Local taxing unit" means a subdivision or taxing unit, 6517  
as defined in section 5705.01 of the Revised Code, or a park 6518  
district created under Chapter 1545. of the Revised Code, but 6519  
excludes school districts and joint vocational school districts. 6520

(4) "State education aid" means the sum of the state basic 6521  
aid and state special education aid amounts computed for a school 6522  
district under divisions (A) and (B) of section 3317.022 of the 6523  
Revised Code. 6524

(5) "State education aid offset" means the amount certified 6525  
for each school district under division (A)(1) of section 5727.85 6526  
of the Revised Code. 6527

(6) "Adjusted total taxable value" has the same meaning as in 6528  
section 3317.02 of the Revised Code. 6529

<u>(7) "Tax value loss" means the amount determined under</u>	6530
<u>division (C) of this section.</u>	6531
<u>(8) "Fixed-rate levy" means any tax levied on property other</u>	6532
<u>than a fixed-sum levy.</u>	6533
<u>(9) "Fixed-rate levy loss" means the amount determined under</u>	6534
<u>division (D) of this section.</u>	6535
<u>(10) "Fixed-sum levy" means a tax levied on property at</u>	6536
<u>whatever rate is required to produce a specified amount of tax</u>	6537
<u>money or to pay debt charges, and includes school district</u>	6538
<u>emergency levies imposed pursuant to section 5705.194 of the</u>	6539
<u>Revised Code.</u>	6540
<u>(11) "Fixed-sum levy loss" means the amount determined under</u>	6541
<u>division (E) of this section.</u>	6542
<u>(12) "Consumer price index" means the consumer price index</u>	6543
<u>(all items, all urban consumers) prepared by the bureau of labor</u>	6544
<u>statistics of the United States department of labor.</u>	6545
<u>(B) All money arising from the tax imposed by section 5727.81</u>	6546
<u>of the Revised Code shall be credited as follows:</u>	6547
<u>(1) Fifty-nine and nine hundred seventy-six one-THOUSANDTHS</u>	6548
<u>per cent, plus an amount equal to the state education aid offset,</u>	6549
<u>shall be credited to the general revenue fund.</u>	6550
<u>(2) Two and six hundred forty-six one-THOUSANDTHS per cent</u>	6551
<u>shall be credited to the local government fund, for distribution</u>	6552
<u>in accordance with section 5747.50 of the Revised Code.</u>	6553
<u>(3) Three hundred seventy-eight one-THOUSANDTHS per cent</u>	6554
<u>shall be credited to the local government revenue assistance fund,</u>	6555
<u>for distribution in accordance with section 5747.61 of the Revised</u>	6556
<u>Code.</u>	6557
<u>(4) Twenty-five and nine-tenths per cent, less an amount</u>	6558
<u>equal to the state education aid offset, shall be credited to the</u>	6559

school district property tax replacement fund, which is hereby 6560  
created in the state treasury for the purpose of making the 6561  
payments described in section 5727.85 of the Revised Code. 6562

(5) Eleven and one-tenth per cent shall be credited to the 6563  
local government property tax replacement fund, which is hereby 6564  
created in the state treasury for the purpose of making the 6565  
payments described in section 5727.86 of the Revised Code. 6566

(6) In any year that the revenue arising from the tax levied 6567  
by section 5727.81 of the Revised Code is less than five hundred 6568  
fifty-two million dollars, the amount credited to the general 6569  
revenue fund under DIVISION (B)(1) of this section shall be 6570  
reduced by the amount necessary to credit TO EACH OF THE FUNDS IN 6571  
divisions (B)(2),(3),(4), and (5) of this section THE AMOUNT IT 6572  
WOULD HAVE RECEIVED IF the tax did raise five hundred fifty-two 6573  
million dollars FOR THAT YEAR, and the amount of that reduction 6574  
shall be so credited. 6575

(C) Not later than January 1, 2002, the tax commissioner 6576  
shall determine for each taxing district its tax value loss, which 6577  
is the sum of the amounts described in divisions (C)(1) and (2) of 6578  
this section: 6579

(1) The difference obtained by subtracting the amount 6580  
described in division (C)(1)(b) from the amount described in 6581  
division (C)(1)(a) of this section. 6582

(a) The value of electric company and rural electric company 6583  
tangible personal property as assessed by the tax commissioner for 6584  
tax year 1998 on a preliminary assessment, or an amended 6585  
preliminary assessment if issued prior to March 1, 1999, and as 6586  
apportioned to the taxing district for tax year 1998; 6587

(b) The value of electric company and rural electric company 6588  
tangible personal property as assessed by the tax commissioner for 6589  
tax year 1998 had the property been apportioned to the taxing 6590

district for tax year 2001, and assessed at the rates in effect 6591  
for tax year 2001. 6592

(2) The difference obtained by subtracting the amount 6593  
described in division (C)(2)(b) from the amount described in 6594  
division (C)(2)(a) of this section. 6595

(a) The three-year average for tax years 1996, 1997, and 1998 6596  
of the assessed value from nuclear fuel materials and assemblies 6597  
assessed against a person under Chapter 5711. of the Revised Code 6598  
from the leasing of them to an electric company for those 6599  
respective tax years, as reflected in the preliminary assessments; 6600  
6601

(b) The three-year average assessed value from nuclear fuel 6602  
materials and assemblies assessed under division (C)(2)(a) of this 6603  
section for tax years 1996, 1997, and 1998, as reflected in the 6604  
preliminary assessments, using an assessment rate of twenty-five 6605  
per cent. 6606

The tax commissioner may request that electric companies and 6607  
rural electric companies file a report to help determine the tax 6608  
value loss under division (C) of this section. The report shall be 6609  
filed within thirty days of the commissioner's request. A company 6610  
that fails to file the report or does not timely file the report 6611  
is subject to the penalty in section 5727.60 of the Revised Code. 6612  
6613

(D) Not later than January 1, 2002, the tax commissioner 6614  
shall determine for each school district, joint vocational school 6615  
district, and local taxing unit its fixed-rate levy loss, which is 6616  
its tax value loss multiplied by the tax rate in effect in tax 6617  
year 1998 for fixed-rate levies. 6618

(E) Not later than January 1, 2002, the tax commissioner 6619  
shall determine for each school district, joint vocational school 6620  
district, and local taxing unit its fixed-sum levy loss, which is 6621

the amount obtained by subtracting the amount described in 6622  
division (E)(2) of this section from the amount described in 6623  
division (E)(1) of this section: 6624

(1) The tax value loss multiplied by the tax rate in effect 6625  
in tax year 1998 for fixed-sum levies for all taxing districts 6626  
within each school district, joint vocational school district, and 6627  
local taxing unit. For the years 2002 through 2006, this 6628  
computation shall include school district emergency levies that 6629  
existed in 1998, and all other fixed-sum levies that existed in 6630  
1998 and continue to be charged in the tax year preceding the 6631  
distribution year. For the years 2007 through 2016, this 6632  
computation shall exclude all school district emergency levies and 6633  
all other fixed-sum levies that existed in 1998 but are no longer 6634  
in effect in the tax year preceding the distribution year. 6635

(2) The total taxable value in tax year 1998 in each school 6636  
district, joint vocational school district, and local taxing unit 6637  
multiplied by one-fourth of one mill. 6638

If the computation under division (E) of this section for any 6639  
school district, joint vocational school district, or local taxing 6640  
unit is greater than zero, the one-fourth of one mill that is 6641  
subtracted pursuant to division (E) of section 5727.85 of the 6642  
Revised Code or division (A)(2) of section 5727.86 of the Revised 6643  
Code shall be apportioned among all contributing fixed-sum levies 6644  
in the proportion of each levy to the sum of all fixed-sum levies 6645  
within each school district, joint vocational school district, or 6646  
local taxing unit. 6647

**Sec. 5727.85.** (A) By the thirty-first day of July of each 6648  
year, beginning in 2002 and ending in 2016, the department of 6649  
education shall determine the following for each school district 6650  
eligible for payment under division (C) of this section: 6651

(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: 6652  
6653  
6654  
6655

(a) The state education aid computed for the school district for the current fiscal year on the basis of the adjusted total taxable value; 6656  
6657  
6658

(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. 6659  
6660  
6661  
6662

(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. 6663  
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6665  
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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: 6670  
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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; 6673  
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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. 6676  
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(3) The difference obtained by subtracting the amount 6683  
computed under division (B)(1) from the amount of the 6684  
inflation-adjusted property tax loss. If this difference is zero 6685  
or a negative number, no further payments shall be made under 6686  
division (C) of this section to the school district from the 6687  
school district property tax replacement fund. If the difference 6688  
is greater than zero, the department of education shall certify 6689  
the amount calculated in division (A)(2) of this section to the 6690  
director of budget and management not later than the thirty-first 6691  
day of December of each year, beginning in 2006 and ending in 6692  
2016. 6693

(C) For all taxing districts in each school district, the 6694  
director of budget and management shall pay from the school 6695  
district property tax replacement fund to the county undivided 6696  
income tax fund in the proper county treasury all of the 6697  
following: 6698

(1) In February 2002, one-half of the fixed-rate levy loss 6699  
certified under division (D) of section 5727.84 of the Revised 6700  
Code on or before the day prescribed for the settlement under 6701  
division (A) of section 321.24 of the Revised Code. 6702

(2) From August 2002 through August 2006, one-half of the 6703  
amount certified for that fiscal year under division (A)(2) of 6704  
this section on or before each of the days prescribed for the 6705  
settlements under divisions (A) and (C) of section 321.24 of the 6706  
Revised Code. 6707

(3) From February 2007 through August 2016, one-half of the 6708  
amount certified for that calendar year under division (B)(3) of 6709  
this section on or before each of the days prescribed for the 6710  
settlements under divisions (A) and (C) of section 321.24 of the 6711  
Revised Code. 6712

The county treasurer shall distribute amounts paid under 6713

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 6746  
county treasurer shall distribute the amounts to the proper school 6747  
district or joint vocational school district as if they had been 6748  
levied and collected as taxes, and the district shall apportion 6749  
the amounts so received among its funds in the same proportions as 6750  
if those amounts had been levied and collected as taxes. No 6751  
payments shall be made under this division once all fixed-sum 6752  
levies in effect in 1998 have expired. 6753

(2) Beginning in 2003 and ending in 2016, by the thirty-first 6754  
day of January of each year, the tax commissioner shall review the 6755  
certification originally made under division (E)(1) of this 6756  
section. If the commissioner determines that a fixed-sum levy that 6757  
had been scheduled to be reimbursed in the current year has 6758  
expired, a revised certification for that and all subsequent years 6759  
shall be made to the director of budget and management. 6760

(F) By August 5, 2002, the tax commissioner shall estimate 6762  
the amount of money in the school district property tax 6763  
replacement fund in excess of the amount necessary to make 6764  
payments in that month under divisions (C), (D), and (E) of this 6765  
section. Notwithstanding division (C) of this section, the 6766  
department of education, in consultation with the tax commissioner 6767  
and from those excess funds, may pay any school district four and 6768  
one-half times the amount certified under division (A)(2) of this 6769  
section. Payments shall be made in order from the smallest annual 6770  
loss to the largest annual loss. A payment made under this 6771  
division shall be in lieu of the payment to be made in August 2002 6772  
under division (C)(2) of this section. No payments shall be made 6773  
in the manner established in this division to any school district 6774  
with annual losses from permanent improvement fixed-rate levies in 6775  
excess of twenty thousand dollars, or annual losses from any other 6776  
fixed-rate levies in excess of twenty thousand dollars. A school 6777

district receiving a payment under this division is no longer 6778  
entitled to any further payments under division (C) of this 6779  
section. 6780

(G) On the thirty-first day of July of 2003, 2004, 2005, AND 6781  
2006, and on the thirty-first day of January and July of 2007 and 6782  
each year thereafter, if THE AMOUNT CREDITED TO THE SCHOOL 6783  
DISTRICT PROPERTY TAX REPLACEMENT FUND EXCEEDS THE AMOUNT NEEDED 6784  
TO make payments FROM THE FUND UNDER DIVISIONS (C), (D), and (E) 6785  
OF THIS SECTION IN THE FOLLOWING MONTH, THE DIRECTOR OF BUDGET AND 6786  
MANAGEMENT SHALL DISTRIBUTE THE EXCESS AMONG SCHOOL DISTRICTS AND 6787  
JOINT VOCATIONAL SCHOOL DISTRICTS. The AMOUNT DISTRIBUTED TO EACH 6788  
DISTRICT SHALL BEAR THE SAME PROPORTION TO THE EXCESS REMAINING IN 6789  
THE FUND AS THE ADM OF THE DISTRICT BEARS TO THE ADM OF ALL OF THE 6790  
DISTRICTS. For THE PURPOSE OF THIS DIVISION, "ADM" MEANS THE 6791  
FORMULA ADM IN THE CASE OF A SCHOOL DISTRICT, AND THE AVERAGE 6792  
DAILY MEMBERSHIP REPORTED UNDER SECTION 3317.03 OF THE REVISED 6793  
CODE IN THE CASE OF A JOINT VOCATIONAL SCHOOL DISTRICT. 6794

If, IN THE OPINION OF THE DIRECTOR OF BUDGET AND MANAGEMENT, 6795  
THE EXCESS REMAINING IN THE SCHOOL DISTRICT PROPERTY TAX 6796  
REPLACEMENT FUND IN ANY YEAR IS NOT SUFFICIENT TO WARRANT 6797  
DISTRIBUTION UNDER THIS DIVISION, THE EXCESS SHALL REMAIN TO THE 6798  
CREDIT OF THE FUND. 6799

Amounts RECEIVED BY A SCHOOL DISTRICT OR JOINT VOCATIONAL 6800  
SCHOOL DISTRICT UNDER THIS DIVISION SHALL BE USED EXCLUSIVELY FOR 6801  
CAPITAL IMPROVEMENTS. 6802

(H) If THE TOTAL AMOUNT IN THE SCHOOL DISTRICT PROPERTY TAX 6803  
REPLACEMENT FUND IS INSUFFICIENT TO MAKE ALL PAYMENTS UNDER 6804  
DIVISIONS (C), (D), and (E) OF THIS SECTION, THE PAYMENTS REQUIRED 6805  
UNDER DIVISION (E) OF THIS SECTION SHALL BE MADE FIRST IN THEIR 6806  
ENTIRETY. AFTER ALL PAYMENTS ARE MADE UNDER DIVISION (E) OF THIS 6807  
SECTION, PAYMENTS UNDER DIVISIONS (C) AND (D) OF THIS SECTION 6808

SHALL BE MADE FROM THE BALANCE OF MONEY AVAILABLE IN THE 6809  
PROPORTION OF EACH SCHOOL DISTRICT'S OR JOINT VOCATIONAL SCHOOL 6810  
DISTRICT'S payment AMOUNT TO THE TOTAL AMOUNT of payments UNDER 6811  
DIVISIONS (C) AND (D) OF THIS SECTION. 6812

(I) If ALL OR A PART OF THE TERRITORY OF A SCHOOL DISTRICT OR 6813  
JOINT VOCATIONAL SCHOOL DISTRICT IS MERGED WITH OR TRANSFERRED TO 6814  
ANOTHER DISTRICT, THE TAX COMMISSIONER SHALL ADJUST THE PAYMENTS 6815  
MADE UNDER THIS SECTION TO EACH OF THE DISTRICTS IN PROPORTION TO 6816  
THE TAX VALUE LOSS APPORTIONED TO THE MERGED OR TRANSFERRED 6817  
TERRITORY. 6818

(J) THERE IS HEREBY CREATED THE ELECTRIC PROPERTY TAX STUDY 6819  
COMMITTEE, EFFECTIVE January 1, 2011. The COMMITTEE SHALL CONSIST 6820  
OF THE FOLLOWING SEVEN MEMBERS: the TAX COMMISSIONER, THREE 6821  
MEMBERS OF THE SENATE APPOINTED BY THE PRESIDENT OF THE SENATE, 6822  
AND THREE MEMBERS OF THE HOUSE OF REPRESENTATIVES APPOINTED BY THE 6823  
SPEAKER OF THE HOUSE OF REPRESENTATIVES. The APPOINTMENTS SHALL BE 6824  
MADE NOT LATER THAN JANUARY 31, 2011. THE TAX COMMISSIONER SHALL 6825  
BE THE CHAIRPERSON OF THE COMMITTEE. 6826

The COMMITTEE SHALL STUDY THE EXTENT TO WHICH EACH SCHOOL 6827  
DISTRICT OR JOINT VOCATIONAL SCHOOL DISTRICT HAS BEEN COMPENSATED, 6828  
UNDER SECTIONS 5727.84 AND 5727.85 OF THE Revised Code AS ENACTED 6829  
BY Substitute Senate Bill No. 3 OF THE 123rd general assembly AND 6830  
ANY SUBSEQUENT ACTS, FOR THE PROPERTY TAX LOSS CAUSED BY THE 6831  
REDUCTION IN THE ASSESSMENT RATES FOR ELECTRIC AND RURAL ELECTRIC 6832  
COMPANY TANGIBLE PERSONAL PROPERTY. Not LATER THAN June 30, 2011, 6833  
THE COMMITTEE SHALL ISSUE A REPORT OF ITS FINDINGS, INCLUDING ANY 6834  
RECOMMENDATIONS FOR PROVIDING ADDITIONAL COMPENSATION FOR THE 6835  
PROPERTY TAX LOSS OR REGARDING REMEDIAL LEGISLATION, TO THE 6836  
PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE OF 6837  
REPRESENTATIVES, AT WHICH TIME THE COMMITTEE SHALL CEASE TO EXIST. 6838

THE DEPARTMENT OF TAXATION AND DEPARTMENT OF EDUCATION SHALL 6839

PROVIDE SUCH INFORMATION AND ASSISTANCE AS IS REQUIRED FOR THE 6840  
COMMITTEE TO CARRY OUT ITS DUTIES. 6841

Sec. 5727.86. (A) Not LATER THAN January 1, 2002, THE TAX 6842  
COMMISSIONER SHALL CERTIFY TO THE DIRECTOR OF BUDGET AND 6843  
MANAGEMENT, FOR ALL TAXING DISTRICTS IN EACH LOCAL TAXING UNIT, 6844  
THE fixed-rate levy loss DETERMINED UNDER DIVISION (D), AND the 6845  
fixed-sum levy loss determined under division (E), OF SECTION 6846  
5727.84 OF THE Revised Code. Based ON THAT CERTIFICATION, THE 6847  
DIRECTOR SHALL COMPUTE THE PAYMENTS to be made to each local 6848  
taxing unit FOR EACH YEAR ACCORDING TO DIVISIONS (A)(1), (2), and 6849  
(3) AND DIVISION (E) OF THIS SECTION, AND SHALL DISTRIBUTE the 6850  
PAYMENTS in the manner prescribed by DIVISION (C) OF THIS SECTION. 6851  
THE CERTIFICATION of the fixed-sum levy loss SHALL COVER a period 6852  
of TIME sufficient to include ALL fixed-sum levies IN EFFECT IN 6853  
1998 until they ARE DUE TO EXPIRE. 6854

(1) Except as provided in division (A)(3) of this section, 6855  
for fixed-rate levy losses determined under division (D) of 6856  
section 5727.84 of the Revised Code, pAYMENTS shall be MADE in 6857  
each of the following years at the following PERCENTage OF THE 6858  
fixed-rate levy loss CERTIFIED UNDER DIVISION (A) of this section: 6859

<u>YEAR</u>	<u>PERCENTAGE</u>	6860
2002	100%	6861
2003	100%	6862
2004	100%	6863
2005	100%	6864
2006	100%	6865
2007	80%	6866
2008	80%	6867
2009	80%	6868
2010	80%	6869
2011	80%	6870

2012	66.7%	6871
2013	53.4%	6872
2014	40.1%	6873
2015	26.8%	6874
2016	13.5%	6875
2017 <u>and thereafter</u>	0%	6876

(2) For fixed-sum levy losses determined under division (E) 6877  
of section 5727.84 of the Revised Code, One HUNDRED PER CENT OF 6878  
THE fixed-sum levy loss CERTIFIED UNDER DIVISION (A) OF this 6879  
SECTION for payments required to be made in 2002 and thereafter. 6880

(3) A local taxing unit in a county of less than TWO HUNDRED 6881  
FIFTY SQUARE MILES that receives eighty per cent or more of its 6882  
combined general fund and bond retirement fund revenues from 6883  
property taxes and rollbacks based on 1997 actual revenues as 6884  
presented in its 1999 tax budget, and in which electric companies 6885  
and rural electric companies comprise over twenty per cent of its 6886  
PROPERTY VALUATION, shall receive one hundred per cent of its 6887  
fixed-rate levy losses certified under division (A) of this 6888  
section in years 2002 to 2016. 6889

(B) BEGINNING IN 2003, BY THE thirty-first DAY OF JANUARY of 6890  
EACH YEAR, THE TAX COMMISSIONER SHALL REVIEW THE CERTIFICATION 6891  
ORIGINALLY MADE UNDER division (A) of this section of the 6892  
fixed-sum levy loss determined under DIVISION (E) OF SECTION 6893  
5727.84 OF THE REVISED CODE. IF THE COMMISSIONER DETERMINES THAT A 6894  
FIXED-SUM LEVY THAT HAD BEEN SCHEDULED TO BE REIMBURSED IN THE 6895  
CURRENT YEAR HAS EXPIRED, A REVISED CERTIFICATION FOR THAT AND ALL 6896  
SUBSEQUENT YEARS SHALL BE MADE. 6897

(C) Payments to local taxing units REQUIRED TO BE MADE UNDER 6898  
DIVISIONS (A) AND (E) OF THIS SECTION SHALL BE PAID FROM THE LOCAL 6899  
GOVERNMENT PROPERTY TAX REPLACEMENT FUND TO THE COUNTY UNDIVIDED 6900  
INCOME TAX FUND IN THE PROPER COUNTY TREASURY. One-half OF THE 6901  
AMOUNT CERTIFIED UNDER THOSE DIVISIONS SHALL BE PAID ON OR BEFORE 6902

EACH OF THE DAYS PRESCRIBED FOR THE SETTLEMENTS UNDER DIVISIONS 6903  
(A) AND (C) OF SECTION 321.24 OF THE REVISED CODE. The COUNTY 6904  
TREASURER SHALL DISTRIBUTE AMOUNTS paid UNDER DIVISION (A) OF THIS 6905  
SECTION TO THE PROPER LOCAL TAXING UNIT AS IF THEY HAD BEEN LEVIED 6906  
AND COLLECTED AS TAXES, AND THE LOCAL TAXING UNIT SHALL APPORTION 6907  
THE AMOUNTS SO RECEIVED AMONG ITS FUNDS IN THE SAME PROPORTIONS AS 6908  
IF THOSE AMOUNTS HAD BEEN LEVIED AND COLLECTED AS TAXES. Amounts 6909  
DISTRIBUTED UNDER DIVISION (E) OF THIS SECTION SHALL BE CREDITED 6910  
TO THE GENERAL FUND OF THE LOCAL TAXING UNIT THAT RECEIVES THEM. 6911

(D) By February 5, 2002, THE TAX COMMISSIONER SHALL ESTIMATE 6912  
THE AMOUNT OF MONEY IN THE LOCAL GOVERNMENT PROPERTY TAX 6913  
REPLACEMENT FUND IN EXCESS OF THE AMOUNT NECESSARY TO MAKE 6914  
PAYMENTS IN THAT MONTH UNDER DIVISION (C) OF THIS SECTION. 6915  
NOTWITHSTANDING DIVISION (A) OF THIS SECTION, THE TAX COMMISSIONER 6916  
MAY PAY ANY LOCAL TAXING UNIT, FROM THOSE EXCESS FUNDS, nine and 6917  
four-tenths TIMES THE AMOUNT computed for 2002 UNDER DIVISION 6918  
(A)(1) OF THIS SECTION. Apayment made under this division SHALL BE 6919  
IN LIEU OF THE PAYMENT TO BE MADE IN FEBRUARY 2002 under division 6920  
(A)(1) of this section. A LOCAL TAXING UNIT RECEIVING A PAYMENT 6921  
UNDER THIS DIVISION WILL NO LONGER BE ENTITLED TO ANY FURTHER 6922  
PAYMENTS UNDER DIVISION (A)(1) OF THIS SECTION. 6923

(E) On the thirty-first day of July of 2002, 2003, 2004, 6924  
2005, AND 2006, and on the thirty-first day of January and July of 6925  
2007 and each year thereafter, if THE AMOUNT CREDITED TO THE LOCAL 6926  
GOVERNMENT PROPERTY TAX REPLACEMENT FUND EXCEEDS THE AMOUNT NEEDED 6927  
TO BE DISTRIBUTED FROM THE FUND UNDER DIVISION (A) OF THIS SECTION 6928  
IN THE FOLLOWING MONTH, THE DIRECTOR OF BUDGET AND MANAGEMENT 6929  
SHALL DISTRIBUTE THE EXCESS TO EACH COUNTY AS FOLLOWS: 6930

(1) One-half SHALL BE DISTRIBUTED TO EACH COUNTY IN 6931  
PROPORTION TO EACH COUNTY'S POPULATION. 6932

(2) One-half SHALL BE DISTRIBUTED TO EACH COUNTY IN THE 6933

PROPORTION THAT THE AMOUNTS DETERMINED UNDER DIVISIONS (D) AND (E) 6934  
OF SECTION 5727.84 OF THE REVISED CODE FOR ALL TAXING DISTRICTS IN 6935  
THE COUNTY IS OF THE TOTAL AMOUNTS SO DETERMINED FOR ALL TAXING 6936  
DISTRICTS IN THE STATE. 6937

THE AMOUNTS DISTRIBUTED TO EACH COUNTY UNDER THIS DIVISION 6938  
SHALL BE DISTRIBUTED BY THE COUNTY BUDGET COMMISSION TO EACH LOCAL 6939  
TAXING UNIT IN THE COUNTY IN THE PROPORTION THAT THE UNIT'S 6940  
CURRENT TAXES CHARGED AND PAYABLE ARE OF THE TOTAL CURRENT TAXES 6941  
CHARGED AND PAYABLE OF ALL THE LOCAL TAXING UNITS IN THE COUNTY. 6942  
AS USED IN THIS DIVISION, "CURRENT TAXES CHARGED AND PAYABLE" 6943  
MEANS THE TAXES CHARGED AND PAYABLE AS MOST RECENTLY DETERMINED 6944  
FOR LOCAL TAXING UNITS IN THE COUNTY. 6945

IF, IN THE OPINION OF THE DIRECTOR OF BUDGET AND MANAGEMENT, 6946  
THE EXCESS REMAINING IN THE LOCAL GOVERNMENT PROPERTY TAX 6947  
REPLACEMENT FUND IN ANY YEAR IS NOT SUFFICIENT TO WARRANT 6948  
DISTRIBUTION UNDER THIS DIVISION, THE EXCESS SHALL REMAIN TO THE 6949  
CREDIT OF THE FUND. 6950

(F) If THE TOTAL AMOUNT IN THE LOCAL GOVERNMENT PROPERTY TAX 6951  
REPLACEMENT FUND IS INSUFFICIENT TO MAKE ALL PAYMENTS UNDER 6952  
DIVISION (C) OF THIS SECTION, THE PAYMENTS REQUIRED UNDER DIVISION 6953  
(A)(2) OF THIS SECTION SHALL BE MADE FIRST IN THEIR ENTIRETY. 6954  
AFTER ALL SUCH PAYMENTS ARE MADE, PAYMENTS UNDER DIVISIONS (A)(1) 6955  
AND (3) OF THIS SECTION SHALL BE MADE FROM THE BALANCE OF MONEY 6956  
AVAILABLE IN THE PROPORTION OF EACH LOCAL TAXING UNIT'S payment 6957  
AMOUNT TO THE TOTAL AMOUNT of all payments to be made UNDER 6958  
divisions (A)(1) and (3) OF THIS SECTION. 6959

(G) If ALL OR A PART OF THE TERRITORIES OF TWO OR MORE LOCAL 6960  
TAXING UNITS ARE MERGED, OR UNINCORPORATED TERRITORY OF A TOWNSHIP 6961  
IS ANNEXED BY A MUNICIPAL CORPORATION, THE TAX COMMISSIONER SHALL 6962  
ADJUST THE PAYMENTS MADE UNDER THIS SECTION TO EACH OF THE LOCAL 6963  
TAXING UNITS IN PROPORTION TO THE TAX VALUE LOSS APPORTIONED TO 6964

THE MERGED OR ANNEXED TERRITORY, OR AS OTHERWISE PROVIDED BY A 6965  
WRITTEN AGREEMENT BETWEEN THE LEGISLATIVE AUTHORITIES OF THE LOCAL 6966  
TAXING UNITS CERTIFIED TO THE TAX COMMISSIONER NOT LATER THAN THE 6967  
FIRST DAY OF JUNE OF THE CALENDAR YEAR IN WHICH THE PAYMENT IS TO 6968  
BE MADE. 6969

**Sec. 5727.87.** (A) As USED IN THIS SECTION: 6970

(1) "ADMINISTRATIVE FEES" MEANS THE DOLLAR PERCENTAGES 6971  
ALLOWED BY THE COUNTY AUDITOR FOR SERVICES OR BY THE COUNTY 6972  
TREASURER AS FEES, OR PAID TO THE CREDIT OF THE REAL ESTATE 6973  
ASSESSMENT FUND, UNDER DIVISIONS (A) AND (B) OF SECTION 319.54 AND 6974  
DIVISION (A) OF SECTION 321.26 OF THE Revised Code. 6975

(2) "ADMINISTRATIVE FEE LOSS" MEANS A COUNTY'S LOSS OF 6976  
ADMINISTRATIVE FEES due to its TAX VALUE LOSS, DETERMINED AS 6977  
FOLLOWS: 6978

(a) For PURPOSES OF THE DETERMINATION made UNDER DIVISION (B) 6979  
OF THIS SECTION IN THE YEARS 2002 THROUGH 2006, THE ADMINISTRATIVE 6980  
FEE LOSS SHALL BE computed BY MULTIPLYING THE AMOUNTS DETERMINED 6981  
FOR ALL TAXING DISTRICTS IN THE COUNTY under DIVISIONS (D) AND (E) 6982  
OF SECTION 5727.84 OF THE REVISED CODE BY NINE THOUSAND SIX 6983  
HUNDRED FIFTY-NINE TEN-THOUSANDTHS OF A PER cent, IF TOTAL TAXES 6984  
COLLECTED IN THE COUNTY IN TAX YEAR 1998 exceeded one hundred 6985  
fifty million dollars, OR ONE AND ONE THOUSAND ONE HUNDRED 6986  
FIFTY-NINE TEN-THOUSANDTHS OF A PER CENT, IF TOTAL TAXES COLLECTED 6987  
IN THE COUNTY IN TAX YEAR 1998 WERE one hundred fifty million 6988  
dollars or less; 6989

(b) For PURPOSES OF THE DETERMINATION UNDER DIVISION (B) OF 6990  
THIS SECTION IN THE YEARS 2007 THROUGH 2011, THE ADMINISTRATIVE 6991  
FEE LOSS SHALL BE DETERMINED BY SUBTRACTING FROM THE DOLLAR AMOUNT 6992  
OF ADMINISTRATIVE FEES COLLECTED IN THE COUNTY IN TAX YEAR 1998, 6993  
THE DOLLAR AMOUNT OF ADMINISTRATIVE FEES COLLECTED IN THE COUNTY 6994

IN THE CURRENT CALENDAR YEAR. 6995

(B) Not LATER THAN the first day of JUNE of 2002 THROUGH 6996  
2011, THE COUNTY AUDITOR SHALL DETERMINE THE ADMINISTRATIVE FEE 6997  
LOSS FOR THE COUNTY AND CERTIFY IT TO THE COUNTY BUDGET 6998  
COMMISSION. NOTWITHSTANDING DIVISIONS (C), (D), AND (E) OF SECTION 6999  
5727.85 AND DIVISION (C) OF SECTION 5727.86 OF THE REVISED CODE, 7000  
PRIOR TO DISTRIBUTION BY THE COUNTY TREASURER OF THE PAYMENTS 7001  
PROVIDED UNDER THOSE DIVISIONS, THE COUNTY BUDGET COMMISSION SHALL 7002  
DEDUCT FROM THOSE PAYMENTS THE AMOUNT OF THE ADMINISTRATIVE FEE 7003  
LOSS CERTIFIED BY THE COUNTY AUDITOR, AS FOLLOWS: 7004

(1) Seventy PER CENT OF THE ADMINISTRATIVE FEE LOSS SHALL BE 7006  
DEDUCTED FROM THE PAYMENTS PROVIDED UNDER DIVISIONS (C), (D), AND 7007  
(E) OF SECTION 5727.85 OF THE REVISED CODE. 7008

(2) Thirty PER CENT OF THE ADMINISTRATIVE FEE LOSS SHALL BE 7009  
DEDUCTED FROM THE PAYMENTS PROVIDED UNDER DIVISION (C) OF SECTION 7010  
5727.86 OF THE REVISED CODE. 7011

(C) On OR BEFORE EACH OF THE DAYS PRESCRIBED FOR THE 7012  
SETTLEMENTS UNDER DIVISIONS (A) AND (C) OF SECTION 321.24 OF THE 7013  
REVISED CODE IN the YEARS 2002 THROUGH 2011, THE COUNTY BUDGET 7014  
COMMISSION SHALL PAY ONE-HALF OF THE AMOUNT OF THE ADMINISTRATIVE 7015  
FEE LOSS TO THE COUNTY AUDITOR, COUNTY TREASURER, OR REAL ESTATE 7016  
ASSESSMENT FUND AS IF THE AMOUNT HAD BEEN ALLOWED AS 7017  
ADMINISTRATIVE FEES, AND SHALL DEPOSIT THE AMOUNT IN THE SAME 7018  
FUNDS AS IF ALLOWED AS ADMINISTRATIVE FEES. 7019

AFTER PAYMENT OF THE ADMINISTRATIVE FEE LOSS ON OR BEFORE 7020  
AUGUST 10, 2011, ALL PAYMENTS UNDER THIS SECTION SHALL CEASE. 7021

Sec. 5727.88. The tax commissioner shall administer sections 7022  
5727.80 to 5727.95 of the Revised Code and may adopt such rules as 7023  
are necessary to administer those sections. Upon request of the 7024

tax commissioner, the public utilities commission shall assist the 7025  
tax commissioner by providing information regarding any electric 7026  
distribution company that is subject to regulation by the 7027  
commission. 7028

**Sec. 5727.89.** (A) The tax commissioner may make an 7029  
assessment, based on any information in the commissioner's 7030  
possession, against any electric distribution company, 7031  
self-assessing purchaser, or qualified end user that fails to file 7032  
a return or pay any tax, interest, or additional charge as 7033  
required by sections 5727.80 to 5727.95 of the Revised Code. 7034

When information in the possession of the tax commissioner 7035  
indicates that a person liable for the tax imposed by section 7036  
5727.81 of the Revised Code has not paid the full amount of tax 7037  
due, the commissioner may audit a representative sample of the 7038  
person's business and may issue an assessment based on the audit. 7039  
The commissioner shall give the person assessed written notice of 7040  
the assessment by personal service or certified mail. 7041

The tax commissioner may issue an assessment for which the 7042  
tax imposed by section 5727.81 of the Revised Code was due and 7043  
unpaid on the date the person was informed by an agent of the tax 7044  
commissioner of an investigation or audit of the person. Any 7045  
payment of the tax for the period covered by the assessment, after 7046  
the person is so informed, shall be credited against the 7047  
assessment. 7048

A penalty of fifteen per cent shall be added to all amounts 7049  
assessed under this section. The commissioner may adopt rules 7050  
providing for the remission of penalties. 7051

(B) Unless the party assessed files with the tax commissioner 7052  
within thirty days after service of the notice of assessment, 7053  
either personally or by certified mail, a written petition for 7054

reassessment signed by the party assessed or the party's 7055  
authorized agent having knowledge of the facts, the assessment is 7056  
final and the amount of the assessment is due and payable from the 7057  
party assessed to the treasurer of state. The petition shall 7058  
indicate the objections of the party assessed, but additional 7059  
objections may be raised in writing prior to the date shown on the 7060  
final determination of the tax commissioner. The commissioner 7061  
shall grant the petitioner a hearing on the petition, unless 7062  
waived by the petitioner. 7063

(C) The commissioner may make any correction to the 7064  
assessment that the commissioner finds proper and shall issue a 7065  
final determination thereon. The commissioner shall serve a copy 7066  
of the final determination on the petitioner either by personal 7067  
service or by certified mail, and the commissioner's decision in 7068  
the matter is final, subject to appeal under section 5717.02 of 7069  
the Revised Code. 7070

(D) After an assessment becomes final, if any portion of the 7071  
assessment, including accrued interest, remains unpaid, a 7072  
certified copy of the commissioner's entry making the assessment 7073  
final may be filed in the office of the clerk of the court of 7074  
common pleas in the county in which the party assessed resides or 7075  
in which the party's business is conducted. If the party assessed 7076  
maintains no place of business in this state and is not a resident 7077  
of this state, the certified copy of the entry may be filed in the 7078  
office of the clerk of the court of common pleas of Franklin 7079  
county. 7080

The clerk, immediately upon the filing of the entry, shall 7081  
enter a judgment for the state against the person assessed in the 7082  
amount shown on the entry. The judgment may be filed by the clerk 7083  
in a loose-leaf book entitled "special judgments for the 7084  
kilowatt-hour tax," and shall have the same effect as other 7085  
judgments. Execution shall issue upon the judgment at the request 7086

of the tax commissioner, and all laws applicable to sales on 7087  
execution shall apply to sales made under the judgment. 7088

The portion of the assessment not paid within thirty days 7089  
after the day the assessment was issued shall bear interest at the 7090  
rate per annum prescribed by section 5703.47 of the Revised Code 7091  
from the day the tax commissioner issues the assessment until the 7092  
day the assessment is paid. Interest shall be paid in the same 7093  
manner as the tax and may be collected by the issuance of an 7094  
assessment under this section. 7095

(E) If the tax commissioner believes that collection of the 7096  
tax imposed by section 5727.81 of the Revised Code will be 7097  
jeopardized unless proceedings to collect or secure collection of 7098  
the tax are instituted without delay, the commissioner may issue a 7099  
jeopardy assessment against the electric distribution company, 7100  
self-assessing purchaser, or qualified end user liable for the 7101  
tax. Upon issuance of the jeopardy assessment, the commissioner 7102  
immediately shall file an entry with the clerk of the court of 7103  
common pleas in the manner prescribed by division (D) of this 7104  
section. Notice of the jeopardy assessment shall be served on the 7105  
party assessed or the party's legal representative within five 7106  
days of the filing of the entry with the clerk. The total amount 7107  
assessed is immediately due and payable, unless the party assessed 7108  
files a petition for reassessment in accordance with division (B) 7109  
of this section and provides security in a form satisfactory to 7110  
the commissioner and in an amount sufficient to satisfy the unpaid 7111  
balance of the assessment. Full or partial payment of the 7112  
assessment does not prejudice the commissioner's consideration of 7113  
the petition for reassessment. 7114

(F) All money collected by the tax commissioner under this 7115  
section shall be paid to the treasurer of state, and when paid 7116  
shall be considered as revenue arising from the tax imposed by 7117  
section 5727.81 of the Revised Code. 7118

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: 7119  
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(A) The party assessed failed to file a return as required by section 5727.82 of the Revised Code; 7125  
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(B) The party assessed knowingly filed a false or fraudulent return; 7127  
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(C) The party assessed and the tax commissioner waived in writing the time limitation. 7129  
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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. 7131  
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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. 7139  
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(B) If an electric distribution company entitled to a refund 7148

of taxes under this section is indebted to the state for any tax 7149  
or fee administered by the tax commissioner that is paid to the 7150  
state or any charge, penalty, or interest arising from such a tax 7151  
or fee, the amount refundable may be applied in satisfaction of 7152  
the debt. If the amount refundable is less than the amount of the 7153  
debt, it may be applied in partial satisfaction of the debt. If 7154  
the amount refundable is greater than the amount of the debt, the 7155  
amount remaining after satisfaction of the debt shall be refunded. 7156  
If the electric distribution company has more than one such debt, 7157  
any debt subject to section 5739.33 or division (G) of section 7158  
5747.07 of the Revised Code shall be satisfied first. This section 7159  
applies only to debts that have become final. 7160

(C) Any electric distribution company that can substantiate 7161  
to the tax commissioner that the tax imposed by section 5727.81 of 7162  
the Revised Code was paid on electricity distributed via wires and 7163  
consumed at a location outside of this state may claim a refund in 7164  
the manner and within the time period prescribed in division (A) 7165  
of this section. 7166

(D) Before a refund is issued under this section, an electric 7167  
distribution company shall certify, as prescribed by the tax 7168  
commissioner, that it either did not include the tax imposed by 7169  
section 5727.81 of the Revised Code in its distribution charge to 7170  
an electric customer upon which a refund of the tax is claimed, or 7171  
it has refunded or credited to the electric customer the excess 7172  
distribution charge related to the tax that was erroneously 7173  
included in the electric customer's distribution charge. 7174

**Sec. 5727.92.** Every person liable for the tax imposed by 7175  
section 5727.81 of the Revised Code shall keep complete and 7176  
accurate records of all electric distributions and other records 7177  
as required by the tax commissioner. The records shall be 7178  
preserved for four years after the return for the taxes to which 7179

the records pertain is due or filed, whichever is later. The 7180  
records shall be available for inspection by the tax commissioner 7181  
or the commissioner's authorized agent, upon request of the 7182  
commissioner or such agent. 7183

**Sec. 5727.93.** (A) No person shall distribute electricity to a 7184  
meter of an end user in this state who is not registered with the 7185  
tax commissioner as an electric distribution company. 7186

(B) Each person required to register under division (A) of 7187  
this section shall register prior to distributing electricity to a 7188  
meter of an end user in this state. The tax commissioner shall 7189  
prescribe the form of the registration application. The 7190  
commissioner shall assign an identification number to each 7191  
registration and notify the registrant of that number. The 7192  
registration shall remain in effect until canceled in writing by 7193  
the registrant upon the cessation of distributing electricity to a 7194  
meter of an end user in this state or until such registration is 7195  
denied, revoked, or canceled by the commissioner. A registration 7196  
may be revoked or canceled by the tax commissioner as provided by 7197  
Chapter 119. of the Revised Code, for failure of an electric 7198  
distribution company to pay the tax imposed by section 5727.81 of 7199  
the Revised Code or to comply with sections 5727.80 to 5727.95 of 7200  
the Revised Code. An electric distribution company whose 7201  
registration is denied may petition for a hearing, in accordance 7202  
with the procedures set forth in divisions (B) and (C) of section 7203  
5727.89 of the Revised Code, not later than thirty days after 7204  
receiving the denial, and the final determination is subject to 7205  
appeal under section 5717.02 of the Revised Code. 7206

(C) The tax commissioner shall maintain a list of the 7207  
electric distribution companies registered under this section. The 7208  
list shall contain the name and address of each company registered 7209  
by the commissioner. The list and subsequent updates of it shall 7210

be open to public inspection. 7211

Sec. 5727.94. Each electric distribution company required to 7212  
pay the tax imposed by section 5727.81 of the Revised Code shall 7213  
provide to its customers in this state the statement required by 7214  
section 4933.33 of the Revised Code. 7215

Sec. 5727.95. (A) No electric distribution company or 7216  
self-assessing purchaser shall fail to file any return or report 7217  
required to be filed pursuant to section 5727.82 of the Revised 7218  
Code, or file or cause to be filed any incomplete, false, or 7219  
fraudulent return, report, or statement, or aid or abet another in 7220  
the filing of any false or fraudulent return, report, or 7221  
statement. 7222

(B) No person shall distribute electricity to a meter of an 7223  
end user in this state without holding a valid registration issued 7224  
under section 5727.93 of the Revised Code. 7225

Sec. 5727.99. (A) Whoever violates section 5727.55 of the 7226  
Revised Code shall be ~~fines~~ fined not less than one hundred nor 7227  
more than one thousand dollars. 7228

(B) Whoever violates section 5727.71 of the Revised Code 7229  
shall be fined not more than five hundred dollars and imprisoned 7230  
not more than thirty days. 7231

(C) Whoever violates section 5727.72 ~~or 5727.73~~ of the 7232  
Revised Code shall be fined not more than five hundred dollars or 7233  
imprisoned not more than thirty days, or both. 7234

(D) Whoever violates sections 5727.80 to 5727.83, or sections 7235  
5727.88 to 5727.95 of the Revised Code or any rule adopted by the 7236  
tax commissioner under those sections, is guilty of a misdemeanor 7237  
of the first degree on the first offense; on each subsequent 7238  
offense, the person is guilty of a felony of the fourth degree. 7239

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**Sec. 5733.04.** As used in this chapter: 7241

(A) "Issued and outstanding shares of stock" applies to 7242  
nonprofit corporations, as provided in section 5733.01 of the 7243  
Revised Code, and includes, but is not limited to, membership 7244  
certificates and other instruments evidencing ownership of an 7245  
interest in such nonprofit corporations, and with respect to a 7246  
financial institution ~~which~~ that does not have capital stock, 7247  
"issued and outstanding shares of stock" includes, but is not 7248  
limited to, ownership interests of depositors in the capital 7249  
employed in such an institution. 7250

(B) "Taxpayer" means a corporation subject to the tax imposed 7251  
by section 5733.06 of the Revised Code. 7252

(C) "Resident" means a corporation organized under the laws 7253  
of this state. 7254

(D) "Commercial domicile" means the principal place from 7255  
which the trade or business of the taxpayer is directed or 7256  
managed. 7257

(E) "Taxable year" means the period prescribed by division 7258  
(A) of section 5733.031 of the Revised Code upon the net income of 7259  
which the value of the taxpayer's issued and outstanding shares of 7260  
stock is determined under division (B) of section 5733.05 of the 7261  
Revised Code or the period prescribed by division (A) of section 7262  
5733.031 of the Revised Code that immediately precedes the date as 7263  
of which the total value of the corporation is determined under 7264  
division (A) or (C) of section 5733.05 of the Revised Code. 7265

(F) "Tax year" means the calendar year in and for which the 7266  
tax imposed by section 5733.06 of the Revised Code is required to 7267  
be paid. 7268

(G) "Internal Revenue Code" means the "Internal Revenue Code 7269

of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 7270

(H) "Federal income tax" means the income tax imposed by the 7271  
Internal Revenue Code. 7272

(I) Except as provided in section 5733.058 of the Revised 7273  
Code, "net income" means the taxpayer's taxable income before 7274  
operating loss deduction and special deductions, as required to be 7275  
reported for the taxpayer's taxable year under the Internal 7276  
Revenue Code, subject to the following adjustments: 7277

(1)(a) Deduct any net operating loss incurred in any taxable 7278  
years ending in 1971 or thereafter but exclusive of any net 7279  
operating loss incurred in taxable years ending prior to January 7280  
1, 1971. This deduction shall not be allowed in any tax year 7281  
commencing before December 31, 1973, but shall be carried over and 7282  
allowed in tax years commencing after December 31, 1973, until 7283  
fully utilized in the next succeeding taxable year or years in 7284  
which the taxpayer has net income, but in no case for more than 7285  
the designated carryover period as described in division (I)(1)(b) 7286  
of this section. The amount of such net operating loss, as 7287  
determined under the allocation and apportionment provisions of 7288  
section 5733.051 and division (B) of section 5733.05 of the 7289  
Revised Code for the year in which the net operating loss occurs, 7290  
shall be deducted from net income, as determined under the 7291  
allocation and apportionment provisions of section 5733.051 and 7292  
division (B) of section 5733.05 of the Revised Code, to the extent 7293  
necessary to reduce net income to zero with the remaining unused 7294  
portion of the deduction, if any, carried forward to the remaining 7295  
years of the designated carryover period as described in division 7296  
(I)(1)(b) of this section, or until fully utilized, whichever 7297  
occurs first. 7298

(b) For losses incurred in taxable years ending on or before 7299  
December 31, 1981, the designated carryover period shall be the 7300

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 7332  
the tax commissioner shows, by clear and convincing evidence, more 7333  
actual expenses. 7334

(3) Add any loss or deduct any gain resulting from the sale, 7335  
exchange, or other disposition of a capital asset, or an asset 7336  
described in section 1231 of the Internal Revenue Code, to the 7337  
extent that such loss or gain occurred prior to the first taxable 7338  
year on which the tax provided for in section 5733.06 of the 7339  
Revised Code is computed on the corporation's net income. For 7340  
purposes of division (I)(3) of this section, the amount of the 7341  
prior loss or gain shall be measured by the difference between the 7342  
original cost or other basis of the asset and the fair market 7343  
value as of the beginning of the first taxable year on which the 7344  
tax provided for in section 5733.06 of the Revised Code is 7345  
computed on the corporation's net income. At the option of the 7346  
taxpayer, the amount of the prior loss or gain may be a percentage 7347  
of the gain or loss, which percentage shall be determined by 7348  
multiplying the gain or loss by a fraction, the numerator of which 7349  
is the number of months from the acquisition of the asset to the 7350  
beginning of the first taxable year on which the fee provided in 7351  
section 5733.06 of the Revised Code is computed on the 7352  
corporation's net income, and the denominator of which is the 7353  
number of months from the acquisition of the asset to the sale, 7354  
exchange, or other disposition of the asset. The adjustments 7355  
described in this division do not apply to any gain or loss where 7356  
the gain or loss is recognized by a qualifying taxpayer, as 7357  
defined in section 5733.0510 of the Revised Code, with respect to 7358  
a qualifying taxable event, as defined in that section. 7359

(4) Deduct the dividend received deduction provided by 7360  
section 243 of the Internal Revenue Code. 7361

(5) Deduct any interest or interest equivalent on public 7362  
obligations and purchase obligations to the extent included in 7363

federal taxable income. As used in divisions (I)(5) and (6) of  
this section, "public obligations," "purchase obligations," and  
"interest or interest equivalent" have the same meanings as in  
section 5709.76 of the Revised Code.

(6) Add any loss or deduct any gain resulting from the sale,  
exchange, or other disposition of public obligations to the extent  
included in federal taxable income.

(7) To the extent not otherwise allowed, deduct any dividends  
or distributions received by a taxpayer from a public utility,  
excluding an electric company, if the taxpayer owns at least  
eighty per cent of the issued and outstanding common stock of the  
public utility. As used in division (I)(7) of this section,  
"public utility" ~~or "utility"~~ means a public utility as defined in  
Chapter 5727. of the Revised Code, whether or not the public  
utility is doing business in the state.

(8) To the extent not otherwise allowed, deduct any dividends  
received by a taxpayer from an insurance company, if the taxpayer  
owns at least eighty per cent of the issued and outstanding common  
stock of the insurance company. As used in division (I)(8) of this  
section, "insurance company" means an insurance company ~~which~~ that  
is taxable under Chapter 5725. or 5729. of the Revised Code.

(9) Deduct expenditures for modifying existing buildings or  
structures to meet American national standards institute standard  
A-117.1-1961 (R-1971), as amended; provided, that no deduction  
shall be allowed to the extent that such deduction is not  
permitted under federal law or under rules of the tax  
commissioner. Those deductions as are allowed may be taken over a  
period of five years. The tax commissioner shall adopt rules under  
Chapter 119. of the Revised Code establishing reasonable  
limitations on the extent that expenditures for modifying existing

buildings or structures are attributable to the purpose of making 7395  
the buildings or structures accessible to and usable by physically 7396  
handicapped persons. 7397

(10) Deduct the amount of wages and salaries, if any, not 7398  
otherwise allowable as a deduction but that would have been 7399  
allowable as a deduction in computing federal taxable income 7400  
before operating loss deduction and special deductions for the 7401  
taxable year, had the targeted jobs credit allowed and determined 7402  
under sections 38, 51, and 52 of the Internal Revenue Code not 7403  
been in effect. 7404

(11) Deduct net interest income on obligations of the United 7405  
States and its territories and possessions or of any authority, 7406  
commission, or instrumentality of the United States to the extent 7407  
the laws of the United States prohibit inclusion of the net 7408  
interest for purposes of determining the value of the taxpayer's 7409  
issued and outstanding shares of stock under division (B) of 7410  
section 5733.05 of the Revised Code. As used in division (I)(11) 7411  
of this section, "net interest" means interest net of any expenses 7412  
taken on the federal income tax return that would not have been 7413  
allowed under section 265 of the Internal Revenue Code if the 7414  
interest were exempt from federal income tax. 7415

(12)(a) Except as set forth in division (I)(12)(d) of this 7416  
section, to the extent not included in computing the taxpayer's 7417  
federal taxable income before operating loss deduction and special 7418  
deductions, add gains and deduct losses from direct or indirect 7419  
sales, exchanges, or other dispositions, made by a related entity 7420  
who is not a taxpayer, of the taxpayer's indirect, beneficial, or 7421  
constructive investment in the stock or debt of another entity, 7422  
unless the gain or loss has been included in computing the federal 7423  
taxable income before operating loss deduction and special 7424  
deductions of another taxpayer with a more closely related 7425  
investment in the stock or debt of the other entity. The amount of 7426

gain added or loss deducted shall not exceed the product obtained 7427  
by multiplying such gain or loss by the taxpayer's proportionate 7428  
share, directly, indirectly, beneficially, or constructively, of 7429  
the outstanding stock of the related entity immediately prior to 7430  
the direct or indirect sale, exchange, or other disposition. 7431  
7432

(b) Except as set forth in division (I)(12)(e) of this 7433  
section, to the extent not included in computing the taxpayer's 7434  
federal taxable income before operating loss deduction and special 7435  
deductions, add gains and deduct losses from direct or indirect 7436  
sales, exchanges, or other dispositions made by a related entity 7437  
who is not a taxpayer, of intangible property other than stock, 7438  
securities, and debt, if such property was owned, or used in whole 7439  
or in part, at any time prior to or at the time of the sale, 7440  
exchange, or disposition by either the taxpayer or by a related 7441  
entity that was a taxpayer at any time during the related entity's 7442  
ownership or use of such property, unless the gain or loss has 7443  
been included in computing the federal taxable income before 7444  
operating loss deduction and special deductions of another 7445  
taxpayer with a more closely related ownership or use of such 7446  
intangible property. The amount of gain added or loss deducted 7447  
shall not exceed the product obtained by multiplying such gain or 7448  
loss by the taxpayer's proportionate share, directly, indirectly, 7449  
beneficially, or constructively, of the outstanding stock of the 7450  
related entity immediately prior to the direct or indirect sale, 7451  
exchange, or other disposition. 7452

(c) As used in division (I)(12) of this section, "related 7453  
entity" means those entities described in divisions (I)(12)(c)(i) 7454  
to (iii) of this section: 7455

(i) An individual stockholder, or a member of the 7456  
stockholder's family enumerated in section 318 of the Internal 7457  
Revenue Code, if the stockholder and the members of the 7458

stockholder's family own, directly, indirectly, beneficially, or  
constructively, in the aggregate, at least fifty per cent of the  
value of the taxpayer's outstanding stock;

(ii) A stockholder, or a stockholder's partnership, estate,  
trust, or corporation, if the stockholder and the stockholder's  
partnerships, estates, trusts, and corporations own directly,  
indirectly, beneficially, or constructively, in the aggregate, at  
least fifty per cent of the value of the taxpayer's outstanding  
stock;

(iii) A corporation, or a party related to the corporation in  
a manner that would require an attribution of stock from the  
corporation to the party or from the party to the corporation  
under division (I)(12)(c)(iv) of this section, if the taxpayer  
owns, directly, indirectly, beneficially, or constructively, at  
least fifty per cent of the value of the corporation's outstanding  
stock.

(iv) The attribution rules of section 318 of the Internal  
Revenue Code apply for purposes of determining whether the  
ownership requirements in divisions (I)(12)(c)(i) to (iii) of this  
section have been met.

(d) For purposes of the adjustments required by division  
(I)(12)(a) of this section, the term "investment in the stock or  
debt of another entity" means only those investments where the  
taxpayer and the taxpayer's related entities directly, indirectly,  
beneficially, or constructively own, in the aggregate, at any time  
during the twenty-four month period commencing one year prior to  
the direct or indirect sale, exchange, or other disposition of  
such investment at least fifty per cent or more of the value of  
either the outstanding stock or such debt of such other entity.

(e) For purposes of the adjustments required by division  
(I)(12)(b) of this section, the term "related entity" excludes all

of the following:	7490
(i) Foreign corporations as defined in section 7701 of the Internal Revenue Code;	7491 7492
(ii) Foreign partnerships as defined in section 7701 of the Internal Revenue Code;	7493 7494
(iii) Corporations, partnerships, estates, and trusts created or organized in or under the laws of the Commonwealth of Puerto Rico or any possession of the United States;	7495 7496 7497
(iv) Foreign estates and foreign trusts as defined in section 7701 of the Internal Revenue Code.	7498 7499
The exclusions described in divisions (I)(12)(e)(i) to (iv) of this section do not apply if the corporation, partnership, estate, or trust is described in any one of divisions (C)(1) to (5) of section 5733.042 of the Revised Code.	7500 7501 7502 7503
(f) Nothing in division (I)(12) of this section shall require or permit a taxpayer to add any gains or deduct any losses described in divisions (I)(12)(f)(i) and (ii) of this section:	7504 7505 7506
(i) Gains or losses recognized for federal income tax purposes by an individual, estate, or trust without regard to the attribution rules described in division (I)(12)(c) of this section, <del>and;</del>	7507 7508 7509 7510
(ii) A related entity's gains or losses described in division (I)(12)(b) if the taxpayer's ownership of or use of such intangible property was limited to a period not exceeding nine months and was attributable to a transaction or a series of transactions executed in accordance with the election or elections made by the taxpayer or a related entity pursuant to section 338 of the Internal Revenue Code.	7511 7512 7513 7514 7515 7516 7517
(13) Any adjustment required by section 5733.042 of the Revised Code.	7518 7519

(14) Add any amount claimed as a credit under section 7520  
5733.0611 of the Revised Code to the extent that such amount 7521  
satisfies either of the following: 7522

(a) It was deducted or excluded from the computation of the 7523  
corporation's taxable income before operating loss deduction and 7524  
special deductions as required to be reported for the 7525  
corporation's taxable year under the Internal Revenue Code; 7526

(b) It resulted in a reduction of the corporation's taxable 7527  
income before operating loss deduction and special deductions as 7528  
required to be reported for any of the corporation's taxable years 7529  
under the Internal Revenue Code. 7530

(15) Deduct the amount contributed by the taxpayer to an 7531  
individual development account program established by a county 7532  
department of human services pursuant to sections 329.11 to 329.14 7533  
of the Revised Code for the purpose of matching funds deposited by 7534  
program participants. On request of the tax commissioner, the 7535  
taxpayer shall provide any information that, in the tax 7536  
commissioner's opinion, is necessary to establish the amount 7537  
deducted under division (I)(15) of this section. 7538

(16) Any adjustment required by section 5733.0510 of the 7539  
Revised Code. 7540

(J) Any term used in this chapter has the same meaning as 7541  
when used in comparable context in the laws of the United States 7542  
relating to federal income taxes unless a different meaning is 7543  
clearly required. Any reference in this chapter to the Internal 7544  
Revenue Code includes other laws of the United States relating to 7545  
federal income taxes. 7546

(K) "Financial institution" has the meaning given by section 7547  
5725.01 of the Revised Code but does not include a production 7548  
credit association as described in 85 Stat. 597, 12 U.S.C.A. 2091. 7549

(L)(1) A "qualifying holding company" is any corporation 7550  
satisfying all of the following requirements: 7551

(a) Subject to divisions (L)(2) and (3) of this section, the 7552  
net book value of the corporation's intangible assets is greater 7553  
than or equal to ninety per cent of the net book value of all of 7554  
its assets and at least fifty per cent of the net book value of 7555  
all of its assets represents direct or indirect investments in the 7556  
equity of, loans and advances to, and accounts receivable due from 7557  
related members; 7558

(b) At least ninety per cent of the corporation's gross 7559  
income for the taxable year is attributable to the following: 7560

(i) The maintenance, management, ownership, acquisition, use, 7561  
and disposition of its intangible property, its aircraft the use 7562  
of which is not subject to regulation under 14 C.F.R. part 121 or 7563  
part 135, and any real property described in division (L)(2)(c) of 7564  
this section; 7565

(ii) The collection and distribution of income from such 7566  
property. 7567

(c) The corporation is not a financial institution on the 7568  
last day of the taxable year ending prior to the first day of the 7569  
tax year; 7570

(d) The corporation's related members make a good faith and 7571  
reasonable effort to make timely and fully the adjustments 7572  
required by division (C)(2) of section 5733.05 of the Revised Code 7573  
and to pay timely and fully all uncontested taxes, interest, 7574  
penalties, and other fees and charges imposed under this chapter; 7575

(e) Subject to division (L)(4) of this section, the 7576  
corporation elects to be treated as a qualifying holding company 7577  
for the tax year. 7578

A corporation otherwise satisfying divisions (L)(1)(a) to (e) 7579

of this section that does not elect to be a qualifying holding 7580  
company is not a qualifying holding company for the purposes of 7581  
this chapter. 7582

(2)(a)(i) For purposes of making the ninety per cent 7583  
computation under division (L)(1)(a) of this section, the net book 7584  
value of the corporation's assets shall not include the net book 7585  
value of aircraft or real property described in division 7586  
(L)(1)(b)(i) of this section. 7587

(ii) For purposes of making the fifty per cent computation 7588  
under division (L)(1)(a) of this section, the net book value of 7589  
assets shall include the net book value of aircraft or real 7590  
property described in division (L)(1)(b)(i) of this section. 7591

(b)(i) As used in division (L) of this section, "intangible 7592  
asset" includes, but is not limited to, the corporation's direct 7593  
interest in each pass-through entity only if at all times during 7594  
the corporation's taxable year ending prior to the first day of 7595  
the tax year the corporation's and the corporation's related 7596  
members' combined direct and indirect interests in the capital or 7597  
profits of such pass-through entity do not exceed fifty per cent. 7598  
If the corporation's interest in the pass-through entity is an 7599  
intangible asset for that taxable year, then the distributive 7600  
share of any income from the pass-through entity shall be income 7601  
from an intangible asset for that taxable year. 7602

(ii) If a corporation's and the corporation's related 7603  
members' combined direct and indirect interests in the capital or 7604  
profits of a pass-through entity exceed fifty per cent at any time 7605  
during the corporation's taxable year ending prior to the first 7606  
day of the tax year, "intangible asset" does not include the 7607  
corporation's direct interest in the pass-through entity, and the 7608  
corporation shall include in its assets its proportionate share of 7609  
the assets of any such pass-through entity and shall include in 7610

its gross income its distributive share of the gross income of 7611  
such pass-through entity in the same form as was earned by the 7612  
pass-through entity. 7613

(iii) A pass-through entity's direct or indirect 7614  
proportionate share of any other pass-through entity's assets 7615  
shall be included for the purpose of computing the corporation's 7616  
proportionate share of the pass-through entity's assets under 7617  
division (L)(2)(b)(ii) of this section, and such pass-through 7618  
entity's distributive share of any other pass-through entity's 7619  
gross income shall be included for purposes of computing the 7620  
corporation's distributive share of the pass-through entity's 7621  
gross income under division (L)(2)(b)(ii) of this section. 7622

(c) For the purposes of divisions (L)(1)(b)(i), (1)(b)(ii), 7623  
(2)(a)(i), and (2)(a)(ii) of this section, real property is 7624  
described in division (L)(2)(c) of this section only if all of the 7625  
following conditions are present at all times during the taxable 7626  
year ending prior to the first day of the tax year: 7627

(i) The real property serves as the headquarters of the 7628  
corporation's trade or business, or is the place from which the 7629  
corporation's trade or business is principally managed or 7630  
directed; 7631

(ii) Not more than ten per cent of the value of the real 7632  
property and not more than ten per cent of the square footage of 7633  
the building or buildings that are part of the real property is 7634  
used, made available, or occupied for the purpose of providing, 7635  
acquiring, transferring, selling, or disposing of tangible 7636  
property or services in the normal course of business to persons 7637  
other than related members, the corporation's employees and their 7638  
families, and such related members' employees and their families. 7639

(d) As used in division (L) of this section, "related member" 7640  
has the same meaning as in division (A)(6) of section 5733.042 of 7641

the Revised Code without regard to division (B) of that section. 7642  
7643

(3) The percentages described in division (L)(1)(a) of this 7644  
section shall be equal to the quarterly average of those 7645  
percentages as calculated during the corporation's taxable year 7646  
ending prior to the first day of the tax year. 7647

(4) With respect to the election described in division 7648  
(L)(1)(e) of this section: 7649

(a) The election need not accompany a timely filed report; 7650

(b) The election need not accompany the report; rather, the 7651  
election may accompany a subsequently filed but timely application 7652  
for refund and timely amended report, or a subsequently filed but 7653  
timely petition for reassessment; 7654

(c) The election is not irrevocable; 7655

(d) The election applies only to the tax year specified by 7656  
the corporation; 7657

(e) The corporation's related members comply with division 7658  
(L)(1)(d) of this section. 7659

Nothing in division (L)(4) of this section shall be construed 7660  
to extend any statute of limitations set forth in this chapter. 7661

(M) "Qualifying controlled group" means two or more 7662  
corporations that satisfy the ownership and control requirements 7663  
of division (A) of section 5733.052 of the Revised Code. 7664

(N) "Limited liability company" means any limited liability 7665  
company formed under Chapter 1705. of the Revised Code or under 7666  
the laws of any other state. 7667

(O) "Pass-through entity" means a corporation that has made 7668  
an election under subchapter S of Chapter 1 of Subtitle A of the 7669  
Internal Revenue Code for its taxable year under that code, or a 7670  
partnership, limited liability company, or any other person, other 7671

than an individual, trust, or estate, if the partnership, limited  
liability company, or other person is not classified for federal  
income tax purposes as an association taxed as a corporation.

(P) "Electric company" and "combined company" have the same  
meanings as in section 5727.01 of the Revised Code.

**Sec. 5733.05.** As used in this section, "qualified research"  
means laboratory research, experimental research, and other  
similar types of research; research in developing or improving a  
product; or research in developing or improving the means of  
producing a product. It does not include market research, consumer  
surveys, efficiency surveys, management studies, ordinary testing  
or inspection of materials or products for quality control,  
historical research, or literary research. "Product" as used in  
this paragraph does not include services or intangible property.

The annual report determines the value of the issued and  
outstanding shares of stock of the taxpayer, which under division  
(A) or divisions (B) and (C) of this section is the base or  
measure of the franchise tax liability. Such determination shall  
be made as of the date shown by the report to have been the  
beginning of the corporation's annual accounting period that  
includes the first day of January of the tax year. For the  
purposes of this chapter, the value of the issued and outstanding  
shares of stock of any corporation that is a financial institution  
shall be deemed to be the value as calculated in accordance with  
division (A) of this section. For the purposes of this chapter,  
the value of the issued and outstanding shares of stock of any  
corporation that is not a financial institution shall be deemed to  
be the values as calculated in accordance with divisions (B) and  
(C) of this section.

(A) The total value, as shown by the books of the financial

institution, of its capital, surplus, whether earned or unearned, 7703  
undivided profits, and reserves shall be determined as prescribed 7704  
by section 5733.056 of the Revised Code for tax years 1998 and 7705  
thereafter. 7706

(B) The sum of the corporation's net income during the 7707  
corporation's taxable year, allocated or apportioned to this state 7708  
as prescribed in divisions (B)(1) and (2) of this section, and 7709  
subject to sections 5733.052, 5733.053, 5733.057, ~~and 5733.058,~~ 7710  
5733.059, and 5733.0510 of the Revised Code: 7711

(1) The net income allocated to this state as provided by 7712  
section 5733.051 of the Revised Code. 7713

(2) The amount of Ohio apportioned net income from sources 7714  
other than those allocated under section 5733.051 of the Revised 7715  
Code, which shall be determined by multiplying the corporation's 7716  
net income by a fraction. The numerator of the fraction is the sum 7717  
of the following products: the property factor multiplied by 7718  
twenty, the payroll factor multiplied by twenty, and the sales 7719  
factor multiplied by sixty. The denominator of the fraction is one 7720  
hundred, provided that the denominator shall be reduced by twenty 7721  
if the property factor has a denominator of zero, by twenty if the 7722  
payroll factor has a denominator of zero, and by sixty if the 7723  
sales factor has a denominator of zero. 7724

The property, payroll, and sales factors shall be determined 7725  
as follows: 7726

(a) The property factor is a fraction the numerator of which 7727  
is the average value of the corporation's real and tangible 7728  
personal property owned or rented, and used in the trade or 7729  
business in this state during the taxable year, and the 7730  
denominator of which is the average value of all the corporation's 7731  
real and tangible personal property owned or rented, and used in 7732  
the trade or business everywhere during such year. There shall be 7733

excluded from the numerator and denominator of the property factor 7734  
the original cost of all of the following property within Ohio: 7735  
property with respect to which a "pollution control facility" 7736  
certificate has been issued pursuant to section 5709.21 of the 7737  
Revised Code; property with respect to which an "industrial water 7738  
pollution control certificate" has been issued pursuant to section 7739  
6111.31 of the Revised Code; and property used exclusively during 7740  
the taxable year for qualified research. 7741

(i) Property owned by the corporation is valued at its 7742  
original cost. Property rented by the corporation is valued at 7743  
eight times the net annual rental rate. "Net annual rental rate" 7744  
means the annual rental rate paid by the corporation less any 7745  
annual rental rate received by the corporation from subrentals. 7746

(ii) The average value of property shall be determined by 7747  
averaging the values at the beginning and the end of the taxable 7748  
year, but the tax commissioner may require the averaging of 7749  
monthly values during the taxable year, if reasonably required to 7750  
reflect properly the average value of the corporation's property. 7751

(b) The payroll factor is a fraction the numerator of which 7752  
is the total amount paid in this state during the taxable year by 7753  
the corporation for compensation, and the denominator of which is 7754  
the total compensation paid everywhere by the corporation during 7755  
such year. There shall be excluded from the numerator and the 7756  
denominator of the payroll factor the total compensation paid in 7757  
this state to employees who are primarily engaged in qualified 7758  
research. 7759

(i) Compensation means any form of remuneration paid to an 7760  
employee for personal services. 7761

(ii) Compensation is paid in this state if: (1) the 7762  
recipient's service is performed entirely within this state, (2) 7763  
the recipient's service is performed both within and without this 7764

state, but the service performed without this state is incidental 7765  
to the recipient's service within this state, (3) some of the 7766  
service is performed within this state and either the base of 7767  
operations, or if there is no base of operations, the place from 7768  
which the service is directed or controlled is within this state, 7769  
or the base of operations or the place from which the service is 7770  
directed or controlled is not in any state in which some part of 7771  
the service is performed, but the recipient's residence is in this 7772  
state. 7773

(iii) Compensation is paid in this state to any employee of a 7774  
common or contract motor carrier corporation, who performs the 7775  
employee's regularly assigned duties on a motor vehicle in more 7776  
than one state, in the same ratio by which the mileage traveled by 7777  
such employee within the state bears to the total mileage traveled 7778  
by such employee everywhere during the taxable year. 7779

(c) The Except as provided in section 5733.059 of the Revised 7780  
Code, the sales factor is a fraction the numerator of which is the 7781  
total sales in this state by the corporation during the taxable 7782  
year, and the denominator of which is the total sales by the 7783  
corporation everywhere during such year. In determining the 7784  
numerator and denominator of the sales factor, receipts from the 7785  
sale or other disposal of a capital asset or an asset described in 7786  
section 1231 of the Internal Revenue Code shall be eliminated. 7787  
Also, in determining the numerator and denominator of the sales 7788  
factor, in the case of a reporting corporation owning at least 7789  
eighty per cent of the issued and outstanding common stock of one 7790  
or more ~~public utilities or insurance companies or public~~ 7791  
utilities, except an electric company, or owning at least 7792  
twenty-five per cent of the issued and outstanding common stock of 7793  
one or more financial institutions, receipts received by the 7794  
reporting corporation from such utilities, insurance companies, 7795  
and financial institutions shall be eliminated. 7796

For the purpose of this section and section 5733.03 of the Revised Code, sales of tangible personal property are in this state where such property is received in this state by the purchaser. In the case of delivery of tangible personal property by common carrier or by other means of transportation, the place at which such property is ultimately received after all transportation has been completed shall be considered as the place at which such property is received by the purchaser. Direct delivery in this state, other than for purposes of transportation, to a person or firm designated by a purchaser constitutes delivery to the purchaser in this state, and direct delivery outside this state to a person or firm designated by a purchaser does not constitute delivery to the purchaser in this state, regardless of where title passes or other conditions of sale.

Sales Except as provided in section 5733.059 of the Revised Code, sales, other than sales of tangible personal property, are in this state if either:

(i) The income-producing activity is performed solely in this state;

(ii) The income-producing activity is performed both within and without this state and a greater proportion of the income-producing activity is performed within this state than in any other state, based on costs of performance.

(d) If the allocation and apportionment provisions of division (B) of this section do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may request, which request must be in writing and must accompany the report, timely filed petition for reassessment, or timely filed amended report, or the tax commissioner may require, in respect to all or any part of the taxpayer's allocated or apportioned base, if reasonable, any one or more of the following:

(i) Separate accounting;	7828
(ii) The exclusion of any one or more of the factors;	7829
(iii) The inclusion of one or more additional factors <del>which</del> <u>that</u> will fairly represent the taxpayer's allocated or apportioned base in this state.	7830 7831 7832
An alternative method will be effective only with approval by the tax commissioner.	7833 7834
Nothing in this section shall be construed to extend any statute of limitations set forth in this chapter.	7835 7836
(C)(1) Subject to divisions (C)(2) and (3) of this section, the total value, as shown on the books of each corporation that is not a qualified holding company, of the net book value of a corporation's assets less the net carrying value of its liabilities. For the purposes of determining that total value, any reserves shown on the corporation's books shall be considered liabilities or contra assets, except for any reserves that are deemed appropriations of retained earnings under generally accepted accounting principles.	7837 7838 7839 7840 7841 7842 7843 7844 7845
(2)(a) If, on the last day of the taxpayer's taxable year preceding the tax year, the taxpayer is a related member to a corporation that elects to be a qualifying holding company for the tax year beginning after the last day of the taxpayer's taxable year, or if, on the last day of the taxpayer's taxable year preceding the tax year, a corporation that elects to be a qualifying holding company for the tax year beginning after the last day of the taxpayer's taxable year is a related member to the taxpayer, then the taxpayer's total value shall be adjusted by the qualifying amount. Except as otherwise provided under division (C)(2)(b) of this section, "qualifying amount" means the amount that, when added to the taxpayer's total value, and when subtracted from the net carrying value of the taxpayer's	7846 7847 7848 7849 7850 7851 7852 7853 7854 7855 7856 7857 7858

liabilities computed without regard to division (C)(2) of this 7859  
section, or when subtracted from the taxpayer's total value and 7860  
when added to the net carrying value of the taxpayer's liabilities 7861  
computed without regard to division (C)(2) of this section, 7862  
results in the taxpayer's debt-to-equity ratio equaling the 7863  
debt-to-equity ratio of the qualifying controlled group on the 7864  
last day of the taxable year ending prior to the first day of the 7865  
tax year computed on a consolidated basis in accordance with 7866  
general accepted accounting principles. For the purposes of 7867  
division (C)(2)(a) of this section, the corporation's total value, 7868  
after the adjustment required by that division, shall not exceed 7869  
the net book value of the corporation's assets. 7870

(b)(i) The amount added to the taxpayer's total value and 7871  
subtracted from the net carrying value of the taxpayer's 7872  
liabilities shall not exceed the amount of the net carrying value 7873  
of the taxpayer's liabilities owed to the taxpayer's related 7874  
members. 7875

(ii) A liability owed to the taxpayer's related members 7876  
includes, but is not limited to, any amount that the corporation 7877  
owes to a person that is not a related member if the corporation's 7878  
related member or related members in whole or in part guarantee 7879  
any portion or all of that amount, or pledge, hypothecate, 7880  
mortgage, or carry out any similar transactions to secure any 7881  
portion or all of that amount. 7882

(3) The base upon which the tax is levied under division (C) 7883  
of section 5733.06 of the Revised Code shall be computed by 7884  
multiplying the amount determined under divisions (C)(1) and (2) 7885  
of this section by the fraction determined under divisions 7886  
(B)(2)(a) to (c) of this section and, if applicable, divisions 7887  
(B)(2)(d)(ii) to (iv) of this section but without regard to 7888  
section 5733.052 of the Revised Code. 7889

(4) For purposes of division (C) of this section, "related member" has the same meaning as in division (A)(6) of section 5733.042 of the Revised Code without regard to division (B) of that section.

**Sec. 5733.051.** ~~Net~~ Subject to section 5733.0510 of the Revised Code, net income of a corporation subject to the tax imposed by section 5733.06 of the Revised Code shall be allocated and apportioned to this state as follows:

(A) Net rents and royalties from real property located in this state are allocable to this state;

(B) Net rents and royalties from tangible personal property, to the extent such property is utilized in this state, are allocable to this state if the taxpayer is otherwise subject to the tax imposed by section 5733.06 of the Revised Code;

(C) Capital gains and losses from the sale or other disposition of real property located in this state are allocable to this state;

(D) Capital gains and losses from the sale or other disposition of tangible personal property are allocable to this state if the property had a situs in this state at the time of sale and the taxpayer is otherwise subject to the tax imposed by section 5733.06 of the Revised Code;

(E) Capital gains and losses from the sale or other disposition of intangible property which may produce income enumerated in division (F) of this section are allocable on the same basis as set forth in such division. Capital gains and losses from the sale or other disposition of all other intangible property are apportionable under division (H) of this section.

(F) Dividends or distributions which are not otherwise deducted or excluded from net income, other than dividends or

distributions from a domestic international sales corporation, are 7920  
allocable to this state in accordance with the ratio of the book 7921  
value of the physical assets of the payor of the dividends or 7922  
distributions located in this state divided by the book value of 7923  
the total physical assets of the payor located everywhere. 7924  
Dividends or distributions received from a domestic international 7925  
sales corporation, or from a payor the location of whose physical 7926  
assets is unavailable to the taxpayer, are apportionable under 7927  
division (H) of this section. 7928

(G) Patent and copyright royalties and technical assistance 7929  
fees, not representing the principal source of gross receipts of 7930  
the taxpayer, are allocable to this state to the extent that the 7931  
activity of the payor thereof giving rise to the payment takes 7932  
place in this state. If the location of the payor's activity is 7933  
unavailable to the taxpayer, such royalties and fees are 7934  
apportionable under division (H) of this section. 7935

(H) Any other net income, from sources other than those 7936  
enumerated in divisions (A) to (G) of this section, is 7937  
apportionable to this state on the basis of the mechanism provided 7938  
in division (B)(2) of section 5733.05 of the Revised Code. 7939

**Sec. 5733.057.** As used in this section, "adjusted qualifying 7940  
amount" has the same meaning as in section 5733.40 of the Revised 7941  
Code. 7942

Except as otherwise provided in divisions (A) and (B) of 7943  
section 5733.401 and in sections 5733.058 and 5747.401 of the 7944  
Revised Code, in making ~~any computation~~ all apportionment, 7945  
allocation, income, gain, loss, deduction, tax, and credit 7946  
computations under this chapter and under sections ~~5733.042,~~ 7947  
~~5733.05, 5733.051, 5733.052, 5733.053, 5733.40, 5733.41, 5747.41,~~ 7948  
and 5747.43 of the Revised Code, each person shall include in that 7949  
person's items of adjusted qualifying amounts, allocable income or 7950

loss, if any, apportionable income or loss, property, 7951  
compensation, and sales, the person's entire distributive share or 7952  
proportionate share of the items of adjusted qualifying amounts, 7953  
allocable income or loss, apportionable income or loss, property, 7954  
compensation, and sales of any pass-through entity in which the 7955  
person has a direct or indirect ownership interest at any time 7956  
during the person's taxable year. A pass-through entity's direct 7957  
or indirect distributive share or proportionate share of any other 7958  
pass-through entity's items of adjusted qualifying amounts, 7959  
allocable income or loss, apportionable income or loss, property, 7960  
compensation, and sales shall be included for the purposes of 7961  
computing the person's distributive share or proportionate share 7962  
of the pass-through entity's items of adjusted qualifying amounts, 7963  
allocable income or loss, apportionable income or loss, property, 7964  
compensation, and sales under this section. Those items shall be 7965  
in the same form as was recognized by the pass-through entity. 7966

**Sec. 5733.059. (A) As used in this section:** 7967

(1) "Customer" means a person who purchases electricity for 7968  
consumption either by that person or by the person's related 7969  
member and the electricity is not for resale directly or 7970  
indirectly to any person other than a related member. 7971

(2) "Related member" has the same meaning as in division 7972  
(a)(6) of section 5733.042 of the Revised Code without regard to 7973  
division (B) of that section. 7974

(B) Except as provided in division (C) of this section, this 7975  
division applies only to sales of electric transmission and 7976  
distribution services. For purposes of sections 5733.05 and 7977  
5747.21 of the Revised Code: 7978

(1) sales of the transmission of electricity are in this 7979  
state in proportion to the ratio of the wire MILEAGE of the 7980  
taxpayer's transmission lines located in this state divided by the 7981

wire mileage of the taxpayer's transmission lines located 7982  
everywhere. Transmission wire mileage shall be weighted for the 7983  
VOLTAGE capacity of each line. 7984

(2) sales of the distribution of electricity are in this 7985  
state in proportion to the ratio of the wire mileage of the 7986  
taxpayer's distribution lines located in this state divided by the 7987  
wire mileage of the taxpayer's DISTRIBUTION lines located 7988  
everywhere. Distribution wire mileage shall not be weighted for 7989  
the voltage capacity of each line. 7990

(C) This division applies only to a person that has 7991  
TRANSMISSION or distribution lines in this state. If a contract 7992  
for the sale of electricity includes the seller's or the seller's 7993  
related member's obligation to transmit or distribute the 7994  
electricity and if the sales contract separately identifies the 7995  
price charged for the transmission or distribution of electricity, 7996  
the price charged for the transmission and distribution of 7997  
electricity shall be apportioned to this state in accordance with 7998  
division (B) of this section. Any remaining portion of the sales 7999  
price of the electricity shall be sitused to this state in 8000  
accordance with division (D) of this section. 8001

If the sales contract does not separately identify the price 8002  
charged for the transmission or distribution of electricity, the 8003  
sales price of the electricity shall be sitused to this state in 8004  
accordance with division (D) of this section. 8005

(D) Any person who makes a sale of electricity shall situs 8006  
the following to this state: 8007

(1) A sale of electricity directly or indirectly to a 8008  
customer to the extent the customer consumes the electricity in 8009  
this state; 8010

(2) A sale of electricity directly or indirectly to a related 8011  
member where the related member directly or indirectly sells 8012

electricity to a customer to the extent the customer consumes the 8013  
electricity in this state; 8014

(3) A sale of electricity if the seller or the seller's 8015  
related member directly or indirectly delivers the electricity to 8016  
a location in this state or directly or indirectly delivers the 8017  
electricity exactly to the border of this state and another state; 8018

(4) A sale of electricity if the seller or the seller's 8019  
related member directly or indirectly directs the delivery of the 8020  
electricity to a location in this state or directly or indirectly 8021  
directs the delivery of the electricity exactly to the border of 8022  
this state and another state. 8023

(E) If the situsing provisions of this section do not fairly 8024  
represent the extent of the taxpayer's or the taxpayer's related 8025  
member's activity in this state, the taxpayer may request, or the 8026  
tax COMMISSIONER may require, in respect to all or part of a 8027  
taxpayer's or related member's sales, if reasonable, any of the 8028  
following: 8029

(1) Separate accounting; 8030

(2) The exclusion of one or more additional situsing factors 8031  
that will fairly represent the taxpayer's and the related member's 8032  
sales in this state; 8033

(3) The inclusion of one or more additional situsing factors 8034  
that will fairly represent the taxpayer's and the related member's 8035  
sales in this state. 8036

The taxpayer's request shall be in writing and shall be filed 8037  
with the report required by section 5733.02 of the Revised Code, a 8038  
timely filed petition for reassessment, or a timely filed amended 8039  
report. An alternative situsing method shall be effective with the 8040  
approval of the tax commissioner. 8041

Nothing in this section shall be construed to extend any 8042

statute of limitations set forth in this chapter. 8043

(F) If the situsing provisions of this section do not fairly represent activity in this state, the tax commissioner may promulgate rules to situs sales using a methodology that fairly reflects sales in this state. 8044  
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(G) Notwithstanding sections 5733.111 and 5747.131 of the Revised Code to the contrary, a person situsing a sale outside this state has the burden to establish by a preponderance of the evidence that the doctrines enumerated in those sections do not apply. 8048  
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**Sec. 5733.0510.** (A) As used in this section: 8053

(1) "qualifying taxpayer" means either of the following: 8054

(a) a person that is an electric company or a combined company, but only if the person was subject to and paid the tax imposed by section 5727.30 of the Revised Code for gross receipts received during the period of May 1, 2000, through April 30, 2001; 8055  
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(b) any taxpayer not described in division (A)(1)(a) of this section if a person described in division (A)(1)(a) of this section transfers all or a portion of its assets or equity directly or indirectly to the taxpayer, the transfer occurred as part of an entity organization or reorganization, or subsequent entity organization or reorganization, and the gain or loss with respect to the transfer is not recognized in whole or in part for federal income tax purposes under the Internal Revenue Code on account of a transfer as part of an equity organization or reorganization, or subsequent organization or reorganization. 8059  
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(2) "qualifying taxable event" means any event resulting in the recognition for federal income tax purposes of gain or loss in connection with any direct or indirect sale, direct or indirect exchange, direct or indirect transfer, direct or indirect 8069  
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retirement, or any other direct or indirect disposition, of any  
qualifying asset.

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(3) "qualifying asset" means any asset shown on the  
qualifying taxpayer's books and records on December 31, 2000, in  
accordance with generally accepted accounting principles,  
including the cost of, or any portion of the cost of, any asset  
acquired after December 31, 2000, where such asset was acquired as  
a result of a tax-free or tax-deferred exchange of a qualifying  
asset.

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(4) "Net Income" has the same meaning as in division (I) of  
section 5733.04 of the Revised Code.

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(5) "book-tax differential" means the difference, if any,  
between an asset's net book value shown on the qualifying  
taxpayer's books and records on December 31, 2000, in accordance  
with generally accepted accounting principles, and such asset's  
adjusted basis on December 31, 2000. The book-tax differential may  
be a negative number.

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(B)(1) If, with respect to a qualifying asset, there occurs a  
qualifying taxable event and if the gain or loss recognized is a  
type of gain or loss that is apportioned as provided in division  
(B) of section 5733.05 of the Revised Code, the qualifying  
taxpayer shall reduce its net income by the amount of the book-tax  
differential for that qualifying asset, if the book-tax  
differential is positive, and the qualifying taxpayer shall  
increase its net income by the absolute value of the amount of the  
book-tax differential for that qualifying asset, if the book-tax  
differential is negative.

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(2) If, with respect to a qualifying asset, there occurs a  
qualifying taxable event and if the gain or loss recognized is a  
type of gain or loss that is allocated to this state as provided  
in section 5733.051 of the Revised Code, the qualifying taxpayer

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shall reduce its income allocated to this state by the amount of 8104  
the book-tax differential for that qualifying asset, if the 8105  
book-tax differential is positive, and the qualifying taxpayer 8106  
shall increase its income allocated to this state by the absolute 8107  
value of the amount of the book-tax differential for that 8108  
qualifying asset, if the book-tax differential is negative. 8109

(3) If, with respect to a qualifying taxable event, the 8110  
person uses the installment sales method to recognize gain over 8111  
more than one year, the adjustments required by divisions (B)(1) 8112  
and (2) of this section shall not be made entirely in the tax year 8113  
immediately following the taxable year in which the qualifying 8114  
taxable event occurred but shall be made in part in such tax year 8115  
and in subsequent tax years in proportion to the gain recognized 8116  
for federal income tax purposes in each corresponding taxable 8117  
year. 8118

(C) Nothing in division (B) of this section shall be 8119  
construed to allow for an adjustment more than once with respect 8120  
to the same qualifying asset. 8121

(D) Nothing in this section shall be construed to allow more 8122  
than one corporation to claim an adjustment with respect to the 8123  
same qualifying asset. 8124

**Sec. 5733.06.** The tax hereby charged each corporation subject 8125  
to this chapter shall be the greater of the sum of divisions (A) 8126  
and (B) of this section, after the reduction, if any, provided by 8127  
division (J) of this section, or division (C) of this section, 8128  
~~whichever is greater~~ after the reduction, if any, provided by 8129  
division (J) of this section, except that the tax hereby charged 8130  
each financial institution subject to this chapter shall be the 8131  
amount computed under division (D) of this section: 8132

(A) Except as set forth in division (F) of this section, five 8133  
and one-tenth per cent upon the first fifty thousand dollars of 8134

the value of the taxpayer's issued and outstanding shares of stock 8135  
as determined under division (B) of section 5733.05 of the Revised 8136  
Code; 8137

(B) Except as set forth in division (F) of this section, 8138  
eight and one-half per cent upon the value so determined in excess 8139  
of fifty thousand dollars; or 8140

(C) Except as otherwise provided under division (G) of this 8141  
section, four mills times that portion of the value of the issued 8142  
and outstanding shares of stock as determined under division (C) 8143  
of section 5733.05 of the Revised Code. For the purposes of 8144  
division (C) of this section, division (C)(2) of section 5733.065, 8145  
and division (C) of section 5733.066 of the Revised Code, the 8146  
value of the issued and outstanding shares of stock of a qualified 8147  
holding company is zero. 8148

(D) The tax charged each financial institution subject to 8149  
this chapter shall be that portion of the value of the issued and 8150  
outstanding shares of stock as determined under division (A) of 8151  
section 5733.05 of the Revised Code, multiplied by the following 8152  
amounts: 8153

(1) For tax years prior to the 1999 tax year, fifteen mills; 8154

(2) For the 1999 tax year, fourteen mills; 8155

(3) For tax year 2000 and thereafter, thirteen mills. 8156

(E) No tax shall be charged from any corporation ~~which~~ that 8157  
has been adjudicated bankrupt, or for which a receiver has been 8158  
appointed, or ~~which~~ that has made a general assignment for the 8159  
benefit of creditors, except for the portion of the then current 8160  
tax year during which the tax commissioner finds such corporation 8161  
had the power to exercise its corporate franchise unimpaired by 8162  
such proceedings or act. The minimum payment for all corporations 8163  
shall be fifty dollars. 8164

The tax charged to corporations under this chapter for the 8165  
privilege of engaging in business in this state, which is an 8166  
excise tax levied on the value of the issued and outstanding 8167  
shares of stock, shall in no manner be construed as prohibiting or 8168  
otherwise limiting the powers of municipal corporations, joint 8169  
economic development zones created under section 715.691 of the 8170  
Revised Code, and joint economic development districts created 8171  
under section 715.70 or 715.71 or sections 715.72 to 715.81 of the 8172  
Revised Code in this state to impose an income tax on the income 8173  
of such corporations. 8174

(F) If two or more taxpayers satisfy the ownership or control 8175  
requirements of division (A) of section 5733.052 of the Revised 8176  
Code, each such taxpayer shall substitute "the taxpayer's pro-rata 8177  
amount" for "fifty thousand dollars" in divisions (A) and (B) of 8178  
this section. For purposes of this division, "the taxpayer's 8179  
pro-rata amount" is an amount that, when added to the other such 8180  
taxpayers' pro-rata amounts, does not exceed fifty thousand 8181  
dollars. For the purpose of making that computation, the 8182  
taxpayer's pro-rata amount shall not be less than zero. Nothing in 8183  
this division derogates from or eliminates the requirement to make 8184  
the alternative computation of tax under division (C) of this 8185  
section. 8186

(G) The tax liability of any corporation under division (C) 8187  
of this section shall not exceed one hundred fifty thousand 8188  
dollars. 8189

(H)(1) For the purposes of division (H) of this section, 8190  
"exiting corporation" means a corporation that satisfies all of 8191  
the following conditions: 8192

(a) The corporation had nexus with or in this state under the 8193  
Constitution of the United States during any portion of a calendar 8194  
year; 8195

(b) The corporation was not a taxpayer on the first day of 8196  
January immediately following that calendar year; 8197

(c) The corporation was not a financial institution on the 8198  
first day of January immediately following that calendar year; 8199

(d) The corporation was not a transferor as defined in 8200  
section 5733.053 of the Revised Code during any portion of that 8201  
calendar year; 8202

(e) During any portion of that calendar year, or any portion 8203  
of the immediately preceding calendar year, the corporation had 8204  
net income that was not included in a report filed pursuant to 8205  
section 5733.02, 5733.021, 5733.03, or 5733.031 of the Revised 8206  
Code; 8207

(f) The corporation would have been subject to the tax 8208  
computed under divisions (A), (B), (C), (F), and (G) of this 8209  
section if the corporation is assumed to have had nexus with or in 8210  
this state under the Constitution of the United States on the 8211  
first day of January immediately following the calendar year 8212  
referred to in division (H)(1)(a) of this section. 8213

(2) For the purposes of division (H) of this section, 8214  
"unreported net income" means net income that was not previously 8215  
included in a report filed pursuant to section 5733.02, 5733.021, 8216  
5733.03, or 5733.031 of the Revised Code and that was realized or 8217  
recognized during the calendar year referred to in division (H)(1) 8218  
of this section or the immediately preceding calendar year. 8219

(3) Each exiting corporation shall pay a tax computed by 8220  
first allocating and apportioning the unreported net income 8221  
pursuant to division (B) of section 5733.05 and ~~sections~~ section 8222  
5733.051 and, if applicable, section 5733.052 of the Revised Code. 8223  
The exiting corporation then shall compute the tax due on its 8224  
unreported net income allocated and apportioned to this state by 8225  
applying divisions (A), (B), and (F) of this section to that 8226

income. 8227

(4) Divisions (C) and (G) of this section, division (D)(2) of 8228  
section 5733.065, and division (C) of section 5733.066 of the 8229  
Revised Code do not apply to an exiting corporation, but exiting 8230  
corporations are subject to every other provision of this chapter. 8231

(5) Notwithstanding sections 5733.02, 5733.021, and 5733.03 8232  
of the Revised Code to the contrary, each exiting corporation 8233  
shall report and pay the tax due under division (H) of this 8234  
section on or before the thirty-first day of May immediately 8235  
following the calendar year referred to in division (H)(1)(a) of 8236  
this section. The exiting corporation shall file that report on 8237  
the form most recently prescribed by the tax commissioner for the 8238  
purposes of complying with sections 5733.02 and 5733.03 of the 8239  
Revised Code. Upon request by the corporation, the tax 8240  
commissioner may extend the date for filing the report. 8241

(6) The tax commissioner may adopt rules governing division 8242  
(H) of this section. 8243

(I) Any reference in the Revised Code to "the tax imposed by 8244  
section 5733.06 of the Revised Code" or "the tax due under section 8245  
5733.06 of the Revised Code" includes the taxes imposed under 8246  
sections 5733.065 and 5733.066 of the Revised Code. 8247

(J)(1) Division (J) of this section applies solely to a 8248  
combined company. Section 5733.057 of the Revised Code shall apply 8249  
when calculating the adjustments required by division (J) of this 8250  
section. 8251

(2) Subject to division (J)(4) of this section, the total tax 8252  
calculated in divisions (A) and (B) of this section shall be 8253  
reduced by an amount calculated by multiplying such tax by a 8254  
fraction, the numerator of which is the total taxable gross 8255  
receipts attributed to providing public utility activity other 8256  
than as an electric company under section 5727.03 of the Revised 8257

Code for the year upon which the taxable gross receipts are 8258  
measured immediately preceding the tax year, and the denominator 8259  
of which is the total gross receipts from all sources for the year 8260  
upon which the taxable gross receipts are measured immediately 8261  
preceding the tax year. Nothing herein shall be construed to 8262  
exclude from the denominator any item of income described in 8263  
section 5733.051 of the Revised Code. 8264

(3) Subject to division (J)(4) of this section, the total tax 8265  
calculated in division (C) of this section shall be reduced by an 8266  
amount calculated by multiplying such tax by the fraction 8267  
described in division (J)(2) of this section. 8268

(4) In no event shall the reduction provided by division 8269  
(J)(2) or (J)(3) of this section exceed the amount of the excise 8270  
tax paid in accordance with section 5727.38 of the Revised Code, 8271  
for the year upon which the taxable gross receipts are measured 8272  
immediately preceding the tax year. 8273

**Sec. 5733.09.** (A) An incorporated company, whether foreign or 8274  
domestic, owning and operating a public utility in this state, and 8275  
~~as such~~ required by law to file reports with the tax commissioner 8276  
and to pay an excise tax upon its gross receipts, and insurance, 8277  
fraternal, beneficial, bond investment, and other corporations 8278  
required by law to file annual reports with the superintendent of 8279  
insurance and dealers in intangibles, the shares of which are, or 8280  
the capital or ownership in capital employed by such dealer is, 8281  
subject to the taxes imposed by section 5707.03 of the Revised 8282  
Code, shall not be subject to this chapter, except for sections 8283  
5733.031, 5733.042, 5733.05, 5733.052, 5733.053, 5733.069, 8284  
5733.0611, 5733.40, 5733.41, and sections 5747.40 to 5747.453 of 8285  
the Revised Code. An electric company subject to the filing 8286  
requirements of section 5727.08 of the Revised Code or otherwise 8287  
having nexus with or in this state under the Constitution of the 8288

United States, or any other corporation having any gross receipts 8289  
directly attributable to providing public utility service as an 8290  
electric company or having any property directly attributable to 8291  
providing public utility service as an electric company, is 8292  
subject to this chapter. 8293

(B) A corporation that has made an election under subchapter 8294  
S, chapter one, subtitle A, of the Internal Revenue Code for its 8295  
taxable year under such code is exempt from the tax imposed by 8296  
section 5733.06 of the Revised Code that is based on that taxable 8297  
year. 8298

A corporation that makes such an election shall file a notice 8299  
of such election with the tax commissioner between the first day 8300  
of January and the thirty-first day of March of each tax year that 8301  
the election is in effect. 8302

(C) An entity defined to be a "real estate investment trust" 8303  
by section 856 of the Internal Revenue Code, a "regulated 8304  
investment company" by section 851 of the Internal Revenue Code, 8305  
or a "real estate mortgage investment conduit" by section 860D of 8306  
the Internal Revenue Code, is exempt from taxation for a tax year 8307  
as a corporation under this chapter and is exempt from taxation 8308  
for a return year as a dealer in intangibles under Chapter 5725. 8309  
of the Revised Code if it provides the report required by this 8310  
division. By the last day of March of the tax or return year the 8311  
entity shall submit to the tax commissioner the name of the entity 8312  
with a list of the names, addresses, and social security or 8313  
federal identification numbers of all investors, shareholders, and 8314  
other similar investors who owned any interest or invested in the 8315  
entity during the preceding calendar year. The commissioner may 8316  
extend the date by which the report must be submitted for 8317  
reasonable cause shown by the entity. The commissioner may 8318  
prescribe the form of the report required for exemption under this 8319

division. 8320

(D)(1) As used in this division: 8321

(a) "Commercial printer" means a person primarily engaged in 8322  
the business of commercial printing. However, "commercial printer" 8323  
does not include a person primarily engaged in the business of 8324  
providing duplicating services using photocopy machines or other 8325  
xerographic processes. 8326

(b) "Commercial printing" means printing by one or more 8327  
common processes such as letterpress, lithography, gravure, 8328  
screen, or digital imaging, and includes related activities such 8329  
as binding, platemaking, prepress operation, cartographic 8330  
composition, and typesetting. 8331

(c) "Contract for printing" means an oral or written 8332  
agreement for the purchase of printed materials produced by a 8333  
commercial printer. 8334

(d) "Intangible property located at the premises of a 8335  
commercial printer" means intangible property of any kind owned or 8336  
licensed by a customer of the commercial printer and furnished to 8337  
the commercial printer for use in commercial printing. 8338

(e) "Printed material" means any tangible personal property 8339  
produced or processed by a commercial printer pursuant to a 8340  
contract for printing. 8341

(f) "Related member" has the same meaning as in division 8342  
(A)(6) of section 5733.042 of the Revised Code without regard to 8343  
division (B) of that section. 8344

(2) Except as provided in divisions (D)(3) and (4) of this 8345  
section, a corporation not otherwise subject to the tax imposed by 8346  
section 5733.06 of the Revised Code for a tax year does not become 8347  
subject to that tax for the tax year solely by reason of any one 8348  
or more of the following occurring in this state during the 8349

taxable year that ends immediately prior to the tax year:	8350
(a) Ownership by the corporation or a related member of the corporation of tangible personal property or intangible property located during all or any portion of the taxable year or on the first day of the tax year at the premises of a commercial printer with which the corporation or the corporation's related member has a contract for printing with respect to such property or the premises of a commercial printer's related member with which the corporation or the corporation's related member has a contract for printing with respect to such property;	8351 8352 8353 8354 8355 8356 8357 8358 8359
(b) Sales by the corporation or a related member of the corporation of property produced at and shipped or distributed from the premises of a commercial printer with which the corporation or the corporation's related member has a contract for printing with respect to such property or the premises of a commercial printer's related member with which the corporation or the corporation's related member has a contract for printing with respect to such property;	8360 8361 8362 8363 8364 8365 8366 8367
(c) Activities of employees, officers, agents, or contractors of the corporation or a related member of the corporation on the premises of a commercial printer with which the corporation or the corporation's related member has a contract for printing or the premises of a commercial printer's related member with which the corporation or the corporation's related member has a contract for printing, where the activities are directly and solely related to quality control, distribution, or printing services, or any combination thereof, performed by or at the direction of the commercial printer or the commercial printer's related member.	8368 8369 8370 8371 8372 8373 8374 8375 8376 8377 8378
(3) The exemption under this division does not apply for a taxable year to any corporation having on the first day of January	8379 8380

of the tax year or at any time during the taxable year ending 8381  
immediately preceding the first day of January of the tax year a 8382  
related member which, on the first day of January of the tax year 8383  
or during any portion of such taxable year of the corporation, has 8384  
nexus in or with this state under the Constitution of the United 8385  
States or holds a certificate of compliance with the laws of this 8386  
state authorizing it to do business in this state. 8387

(4) With respect to allowing the exemption under this 8388  
division, the tax commissioner shall be guided by the doctrines of 8389  
"economic reality," "sham transaction," "step transaction," and 8390  
"substance over form." A corporation shall bear the burden of 8391  
establishing by a preponderance of the evidence that any 8392  
transaction giving rise to an exemption claimed under this 8393  
division did not have as a principal purpose the avoidance of any 8394  
portion of the tax imposed by section 5733.06 of the Revised Code. 8395

Application of the doctrines listed in division (D)(4) of 8396  
this section is not limited to this division. 8397

**Sec. 5733.33.** (A) As used in this section: 8398

(1) "Manufacturing machinery and equipment" means engines and 8399  
machinery, and tools and implements, of every kind used, or 8400  
designed to be used, in refining and manufacturing. "Manufacturing 8401  
machinery and equipment" does not include property acquired after 8402  
December 31, 1999, that is used: 8403

(a) For the transmission and distribution of electricity; 8404

(b) For the generation of electricity if fifty per cent or 8405  
more of the electricity that the property generates is consumed, 8406  
during the one-hundred-twenty-month period commencing with the 8407  
date the property is placed in service, by persons that are not 8408  
related members to the person who generates the electricity. 8409

(2) "New manufacturing machinery and equipment" means 8410

manufacturing machinery and equipment, the original use in this state of which commences with the taxpayer or with a partnership of which the taxpayer is a partner. "New manufacturing machinery and equipment" does not include property acquired after December 31, 1999, that is used:

(a) For the transmission and distribution of electricity;

(b) For the generation of electricity if fifty per cent or more of the electricity that the property generates is consumed, during the one-hundred-twenty-month period commencing with the date the property is placed in service, by persons that are not related members to the person who generates the electricity.

(3)(a) "Purchase" has the same meaning as in section 179(d)(2) of the Internal Revenue Code.

(b) Any purchase, for purposes of this section, is considered to occur at the time the agreement to acquire the property to be purchased becomes binding.

(c) Notwithstanding section 179(d) of the Internal Revenue Code, a taxpayer's direct or indirect acquisition of new manufacturing machinery and equipment is not purchased on or after July 1, 1995, if the taxpayer, or a person whose relationship to the taxpayer is described in subparagraphs (A), (B), or (C) of section 179(d)(2) of the Internal Revenue Code, had directly or indirectly entered into a binding agreement to acquire the property at any time prior to July 1, 1995.

(4) "Qualifying period" means the period that begins July 1, 1995, and ends December 31, 2000.

(5) "County average new manufacturing machinery and equipment investment" means either of the following:

(a) The average annual cost of new manufacturing machinery and equipment purchased for use in the county during baseline

years, in the case of a taxpayer or partnership that was in 8441  
existence for more than one year during baseline years. 8442

(b) Zero, in the case of a taxpayer or partnership that was 8443  
not in existence for more than one year during baseline years. 8444

(6) "Partnership" includes a limited liability company formed 8445  
under Chapter 1705. of the Revised Code or under the laws of any 8446  
other state, provided that the company is not classified for 8447  
federal income tax purposes as an association taxable as a 8448  
corporation. 8449

(7) "Partner" includes a member of a limited liability 8450  
company formed under Chapter 1705. of the Revised Code or under 8451  
the laws of any other state, provided that the company is not 8452  
classified for federal income tax purposes as an association 8453  
taxable as a corporation. 8454

(8) "Distressed area" means either a municipal corporation 8455  
that has a population of at least fifty thousand or a county that 8456  
meets two of the following criteria of economic distress, or a 8457  
municipal corporation the majority of the population of which is 8458  
situated in such a county: 8459

(a) Its average rate of unemployment, during the most recent 8460  
five-year period for which data are available, is equal to at 8461  
least one hundred twenty-five per cent of the average rate of 8462  
unemployment for the United States for the same period; 8463

(b) It has a per capita income equal to or below eighty per 8464  
cent of the median county per capita income of the United States 8465  
as determined by the most recently available figures from the 8466  
United States census bureau; 8467

(c)(i) In the case of a municipal corporation, at least 8468  
twenty per cent of the residents have a total income for the most 8469  
recent census year that is below the official poverty line; 8470

(ii) In the case of a county, in intercensal years, the county has a ratio of transfer payment income to total county income equal to or greater than twenty-five per cent.

(9) "Eligible area" means a distressed area, a labor surplus area, an inner city area, or a situational distress area.

(10) "Inner city area" means, in a municipal corporation that has a population of at least one hundred thousand and does not meet the criteria of a labor surplus area or a distressed area, targeted investment areas established by the municipal corporation within its boundaries that are comprised of the most recent census block tracts that individually have at least twenty per cent of their population at or below the state poverty level or other census block tracts contiguous to such census block tracts.

(11) "Labor surplus area" means an area designated as a labor surplus area by the United States department of labor.

(12) "Official poverty line" has the same meaning as in division (A) of section 3923.51 of the Revised Code.

(13) "Situational distress area" means a county or a municipal corporation that has experienced or is experiencing a closing or downsizing of a major employer, that will adversely affect the county's or municipal corporation's economy. In order to be designated as a situational distress area for a period not to exceed thirty-six months, the county or municipal corporation may petition the director of development. The petition shall include written documentation that demonstrates all of the following adverse effects on the local economy:

(a) The number of jobs lost by the closing or downsizing;

(b) The impact that the job loss has on the county's or municipal corporation's unemployment rate as measured by the Ohio

bureau of employment services;	8501
(c) The annual payroll associated with the job loss;	8502
(d) The amount of state and local taxes associated with the job loss;	8503 8504
(e) The impact that the closing or downsizing has on the suppliers located in the county or municipal corporation.	8505 8506
(14) "Cost" has the same meaning and limitation as in section 179(d)(3) of the Internal Revenue Code.	8507 8508
(15) "Baseline years" means:	8509
(a) Calendar years 1992, 1993, and 1994, with regard to a credit claimed for the purchase during calendar year 1995, 1996, 1997, or 1998 of new manufacturing machinery and equipment;	8510 8511 8512
(b) Calendar years 1993, 1994, and 1995, with regard to a credit claimed for the purchase during calendar year 1999 of new manufacturing machinery and equipment;	8513 8514 8515
(c) Calendar years 1994, 1995, and 1996, with regard to a credit claimed for the purchase during calendar year 2000 of new manufacturing machinery and equipment.	8516 8517 8518
(B)(1) A nonrefundable credit is allowed against the tax imposed by section 5733.06 of the Revised Code for a taxpayer that purchases new manufacturing machinery and equipment during the qualifying period, provided that the new manufacturing machinery and equipment are installed in this state no later than December 31, 2001.	8519 8520 8521 8522 8523 8524
(2) The credit is also available to a taxpayer that is a partner in a partnership that purchases new manufacturing machinery and equipment during the qualifying period, provided that the partnership installs the new manufacturing machinery and equipment in this state no later than December 31, 2001. The taxpayer shall determine the credit amount as provided in division	8525 8526 8527 8528 8529 8530

(H) of this section. 8531

(3)(a) Except as otherwise provided in division (B)(3)(b) of 8532  
this section, a credit may be claimed under this section in excess 8533  
of one million dollars only if the cost of all manufacturing 8534  
machinery and equipment owned in this state by the taxpayer 8535  
claiming the credit on the last day of the calendar year exceeds 8536  
the cost of all manufacturing machinery and equipment owned in 8537  
this state by the taxpayer on the first day of that calendar year. 8538

As used in division (B)(3)(a) of this section, "calendar 8539  
year" means the calendar year in which the machinery and equipment 8540  
for which the credit is claimed was purchased. 8541

(b) Division (B)(3)(a) of this section does not apply if the 8542  
taxpayer claiming the credit applies for and is issued a waiver of 8543  
the requirement of that division. A taxpayer may apply to the 8544  
director of the department of development for such a waiver in the 8545  
manner prescribed by the director, and the director may issue such 8546  
a waiver if the director determines that granting the credit is 8547  
necessary to increase or retain employees in this state, and that 8548  
the credit has not caused relocation of manufacturing machinery 8549  
and equipment among counties within this state for the primary 8550  
purpose of qualifying for the credit. 8551

(C)(1) Except as otherwise provided in division (C)(2) of 8552  
this section, the credit amount is equal to seven and one-half per 8553  
cent of the excess of the cost of the new manufacturing machinery 8554  
and equipment purchased during the calendar year for use in a 8555  
county over the county average new manufacturing machinery and 8556  
equipment investment for that county. 8557

(2) As used in division (C)(2) of this section, "county 8558  
excess" means the taxpayer's excess cost for a county as computed 8559  
under division (C)(1) of this section. 8560

For a taxpayer with a county excess, whose purchases included 8561

purchases for use in any eligible area in the county, the credit amount is equal to thirteen and one-half per cent of the cost of the new manufacturing machinery and equipment purchased during the calendar year for use in the eligible areas in the county, provided that the cost subject to the thirteen and one-half per cent rate shall not exceed the county excess. If the county excess is greater than the cost of the new manufacturing machinery and equipment purchased during the calendar year for use in eligible areas in the county, the credit amount also shall include an amount equal to seven and one-half per cent of the amount of the difference.

(3) If a taxpayer is allowed a credit for purchases of new manufacturing machinery and equipment in more than one county or eligible area, it shall aggregate the amount of those credits each year.

(4) The taxpayer shall claim one-seventh of the credit amount for the tax year immediately following the calendar year in which the new manufacturing machinery and equipment is purchased for use in the county by the taxpayer or partnership. One-seventh of the taxpayer credit amount is allowed for each of the six ensuing tax years. Except for carried-forward amounts, the taxpayer is not allowed any credit amount remaining if the new manufacturing machinery and equipment is sold by the taxpayer or partnership or is transferred by the taxpayer or partnership out of the county before the end of the seven-year period.

(5)(a) A taxpayer that acquires manufacturing machinery and equipment as a result of a merger with the taxpayer with whom commenced the original use in this state of the manufacturing machinery and equipment, or with a taxpayer that was a partner in a partnership with whom commenced the original use in this state of the manufacturing machinery and equipment, is entitled to any remaining or carried-forward credit amounts to which the taxpayer

was entitled. 8594

(b) A taxpayer that enters into an agreement under division 8595  
(C)(3) of section 5709.62 of the Revised Code and that acquires 8596  
manufacturing machinery or equipment as a result of purchasing a 8597  
large manufacturing facility, as defined in section 5709.61 of the 8598  
Revised Code, from another taxpayer with whom commenced the 8599  
original use in this state of the manufacturing machinery or 8600  
equipment, and that operates the large manufacturing facility so 8601  
purchased, is entitled to any remaining or carried-forward credit 8602  
amounts to which the other taxpayer who sold the facility would 8603  
have been entitled under this section had the other taxpayer not 8604  
sold the manufacturing facility or equipment. 8605

(c) New manufacturing machinery and equipment is not 8606  
considered sold if a pass-through entity transfers to another 8607  
pass-through entity substantially all of its assets as part of a 8608  
plan of reorganization under which substantially all gain and loss 8609  
is not recognized by the pass-through entity that is transferring 8610  
the new manufacturing machinery and equipment to the transferee 8611  
and under which the transferee's basis in the new manufacturing 8612  
machinery and equipment is determined, in whole or in part, by 8613  
reference to the basis of the pass-through entity which 8614  
transferred the new manufacturing machinery and equipment to the 8615  
transferee. 8616

(d) Division (C)(5) of this section shall apply only if the 8617  
acquiring taxpayer or transferee does not sell the new 8618  
manufacturing machinery and equipment or transfer the new 8619  
manufacturing machinery and equipment out of the county before the 8620  
end of the seven-year period to which division (C)(4) of this 8621  
section refers. 8622

(e) Division (C)(5)(b) of this section applies only to the 8623  
extent that the taxpayer that sold the manufacturing machinery or 8624

equipment, upon request, timely provides to the tax commissioner 8625  
any information that the tax commissioner considers to be 8626  
necessary to ascertain any remaining or carried-forward amounts to 8627  
which the taxpayer that sold the facility would have been entitled 8628  
under this section had the taxpayer not sold the manufacturing 8629  
machinery or equipment. Nothing in division (C)(5)(b) or (e) of 8630  
this section shall be construed to allow a taxpayer to claim any 8631  
credit amount with respect to the acquired manufacturing machinery 8632  
or equipment that is greater than the amount that would have been 8633  
available to the other taxpayer that sold the manufacturing 8634  
machinery or equipment had the other taxpayer not sold the 8635  
manufacturing machinery or equipment. 8636

(D) The taxpayer shall claim the credit in the order required 8637  
under section 5733.98 of the Revised Code. Each year, any credit 8638  
amount in excess of the tax due under section 5733.06 of the 8639  
Revised Code after allowing for any other credits that precede the 8640  
credit under this section in that order may be carried forward for 8641  
three tax years. 8642

(E) A taxpayer purchasing new manufacturing machinery and 8643  
equipment and intending to claim the credit shall file, with the 8644  
department of development, a notice of intent to claim the credit 8645  
on a form prescribed by the department of development. The 8646  
department of development shall inform the tax commissioner of the 8647  
notice of intent to claim the credit. 8648

(F) The director of development shall annually certify, by 8649  
the first day of January of each year during the qualifying 8650  
period, the eligible areas for the tax credit for the calendar 8651  
year that includes that first day of January. The director shall 8652  
send a copy of the certification to the tax commissioner. 8653

(G) New manufacturing machinery and equipment for which a 8654  
taxpayer claims the credit under section 5733.31, 5733.311, 8655

5747.26, or 5747.261 of the Revised Code shall not be considered 8656  
new manufacturing machinery and equipment for purposes of the 8657  
credit under this section. 8658

(H)(1) With regard to a taxpayer that is a partner in a 8659  
partnership, the county average new manufacturing machinery and 8660  
equipment investment shall be determined based on the number of 8661  
years, if any, the partnership was in existence during baseline 8662  
years. In determining the county average new manufacturing 8663  
machinery and equipment investment, the excess of the cost of new 8664  
manufacturing machinery and equipment purchased during the 8665  
calendar year, and all other amounts necessary to calculate the 8666  
credit allowed by this section, the taxpayer shall include the 8667  
taxpayer's distributive share of the cost of new manufacturing 8668  
machinery and equipment purchased by a partnership in which the 8669  
corporation had a direct or indirect investment during the 8670  
calendar year prior to the first day of a tax year for which the 8671  
taxpayer is claiming the credit. These determinations and 8672  
calculations shall be made for the taxpayer's calendar year during 8673  
which the partnership made the purchase. 8674

(2) Nothing in this section shall be construed to limit or 8675  
disallow pass-through treatment of a pass-through entity's income, 8676  
deductions, credits, or other amounts necessary to compute the tax 8677  
imposed by section 5733.06 of the Revised Code and the credits 8678  
allowed by this chapter. 8679

(I)(1) Notwithstanding sections 5733.11 and 5747.13 of the 8680  
Revised Code, but subject to division (I)(2) of this section, the 8681  
tax commissioner may issue an assessment against a person with 8682  
respect to a credit claimed under this section for new 8683  
manufacturing machinery and equipment described in division 8684  
(A)(1)(b) or (2)(b) of this section, if the machinery or equipment 8685  
subsequently does not qualify for the credit. 8686

(2) DIVISION (I)(1) of this section shall not apply after the 8687  
twenty-fourth month following the last day of the period described 8688  
in divisions (A)(1)(b) and (2)(b) of this section. 8689

**Sec. 5733.39.** (A) As used in this section: 8690

(1) "Compliance facility" means property that is designed, 8691  
constructed, or installed, and used, at a coal-fired electric 8692  
generating facility for the primary purpose of complying with 8693  
Phase I acid rain control requirements under Title IV of the 8694  
"Clean Air Act Amendments of 1990," 104 Stat. 2584, 42 U.S.C.A. 8695  
7651, and that controls or limits emissions of sulfur or nitrogen 8696  
compounds resulting from the combustion of coal through the 8697  
removal or reduction of those compounds before, during, or after 8698  
the combustion of the coal, but before the combustion products are 8699  
emitted into the atmosphere. "Compliance facility" also includes 8700  
any of the following: 8701

(a) A facility that removes sulfur compounds from coal before 8702  
the combustion of the coal and that is located off the premises of 8703  
the electric generating facility where the coal processed by the 8704  
compliance facility is burned; 8705

(b) Modifications to the electric generating facility where 8706  
the compliance facility is constructed or installed that are 8707  
necessary to accommodate the construction or installation, and 8708  
operation, of the compliance facility; 8709

(c) A byproduct disposal facility, as defined in section 8710  
3734.051 of the Revised Code, that exclusively disposes of wastes 8711  
produced by the compliance facility and other coal combustion 8712  
byproducts produced by the generating unit in or to which the 8713  
compliance facility is incorporated or connected regardless of 8714  
whether the byproduct disposal facility is located on the same 8715  
premises as the compliance facility or generating unit that 8716

produces the wastes disposed of at the facility; 8717

(d) Facilities or equipment that is acquired, constructed, or 8718  
installed, and used, at a coal-fired electric generating facility 8719  
exclusively for the purpose of handling the byproducts produced by 8720  
the compliance facility or other coal combustion byproducts 8721  
produced by the generating unit in or to which the compliance 8722  
facility is incorporated or connected; 8723

(e) A flue gas desulfurization system that is connected to a 8724  
coal-fired electric generating unit and that either was placed in 8725  
service prior to July 10, 1991, or construction of which was 8726  
commenced prior to that date; 8727

(f) Facilities or equipment acquired, constructed, or 8728  
installed, and used, at a coal-fired electric generating unit 8729  
primarily for the purpose of handling the byproducts produced by a 8730  
compliance facility or other coal combustion byproducts produced 8731  
by the generating unit in or to which the compliance facility is 8732  
incorporated or connected. 8733

(2) "Ohio coal" has the same meaning as in section 4913.01 of 8734  
the Revised Code. 8735

(3) "Sale and leaseback transaction" has the same meaning as 8736  
in section 5727.01 of the Revised Code. 8737

(B) Beginning in tax year 2002, an electric company shall be 8738  
allowed a nonrefundable credit against the tax imposed by section 8739  
5733.06 of the Revised Code for Ohio coal used in any of its 8740  
coal-fired electric generating units after April 30, 2001. Section 8741  
5733.057 of the Revised Code shall apply when calculating the 8742  
credit allowed by this section. The credit shall be claimed at the 8743  
rate of one dollar per ton of Ohio coal burned in a coal-fired 8744  
electric generating unit during the taxable year ending 8745  
immediately preceding the tax year. The credit is allowed only if 8746  
all of the following conditions are met during such taxable year: 8747

(1) The coal-fired electric generating unit is owned and used 8748  
by the company claiming the credit or leased and used by that 8749  
company under a sale and leaseback transaction. 8750

(2) A compliance facility is attached to, incorporated in, or 8751  
used in conjunction with the coal-fired generating unit. 8752

(3) Either of the following applies: 8753

(a) In the case of a coal-fired electric generating unit that 8754  
burns coal in combination with another fuel for the purpose of 8755  
complying with Phase I acid rain control requirements under Title 8756  
IV of the "Clean Air Act Amendments of 1990," 104 Stat. 2584, 42 8757  
U.S.C.A. 7651, at least eighty per cent of the heat input during 8758  
the taxable year is from Ohio coal. 8759

(b) In the case of any other coal-fired electric generating 8760  
unit, at least ninety per cent of the heat input during the 8761  
taxable year is from Ohio coal. 8762

(C) The credit shall be claimed in the order required under 8763  
section 5733.98 of the Revised Code. If the credit exceeds the tax 8764  
imposed by section 5733.06 of the Revised Code after all other 8765  
nonrefundable credits for the tax year as set forth in section 8766  
5733.98 of the Revised Code, the excess shall not be allowed as a 8767  
credit either against the taxes due for any other year or against 8768  
any other tax or fee. Nothing herein shall be construed to provide 8769  
for carryover or carryback of any unused credit provided by any 8770  
other section of the Revised Code or for the application of any 8771  
unused credit provided by any other section of the Revised Code 8772  
against any other tax or fee if such section does not expressly 8773  
provide either for a carryover or carryback of any unused credit 8774  
or for the application of an unused credit against any other tax 8775  
or fee. 8776

(D) The sum of the credits allowed for all years under 8777  
section 5727.391 of the Revised Code for coal burned in each 8778

coal-fired electric generating unit and the sum of the credits 8779  
allowed for all tax years under this section shall not exceed 8780  
twenty per cent of the cost of the compliance facility attached 8781  
to, incorporated in, or used in conjunction with the unit. If a 8782  
compliance facility is used in conjunction with more than one 8783  
generating unit, the tax commissioner shall prorate its cost among 8784  
the units. 8785

(E) The director of environmental protection, upon the 8786  
request of the tax commissioner, shall certify whether a facility 8787  
is a compliance facility. In the case of a compliance facility 8788  
owned by an electric company, the public utilities commission 8789  
shall certify to the tax commissioner the cost of the facility as 8790  
of the date it was placed in service. In the case of a compliance 8791  
facility owned by a person other than an electric company, the tax 8792  
commissioner shall determine the cost of the facility as of the 8793  
date it was placed in service. If the owner of such a facility 8794  
fails to furnish the information necessary to make that 8795  
determination, no credit shall be allowed. 8796

**Sec. 5733.98.** (A) To provide a uniform procedure for 8797  
calculating the amount of tax imposed by section 5733.06 of the 8798  
Revised Code that is due under this chapter, a taxpayer shall 8799  
claim any credits to which it is entitled in the following order, 8800  
except as otherwise provided in section 5733.058 of the Revised 8801  
Code: 8802

(1) The credit for taxes paid by a qualifying pass-through 8803  
entity allowed under section 5733.0611 of the Revised Code; 8804

(2) The credit for qualifying affiliated groups under section 8805  
5733.068 of the Revised Code; 8806

(3) The subsidiary corporation credit under section 5733.067 8807  
of the Revised Code; 8808

(4) The savings and loan assessment credit under section 5733.063 of the Revised Code;	8809 8810
(5) The credit for recycling and litter prevention donations under section 5733.064 of the Revised Code;	8811 8812
(6) The credit for employers that enter into agreements with child day-care centers under section 5733.36 of the Revised Code;	8813 8814
(7) The credit for employers that reimburse employee child day-care expenses under section 5733.38 of the Revised Code;	8815 8816
(8) The credit for manufacturing investments under section 5733.061 of the Revised Code;	8817 8818
(9) The credit for purchases of new manufacturing machinery and equipment under section 5733.31 or section 5733.311 of the Revised Code;	8819 8820 8821
(10) The second credit for purchases of new manufacturing machinery and equipment under section 5733.33 of the Revised Code;	8822 8823
(11) The enterprise zone credit under section 5709.66 of the Revised Code;	8824 8825
(12) The credit for the eligible costs associated with a voluntary action under section 5733.34 of the Revised Code;	8826 8827
(13) The credit for employers that establish on-site child day-care under section 5733.37 of the Revised Code;	8828 8829
(14) The credit for purchases of qualifying grape production property under section 5733.32 of the Revised Code;	8830 8831
(15) The export sales credit under section 5733.069 of the Revised Code;	8832 8833
(16) The credit for research and development and technology transfer investors under section 5733.35 of the Revised Code;	8834 8835
(17) The enterprise zone credits under section 5709.65 of the Revised Code;	8836 8837

(18) <u>The credit for using Ohio coal under section 5733.39 of the Revised Code;</u>	8838
	8839
(19) The refundable jobs creation credit under section 5733.0610 of the Revised Code.	8840
	8841
(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.	8842
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<b>Sec. 5739.011.</b> (A) As used in this section:	8848
(1) "Manufacturer" means a person who is engaged in manufacturing, processing, assembling, or refining a product for sale.	8849
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(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.	8852
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(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.	8856
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(4) "Testing" means a process or procedure to identify the properties or assure the quality of a material or product.	8860
	8861
(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.	8862
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(6) "Continuous manufacturing operation" means the process in 8868  
which raw materials or components are moved through the steps 8869  
whereby manufacturing occurs. Materials handling of raw materials 8870  
or parts from the point of receipt or ~~pre-production~~ preproduction 8871  
storage or of a completed product, to or from storage, to or from 8872  
packaging, or to the place from which the completed product will 8873  
be shipped, is not a part of a continuous manufacturing operation. 8874

(B) For purposes of division (E)(9) of section 5739.01 of the 8875  
Revised Code, the "thing transferred" includes, but is not limited 8876  
to, any of the following: 8877

(1) Production machinery and equipment that act upon the 8878  
product or machinery and equipment that treat the materials or 8879  
parts in preparation for the manufacturing operation; 8880

(2) Materials handling equipment that moves the product 8881  
through a continuous manufacturing operation; equipment that 8882  
temporarily stores the product during the manufacturing operation; 8883  
or, excluding motor vehicles licensed to operate on public 8884  
highways, equipment used in intraplant or interplant transfers of 8885  
work in process where the plant or plants between which such 8886  
transfers occur are manufacturing facilities operated by the same 8887  
person; 8888

(3) Catalysts, solvents, water, acids, oil, and similar 8889  
consumables that interact with the product and that are an 8890  
integral part of the manufacturing operation; 8891

(4) Machinery, equipment, and other tangible personal 8892  
property used during the manufacturing operation that control, 8893  
physically support, produce power for, lubricate, or are otherwise 8894  
necessary for the functioning of production machinery and 8895  
equipment and the continuation of the manufacturing operation; 8896

(5) Machinery, equipment, fuel, power, material, parts, and 8897  
other tangible personal property used to manufacture machinery, 8898

equipment, or other tangible personal property used in	8899
manufacturing a product for sale;	8900
(6) Machinery, equipment, and other tangible personal	8901
property used by a manufacturer to test raw materials, the product	8902
being manufactured, or the completed product;	8903
(7) Machinery and equipment used to handle or temporarily	8904
store scrap that is intended to be reused in the manufacturing	8905
operation at the same manufacturing facility;	8906
(8) <del>Electricity, coke</del> <u>Coke</u> , gas, water, steam, and similar	8907
substances used in the manufacturing operation; machinery and	8908
equipment used for, and fuel consumed in, producing or extracting	8909
those substances; <del>and</del> machinery, equipment, and other tangible	8910
personal property used to treat, filter, pump, <del>alter voltage</del> , or	8911
otherwise make the substance suitable for use in the manufacturing	8912
operation; <u>and machinery and equipment used to produce electricity</u>	8913
<u>for use in the manufacturing operation;</u>	8914
(9) Machinery, equipment, and other tangible personal	8915
property used to transport or transmit electricity, coke, gas,	8916
water, steam, or similar substances used in the manufacturing	8917
operation from the point of generation, if produced by the	8918
manufacturer, or from the point where the substance enters the	8919
manufacturing facility, if purchased by the manufacturer, to the	8920
manufacturing operation;	8921
(10) Machinery, equipment, and other tangible personal	8922
property that treats, filters, cools, refines, or otherwise	8923
renders water, steam, acid, oil, solvents, or similar substances	8924
used in the manufacturing operation reusable, provided that the	8925
substances are intended for reuse and not for disposal, sale, or	8926
transportation from the manufacturing facility;	8927
(11) Parts, components, and repair and installation services	8928
for items described in division (B) of this section.	8929

(C) For purposes of division (E)(9) of section 5739.01 of the Revised Code, the "thing transferred" does not include any of the following:

(1) Tangible personal property used in administrative, personnel, security, inventory control, record\_keeping, ordering, billing, or similar functions;

(2) Tangible personal property used in storing raw materials or parts prior to the commencement of the manufacturing operation or used to handle or store a completed product, including storage that actively maintains a completed product in a marketable state or form;

(3) Tangible personal property used to handle or store scrap or waste intended for disposal, sale, or other disposition, other than reuse in the manufacturing operation at the same manufacturing facility;

(4) Tangible personal property that is or is to be incorporated into realty;

(5) Machinery, equipment, and other tangible personal property used for ventilation, dust, or gas collection, humidity or temperature regulation, or similar environmental control, except machinery, equipment, and other tangible personal property that totally regulates the environment in a special and limited area of the manufacturing facility where the regulation is essential for production to occur;

(6) Tangible personal property used for the protection and safety of workers, unless the property is attached to or incorporated into machinery and equipment used in a continuous manufacturing operation;

(7) Tangible personal property used to store fuel, water, solvents, acid, oil, or similar items consumed in the

manufacturing operation;	8960
(8) Machinery, equipment, and other tangible personal property used for research and development;	8961 8962
(9) Machinery, equipment, and other tangible personal property used to clean, repair, or maintain real or personal property in the manufacturing facility;	8963 8964 8965
(10) Motor vehicles registered for operation on the public highways.	8966 8967
(D) For purposes of division (E)(9) of section 5739.01 of the Revised Code, if the "thing transferred" is a machine used by a manufacturer in both a taxable and an exempt manner, it shall be totally taxable or totally exempt from taxation based upon its quantified primary use. If the "things transferred" are fungibles, they shall be taxed based upon the proportion of the fungibles used in a taxable manner.	8968 8969 8970 8971 8972 8973 8974
<b>Sec. 5739.02.</b> For the purpose of providing revenue with which to meet the needs of the state, for the use of the general revenue fund of the state, for the purpose of securing a thorough and efficient system of common schools throughout the state, for the purpose of affording revenues, in addition to those from general property taxes, permitted under constitutional limitations, and from other sources, for the support of local governmental functions, and for the purpose of reimbursing the state for the expense of administering this chapter, an excise tax is hereby levied on each retail sale made in this state.	8975 8976 8977 8978 8979 8980 8981 8982 8983 8984
(A) The tax shall be collected pursuant to the schedules in section 5739.025 of the Revised Code.	8985 8986
The tax applies and is collectible when the sale is made, regardless of the time when the price is paid or delivered.	8987 8988
In the case of a sale, the price of which consists in whole	8989

or in part of rentals for the use of the thing transferred, the 8990  
tax, as regards such rentals, shall be measured by the 8991  
installments thereof. 8992

In the case of a sale of a service defined under division 8993  
(MM) or (NN) of section 5739.01 of the Revised Code, the price of 8994  
which consists in whole or in part of a membership for the receipt 8995  
of the benefit of the service, the tax applicable to the sale 8996  
shall be measured by the installments thereof. 8997

(B) The tax does not apply to the following: 8998

(1) Sales to the state or any of its political subdivisions, 8999  
or to any other state or its political subdivisions if the laws of 9000  
that state exempt from taxation sales made to this state and its 9001  
political subdivisions; 9002

(2) Sales of food for human consumption off the premises 9003  
where sold; 9004

(3) Sales of food sold to students only in a cafeteria, 9005  
dormitory, fraternity, or sorority maintained in a private, 9006  
public, or parochial school, college, or university; 9007

(4) Sales of newspapers, and of magazine subscriptions 9008  
shipped by second class mail, and sales or transfers of magazines 9009  
distributed as controlled circulation publications; 9010

(5) The furnishing, preparing, or serving of meals without 9011  
charge by an employer to an employee provided the employer records 9012  
the meals as part compensation for services performed or work 9013  
done; 9014

(6) Sales of motor fuel upon receipt, use, distribution, or 9015  
sale of which in this state a tax is imposed by the law of this 9016  
state, but this exemption shall not apply to the sale of motor 9017  
fuel on which a refund of the tax is allowable under section 9018  
5735.14 of the Revised Code; and the tax commissioner may deduct 9019

the amount of tax levied by this section applicable to the price 9020  
of motor fuel when granting a refund of motor fuel tax pursuant to 9021  
section 5735.14 of the Revised Code and shall cause the amount 9022  
deducted to be paid into the general revenue fund of this state; 9023

(7) Sales of natural gas by a natural gas company, ~~of~~ 9024  
~~electricity by an electric company,~~ of water by a water-works 9025  
company, or of steam by a heating company, if in each case the 9026  
thing sold is delivered to consumers through ~~wires,~~ pipes, or 9027  
conduits, and all sales of communications services by a telephone 9028  
or telegraph company, all terms as defined in section 5727.01 of 9029  
the Revised Code; 9030

(8) Casual sales by a person, or auctioneer employed directly 9031  
by the person to conduct such sales, except as to such sales of 9032  
motor vehicles, watercraft or outboard motors required to be 9033  
titled under section 1548.06 of the Revised Code, watercraft 9034  
documented with the United States coast guard, snowmobiles, and 9035  
all-purpose vehicles as defined in section 4519.01 of the Revised 9036  
Code; 9037

(9) Sales of services or tangible personal property, other 9038  
than motor vehicles, mobile homes, and manufactured homes, by 9039  
churches or by nonprofit organizations operated exclusively for 9040  
charitable purposes as defined in division (B)(12) of this 9041  
section, provided that the number of days on which such tangible 9042  
personal property or services, other than items never subject to 9043  
the tax, are sold does not exceed six in any calendar year. If the 9044  
number of days on which such sales are made exceeds six in any 9045  
calendar year, the church or organization shall be considered to 9046  
be engaged in business and all subsequent sales by it shall be 9047  
subject to the tax. In counting the number of days, all sales by 9048  
groups within a church or within an organization shall be 9049  
considered to be sales of that church or organization, except that 9050  
sales made by separate student clubs and other groups of students 9051

of a primary or secondary school, and sales made by a 9052  
parent-teacher association, booster group, or similar organization 9053  
that raises money to support or fund curricular or extracurricular 9054  
activities of a primary or secondary school, shall not be 9055  
considered to be sales of such school, and sales by each such 9056  
club, group, association, or organization shall be counted 9057  
separately for purposes of the six-day limitation. This division 9058  
does not apply to sales by a noncommercial educational radio or 9059  
television broadcasting station. 9060

(10) Sales not within the taxing power of this state under 9061  
the Constitution of the United States; 9062

(11) The transportation of persons or property, unless the 9063  
transportation is by a private investigation and security service; 9064

(12) Sales of tangible personal property or services to 9065  
churches, to organizations exempt from taxation under section 9066  
501(c)(3) of the Internal Revenue Code of 1986, and to any other 9067  
nonprofit organizations operated exclusively for charitable 9068  
purposes in this state, no part of the net income of which inures 9069  
to the benefit of any private shareholder or individual, and no 9070  
substantial part of the activities of which consists of carrying 9071  
on propaganda or otherwise attempting to influence legislation; 9072  
sales to offices administering one or more homes for the aged or 9073  
one or more hospital facilities exempt under section 140.08 of the 9074  
Revised Code; and sales to organizations described in division (D) 9075  
of section 5709.12 of the Revised Code. 9076

"Charitable purposes" means the relief of poverty; the 9077  
improvement of health through the alleviation of illness, disease, 9078  
or injury; the operation of an organization exclusively for the 9079  
provision of professional, laundry, printing, and purchasing 9080  
services to hospitals or charitable institutions; the operation of 9081  
a home for the aged, as defined in section 5701.13 of the Revised 9082

Code; the operation of a radio or television broadcasting station 9083  
that is licensed by the federal communications commission as a 9084  
noncommercial educational radio or television station; the 9085  
operation of a nonprofit animal adoption service or a county 9086  
humane society; the promotion of education by an institution of 9087  
learning that maintains a faculty of qualified instructors, 9088  
teaches regular continuous courses of study, and confers a 9089  
recognized diploma upon completion of a specific curriculum; the 9090  
operation of a parent\_teacher association, booster group, or 9091  
similar organization primarily engaged in the promotion and 9092  
support of the curricular or extracurricular activities of a 9093  
primary or secondary school; the operation of a community or area 9094  
center in which presentations in music, dramatics, the arts, and 9095  
related fields are made in order to foster public interest and 9096  
education therein; the production of performances in music, 9097  
dramatics, and the arts; or the promotion of education by an 9098  
organization engaged in carrying on research in, or the 9099  
dissemination of, scientific and technological knowledge and 9100  
information primarily for the public. 9101

Nothing in this division shall be deemed to exempt sales to 9102  
any organization for use in the operation or carrying on of a 9103  
trade or business, or sales to a home for the aged for use in the 9104  
operation of independent living facilities as defined in division 9105  
(A) of section 5709.12 of the Revised Code. 9106

(13) Building and construction materials and services sold to 9107  
construction contractors for incorporation into a structure or 9108  
improvement to real property under a construction contract with 9109  
this state or a political subdivision thereof, or with the United 9110  
States government or any of its agencies; building and 9111  
construction materials and services sold to construction 9112  
contractors for incorporation into a structure or improvement to 9113  
real property that are accepted for ownership by this state or any 9114

of its political subdivisions, or by the United States government 9115  
or any of its agencies at the time of completion of such 9116  
structures or improvements; building and construction materials 9117  
sold to construction contractors for incorporation into a 9118  
horticulture structure or livestock structure for a person engaged 9119  
in the business of horticulture or producing livestock; building 9120  
materials and services sold to a construction contractor for 9121  
incorporation into a house of public worship or religious 9122  
education, or a building used exclusively for charitable purposes 9123  
under a construction contract with an organization whose purpose 9124  
is as described in division (B)(12) of this section; building and 9125  
construction materials sold for incorporation into the original 9126  
construction of a sports facility under section 307.696 of the 9127  
Revised Code; and building and construction materials and services 9128  
sold to a construction contractor for incorporation into real 9129  
property outside this state if such materials and services, when 9130  
sold to a construction contractor in the state in which the real 9131  
property is located for incorporation into real property in that 9132  
state, would be exempt from a tax on sales levied by that state; 9133

(14) Sales of ships or vessels or rail rolling stock used or 9134  
to be used principally in interstate or foreign commerce, and 9135  
repairs, alterations, fuel, and lubricants for such ships or 9136  
vessels or rail rolling stock; 9137

(15) Sales to persons engaged in any of the activities 9138  
mentioned in division (E)(2) or (9) of section 5739.01 of the 9139  
Revised Code, to persons engaged in making retail sales, or to 9140  
persons who purchase for sale from a manufacturer tangible 9141  
personal property that was produced by the manufacturer in 9142  
accordance with specific designs provided by the purchaser, of 9143  
packages, including material and parts for packages, and of 9144  
machinery, equipment, and material for use primarily in packaging 9145  
tangible personal property produced for sale by or on the order of 9146

the person doing the packaging, or sold at retail. "Packages" 9147  
includes bags, baskets, cartons, crates, boxes, cans, bottles, 9148  
bindings, wrappings, and other similar devices and containers, and 9149  
"packaging" means placing therein. 9150

(16) Sales of food to persons using food stamp coupons to 9151  
purchase the food. As used in division (B)(16) of this section, 9152  
"food" has the same meaning as in the "Food Stamp Act of 1977," 91 9153  
Stat. 958, 7 U.S.C. 2012, as amended, and federal regulations 9154  
adopted pursuant to that act. 9155

(17) Sales to persons engaged in farming, agriculture, 9156  
horticulture, or floriculture, of tangible personal property for 9157  
use or consumption directly in the production by farming, 9158  
agriculture, horticulture, or floriculture of other tangible 9159  
personal property for use or consumption directly in the 9160  
production of tangible personal property for sale by farming, 9161  
agriculture, horticulture, or floriculture; or material and parts 9162  
for incorporation into any such tangible personal property for use 9163  
or consumption in production; and of tangible personal property 9164  
for such use or consumption in the conditioning or holding of 9165  
products produced by and for such use, consumption, or sale by 9166  
persons engaged in farming, agriculture, horticulture, or 9167  
floriculture, except where such property is incorporated into real 9168  
property; 9169

(18) Sales of drugs dispensed by a licensed pharmacist upon 9170  
the order of a licensed health professional authorized to 9171  
prescribe drugs to a human being, as the term "licensed health 9172  
professional authorized to prescribe drugs" is defined in section 9173  
4729.01 of the Revised Code; insulin as recognized in the official 9174  
United States pharmacopoeia; urine and blood testing materials 9175  
when used by diabetics or persons with hypoglycemia to test for 9176  
glucose or acetone; hypodermic syringes and needles when used by 9177  
diabetics for insulin injections; epoetin alfa when purchased for 9178

use in the treatment of persons with end-stage renal disease; 9179  
hospital beds when purchased for use by persons with medical 9180  
problems for medical purposes; and oxygen and oxygen-dispensing 9181  
equipment when purchased for use by persons with medical problems 9182  
for medical purposes; 9183

(19) Sales of artificial limbs or portion thereof, breast 9184  
prostheses, and other prosthetic devices for humans; braces or 9185  
other devices for supporting weakened or nonfunctioning parts of 9186  
the human body; wheelchairs; devices used to lift wheelchairs into 9187  
motor vehicles and parts and accessories to such devices; crutches 9188  
or other devices to aid human perambulation; and items of tangible 9189  
personal property used to supplement impaired functions of the 9190  
human body such as respiration, hearing, or elimination. No 9191  
exemption under this division shall be allowed for nonprescription 9192  
drugs, medicines, or remedies; items or devices used to supplement 9193  
vision; items or devices whose function is solely or primarily 9194  
cosmetic; or physical fitness equipment. This division does not 9195  
apply to sales to a physician or medical facility for use in the 9196  
treatment of a patient. 9197

(20) Sales of emergency and fire protection vehicles and 9198  
equipment to nonprofit organizations for use solely in providing 9199  
fire protection and emergency services for political subdivisions 9200  
of the state; 9201

(21) Sales of tangible personal property manufactured in this 9202  
state, if sold by the manufacturer in this state to a retailer for 9203  
use in the retail business of the retailer outside of this state 9204  
and if possession is taken from the manufacturer by the purchaser 9205  
within this state for the sole purpose of immediately removing the 9206  
same from this state in a vehicle owned by the purchaser; 9207

9208

(22) Sales of services provided by the state or any of its 9209

political subdivisions, agencies, instrumentalities, institutions, 9210  
or authorities, or by governmental entities of the state or any of 9211  
its political subdivisions, agencies, instrumentalities, 9212  
institutions, or authorities; 9213

(23) Sales of motor vehicles to nonresidents of this state 9214  
upon the presentation of an affidavit executed in this state by 9215  
the nonresident purchaser affirming that the purchaser is a 9216  
nonresident of this state, that possession of the motor vehicle is 9217  
taken in this state for the sole purpose of immediately removing 9218  
it from this state, that the motor vehicle will be permanently 9219  
titled and registered in another state, and that the motor vehicle 9220  
will not be used in this state; 9221

(24) Sales to persons engaged in the preparation of eggs for 9222  
sale of tangible personal property used or consumed directly in 9223  
such preparation, including such tangible personal property used 9224  
for cleaning, sanitizing, preserving, grading, sorting, and 9225  
classifying by size; packages, including material and parts for 9226  
packages, and machinery, equipment, and material for use in 9227  
packaging eggs for sale; and handling and transportation equipment 9228  
and parts therefor, except motor vehicles licensed to operate on 9229  
public highways, used in intraplant or interplant transfers or 9230  
shipment of eggs in the process of preparation for sale, when the 9231  
plant or plants within or between which such transfers or 9232  
shipments occur are operated by the same person. "Packages" 9233  
includes containers, cases, baskets, flats, fillers, filler flats, 9234  
cartons, closure materials, labels, and labeling materials, and 9235  
"packaging" means placing therein. 9236

(25)(a) Sales of water to a consumer for residential use, 9237  
except the sale of bottled water, distilled water, mineral water, 9238  
carbonated water, or ice; 9239

(b) Sales of water by a nonprofit corporation engaged 9240

exclusively in the treatment, distribution, and sale of water to	9241
consumers, if such water is delivered to consumers through pipes	9242
or tubing.	9243
(26) Fees charged for inspection or reinspection of motor	9244
vehicles under section 3704.14 of the Revised Code;	9245
(27) Sales of solar, wind, or hydrothermal energy systems	9246
that meet the guidelines established under division (B) of section	9247
1551.20 of the Revised Code, components of such systems that are	9248
identified under division (B) or (D) of that section, or charges	9249
for the installation of such systems or components, made during	9250
the period from August 14, 1979, through December 31, 1985;	9251
(28) Sales to persons licensed to conduct a food service	9252
operation pursuant to section 3732.03 of the Revised Code, of	9253
tangible personal property primarily used directly for the	9254
following:	9255
(a) To prepare food for human consumption for sale;	9256
(b) To preserve food that has been or will be prepared for	9257
human consumption for sale by the food service operator, not	9258
including tangible personal property used to display food for	9259
selection by the consumer;	9260
(c) To clean tangible personal property used to prepare or	9261
serve food for human consumption for sale.	9262
(29) Sales of animals by nonprofit animal adoption services	9263
or county humane societies;	9264
(30) Sales of services to a corporation described in division	9265
(A) of section 5709.72 of the Revised Code, and sales of tangible	9266
personal property that qualifies for exemption from taxation under	9267
section 5709.72 of the Revised Code;	9268
(31) Sales and installation of agricultural land tile, as	9269
defined in division (B)(5)(a) of section 5739.01 of the Revised	9270

Code;	9271
(32) Sales and erection or installation of portable grain bins, as defined in division (B)(5)(b) of section 5739.01 of the Revised Code;	9272 9273 9274
(33) The sale, lease, repair, and maintenance of parts for or items attached to or incorporated in motor vehicles that are primarily used for transporting tangible personal property by a person engaged in highway transportation for hire;	9275 9276 9277 9278
(34) Sales to the state headquarters of any veterans' organization in Ohio that is either incorporated and issued a charter by the congress of the United States or is recognized by the United States veterans administration, for use by the headquarters;	9279 9280 9281 9282 9283
(35) Sales to a telecommunications service vendor of tangible personal property and services used directly and primarily in transmitting, receiving, switching, or recording any interactive, two-way electromagnetic communications, including voice, image, data, and information, through the use of any medium, including, but not limited to, poles, wires, cables, switching equipment, computers, and record storage devices and media, and component parts for the tangible personal property. The exemption provided in division (B)(35) of this section shall be in lieu of all other exceptions under division (E)(2) of section 5739.01 of the Revised Code to which a telecommunications service vendor may otherwise be entitled based upon the use of the thing purchased in providing the telecommunications service.	9284 9285 9286 9287 9288 9289 9290 9291 9292 9293 9294 9295 9296
(36) Sales of investment metal bullion and investment coins. "Investment metal bullion" means any elementary precious metal that has been put through a process of smelting or refining, including, but not limited to, gold, silver, platinum, and palladium, and which is in such state or condition that its value	9297 9298 9299 9300 9301

depends upon its content and not upon its form. "Investment metal  
bullion" does not include fabricated precious metal that has been  
processed or manufactured for one or more specific and customary  
industrial, professional, or artistic uses. "Investment coins"  
means numismatic coins or other forms of money and legal tender  
manufactured of gold, silver, platinum, palladium, or other metal  
under the laws of the United States or any foreign nation with a  
fair market value greater than any statutory or nominal value of  
such coins.

(37)(a) Sales where the purpose of the consumer is to use or  
consume the things transferred in making retail sales and  
consisting of newspaper inserts, catalogues, coupons, flyers, gift  
certificates, or other advertising material that prices and  
describes tangible personal property offered for retail sale.

(b) Sales to direct marketing vendors of preliminary  
materials such as photographs, artwork, and typesetting that will  
be used in printing advertising material; of printed matter that  
offers free merchandise or chances to win sweepstake prizes and  
that is mailed to potential customers with advertising material  
described in division (B)(37)(a) of this section; and of equipment  
such as telephones, computers, facsimile machines, and similar  
tangible personal property primarily used to accept orders for  
direct marketing retail sales.

(c) Sales of automatic food vending machines that preserve  
food with a shelf life of forty-five days or less by refrigeration  
and dispense it to the consumer.

For purposes of division (B)(37) of this section, "direct  
marketing" means the method of selling where consumers order  
tangible personal property by United States mail, delivery  
service, or telecommunication and the vendor delivers or ships the  
tangible personal property sold to the consumer from a warehouse,

catalogue distribution center, or similar fulfillment facility by 9333  
means of the United States mail, delivery service, or common 9334  
carrier. 9335

(38) Sales to a person engaged in the business of 9336  
horticulture or producing livestock of materials to be 9337  
incorporated into a horticulture structure or livestock structure; 9338

(39) The sale of a motor vehicle that is used exclusively for 9339  
a vanpool ridesharing arrangement to persons participating in the 9340  
vanpool ridesharing arrangement when the vendor is selling the 9341  
vehicle pursuant to a contract between the vendor and the 9342  
department of transportation; 9343

(40) Sales of personal computers, computer monitors, computer 9344  
keyboards, modems, and other peripheral computer equipment to an 9345  
individual who is licensed or certified to teach in an elementary 9346  
or a secondary school in this state for use by that individual in 9347  
preparation for teaching elementary or secondary school students; 9348  
9349

(41) Sales to a professional racing team of any of the 9350  
following: 9351

(a) Motor racing vehicles; 9352

(b) Repair services for motor racing vehicles; 9353

(c) Items of property that are attached to or incorporated in 9354  
motor racing vehicles, including engines, chassis, and all other 9355  
components of the vehicles, and all spare, replacement, and 9356  
rebuilt parts or components of the vehicles; except not including 9357  
tires, consumable fluids, paint, and accessories consisting of 9358  
instrumentation sensors and related items added to the vehicle to 9359  
collect and transmit data by means of telemetry and other forms of 9360  
communication. 9361

(42) Sales of used manufactured homes and used mobile homes, 9362

as defined in section 5739.0210 of the Revised Code, made on or 9363  
after January 1, 2000; 9364

(43) Sales of tangible personal property and services to a 9365  
provider of electricity used or consumed directly and primarily in 9366  
generating, transmitting, or distributing electricity for use by 9367  
others, including property that is or is to be incorporated into 9368  
and will become a part of the consumer's production, transmission, 9369  
or distribution system and that retains its classification as 9370  
tangible personal property after incorporation; fuel or power used 9371  
in the production, transmission, or distribution of electricity; 9372  
and tangible personal property and services used in the repair and 9373  
maintenance of the production, transmission, or distribution 9374  
system, including only those motor vehicles as are specially 9375  
designed and equipped for such use. The exemption provided in this 9376  
division shall be in lieu of all other exceptions in division 9377  
(E)(2) of section 5739.01 of the Revised Code to which a provider 9378  
of electricity may otherwise be entitled based on the use of the 9379  
tangible personal property or service purchased in generating, 9380  
transmitting, or distributing electricity. 9381

For the purpose of the proper administration of this chapter, 9382  
and to prevent the evasion of the tax, it is presumed that all 9383  
sales made in this state are subject to the tax until the contrary 9384  
is established. 9385

As used in this section, except in division (B)(16) of this 9386  
section, "food" includes cereals and cereal products, milk and 9387  
milk products including ice cream, meat and meat products, fish 9388  
and fish products, eggs and egg products, vegetables and vegetable 9389  
products, fruits, fruit products, and pure fruit juices, 9390  
condiments, sugar and sugar products, coffee and coffee 9391  
substitutes, tea, and cocoa and cocoa products. It does not 9392  
include: spirituous or malt liquors; soft drinks; sodas and 9393  
beverages that are ordinarily dispensed at bars and soda fountains 9394

or in connection therewith, other than coffee, tea, and cocoa; 9395  
root beer and root beer extracts; malt and malt extracts; mineral 9396  
oils, cod liver oils, and halibut liver oil; medicines, including 9397  
tonics, vitamin preparations, and other products sold primarily 9398  
for their medicinal properties; and water, including mineral, 9399  
bottled, and carbonated waters, and ice. 9400

(C) The levy of an excise tax on transactions by which 9401  
lodging by a hotel is or is to be furnished to transient guests 9402  
pursuant to this section and division (B) of section 5739.01 of 9403  
the Revised Code does not prevent any of the following: 9404

(1) A municipal corporation or township from levying an 9405  
excise tax for any lawful purpose not to exceed three per cent on 9406  
transactions by which lodging by a hotel is or is to be furnished 9407  
to transient guests in addition to the tax levied by this section. 9408  
If a municipal corporation or township repeals a tax imposed under 9409  
division (C)(1) of this section and a county in which the 9410  
municipal corporation or township has territory has a tax imposed 9411  
under division (C) of section 5739.024 of the Revised Code in 9412  
effect, the municipal corporation or township may not reimpose its 9413  
tax as long as that county tax remains in effect. A municipal 9414  
corporation or township in which a tax is levied under division 9415  
(B)(2) of section 351.021 of the Revised Code may not increase the 9416  
rate of its tax levied under division (C)(1) of this section to 9417  
any rate that would cause the total taxes levied under both of 9418  
those divisions to exceed three per cent on any lodging 9419  
transaction within the municipal corporation or township. 9420

(2) A municipal corporation or a township from levying an 9421  
additional excise tax not to exceed three per cent on such 9422  
transactions pursuant to division (B) of section 5739.024 of the 9423  
Revised Code. Such tax is in addition to any tax imposed under 9424  
division (C)(1) of this section. 9425

(3) A county from levying an excise tax pursuant to division	9426
(A) of section 5739.024 of the Revised Code.	9427
(4) A county from levying an excise tax not to exceed three	9428
per cent of such transactions pursuant to division (C) of section	9429
5739.024 of the Revised Code. Such a tax is in addition to any tax	9430
imposed under division (C)(3) of this section.	9431
(5) A convention facilities authority, as defined in division	9432
(A) of section 351.01 of the Revised Code, from levying the excise	9433
taxes provided for in division (B) of section 351.021 of the	9434
Revised Code.	9435
(6) A county from levying an excise tax not to exceed one and	9436
one-half per cent of such transactions pursuant to division (D) of	9437
section 5739.024 of the Revised Code. Such tax is in addition to	9438
any tax imposed under division (C)(3) or (4) of this section.	9439
	9440
(7) A county from levying an excise tax not to exceed one and	9441
one-half per cent of such transactions pursuant to division (E) of	9442
section 5739.024 of the Revised Code. Such a tax is in addition to	9443
any tax imposed under division (C)(3), (4), or (6) of this	9444
section.	9445
(D) The levy of this tax on retail sales of recreation and	9446
sports club service shall not prevent a municipal corporation from	9447
levying any tax on recreation and sports club dues or on any	9448
income generated by recreation and sports club dues.	9449
<b>Sec. 5747.31.</b> (A) This section applies to an individual or	9450
estate that is a proprietor or a pass-through entity investor.	9451
(B)(1) A taxpayer described in division (A) of this section	9452
is allowed a credit that shall be computed and claimed in the same	9453
manner as the credit allowed to corporations in section 5733.33 of	9454
the Revised Code, with the following adjustments:	9455

(a) The taxpayer shall claim one-seventh of the credit amount 9456  
for the calendar year in which the new manufacturing machinery and 9457  
equipment is purchased for use in the county by the taxpayer or 9458  
partnership. One-seventh of the taxpayer credit amount is allowed 9459  
for each of the six ensuing taxable years. 9460

(b) Substitute "taxable year" for the phrase "calendar year 9461  
prior to the first day of a tax year" wherever the phrase appears 9462  
in division (H)(1) of section 5733.33 of the Revised Code. 9463

(2) The taxpayer shall claim the credit in the order required 9464  
under section 5747.98 of the Revised Code. 9465

(3) The taxpayer shall file with the department of 9466  
development a notice of intent to claim the credit in accordance 9467  
with division (E) of section 5733.33 of the Revised Code. 9468

(C)(1) A taxpayer described in division (A) of this section 9469  
is allowed a credit that shall be computed in the same manner as 9470  
the credit allowed to a corporation in section 5733.39 of the 9471  
Revised Code, with the following adjustments: 9472

(a) Substitute "taxable year" for "tax year" wherever "tax 9473  
year" appears in section 5733.39 of the Revised Code; 9474

(b) Substitute "5747.02" for "5733.06" wherever "5733.06" 9475  
appears in section 5733.39 of the Revised Code; 9476

(c) Substitute "5747.98" for "5733.98" wherever "5733.98" 9477  
appears in section 5733.39 of the Revised Code; 9478

(d) The credit allowed under division (C) of this section 9479  
shall be subject to the same disallowance for the carryover or 9480  
carryback of any unused credit as provided in division (C) of 9481  
section 5733.39 of the Revised Code. 9482

(2) Notwithstanding section 5747.131 of the Revised Code to 9483  
the contrary, a taxpayer claiming a credit under this division has 9484  
the burden of establishing by a preponderance of the evidence that 9485

the doctrines enumerated in SECTION 5747.131 of the Revised Code 9486  
do not apply with respect to the credit provided by this division. 9487

(D) Nothing in this section shall be construed to limit or 9488  
disallow pass-through treatment of a pass-through entity's income, 9489  
deductions, credits, or other amounts necessary to compute the tax 9490  
imposed by section 5747.02 of the Revised Code and the credits 9491  
allowed by this chapter. 9492

~~(D) The taxpayer shall file with the department of 9493  
development a notice of intent to claim the credit in accordance 9494  
with division (E) of section 5733.33 of the Revised Code.~~ 9495

**Sec. 5747.98.** (A) To provide a uniform procedure for 9496  
calculating the amount of tax due under section 5747.02 of the 9497  
Revised Code, a taxpayer shall claim any credits to which the 9498  
taxpayer is entitled in the following order: 9499

~~(2)~~(1) The retirement income credit under division (B) of 9500  
section 5747.055 of the Revised Code; 9501

~~(3)~~(2) The senior citizen credit under division (C) of 9502  
section 5747.05 of the Revised Code; 9503

~~(4)~~(3) The lump sum distribution credit under division (D) of 9504  
section 5747.05 of the Revised Code; 9505

~~(5)~~(4) The dependent care credit under section 5747.054 of 9506  
the Revised Code; 9507

~~(6)~~(5) The lump sum retirement income credit under division 9508  
(C) of section 5747.055 of the Revised Code; 9509

~~(7)~~(6) The lump sum retirement income credit under division 9510  
(D) of section 5747.055 of the Revised Code; 9511

~~(8)~~(7) The lump sum retirement income credit under division 9512  
(E) of section 5747.055 of the Revised Code; 9513

~~(9)~~(8) The credit for displaced workers who pay for job 9514

training under section 5747.27 of the Revised Code;	9515
<del>(10)</del> <u>(9)</u> The campaign contribution credit under section 5747.29 of the Revised Code;	9516 9517
<del>(11)</del> <u>(10)</u> The twenty-dollar personal exemption credit under section 5747.022 of the Revised Code;	9518 9519
<del>(12)</del> <u>(11)</u> The joint filing credit under division (G) of section 5747.05 of the Revised Code;	9520 9521
<del>(13)</del> <u>(12)</u> The nonresident credit under division (A) of section 5747.05 of the Revised Code;	9522 9523
<del>(14)</del> <u>(13)</u> The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code;	9524 9525
<del>(15)</del> <u>(14)</u> The credit for employers that enter into agreements with child day-care centers under section 5747.34 of the Revised Code;	9526 9527 9528
<del>(16)</del> <u>(15)</u> The credit for employers that reimburse employee child day-care expenses under section 5747.36 of the Revised Code;	9529 9530
<del>(17)</del> <u>(16)</u> The credit for manufacturing investments under section 5747.051 of the Revised Code;	9531 9532
<del>(18)</del> <u>(17)</u> The credit for purchases of new manufacturing machinery and equipment under section 5747.26 or section 5747.261 of the Revised Code;	9533 9534 9535
<del>(19)</del> <u>(18)</u> The second credit for purchases of new manufacturing machinery and equipment <u>and the credit for using Ohio coal</u> under section 5747.31 of the Revised Code;	9536 9537 9538
<del>(20)</del> <u>(19)</u> The enterprise zone credit under section 5709.66 of the Revised Code;	9539 9540
<del>(21)</del> <u>(20)</u> The credit for the eligible costs associated with a voluntary action under section 5747.32 of the Revised Code;	9541 9542
<del>(22)</del> <u>(21)</u> The credit for employers that establish on-site	9543

child day-care centers under section 5747.35 of the Revised Code;	9544
<del>(23)</del> <u>(22)</u> The credit for purchases of qualifying grape production property under section 5747.28 of the Revised Code;	9545 9546
<del>(24)</del> <u>(23)</u> The export sales credit under section 5747.057 of the Revised Code;	9547 9548
<del>(25)</del> <u>(24)</u> The credit for research and development and technology transfer investors under section 5747.33 of the Revised Code;	9549 9550 9551
<del>(26)</del> <u>(25)</u> The enterprise zone credits under section 5709.65 of the Revised Code;	9552 9553
<del>(27)</del> <u>(26)</u> The refundable jobs creation credit under section 5747.058 of the Revised Code;	9554 9555
<del>(28)</del> <u>(27)</u> The refundable credit for taxes paid by a qualifying entity granted under section 5747.059 of the Revised Code;	9556 9557 9558
<del>(29)</del> <u>(28)</u> The refundable credits for taxes paid by a qualifying pass-through entity granted under division (J) of section 5747.08 of the Revised Code.	9559 9560 9561
(B) For any credit except the refundable credits enumerated in divisions (A) <del>(27)</del> <u>(26)</u> , <del>(28)</del> <u>(27)</u> , and <del>(29)</del> <u>(28)</u> of this section and the credit granted under division (I) of section 5747.08 of the Revised Code, the amount of the credit for a taxable 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. Nothing in this chapter shall be construed to allow a taxpayer to claim, directly or indirectly, a credit more than once for a taxable year.	9562 9563 9564 9565 9566 9567 9568 9569 9570 9571 9572
<b>Section 2.</b> That existing sections 113.061, 133.04, 715.013,	9573

718.01, 1551.33, 1551.35, 3317.028, 4905.01, 4905.02, 4905.03, 9574  
4905.10, 4905.14, 4905.34, 4905.40, 4905.402, 4905.42, 4905.46, 9575  
4905.70, 4906.10, 4909.01, 4909.05, 4909.15, 4909.161, 4911.18, 9576  
4933.14, 4933.15, 4933.33, 4933.81, 4935.03, 4935.04, 5117.01, 9577  
5117.02, 5117.03, 5117.04, 5117.05, 5117.07, 5117.08, 5117.09, 9578  
5117.10, 5117.12, 5701.03, 5703.052, 5703.053, 5705.34, 5727.01, 9579  
5727.02, 5727.05, 5727.06, 5727.11, 5727.111, 5727.15, 5727.30, 9580  
5727.31, 5727.311, 5727.32, 5727.33, 5727.38, 5727.42, 5727.45, 9581  
5727.47, 5727.53, 5727.60, 5727.61, 5727.72, 5727.99, 5733.04, 9582  
5733.05, 5733.051, 5733.057, 5733.06, 5733.09, 5733.33, 5733.98, 9583  
5739.011, 5739.02, 5747.31, and 5747.98 and sections 4905.301, 9584  
4905.66, 4905.67, 4905.68, 4905.69, 4909.157, 4909.158, 4909.159, 9585  
4909.191, 4909.192, 4909.193, 4913.01, 4913.02, 4913.03, 4913.04, 9586  
4913.05, 4913.06, 4913.07, 4933.27, 4933.34, 5727.231, and 5727.73 9587  
of the Revised Code are hereby repealed. 9588

**Section 3.** Sections 5727.111 and 5727.15 of the Revised Code, 9589  
as amended by this act, shall first apply to tax year 2001. 9590

**Section 4.** Sections 4933.33, 5727.30, 5727.32, and 5727.33 of 9591  
the Revised Code, as amended by this act, shall first apply to the 9592  
excise tax assessed by the Tax Commissioner for tax year 2002. 9593

**Section 5.** Sections 1551.33, 1551.35, 4905.01, 4905.02, 9594  
4905.03, 4905.10, 4905.14, 4905.34, 4905.40, 4905.402, 4905.42, 9595  
4905.70, 4909.01, 4909.05, 4909.15, 4909.161, 4935.04, and 5703.14 9596  
of the Revised Code, as amended by this act, shall take effect on 9597  
January 1, 2001, but if the Public Utilities Commission issues an 9598  
order under division (C) of section 4928.01 of the Revised Code, 9599  
as enacted by this act, the amendments to such sections shall be 9600  
applied accordingly. In addition, the amendment of division 9601  
(A)(4)(b) of section 4909.15 of the Revised Code, as amended by 9602  
this act, shall not be applied until January 1, 2002. 9603

**Section 6.** Section 5727.45 of the Revised Code, as amended by this act, shall take effect January 1, 2002. 9604  
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**Section 7.** Sections 5117.01, 5117.02, 5117.03, 5117.04, 5117.05, 5117.07, 5117.08, 5117.09, 5117.10, and 5117.12 of the Revised Code, as amended by this act, shall take effect on July 1, 2000. 9606  
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**Section 8.** Section 5727.391 of the Revised Code is hereby repealed effective January 1, 2002. 9610  
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**Section 9.** Sections 4905.301, 4905.66, 4905.67, 4905.68, 4905.69, 4909.157, 4909.158, 4909.159, 4909.191, 4909.192, 4909.193, 4913.01, 4913.02, 4913.03, 4913.04, 4913.05, 4913.06, 4913.07, 4933.27, and 4933.34 of the Revised Code, as repealed by this act, shall take effect on January 1, 2001, but if the Public Utilities Commission issues an order under division (C) of section 4928.01 of the Revised Code, as enacted by this act, the repeal of such sections shall be applied accordingly. 9612  
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**Section 10.** The Public Utilities Commission, Consumers' Counsel, and the Attorney General shall develop a memorandum of understanding not later than January 1, 2000, to establish a system to respond effectively and efficiently to residential consumer inquiries and complaints and shall provide a joint report to the General Assembly on the efforts of the three agencies not later than June 30, 2002. 9620  
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**Section 11.** (A) As used in this section: 9627

(1) "Electric company," "combined company," and "rural electric company" have the same meanings as in section 5727.01 of the Revised Code. 9628  
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(2) "Gross receipts" means gross receipts determined in accordance with section 5727.33 of the Revised Code and any receipts received by an electric company, combined company, or rural electric company after April 30, 2001, from the distribution of electricity that was not subject to the excise tax imposed by section 5727.81 of the Revised Code.

(B) Each electric company, combined company, and rural electric company shall pay the public utility excise tax imposed by section 5727.30 of the Revised Code on the company's gross receipts received during the period of May 1, 2000, through May 1, 2001. Receipts received after August 1, 2001, are not subject to the tax on gross receipts under this section if an electric company, combined company, or rural electric company takes reasonable collection measures to collect the gross receipts. Notwithstanding section 5727.31 of the Revised Code, each electric company, combined company, and rural electric company shall make tax payments toward that liability. The first payment must be made on or before October 15, 2000, and shall equal one-third of the estimated liability shown in the report filed on or before August 1, 2000. The second payment must be made on or before March 1, 2001, and shall equal one-third of the tax assessed by the Tax Commissioner on or before the first Monday in November, 2000. The last payment must be made on or before June 1, 2001, and shall equal one-fourth of the tax assessed by the commissioner. The final report for the period of May 1, 2000, through May 1, 2001, shall be filed by an electric company, a combined company, or a rural electric company on or before August 1, 2001, in accordance with division (A) of section 5727.31 and section 5727.32 of the Revised Code.

On or before the first Monday of November 2001, the Tax Commissioner shall assess an excise tax equal to four and three-quarters per cent of the gross receipts received by electric

companies, combined companies, and rural electric companies during 9663  
the period of May 1, 2000, through May 1, 2001. Except as provided 9664  
in section 5727.03 of the Revised Code, as enacted by this act, 9665  
after payment of this assessment, electric companies, rural 9666  
electric companies, and combined companies, to the extent of their 9667  
activities as an electric company, are not subject to the excise 9668  
tax imposed by section 5727.30 of the Revised Code. 9669

**Section 12.** Electric companies, as defined in section 5727.01 9670  
of the Revised Code, shall first be subject to the corporation 9671  
franchise tax under Chapter 5733. of the Revised Code for tax year 9672  
2002, as "tax year" is defined in section 5733.04 of the Revised 9673  
Code. For tax year 2002, an electric company shall pay two-thirds 9674  
of its total corporation franchise tax liability under Chapter 9675  
5733. of the Revised Code. The amendments in this act to sections 9676  
4909.15, 5733.04, 5733.05, 5733.051, 5733.057, 5733.06, 5733.09, 9677  
5733.33, 5733.98, 5747.31, and 5747.98 of the Revised Code, and 9678  
the enactment in this act of sections 5733.059, 5733.0510, and 9679  
5733.39 of the Revised Code, first apply for tax year 2002. 9680

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**Section 13.** An electric company that is entitled to carry 9682  
forward a credit against its public utility excise tax liability 9683  
under section 5727.391 of the Revised Code before the repeal of 9684  
that section under this act, is not entitled to carry forward any 9685  
amount remaining after its last public utility excise tax payment 9686  
and claim that amount as a credit against its corporation 9687  
franchise tax liability under section 5733.39 of the Revised Code, 9688  
as enacted by this act. The credit granted under section 5727.391 9689  
of the Revised Code only applies through the last assessment 9690  
issued by the Tax Commissioner under Section 11 of this act. 9691

**Section 14.** The tax levied under section 5727.81 of the 9692

Revised Code first applies on and after May 1, 2001. Before that 9693  
date, any electric distribution company shall register with the 9694  
Tax Commissioner in accordance with section 5727.93 of the Revised 9695  
Code, as enacted by this act. 9696

**Section 15.** The intent of division (C) of section 5727.81 of 9697  
the Revised Code, as enacted by this act, is to craft a revenue 9698  
neutral solution for all customer classes, with any margin of 9699  
error being resolved in favor of residential customers. 9700

**Section 16.** The Director of Development shall study and 9701  
report to the General Assembly concerning the desirability of 9702  
implementing a tax credit program for the creation of new jobs in 9703  
Ohio to manufacture or assemble generating equipment and 9704  
components for global use. The director shall determine and 9705  
recommend how the tax credit should be structured to encourage 9706  
investments in facilities, equipment, and services related to the 9707  
manufacture, assembly, shipping preparation, and transportation of 9708  
generation equipment or components for global use, and to create 9709  
new jobs as a result of such investments. 9710

On or before December 31, 2000, the Director of Development 9711  
shall issue a report of its findings to the Senate and House of 9712  
Representatives in accordance with division (B) of section 101.68 9713  
of the Revised Code. 9714

**Section 17.** Section 5727.47 of the Revised Code is presented 9715  
in this act as a composite of the section as amended by both Am. 9716  
Sub. H.B. 904 and Am. S.B. 358 of the 119th General Assembly, with 9717  
the new language of neither of the acts shown in capital letters. 9718  
This is in recognition of the principle stated in division (B) of 9719  
section 1.52 of the Revised Code that such amendments are to be 9720  
harmonized where not substantively irreconcilable and constitutes 9721

a legislative finding that such is the resulting version in effect 9722  
prior to the effective date of this act. 9723

**Section 18.** Section 4928.431 of the Revised Code, as enacted 9724  
by this act, is hereby repealed effective December 31, 2005, at 9725  
which time the Electric Employee Assistance Advisory Board created 9726  
by that section shall cease to exist. 9727

**Section 19.** If any provision of law that constitutes the 9728  
whole or part of a codified or uncodified section of law contained 9729  
in this act, or if any application of any provision of law that 9730  
constitutes the whole or part of a codified or uncodified section 9731  
of law contained in this act, is held invalid, the invalidity does 9732  
not affect other provisions of law or applications of provisions 9733  
of law that can be given effect without the invalid provision of 9734  
law or application. To this end, the provisions of law of which 9735  
the codified and uncodified sections contained in this act are 9736  
composed, and their applications, are independent and severable. 9737

**Section 20.** It is the intent of the General Assembly to enact 9738  
laws prescribing a uniform set of procedures for the taxation of 9739  
electric company income by municipal corporations and to have such 9740  
laws in effect prior to the time those companies become subject to 9741  
municipal income taxes, as authorized by this act. 9742  
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