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123rd General Assembly

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Am. 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,
Mottley, Terwilleger, Harris, Core, Brading, Womer Benjamin, Tiberi, Corbin,
Thomas, Van Vyven, Winkler, O'Brien, Opfer, Evans, Perz, Hood, Amstutz,
Britton, Barrett**

A B I L L

To amend sections 113.061, 133.04, 715.013, 718.01,	1
1551.33, 1551.35, 3317.028, 4905.01, 4905.03,	2
4905.10, 4905.14, 4905.33, 4905.34, 4905.40,	3
4905.402, 4905.42, 4905.46, 4905.70, 4906.10,	4
4909.01, 4909.05, 4909.15, 4909.161, 4911.18,	5
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5733.057, 5733.06, 5733.09, 5733.33, 5733.98,	15
5739.011, 5739.02, 5747.31, and 5747.98; to enact	16
sections 4928.01 to 4928.20, 4928.31 to 4928.43,	17
4928.431, 4928.44, 4928.51 to 4928.58, 4928.61 to	18

4928.63, 4928.67, 5727.03, 5727.80 to 5727.95, 19
5733.059, 5733.0510, and 5733.39; and to repeal 20
sections 4905.301, 4905.66, 4905.67, 4905.68, 21
4905.69, 4909.157, 4909.158, 4909.159, 4909.191, 22
4909.192, 4909.193, 4913.01, 4913.02, 4913.03, 23
4913.04, 4913.05, 4913.06, 4913.07, 4933.27, 24
4933.34, 5727.231, 5727.391, and 5727.73 of the 25
Revised Code to provide for competition in retail 26
electric service, including provisions regarding 27
market structure, consumer protection, and 28
transition revenues; to levy a kilowatt-hour 29
excise tax on electric distribution companies; to 30
revise taxes for electric companies and rural 31
electric companies; to reduce tax assessment rates 32
on 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:

Section 1. That sections 113.061, 133.04, 715.013, 718.01, 38
1551.33, 1551.35, 3317.028, 4905.01, 4905.03, 4905.10, 4905.14, 39
4905.33, 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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5117.12, 5701.03, 5703.052, 5703.053, 5703.14, 5705.34, 5727.01, 44
5727.02, 5727.05, 5727.06, 5727.11, 5727.111, 5727.15, 5727.30, 45
5727.31, 5727.311, 5727.32, 5727.33, 5727.38, 5727.42, 5727.45, 46
5727.47, 5727.53, 5727.60, 5727.61, 5727.72, 5727.99, 5733.04, 47

5733.05, 5733.051, 5733.057, 5733.06, 5733.09, 5733.33, 5733.98, 48
5739.011, 5739.02, 5747.31, and 5747.98 be amended and sections 49
4928.01, 4928.02, 4928.03, 4928.04, 4928.05, 4928.06, 4928.07, 50
4928.08, 4928.09, 4928.10, 4928.11, 4928.12, 4928.13, 4928.14, 51
4928.15, 4928.16, 4928.17, 4928.18, 4928.19, 4928.20, 4928.31, 52
4928.32, 4928.33, 4928.34, 4928.35, 4928.36, 4928.37, 4928.38, 53
4928.39, 4928.40, 4928.41, 4928.42, 4928.43, 4928.431, 4928.44, 54
4928.51, 4928.52, 4928.53, 4928.54, 4928.55, 4928.56, 4928.57, 55
4928.58, 4928.61, 4928.62, 4928.63, 4928.67, 5727.03, 5727.80, 56
5727.81, 5727.82, 5727.83, 5727.84, 5727.85, 5727.86, 5727.87, 57
5727.88, 5727.89, 5727.90, 5727.91, 5727.92, 5727.93, 5727.94, 58
5727.95, 5733.059, 5733.0510, and 5733.39 of the Revised Code be 59
enacted to 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
5727.83, 5733.022, 5735.062, 5739.032, 5739.122, 5741.121, or
5747.072 of the Revised Code and rules adopted under this section,
the treasurer of state shall notify the tax commissioner of such
failure if the treasurer of state determines that such failure was
not due to reasonable cause or was due to willful neglect, and
shall provide the tax commissioner with any information used in
making that determination. The tax commissioner may assess an
additional charge as specified in the respective section of the
Revised Code governing the requirement to remit taxes by
electronic funds transfer.

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

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

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

territory and the payment or reimbursement obligations of the 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
the Revised Code; 143

(9) Other securities, including self-supporting securities, 144
excepted by law from the calculation of net indebtedness or from 145
the application of this chapter; 146

~~(9)~~(10) Any other securities outstanding on October 30, 1989, 147
and then excepted from the calculation of net indebtedness or from 148
the application of this chapter, and securities issued at any time 149
to fund or refund those securities. 150

Sec. 715.013. Except as otherwise expressly authorized by the 151
Revised Code, no municipal corporation shall levy a tax that is 152
the same as or similar to a tax levied under Chapter 322., 3734., 153
3769., 4123., 4141., 4301., 4303., 4305., 4307., 4309., 5707., 154
5725., 5727., 5728., 5729., 5731., 5735., 5737., 5739., 5741., 155
5743., or 5749. of the Revised Code. 156

This section does not prohibit a municipal corporation from 157
levying a tax on amounts received for admission to any place or, 158
on and after January 1, 2002, on the income of an electric company 159
or combined company, as defined in section 5727.01 of the Revised 160
Code. 161

Sec. 718.01. (A) As used in this chapter: 162

(1) "Internal Revenue Code" means the Internal Revenue Code 163
of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended. 164

(2) "Schedule C" means internal revenue service schedule C 165
filed by a taxpayer pursuant to the Internal Revenue Code. 166

(3) "Form 2106" means internal revenue service form 2106 167
filed by a taxpayer pursuant to the Internal Revenue Code. 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 intangible property including, but not limited to, investments, deposits, money, or credits as those terms are defined in Chapter 5701. of the Revised Code.

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

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

FOR THE INCOME TAX

AGAINST THE INCOME TAX"

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

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

(2) The legislative authority of a municipal corporation may, 200
by ordinance or resolution, exempt from a tax on income any 201
compensation arising from the grant, sale, exchange, or other 202
disposition of a stock option; the exercise of a stock option; or 203
the sale, exchange, or other disposition of stock purchased under 204
a stock option. 205

(E) Nothing in this section shall prevent a municipal 206
corporation from permitting lawful deductions as prescribed by 207
ordinance. If a taxpayer's taxable income includes income against 208
which the taxpayer has taken a deduction for federal income tax 209
purposes as reportable on the taxpayer's form 2106, and against 210
which a like deduction has not been allowed by the municipal 211
corporation, the municipal corporation shall deduct from the 212
taxpayer's taxable income an amount equal to the deduction shown 213
on such form allowable against such income, to the extent not 214
otherwise so allowed as a deduction by the municipal corporation. 215
In the case of a taxpayer who has a net profit from a business or 216
profession that is operated as a sole proprietorship, no municipal 217
corporation may tax or use as the base for determining the amount 218
of the net profit that shall be considered as having a taxable 219
situs in the municipal corporation, a greater amount than the net 220
profit reported by the taxpayer on schedule C filed in reference 221
to the year in question as taxable income from such sole 222
proprietorship, except as otherwise specifically provided by 223
ordinance or regulation. 224

(F) No municipal corporation shall tax any of the following: 225

(1) The military pay or allowances of members of the armed 226
forces of the United States and of members of their reserve 227
components, including the Ohio national guard; 228

(2) The income of religious, fraternal, charitable, 229
scientific, literary, or educational institutions to the extent 230

that such income is derived from tax-exempt real estate, 231
tax-exempt tangible or intangible property, or tax-exempt 232
activities; 233

(3) Except as otherwise provided in division (G) of this 234
section, intangible income; 235

(4) Compensation paid under section 3501.28 or 3501.36 of the 236
Revised Code to a person serving as a precinct election official, 237
to the extent that such compensation does not exceed one thousand 238
dollars annually. Such compensation in excess of one thousand 239
dollars may be subjected to taxation by a municipal corporation. A 240
municipal corporation shall not require the payer of such 241
compensation to withhold any tax from that compensation. 242

(5) Compensation paid to an employee of a transit authority, 243
regional transit authority, or regional transit commission created 244
under Chapter 306. of the Revised Code for operating a transit bus 245
or other motor vehicle for the authority or commission in or 246
through the municipal corporation, unless the bus or vehicle is 247
operated on a regularly scheduled route, the operator is subject 248
to such a tax by reason of residence or domicile in the municipal 249
corporation, or the headquarters of the authority or commission is 250
located within the municipal corporation. 251

(6) The income of a public utility when that public utility 252
is subject to the tax levied under section 5727.30 of the Revised 253
Code, except starting January 1, 2002, the income of an electric 254
company or combined company, as defined in section 5727.01 of the 255
Revised Code, may be taxed by a municipal corporation. For a 256
combined company, only the income attributed from the activity of 257
an electric company shall be subject to taxation by a municipal 258
corporation. The income of an electric company or combined company 259
subject to taxation by a municipal corporation shall be computed 260
by taking into account the adjustments provided by division 261

(I)(16) of section 5733.04 of the Revised Code. 262

(G) Any municipal corporation that taxes any type of 263
intangible income on March 29, 1988, pursuant to Section 3 of 264
Amended Substitute Senate Bill No. 238 of the 116th general 265
assembly, may continue to tax that type of income after 1988 if a 266
majority of the electors of the municipal corporation voting on 267
the question of whether to permit the taxation of that type of 268
intangible income after 1988 vote in favor thereof at an election 269
held on November 8, 1988. 270

(H) Nothing in this section or section 718.02 of the Revised 271
Code, shall authorize the levy of any tax on income ~~which~~ that a 272
municipal corporation is not authorized to levy under existing 273
laws or shall require a municipal corporation to allow a deduction 274
from taxable income for losses incurred from a sole proprietorship 275
or partnership. 276

Sec. 1551.33. (A) The director of development shall appoint 277
and fix the compensation of the director of the Ohio coal 278
development office established under section 1551.32 of the 279
Revised Code. The director of the office shall serve at the 280
pleasure of the director of development. 281

(B) The director of the office shall do all of the following: 282
283

(1) Biennially prepare and maintain the Ohio coal development 284
agenda required under section 1551.34 of the Revised Code; 285
286

(2) Propose and support policies for the office consistent 287
with the Ohio coal development agenda and develop means to 288
implement the agenda; 289

(3) Apportion for the office's administrative costs no more 290
than ten per cent of the moneys credited to the Ohio coal 291

development fund created under section 1551.36 of the Revised Code; 292
293

(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 ~~purposes~~ purpose of ~~sections 4905.301, section 4905.304,~~ 312
~~and 4909.191~~ 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 ~~4905.301,~~ 320
~~4905.304, or 4909.191~~ 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 479
coal mining industry; or 480

(b) Incorporate a design consistent with long-term 481
dependability; and 482

(c) Take into account the intermediate or long-term cost and 483
reliable energy supply interests of the company's customers; or 484

(2) Ineffective operating techniques. Such term does not 485
embrace any associated cost, including, but not limited to, 486
delivery cost, the cost of handling the fuel after its delivery to 487
such facility, the cost of such processing, readying, or 488
refinement of the fuel as may be necessary in order to use the 489
fuel to generate electricity, or the cost of disposing of any 490
residue of such fuel after it has been so used. To the extent the 491
washing of coal is required, by law or rule, to remove or reduce 492
sulfur compounds or any other impurity, "acquisition cost" 493
includes the cost of such washing. 494

(G) "Fuel component" means acquisition and delivery costs of 495
fuel for the generation of electricity, including the allowable 496
costs of purchased power as defined in section 4909.159 of the 497
Revised Code, divided by the corresponding number of net kilowatt 498
hours generated and purchased. 499

(H) "Base period" means the most recent six-month period for 500
which the public utilities commission has determined either the 501
amount of the fuel component or the fuel cost per kilowatt hour 502
included in the base rates of an electric light company, whichever 503
is last determined. 504

(I) "Current period" means the six-month period immediately 505
succeeding the base period for which the public utilities 506
commission has determined the amount of the fuel component in the 507

~~base rate of an electric light company.~~

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

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

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

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

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~~(3) A byproduct disposal facility, as defined in section 539
3734.051 of the Revised Code, that exclusively disposes of wastes 540
produced by the compliance facility and other coal combustion 541
byproducts produced by the generating unit in or to which the 542
compliance facility is incorporated or connected regardless of 543
whether the byproduct disposal facility is located on the same 544
premises as the compliance facility or generating unit that 545
produces the wastes disposed of at the facility; 546~~

~~(4) Facilities or equipment that is acquired, constructed, or 547
installed, and used, at a coal-fired electric generating facility 548
exclusively for the purpose of handling the byproducts produced by 549
the compliance facility or other coal combustion byproducts 550
produced by the generating unit in or to which the compliance 551
facility is incorporated or connected. 552~~

Sec. 4905.03. As used in this chapter: 553

(A) Any person, firm, copartnership, voluntary association, 554
joint-stock association, company, or corporation, wherever 555
organized or incorporated, is: 556

(1) A telegraph company, when engaged in the business of 557
transmitting telegraphic messages to, from, through, or in this 558
state; 559

(2) A telephone company, when engaged in the business of 560
transmitting telephonic messages to, from, through, or in this 561
state and as such is a common carrier; 562

(3) A motor transportation company, when engaged in the 563
business of carrying and transporting persons or property or the 564
business of providing or furnishing such transportation service, 565
for hire, in or by motor-propelled vehicles of any kind, including 566
trailers, for the public in general, over any public street, road, 567
or highway in this state, except as provided in section 4921.02 of 568

the Revised Code; 569

(4) An electric light company, when engaged in the business 570
of supplying electricity for light, heat, or power purposes to 571
consumers within this state, including supplying electric 572
transmission service for electricity delivered to consumers in 573
this state, but excluding a regional transmission organization 574
approved by the federal energy regulatory commission; 575

(5) A gas company, when engaged in the business of supplying 576
artificial gas for lighting, power, or heating purposes to 577
consumers within this state or when engaged in the business of 578
supplying artificial gas to gas companies or to natural gas 579
companies within this state, but a producer engaged in supplying 580
to one or more gas or natural gas companies, only such artificial 581
gas as is manufactured by that producer as a by-product of some 582
other process in which the producer is primarily engaged within 583
this state is not thereby a gas company. All rates, rentals, 584
tolls, schedules, charges of any kind, or agreements between any 585
gas company and any other gas company or any natural gas company 586
providing for the supplying of artificial gas and for compensation 587
for the same are subject to the jurisdiction of the public 588
utilities commission. 589

(6) A natural gas company, when engaged in the business of 590
supplying natural gas for lighting, power, or heating purposes to 591
consumers within this state. Notwithstanding the above, neither 592
the delivery nor sale of Ohio-produced natural gas by a producer 593
or gatherer under a public utilities commission-ordered exemption, 594
adopted before, as to producers, or after, as to producers or 595
gatherers, January 1, 1996, or the delivery or sale of 596
Ohio-produced natural gas by a producer or gatherer of 597
Ohio-produced natural gas, either to a lessor under an oil and gas 598
lease of the land on which the producer's drilling unit is 599
located, or the grantor incident to a right-of-way or easement to 600

the producer or gatherer, shall cause the producer or gatherer to
be a natural gas company for the purposes of this section.

All rates, rentals, tolls, schedules, charges of any kind, or
agreements between a natural gas company and other natural gas
companies or gas companies providing for the supply of natural gas
and for compensation for the same are subject to the jurisdiction
of the public utilities commission. The commission, upon
application made to it, may relieve any producer or gatherer of
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 631
of operating as a common carrier, a railway, wholly or partly 632
within this state, with one or more tracks upon, along, above, or 633
below any public road, street, alleyway, or ground, within any 634
municipal corporation, operated by any motive power other than 635
steam and not a part of an interurban railroad, whether the 636
railway is termed street, inclined-plane, elevated, or underground 637
railway; 638

(12) A suburban railroad company, when engaged in the 639
business of operating as a common carrier, whether wholly or 640
partially within this state, a part of a street railway 641
constructed or extended beyond the limits of a municipal 642
corporation, and not a part of an interurban railroad; 643

(13) An interurban railroad company, when engaged in the 644
business of operating a railroad, wholly or partially within this 645
state, with one or more tracks from one municipal corporation or 646
point in this state to another municipal corporation or point in 647
this state, whether constructed upon the public highways or upon 648
private rights-of-way, outside of municipal corporations, using 649
electricity or other motive power than steam power for the 650
transportation of passengers, packages, express matter, United 651
States mail, baggage, and freight. Such an interurban railroad 652
company is included in the term "railroad" as used in section 653
4907.02 of the Revised Code. 654

(14) A sewage disposal system company, when engaged in the 655
business of sewage disposal services through pipes or tubing, and 656
treatment works, or in a similar manner, within this state. 657

(B) "Motor-propelled vehicle" means any automobile, 658
automobile truck, motor bus, or any other self-propelled vehicle 659
not operated or driven upon fixed rails or tracks. 660

~~Nothing in this section shall be construed to mean that an~~ 661

electric light company operated not for profit, owned and operated 662
exclusively by and solely for its customers, or owned or operated 663
by a municipal corporation, is subject to sections ~~4905.66,~~ 664
~~4905.67, 4905.68, and 4905.69~~ of the Revised Code. 665

Sec. 4905.10. (A) For the sole purpose of maintaining and 666
administering the public utilities commission and exercising its 667
supervision and jurisdiction over the railroads and public 668
utilities of the state, an amount equivalent to the appropriation 669
from the public utilities fund created under division (B) of this 670
section to the public utilities commission for railroad and public 671
utilities regulation in each fiscal year shall be apportioned 672
among and assessed against ~~the railroads~~ each railroad and public 673
~~utilities~~ utility within the state by the commission by first 674
computing an assessment as though it were to be made in proportion 675
to the intrastate gross earnings or receipts, excluding earnings 676
or receipts from sales to other public utilities for resale, of 677
the ~~railroads and~~ railroad or public utilities utility for the 678
calendar year next preceding that in which the ~~assessments are~~ 679
assessment is made. The commission may include in that first 680
computation any amount of a railroad's or public utility's 681
intrastate gross earnings or receipts that were underreported in a 682
prior year. in addition to whatever penalties apply under the 683
Revised Code to such underreporting, the commission shall assess 684
the railroad or public utility interest at the rate stated in 685
division (A) of section 1343.01 of the Revised Code. the 686
commission shall deposit any interest so collected into the public 687
utilities fund. 688

The final computation of the assessment shall consist of 689
imposing upon each railroad and public utility whose assessment 690
under the first computation would have been fifty dollars or less 691
an assessment of fifty dollars and recomputing the ~~assessment~~ 692

assessments of the remaining railroads and public utilities by 693
apportioning an amount equal to the appropriation to the public 694
utilities commission for administration of the utilities division 695
in each fiscal year less the total amount to be recovered from 696
those paying the minimum assessment, in proportion to the 697
intrastate gross earnings or receipts of the remaining railroads 698
and public utilities for the calendar year next preceding that in 699
which the assessments are made. 700

In the case of an assessment based on intrastate gross 701
receipts under this section against a public utility that is an 702
electric utility as defined in section 4928.01 of the Revised 703
Code, or an electric services company, electric cooperative, or 704
governmental aggregator subject to certification under section 705
4928.08 of the Revised Code, such receipts shall be those 706
specified in the utility's, company's, COOPERATIVE'S, OR 707
aggregator's most recent report of intrastate gross receipts and 708
sales of kilowatt hours of electricity, filed with the commission 709
pursuant to division (F) of section 4928.06 of the Revised Code,
AND VERIFIED BY THE COMMISSION. 711

(B) On or before the first day of October in each year, the 712
commission shall notify each such railroad and public utility of 713
the sum assessed against it, whereupon payment shall be made to 714
the commission, which shall deposit it into the state treasury to 715
the credit of the public utilities fund, which is hereby created. 716
Any such amounts paid into the fund but not expended by the 717
commission shall be credited ratably, after first deducting any 718
deficits accumulated from prior years, by the commission to 719
railroads and public utilities that pay more than the minimum 720
assessment, according to the respective portions of such sum 721
assessable against them for the ensuing calendar year. The 722
assessments for such calendar year shall be reduced 723
correspondingly. 724

(C) Within five days after the beginning of each fiscal year, 725
the director of budget and management shall transfer from the 726
general revenue fund to the public utilities fund an amount 727
sufficient for maintaining and administering the public utilities 728
commission and exercising its supervision and jurisdiction over 729
the railroads and public utilities of the state during the first 730
four months of the fiscal year. The director shall transfer the 731
same amount back to the general revenue fund from the public 732
utilities fund at such time as the director determines that the 733
balance of the public utilities fund is sufficient to support the 734
appropriations from the fund for the fiscal year. The director may 735
transfer less than that amount if the director determines that the 736
revenues of the public utilities fund during the fiscal year will 737
be insufficient to support the appropriations from the fund for 738
the fiscal year, in which case the amount not paid back to the 739
general revenue fund shall be payable to the general revenue fund 740
in future fiscal years. 741

~~(C)~~(D) For the purpose of this section only, "public utility" 742
includes, in addition to an electric utility as defined in section 743
4928.01 of the Revised Code, an electric services company, an 744
electric cooperative, or a governmental aggregator subject to 745
certification under section 4928.08 of the Revised Code, to the 746
extent of the company's, cooperative's, or aggregator's engagement 747
in the business of supplying or arranging for the supply in this 748
state of any retail electric service for which it must be so 749
certified. 750

(E) Each public utilities commissioner shall receive a salary 751
fixed at the level set by pay range 49 under schedule E-2 of 752
section 124.152 of the Revised Code. 753

Sec. 4905.14. (A) Every public utility shall file an annual 754
report with the public utilities commission. The report shall be 755

filed at the time and in the form prescribed by the commission, 756
shall be duly verified, and shall cover the yearly period fixed by 757
the commission. The commission shall prescribe the character of 758
the information to be embodied in the annual report, and shall 759
furnish to each public utility a blank form for it. Every public 760
utility also shall file a copy of the annual report with the 761
office of consumers' counsel; the copy shall be filed at the same 762
time that the original is filed with the commission. If any annual 763
report filed with the commission is defective or erroneous, the 764
commission may order that it be amended within a prescribed time. 765
Any amendments made pursuant to such an order shall be filed with 766
the commission and with the office of consumers' counsel. Each 767
annual report filed with the commission shall be preserved in the 768
office of the commission. The commission may, at any time, require 769
specific answers to questions upon which it desires information. 770

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(B) On the first day of July and the first day of November of 772
each year, each gas company, and natural gas company, ~~and electric~~ 773
~~light company~~ shall file with the commission a report in 774
quintuplicate stating: 775

(1) The total demand, stated in terms of ~~kilowatt hours or~~ 776
cubic feet, that the company projects will be expected of the 777
company for the following twelve months; 778

~~(2) With respect to electric light companies, the supply of~~ 779
~~fuel for the generation of electricity that they will possess as~~ 780
~~of the first day of July and the first day of November;~~ 781

~~(3) With respect to gas companies and natural gas companies,~~ 782
the The pertinent details of supply contracts with pipeline 783
companies and producers for the following twelve months that they 784
have executed and the quantity of the gas that they will possess 785
in storage and will be available for delivery as of the first day 786

of July and the first day of November; 787

~~(4)~~(3) Where it appears from a comparison of the information 788
reported in division (B)(1) of this section with that reported in 789
division (B)(2) ~~or (3)~~ of this section that the total demand 790
projected by the company for the twelve months following the date 791
of the report will exceed the ability of the company to furnish 792
it, the means which the company intends to employ in order to 793
prevent any interruption or curtailment of service. 794

(C) The public utilities commission may require any telephone 795
company to file with its annual report, supplementary reports of 796
each exchange area owned or operated by it, in such detail as the 797
commission may prescribe. Upon request of fifteen per cent of the 798
subscribers of any telephone exchange, the public utilities 799
commission shall require the report for such exchange area. 800
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Sec. 4905.33. (A) No public utility shall directly or 802
indirectly, or by any special rate, rebate, drawback, or other 803
device or method, charge, demand, collect, or receive from any 804
person, firm, or corporation a greater or lesser compensation for 805
any services rendered, or to be rendered, except as provided in 806
Chapters 4901., 4903., 4905., 4907., 4909., 4921., AND 4923., ~~and~~ 807
~~4925.~~ of the Revised Code, than it charges, demands, collects, or 808
receives from any other person, firm, or corporation for doing a 809
like and contemporaneous service under substantially the same 810
circumstances and conditions. ~~No~~ 811

(B) No public utility shall furnish free service or service 812
for less than actual cost for the purpose of destroying 813
competition. 814

Sec. 4905.34. Except as provided in sections 4905.33 and 815
4905.35 and Chapter 4928. of the Revised Code, Chapters 4901., 816

4903., 4905., 4907., 4909., 4921., and 4923. of the Revised Code 817
do not prevent any public utility or railroad from granting any of 818
its property for any public purpose, or granting reduced rates or 819
free service of any kind to the United States, to the state or any 820
political subdivision of the state, for charitable purposes, for 821
fairs or expositions, to a law enforcement officer residing in 822
free housing provided pursuant to section 3735.43 of the Revised 823
Code, or to any officer or employee of such public utility or 824
railroad or the officer's or employee's family. All contracts and 825
agreements made or entered into by such public utility or railroad 826
for such use, reduced rates, or free service are valid and 827
enforcible at law. As used in this section, "employee" includes 828
furloughed, pensioned, and superannuated employees. 829

Sec. 4905.40. (A) A public utility or a railroad may, when 830
authorized by order of the public utilities commission, issue 831
stocks, bonds, notes, and other evidences of indebtedness, payable 832
at periods of more than twelve months after their date of 833
issuance, when necessary: 834

(1) For the acquisition of property, the construction, 835
completion, extension, renewal, or improvement of its facilities, 836
or the improvement of its service; or 837

(2) For reorganization or readjustment of its indebtedness 838
and capitalization, for the discharge or lawful refunding of its 839
obligation, or for the reimbursement of moneys actually expended 840
for such purposes from income or from any other moneys in the 841
treasury of the public utility or railroad not secured or obtained 842
from the issue of stocks, bonds, notes, or other evidences of 843
indebtedness of such public utility or railroad. No reimbursement 844
of moneys expended for such purposes from income or other moneys 845
in the treasury shall be authorized unless the applicant has kept 846
its accounts and vouchers of such expenditures in such manner as 847

to enable the commission to ascertain the amount and purposes of 848
such expenditures. 849

(B) Any public utility, subject to the jurisdiction of the 850
commission, may, when authorized by the commission, issue shares 851
of common capital stock to acquire or pay for shares of common 852
capital stock of a public utility of this or an adjoining state 853
whose property is so located as to permit the operation of the 854
properties of such utilities as an integrated system if the 855
applicant owns, or by this issue will acquire, not less than 856
sixty-five per cent of the issued and outstanding common capital 857
shares of the company whose shares are to be acquired, and if the 858
consideration to be capitalized by the acquiring company does not 859
exceed the par or stated value at which the shares so acquired 860
were issued. 861

(C) Any bonds, notes, or other evidences of indebtedness 862
payable at periods of more than twelve months after their date may 863
be issued as provided in sections 4905.40 to 4905.43 of the 864
Revised Code, regardless of the amount of the capital stock of the 865
public utility or railroad, subject to the approval of the 866
commission of the excess of such bonds, notes, or other evidences 867
of indebtedness above the amount of the capital stock of such 868
public utility or railroad. 869

(D) The commission shall authorize on the best terms 870
obtainable such issues of stocks, bonds, and other evidences of 871
indebtedness as are necessary to enable any public utility to 872
comply with any contract made between such public utility and any 873
municipal corporation prior to June 30, 1911. 874

(E) The commission may authorize a public utility that is an 875
electric light company to issue equity securities, or debt 876
securities having a term of more than twelve months from the date 877
of issuance, for the purpose of yielding to the company the 878

capacity to acquire a facility that produces fuel for the 879
generation of electricity. 880

(F) In any proceeding under division (A)(1) of this section 881
initiated by a public utility, the commission shall determine and 882
set forth in its order: 883

(1) Whether the purpose to which the issue or any proceeds of 884
it shall be applied was or is reasonably required by the utility 885
to meet its present and prospective obligations to provide utility 886
service; 887

(2) Whether the amount of the issue and the probable cost of 888
such stocks, bonds, notes, or other evidences of indebtedness is 889
just and reasonable; 890

(3) What effect, if any, the issuance of such stocks, bonds, 891
notes, or other evidences of indebtedness and the cost thereof 892
will have upon the present and prospective revenue requirements of 893
the utility. 894

(G) Sections 4905.40 to 4905.42 of the Revised Code do not 895
apply to stocks, bonds, notes, or other evidence of indebtedness 896
issued for the purpose of financing oil or natural gas drilling, 897
producing, gathering, and associated activities and facilities by 898
a producer which supplies to no more than twenty purchasers only 899
such gas as is produced, gathered, or purchased by such producer 900
within this state. 901

(H) Each public utility seeking authorization from the 902
commission for the issuance of securities to finance the 903
installation, construction, extension, or improvement of an air 904
quality facility, as defined in section 3706.01 of the Revised 905
Code, shall consider the availability of financing therefor from 906
the Ohio air quality development authority and shall demonstrate 907
to the commission that the proposed financing will be obtained on 908
the best terms obtainable. 909

Sec. 4905.402. (A) As used in this section: 910

(1) "Control" means the possession of the power to direct the 911
management and policies of a domestic telephone company or a 912
holding company of a domestic telephone company, or the management 913
and policies of a domestic electric utility or a holding company 914
of a domestic electric utility, through the ownership of voting 915
securities, by contract, or otherwise, but does not include the 916
power that results from holding an official position or the 917
possession of corporate office with the domestic ~~telephone~~ company 918
or utility or the holding company. Control is presumed to exist if 919
any person, directly or indirectly, owns, controls, holds the 920
power to vote, or holds with the power to vote proxies ~~which~~ that 921
constitute, twenty per cent or more of the total voting power of 922
the domestic ~~telephone~~ company or utility or the holding company. 923

(2) "Electric utility" has the same meaning as in section 924
4928.07 of the Revised Code. 925

(3) "Holding company" excludes any securities broker 926
performing the usual and customary broker's function. 927

~~(3)~~(4) "Telephone company" means any company described in 928
division (A)(2) of section 4905.03 of the Revised Code that is a 929
public utility under section 4905.02 of the Revised Code and 930
provides basic local exchange service, as defined in section 931
4927.01 of the Revised Code. 932

(B) No person shall acquire control, directly or indirectly, 933
of a domestic telephone company or a holding company controlling a 934
domestic telephone company or of a domestic electric utility or a 935
holding company controlling a domestic electric utility unless 936
that person obtains the prior approval of the public utilities 937
commission under this section. To obtain approval the person shall 938
file an application with the commission demonstrating that the 939

acquisition will promote public convenience and result in the 940
provision of adequate service for a reasonable rate, rental, toll, 941
or charge. The application shall contain such information as the 942
commission may require. If the commission considers a hearing 943
necessary, it may fix a time and place for hearing. If, after 944
review of the application and after any necessary hearing, the 945
commission is satisfied that approval of the application will 946
promote public convenience and result in the provision of adequate 947
service for a reasonable rate, rental, toll, or charge, the 948
commission shall approve the application and make such order as it 949
considers proper. If the commission fails to issue an order within 950
thirty days of the filing of the application, or within twenty 951
days of the conclusion of a hearing, if one is held, the 952
application shall be deemed approved by operation of law. 953

(C) The ~~public utilities~~ commission shall adopt such rules as 954
it finds necessary to carry out this section. 955

(D) If it appears to the ~~public utilities~~ commission or to 956
any person ~~who~~ that may be adversely affected that any person is 957
engaged in or about to engage in any acts or practices that would 958
violate this section, the attorney general, when directed to do so 959
by the commission, or the person claiming to be adversely affected 960
may bring an action in any court of common pleas that has 961
jurisdiction and venue to enjoin such acts or practices and 962
enforce compliance with this section. Upon a proper showing, the 963
court shall grant, without bond, a restraining order or temporary 964
or permanent injunction. 965

(E) The courts of this state have jurisdiction over every 966
person not a resident of or domiciled or authorized to do business 967
in this state ~~who~~ that files, or is prohibited from acting without 968
first filing, an application under division (B) of this section, 969
and over all actions involving such person arising out of 970
violations of this section. The secretary of state shall be the 971

agent for service of process for any such person in any action, 972
suit, or proceeding arising out of violations of this section. 973
Copies of all such lawful process shall be served upon the 974
secretary of state and transmitted by certified mail, with return 975
receipt requested, by the secretary of state to such person at ~~his~~ 976
the person's last known address. 977

Sec. 4905.42. To determine whether it should issue the order 978
referred to in section 4905.40 of the Revised Code, the public 979
utilities commission shall hold such hearings, make such inquiries 980
or investigations, and examine such witnesses, books, papers, 981
documents, and contracts as it deems proper. ~~Within forty-five~~ 982
~~days after an electric light company submits an application under~~ 983
~~that section pertaining to the issuance of stocks, bonds, notes,~~ 984
~~or other evidence of indebtedness to acquire, construct, or~~ 985
~~install a compliance facility, the commission shall complete its~~ 986
~~review and shall render a decision on the application.~~ 987

An order issued under this section shall fix the amount, 988
character, and terms of any issue of stocks, bonds, notes, or 989
other evidence of indebtedness, and the purposes to which the 990
issue or any proceeds of it shall be applied, shall recite that 991
the money, property, consideration, or labor procured or to be 992
procured or paid for by such issue was or is reasonably required 993
for the purposes specified in the order, and shall recite the 994
value of any property, consideration, or service, as found by the 995
commission, for which in whole or in part such issue is proposed 996
to be made. 997

No public utility or railroad shall, without the consent of 998
the commission, apply any such issue or its proceeds to any 999
purpose not specified in the order. Such public utilities or 1000
railroads may issue notes for proper corporate purposes, payable 1001
at periods of not more than twelve months, without the consent of 1002

the commission, but no such notes shall, in whole or in part,
directly or indirectly, be refunded by any issue of stocks or
bonds, or by any evidence of indebtedness, running for more than
twelve months, without the consent of the commission.

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

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

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

Sec. 4905.46. (A) No public utility or railroad shall declare 1035
any stock, bond, or scrip dividend or distribution, or divide the 1036
proceeds of the sale of any stock, bond, or scrip among its 1037
stockholders, unless it is authorized to do so by the public 1038
utilities commission. 1039

(B) ~~Unless it is authorized to do so by the commission:~~ 1040

~~(1) No public utility which is a part of an electric utility 1041
holding company system exempt under section 3(a)(1) or (2) of the 1042
"Public Utility Holding Company Act of 1935," 49 Stat. 803, 15 1043
U.S.C. 79c, and the rules and regulations promulgated thereunder, 1044
shall invest in, lend funds to, guarantee the obligations of, 1045
otherwise finance, or transfer assets to any company which is not 1046
a public utility as defined by Ohio law or the law of any other 1047
state, and which is affiliated or associated with it in the same 1048
holding company system. This limitation on investments, loans, 1049
guarantees, or other financing does not apply to transactions in 1050
the ordinary course of the companies' public utilities business 1051
operations in which one entity acts on behalf of, or with respect 1052
to, another within the holding company system. 1053~~

~~(2) No electric utility holding company exempt under section 1054
3(a)(1) or (2) of the "Public Utility Holding Company Act of 1055
1935," 49 Stat. 803, 15 U.S.C. 79c, and the rules and regulations 1056
promulgated thereunder, which directly owns, controls or holds 1057
with the power to vote ten per cent or more of the outstanding 1058
voting securities of an electric light company, or is itself an 1059
electric light company, shall make any investment, including 1060
loans, in any subsidiary, affiliate, or associate that is not a 1061
public utility as defined by Ohio law or the law of another state, 1062
that would cause the company's capital investments in all such 1063
non-utility subsidiaries, affiliates, and associates to exceed, at 1064
the time such proposed investment is made, fifteen per cent or 1065~~

more of the aggregate capitalization of the holding company on a 1066
consolidated basis. This limitation, however, does not extend to 1067
investments made with funds provided from nonutility subsidiaries, 1068
affiliates, or associates. 1069

~~(C) The commission shall not approve a transfer of assets 1070~~
~~subject to division (B)(1) of this section for at least forty-five 1071~~
~~days after an application for approval has been filed with it, in 1072~~
~~order to afford interested persons the opportunity to submit 1073~~
~~objections to approval of the application and to request a public 1074~~
~~hearing. If the commission, after such forty-five day period but 1075~~
~~within one hundred thirty-five days after the application was 1076~~
~~filed, does not disapprove the application, the application shall 1077~~
~~be deemed approved. 1078~~

~~(D) Nothing in division (B) or (C) of this section affects 1079~~
~~the authority of a public utility or railroad to declare and pay 1080~~
~~interest or dividends on, or otherwise act with respect to, 1081~~
~~stocks, bonds, notes, or other evidences of indebtedness once 1082~~
~~issued pursuant to sections 4905.40 to 4905.42 of the Revised 1083~~
~~Code. 1084~~

~~(E) No telephone company shall declare any cash, stock, bond, 1085~~
~~or scrip dividend or distribution, or divide the proceeds of the 1086~~
~~sale of any stock, bond, or scrip among its common or voting 1087~~
~~shareholders, while such telephone company is in violation of any 1088~~
~~order of the commission, or against which telephone company there 1089~~
~~exists a finding of inadequate service, except when the public 1090~~
~~utilities commission makes a finding after hearing and notice, as 1091~~
~~provided in section 4905.26 of the Revised Code, that such 1092~~
~~dividend or distribution will in no way postpone compliance with 1093~~
~~any order or affect the adequacy of service rendered or to be 1094~~
~~rendered by such telephone company. ~~Provided that if~~ If a 1095~~
~~telephone company, while in violation of any order of the 1096~~
~~commission, or against which there exists a finding of inadequate 1097~~

service, desires to declare a cash dividend or distribution 1098
without the consent of the commission, it shall set aside in a 1099
special reserve fund a sum of money equivalent to the amount 1100
necessary to pay the proposed dividend or distribution, which, 1101
while said company is in violation of said order or against which 1102
such finding exists, may be expended only with the consent of the 1103
commission. 1104

Sec. 4905.70. The public utilities commission shall initiate 1105
programs that will promote and encourage conservation of energy 1106
and a reduction in the growth rate of energy consumption, promote 1107
economic efficiencies, and take into account long-run incremental 1108
costs. Notwithstanding sections 4905.31, 4905.33, 4905.35, and 1109
4909.151 of the Revised Code, the ~~public utilities~~ commission 1110
shall examine and issue written findings on the declining block 1111
rate structure, lifeline rates, long-run incremental pricing, peak 1112
load and off-peak pricing, time of day and seasonal pricing, 1113
interruptible load pricing, and single rate pricing where rates do 1114
not vary because of classification of customers or amount of 1115
usage. ~~The public utilities commission shall establish criteria~~ 1116
~~for the investigation, identification, and remedy of the existence~~ 1117
~~of any excess capacity, exclusive of capacity used primarily for~~ 1118
~~Ohio coal research and development, as defined in section 1555.01~~ 1119
~~of the Revised Code, the costs of which have been allowed for~~ 1120
~~recovery under section 4905.301 or 4909.15 of the Revised Code, in~~ 1121
~~the generating systems of electric light companies.~~ The public 1122
utilities commission, by a rule adopted no later than October 1, 1123
1977, and effective and applicable no later than November 1, 1977, 1124
shall require each electric light company to offer to such of 1125
their residential customers whose residences are primarily heated 1126
by electricity the option of their usage being metered by a demand 1127
or load meter. A under the rule, a customer who selects such 1128
option may, ~~under the rule,~~ be required by the company, where no 1129

such meter is already installed, to pay for such meter and its 1130
installation. The rule shall require each company to bill such of 1131
its customers who select such option for those kilowatt hours in 1132
excess of a prescribed number of kilowatt hours per kilowatt of 1133
billing demand, at a rate per kilowatt hour that reflects the 1134
lower cost of providing service during off-peak periods. 1135

Sec. 4906.10. (A) The power siting board shall render a 1136
decision upon the record either granting or denying the 1137
application as filed, or granting it upon such terms, conditions, 1138
or modifications of the construction, operation, or maintenance of 1139
the major utility facility as the board considers appropriate. The 1140
certificate shall be conditioned upon the facility being in 1141
compliance with standards and rules adopted under sections 1142
1501.33, 1501.34, and 4561.32 and Chapters 3704., 3734., and 6111. 1143
of the Revised Code. The period of initial operation under a 1144
certificate shall expire two years after the date on which 1145
electric power is first generated by the facility. During the 1146
period of initial operation, the facility shall be subject to the 1147
enforcement and monitoring powers of the director of environmental 1148
protection under Chapters 3704., 3734., and 6111. of the Revised 1149
Code and to the emergency provisions under those chapters. If a 1150
major utility facility constructed in accordance with the terms 1151
and conditions of its certificate is unable to operate in 1152
compliance with all applicable requirements of state laws, rules, 1153
and standards pertaining to air pollution, the facility may apply 1154
to the director of environmental protection for a conditional 1155
operating permit under division (G) of section 3704.03 of the 1156
Revised Code and the rules adopted thereunder. The operation of a 1157
major utility facility in compliance with a conditional operating 1158
permit is not in violation of its certificate. After the 1159
expiration of the period of initial operation of a major utility 1160

facility, the facility shall be under the jurisdiction of the 1161
environmental protection agency and shall comply with all laws, 1162
rules, and standards pertaining to air pollution, water pollution, 1163
and solid and hazardous waste disposal. 1164

The board shall not grant a certificate for the construction, 1165
operation, and maintenance of a major utility facility, either as 1166
proposed or as modified by the board, unless it finds and 1167
determines all of the following: 1168

(1) The basis of the need for the facility⁷. In the case of a 1169
major utility facility described in division (B)(1) of section 1170
4906.01 of the Revised Code to be constructed on or after the 1171
effective date of this amendment, the board shall presume the need 1172
for the facility as that need is stated in an application pursuant 1173
to division (A)(3) of section 4906.06 of the Revised Code. 1174

(2) The nature of the probable environmental impact; 1175

(3) That the facility represents the minimum adverse 1176
environmental impact, considering the state of available 1177
technology and the nature and economics of the various 1178
alternatives, and other pertinent considerations; 1179

(4) In the case of an electric transmission line, that the 1180
facility is consistent with regional plans for expansion of the 1181
electric power grid of the electric systems serving this state and 1182
interconnected utility systems and that the facility will serve 1183
the interests of electric system economy and reliability; 1184

(5) That the facility will comply with Chapters 3704., 3734., 1185
and 6111. of the Revised Code and all rules and standards adopted 1186
under those chapters and under sections 1501.33, 1501.34, and 1187
4561.32 of the Revised Code. In determining whether the facility 1188
will comply with all rules and standards adopted under section 1189
4561.32 of the Revised Code, the board shall consult with the 1190

office of aviation of the division of multi-modal planning and 1191
programs of the department of transportation under section 1192
4561.341 of the Revised Code. 1193

(6) That the facility will serve the public interest, 1194
convenience, and necessity; 1195

(7) In addition to the provisions contained in divisions 1196
(A)(1) to (6) of this section and rules adopted under those 1197
divisions, what its impact will be on the viability as 1198
agricultural land of any land in an existing agricultural district 1199
established under Chapter 929. of the Revised Code that is located 1200
within the site and alternative site of the proposed major utility 1201
facility. Rules adopted to evaluate impact under division (A)(7) 1202
of this section shall not require the compilation, creation, 1203
submission, or production of any information, document, or other 1204
data pertaining to land not located within the site and 1205
alternative site. 1206

(8) That the facility incorporates maximum feasible water 1207
conservation practices as determined by the board, considering 1208
available technology and the nature and economics of the various 1209
alternatives. 1210

(B) If the board determines that the location of all or a 1211
part of the proposed facility should be modified, it may condition 1212
its certificate upon that modification, provided that the 1213
municipal corporations and counties, and persons residing therein, 1214
affected by the modification shall have been given reasonable 1215
notice thereof. 1216

(C) A copy of the decision and any opinion issued therewith 1217
shall be served upon each party. 1218

Sec. 4909.01. As used in this chapter: 1219

(A) "Public utility" has the meaning set forth in section 1220

4905.02 of the Revised Code.	1221
(B) "Telegraph company," "telephone company," "electric light company," "gas company," "natural gas company," "pipeline company," "water-works company," "sewage disposal system company," "heating or cooling company," "messenger company," "street railway company," "suburban railroad company," "interurban railroad company," and "motor-propelled vehicle" have the meanings set forth in section 4905.03 of the Revised Code.	1222 1223 1224 1225 1226 1227 1228
(C) "Railroad" has the meaning set forth in section 4907.02 of the Revised Code.	1229 1230
(D) "Motor transportation company" has the meaning set forth in sections 4905.03 and 4921.02 of the Revised Code.	1231 1232
(E) "Trailers," "public highway," "fixed termini," "regular route," and "irregular route" have the meanings set forth in section 4921.02 of the Revised Code.	1233 1234 1235
(F) "Private motor carrier," "contract carrier by motor vehicle," "motor vehicle," and "charter party trip" have the meanings set forth in section 4923.02 of the Revised Code.	1236 1237 1238
(G) "Delivery cost" and "acquisition cost" have the meanings set forth in section 4905.01 of the Revised Code.	1239 1240
(H) "Compliance facility" has the meaning set forth in section 4905.01 of the Revised Code.	1241 1242
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.	1243 1244 1245 1246
Sec. 4909.05. As used in this section:	1247
(A) A "lease purchase agreement" is an agreement pursuant to which a public utility leasing property is required to make rental	1248 1249

payments for the term of the agreement and either the utility is 1250
granted the right to purchase the property upon the completion of 1251
the term of the agreement and upon the payment of an additional 1252
fixed sum of money or title to the property vests in the utility 1253
upon the making of the final rental payment. 1254

(B) A "leaseback" is the sale or transfer of property by a 1255
public utility to another person contemporaneously followed by the 1256
leasing of the property to the public utility on a long-term 1257
basis. 1258

The public utilities commission shall prescribe the form and 1259
details of the valuation report of the property of each public 1260
utility or railroad in the state. Such report shall include all 1261
the kinds and classes of property, with the value of each, owned 1262
or held by each public utility or railroad used and useful for the 1263
service and convenience of the public. Such report shall contain 1264
the following facts in detail: 1265

(C) The original cost of each parcel of land owned in fee and 1266
in use at the date certain determined by the commission; and also 1267
a statement of the conditions of acquisition, whether by direct 1268
purchase, by donation, by exercise of the power of eminent domain, 1269
or otherwise; 1270

(D) The actual acquisition cost, not including periodic 1271
rental fees, of rights-of-way, trailways, or other land rights 1272
held by virtue of easements, leases, or other forms of grants of 1273
rights as to usage; 1274

(E) The original cost of all other kinds and classes of 1275
property used and useful in the rendition of service to the 1276
public. Such original costs of property, other than land owned in 1277
fee, shall be the cost, as determined to be reasonable by the 1278
commission, to the person that first dedicated the property to the 1279
public use and shall be set forth in property accounts and 1280

subaccounts as prescribed by the commission. To the extent that
the costs of property comprising a coal research and development
facility, as defined in section 1555.01 of the Revised Code, or a
coal development project, as defined in section 1551.30 of the
Revised Code, have been allowed for recovery as Ohio coal research
and development costs under section ~~4905.301~~, 4905.304, or
~~4909.191~~ of the Revised Code, none of those costs shall be
included as a cost of property under this division.

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

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

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

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

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

The report shall show separately the property used and useful

to such public utility or railroad in the furnishing of the 1312
service to the public, and the property held by such public 1313
utility or railroad for other purposes, and such other items as 1314
the commission considers proper. The commission may require an 1315
additional report showing the extent to which the property is used 1316
and useful. Such reports shall be filed in the office of the 1317
commission for the information of the governor and the general 1318
assembly. 1319

Sec. 4909.15. (A) The public utilities commission, when 1320
fixing and determining just and reasonable rates, fares, tolls, 1321
rentals, and charges, shall determine: 1322

(1) The valuation as of the date certain of the property of 1323
the public utility used and useful in rendering the public utility 1324
service for which rates are to be fixed and determined. The 1325
valuation so determined shall be the total value as set forth in 1326
division (J) of section 4909.05 of the Revised Code, and a 1327
reasonable allowance for materials and supplies and cash working 1328
capital, as determined by the ~~public utilities~~ commission. 1329

The commission ~~may~~, in its discretion, may include in the 1330
valuation a reasonable allowance for construction work in progress 1331
but, in no event, may such an allowance be made by the commission 1332
until it has determined that the particular construction project 1333
is at least seventy-five per cent complete. 1334

~~In the case of a construction project involving the 1335
installation, renovation, or maintenance of pollution control 1336
equipment, the commission may include the project in the valuation 1337
as construction work in progress as of the date that the 1338
particular construction project is at least seventy five per cent 1339
complete. 1340~~

~~As used in this division, "pollution control equipment" means 1341~~

~~any construction project undertaken, in whole or in part, to~~ 1342
~~reduce sulfur or nitrous oxide emissions to levels established by~~ 1343
~~federal, state, or local statute, law, ordinance, regulation, or~~ 1344
~~order. The commission shall determine by rule what projects~~ 1345
~~qualify as pollution control equipment.~~ 1346

In determining the percentage completion of a particular 1347
construction project, the commission shall consider, among other 1348
relevant criteria, the per cent of time elapsed in construction; 1349
the per cent of construction funds, excluding allowance for funds 1350
used during construction, expended, or obligated to such 1351
construction funds budgeted where all such funds are adjusted to 1352
reflect current purchasing power; and any physical inspection 1353
performed by or on behalf of any party, including the commission's 1354
staff. 1355

A reasonable allowance for construction work in progress 1356
~~other than for construction projects involving the installation,~~ 1357
~~renovation, or maintenance of pollution control equipment shall~~ 1358
not exceed ten per cent of the total valuation as stated in this 1359
division, not including such allowance for construction work in 1360
progress. 1361

~~The allowance for construction work in progress for~~ 1362
~~construction projects involving the installation, renovation, or~~ 1363
~~maintenance of pollution control equipment shall be the dollar~~ 1364
~~value of the project and shall not exceed, together with any other~~ 1365
~~allowance for construction work in progress granted under this~~ 1366
~~division, twenty per cent of the total valuation as stated in this~~ 1367
~~division, not including such allowance for construction work in~~ 1368
~~progress.~~ 1369

Where the commission permits an allowance for construction 1370
work in progress, the dollar value of the project or portion 1371
thereof included in the valuation as construction work in progress 1372

shall not be included in the valuation as plant in service until 1373
such time as the total revenue effect of the construction work in 1374
progress allowance is offset by the total revenue effect of the 1375
plant in service exclusion. Carrying charges calculated in a 1376
manner similar to allowance for funds used during construction 1377
shall accrue on that portion of the project in service but not 1378
reflected in rates as plant in service, and such accrued carrying 1379
charges shall be included in the valuation of the property at the 1380
conclusion of the offset period for purposes of division (J) of 1381
section 4909.05 of the Revised Code. 1382

From and after April 10, 1985, no allowance for construction 1383
work in progress as it relates to a particular construction 1384
project shall be reflected in rates for a period exceeding 1385
forty-eight consecutive months commencing on the date the initial 1386
rates reflecting such allowance become effective, except as 1387
otherwise provided in this division. 1388

~~In the case of a nuclear generating facility that has not 1389
been granted a full construction permit by the nuclear regulatory 1390
commission on or before April 10, 1985, the utility, within six 1391
months after the granting of such permit, shall submit to the 1392
public utilities commission a projected in service date for such 1393
facility. Thereafter, no allowance for construction work in 1394
progress as it relates to such nuclear generating facility shall 1395
be reflected in rates for a period exceeding forty-eight 1396
consecutive months commencing on the date the initial rates 1397
reflecting such allowance become effective, or for a period 1398
commencing on the date the initial rates reflecting such allowance 1399
become effective and ending on the projected in service date 1400
previously submitted to the commission, whichever period expires 1401
first. 1402~~

The applicable maximum period in rates for an allowance for 1403
construction work in progress as it relates to a particular 1404

construction project shall be tolled if, and to the extent, a
delay in the in-service date of the project is caused by the
action or inaction of any federal, state, county, or municipal
agency having jurisdiction, where such action or inaction relates
to a change in a rule, standard, or approval of such agency, and
where such action or inaction is not the result of the failure of
the utility to reasonably endeavor to comply with any rule,
standard, or approval prior to such change.

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

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

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

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

(2) A fair and reasonable rate of return to the utility on 1436
the valuation as determined in division (A)(1) of this section; 1437

(3) The dollar annual return to which the utility is entitled 1438
by applying the fair and reasonable rate of return as determined 1439
under division (A)(2) of this section to the valuation of the 1440
utility determined under division (A)(1) of this section; 1441

(4) The cost to the utility of rendering the public utility 1442
service for the test period less the total of any interest on cash 1443
or credit refunds paid, pursuant to section 4909.42 of the Revised 1444
Code, by the utility during the test period. 1445

~~(a) Any depreciation expense of a compliance facility shall 1446
be calculated under division (A)(4) of this section on the basis 1447
of the useful service life of the compliance facility or the 1448
remaining useful life of the electric generating unit in 1449
connection with which the compliance facility was acquired, 1450
constructed, or installed, whichever is the shorter time. Division 1451
(A)(4)(a) of this section applies only to depreciation expense of 1452
a compliance facility contained in the environmental compliance 1453
plan of the electric light company approved under Chapter 4913. of 1454
the Revised Code or in its compliance strategy examined under 1455
section 4909.158 of the Revised Code. 1456~~

~~(b)~~ Federal, state, and local taxes imposed on or measured by 1457
net income may, in the discretion of the commission, be computed 1458
by the normalization method of accounting, provided the utility 1459
maintains accounting reserves that reflect differences between 1460
taxes actually payable and taxes on a normalized basis, provided 1461
that no determination as to the treatment in the rate-making 1462
process of such taxes shall be made that will result in loss of 1463
any tax depreciation or other tax benefit to which the utility 1464
would otherwise be entitled, and further provided that such tax 1465
benefit as redounds to the utility as a result of such a 1466

computation may not be retained by the company, used to fund any 1467
dividend or distribution, or utilized for any purpose other than 1468
the defrayal of the operating expenses of the utility and the 1469
defrayal of the expenses of the utility in connection with 1470
construction work. 1471

~~(c)~~(b) The amount of any tax credits granted to an electric 1472
light company under section ~~5727.391~~ 5733.39 of the Revised Code 1473
shall not be retained by the company, used to fund any dividend or 1474
distribution, or utilized for any purposes other than the defrayal 1475
of the allowable operating expenses of the company and the 1476
defrayal of the allowable expenses of the company in connection 1477
with the installation, acquisition, construction, or use of a 1478
compliance facility. The amount of the tax credits granted to an 1479
electric light company under that section shall be returned to its 1480
customers within three years after initially claiming the credit 1481
through an offset to the company's rates or fuel component, as 1482
determined by the commission, as set forth in schedules filed by 1483
the company under section 4905.30 of the Revised Code. As used in 1484
division (A)(4)(c) of this section, "compliance facility" has the 1485
same meaning as in section ~~5727.391~~ 5733.39 of the Revised Code. 1486

(B) The ~~public utilities~~ commission shall compute the gross 1487
annual revenues to which the utility is entitled by adding the 1488
dollar amount of return under division (A)(3) of this section to 1489
the cost of rendering the public utility service for the test 1490
period under division (A)(4) of this section. 1491

(C) The test period, unless otherwise ordered by the ~~public~~ 1492
~~utilities~~ commission, shall be the twelve-month period beginning 1493
six months prior to the date the application is filed and ending 1494
six months subsequent to that date. In no event shall the test 1495
period end more than nine months subsequent to the date the 1496
application is filed. The revenues and expenses of the utility 1497
shall be determined during the test period. The date certain shall 1498

be not later than the date of filing. 1499

(D) When the ~~public utilities~~ commission is of the opinion, 1500
after hearing and after making the determinations under divisions 1501
(A) and (B) of this section, that any rate, fare, charge, toll, 1502
rental, schedule, classification, or service, or any joint rate, 1503
fare, charge, toll, rental, schedule, classification, or service 1504
rendered, charged, demanded, exacted, or proposed to be rendered, 1505
charged, demanded, or exacted, is, or will be, unjust, 1506
unreasonable, unjustly discriminatory, unjustly preferential, or 1507
in violation of law, that the service is, or will be, inadequate, 1508
or that the maximum rates, charges, tolls, or rentals chargeable 1509
by any such public utility are insufficient to yield reasonable 1510
compensation for the service rendered, and are unjust and 1511
unreasonable, the commission shall: 1512

(1) With due regard among other things to the value of all 1513
property of the public utility actually used and useful for the 1514
convenience of the public as determined under division (A)(1) of 1515
this section, excluding from such value the value of any franchise 1516
or right to own, operate, or enjoy the same in excess of the 1517
amount, exclusive of any tax or annual charge, actually paid to 1518
any political subdivision of the state or county, as the 1519
consideration for the grant of such franchise or right, and 1520
excluding any value added to such property by reason of a monopoly 1521
or merger, with due regard in determining the dollar annual return 1522
under division (A)(3) of this section to the necessity of making 1523
reservation out of the income for surplus, depreciation, and 1524
contingencies, and; 1525

(2) With due regard to all such other matters as are proper, 1526
according to the facts in each case, 1527

(a) Including a fair and reasonable rate of return determined 1528
by the commission with reference to a cost of debt equal to the 1529
actual embedded cost of debt of such public utility, 1530

(b) But not including the portion of any periodic rental or 1531
use payments representing that cost of property ~~which~~ that is 1532
included in the valuation report under divisions (F) and (G) of 1533
section 4909.05 of the Revised Code, fix and determine the just 1534
and reasonable rate, fare, charge, toll, rental, or service to be 1535
rendered, charged, demanded, exacted, or collected for the 1536
performance or rendition of the service that will provide the 1537
public utility the allowable gross annual revenues under division 1538
(B) of this section, and order such just and reasonable rate, 1539
fare, charge, toll, rental, or service to be substituted for the 1540
existing one. After such determination and order no change in the 1541
rate, fare, toll, charge, rental, schedule, classification, or 1542
service shall be made, rendered, charged, demanded, exacted, or 1543
changed by such public utility without the order of the 1544
commission, and any other rate, fare, toll, charge, rental, 1545
classification, or service is prohibited. 1546

(E) Upon application of any person or any public utility, and 1547
after notice to the parties in interest and opportunity to be 1548
heard as provided in Chapters 4901., 4903., 4905., 4907., 4909., 1549
4921., and 4923. of the Revised Code for other hearings, has been 1550
given, the commission may rescind, alter, or amend an order fixing 1551
any rate, fare, toll, charge, rental, classification, or service, 1552
or any other order made by the commission. Certified copies of 1553
such orders shall be served and take effect as provided for 1554
original orders. 1555

Sec. 4909.161. (A) Notwithstanding the provisions of Chapters 1556
4905. and 4909. of the Revised Code, the payment of any type of 1557
increased excise tax levy shall be considered to be a normal 1558
expense incurred by a public utility in the course of rendering 1559
service to the public, and may be recovered as such in accordance 1560
with an order of the public utilities commission. Any public 1561

utility required to pay any such increased excise tax levy may 1562
file with the public utilities commission revised rate schedules 1563
~~which that~~ will permit full recovery on an interim or permanent 1564
basis in its rates, of the amount of any resultant increased tax 1565
payments and the commission shall promptly act to approve such 1566
schedules. 1567

(B) Notwithstanding Chapters 4905. and 4909. of the Revised 1568
Code, the payment of the kilowatt-hour tax imposed by section 1569
5727.81 of the Revised Code shall be considered a normal expense 1570
incurred by an electric distribution utility, as defined in 1571
section 4928.01 of the Revised Code, in the course of rendering 1572
service to the public, and may be recovered as such in accordance 1573
with an order of the commission. An electric distribution utility 1574
required to pay the kilowatt-hour tax may file with the commission 1575
revised rate schedules, CONSISTENT WITH CHAPTERS 4905. AND 4909. 1576
AND DIVISION (A)(6) OF SECTION 4928.34 OF THE REVISED CODE, that 1577
will permit full recovery on a permanent basis in its rates, of 1578
the amount of any resultant tax payments, after taking into 1579
account any reductions of taxes in its rates resulting from Sub. 1580
S.B. No. 3 of the 123rd general assembly, and the commission shall 1581
act promptly to approve those schedules. 1582

Sec. 4911.18. (A) For the sole purpose of maintaining and 1583
administering the office of the consumers' counsel and exercising 1584
the powers of the consumers' counsel under this chapter, an amount 1585
equal to the appropriation to the office of the consumers' counsel 1586
in each fiscal year shall be apportioned among and assessed 1587
against ~~the each~~ public ~~utilities~~ utility within the state, as 1588
defined in section 4911.01 of the Revised Code, by first computing 1589
an assessment as though it were to be made in proportion to the 1590
intrastate gross earnings or receipts of the public ~~utilities~~ 1591
~~companies~~ utility for the calendar year next preceding that in 1592

which the ~~assessments are~~ assessment is made, excluding earnings 1593
or receipts from sales to other public utilities for resale. The 1594
office may include in that first computation any amount of a 1595
railroad's or public utility's intrastate gross earnings or 1596
receipts underreported in a prior year. in addition to whatever 1597
penalties apply under the Revised Code to such underreporting, the 1598
office shall assess the railroad or public utility interest at the 1599
rate stated in division (A) of section 1343.01 of the Revised 1600
Code. the office shall deposit any interest so collected into the 1601
consumers' counsel operating fund. 1602

The final computation of the assessment shall consist of 1603
imposing upon each ~~company~~ public utility whose assessment under 1604
the first computation would have been fifty dollars or less an 1605
assessment of fifty dollars and recomputing the assessment of the 1606
remaining companies by apportioning an amount equal to the 1607
appropriation to the office of consumers' counsel in each fiscal 1608
year less the total amount to be recovered from those paying the 1609
minimum assessment, in proportion to the intrastate gross earnings 1610
or receipts of the remaining companies for the calendar year next 1611
preceding that in which the assessments are made, excluding 1612
earnings or receipts from sales to other public utilities for 1613
resale. 1614

In the case of an assessment based on intrastate gross 1615
receipts under this section against a public utility that is an 1616
electric utility as defined in section 4928.01 of the Revised 1617
Code, or an electric services company, electric cooperative, or 1618
governmental aggregator subject to certification under section 1619
4928.08 of the Revised Code, such receipts shall be those 1620
specified in the utility's, company's, COOPERATIVE'S, OR 1621
aggregator's most recent report of intrastate gross receipts and 1622
sales of kilowatt hours of electricity, filed with the public 1623
utilities commission pursuant to division (F) of section 4928.06 1624

of the Revised Code, AND VERIFIED BY THE COMMISSION. 1625

(B) On or before the first day of October in each year, the 1626
office of consumers' counsel shall notify each public utility 1627
~~company~~ of the sum assessed against it, whereupon payment shall be 1628
made to the counsel, who shall deposit it into the state treasury 1629
to the credit of the consumers' counsel operating fund, which is 1630
hereby created. Any such amounts paid into the fund but not 1631
expended by the ~~counsel~~ office shall be credited ratably by the 1632
~~counsel office~~ to the public utility ~~companies~~ which utilities 1633
that pay more than the minimum assessment, according to the 1634
respective portions of such sum assessable against them for the 1635
ensuing calendar year, after first deducting any deficits 1636
accumulated from prior years. The assessments for such calendar 1637
year shall be reduced correspondingly. 1638

(C) Within five days after the beginning of each fiscal year, 1639
the director of budget and management shall transfer from the 1640
general revenue fund to the consumers' counsel operating fund an 1641
amount sufficient for maintaining and administering the office of 1642
the consumers' counsel and exercising the powers of the consumers' 1643
counsel under this chapter during the first four months of the 1644
fiscal year. Not later than the thirty-first day of December of 1645
the fiscal year, the same amount shall be transferred back to the 1646
general revenue fund from the consumers' counsel operating fund. 1647
1648

(D) As used in this section, "public utility" includes, in 1649
addition to an electric utility as defined in section 4928.01 of 1650
the Revised Code, an electric services company, an electric 1651
cooperative, or a governmental aggregator subject to certification 1652
under section 4928.08 of the Revised Code, to the extent of the 1653
company's, cooperative's, or aggregator's engagement in the 1654
business of supplying or arranging for the supply in this state of 1655
any retail electric service for which it must be so certified. 1656

Sec. 4928.01. (A) As used in this chapter: 1657

(1) "Ancillary service" means any function necessary to the 1658
provision of electric transmission or distribution service to a 1659
retail customer and includes, but is not limited to, scheduling, 1660
system control, and dispatch services; reactive supply from 1661
generation resources and voltage control service; reactive supply 1662
from transmission resources service; regulation service; frequency 1663
response service; energy imbalance service; operating 1664
reserve-spinning reserve service; operating reserve-supplemental 1665
reserve service; load following; back-up supply service; 1666
real-power loss replacement service; dynamic scheduling; system 1667
black start capability; and network stability service. 1668

(2) "Billing and collection agent" means a fully independent 1669
agent, not affiliated with or otherwise controlled by an electric 1670
utility, electric services company, electric cooperative, or 1671
governmental aggregator subject to certification under section 1672
4928.08 of the Revised Code, to the extent that the agent is under 1673
contract with such utility, company, cooperative, or aggregator 1674
solely to provide billing and collection for retail electric 1675
service on behalf of the utility company, cooperative, or 1676
aggregator. 1677

(3) "Certified territory" means the certified territory 1678
established for an electric supplier under sections 4933.81 to 1679
4933.90 of the Revised Code as amended by Sub. S.B. No. 3 of the 1680
123rd general assembly. 1681

(4) "Competitive retail electric service" means a component 1682
of retail electric service that is competitive as provided under 1683
division (B) of this section. 1684

(5) "Electric cooperative" means a not-for-profit electric 1685
light company that both is or has been financed in whole or in 1686

part under the "Rural Electrification Act of 1936," 49 Stat. 1363, 1687
7 U.S.C. 901, and owns or operates facilities IN THIS STATE to 1688
generate, transmit, or DISTRIBUTE electricity, or a not-for-profit 1689
successor of such company. 1690

(6) "ELECTRIC DISTRIBUTION UTILITY" MEANS AN ELECTRIC UTILITY 1691
THAT SUPPLIES AT LEAST retail ELECTRIC DISTRIBUTION SERVICE. 1692
1693

(7) "Electric light company" has the same meaning as in 1694
section 4905.03 of the Revised Code and includes an electric 1695
services company, BUT EXCLUDES ANY self-GENERATOR TO THE EXTENT IT 1696
CONSUMES ELECTRICITY IT SO PRODUCES OR TO THE EXTENT IT SELLS FOR 1697
RESALE ELECTRICITY IT SO PRODUCES. 1698

(8) "Electric load center" has the same meaning as in section 1699
4933.81 of the Revised Code. 1700

(9) "Electric services company" means an electric light 1701
company that is engaged on a for-profit or not-for-profit basis in 1702
the business of supplying or arranging for the supply of only a 1703
competitive retail electric service in this state. "Electric 1704
services company" includes a power marketer, power broker, 1705
aggregator, or independent power producer but excludes an electric 1706
cooperative, municipal electric utility, governmental AGGREGATOR, 1707
or billing and collection agent. 1708

(10) "Electric supplier" has the same meaning as in section 1709
4933.81 of the Revised Code. 1710

(11) "Electric utility" means an electric light company that 1711
is engaged on a for-profit basis in the business of supplying a 1712
noncompetitive retail electric service in this state or in the 1713
businesses of supplying both a noncompetitive and a competitive 1714
retail electric service in this state. "Electric utility" excludes 1715
a municipal electric utility or a billing and collection agent. 1716
1717

(12) "FIRM ELECTRIC SERVICE" MEANS ELECTRIC SERVICE OTHER 1718
THAN NONFIRM ELECTRIC SERVICE. 1719

(13) "Governmental aggregator" means a legislative AUTHORITY 1720
of a municipal corporation, a board of township trustees, or a 1721
board of county commissioners acting as an aggregator for the 1722
provision of a competitive retail electric service under AUTHORITY 1723
conferred under section 4928.20 of the Revised Code. 1724

(14) A PERSON ACTS "KNOWINGLY," REGARDLESS OF THE PERSON'S 1725
PURPOSE, WHEN THE PERSON IS AWARE THAT THE PERSON'S CONDUCT WILL 1726
PROBABLY CAUSE A CERTAIN RESULT OR WILL PROBABLY BE OF A CERTAIN 1727
NATURE. A PERSON HAS KNOWLEDGE OF CIRCUMSTANCES WHEN THE PERSON IS 1728
AWARE THAT SUCH CIRCUMSTANCES PROBABLY EXIST. 1729

(15) "LEVEL OF FUNDING FOR LOW-INCOME CUSTOMER ENERGY 1730
EFFICIENCY PROGRAMS PROVIDED THROUGH ELECTRIC UTILITY RATES" MEANS 1731
THE LEVEL OF FUNDS specifically included in an electric utility's 1732
rates on the effective date of this section PURSUANT TO AN ORDER 1733
OF THE PUBLIC UTILITIES COMMISSION ISSUED UNDER CHAPTER 4905. OR 1734
4909. OF THE REVISED CODE AND IN EFFECT ON THE DAY BEFORE THE 1735
EFFECTIVE DATE OF THIS SECTION, FOR THE PURPOSE OF IMPROVING THE 1736
ENERGY EFFICIENCY OF HOUSING FOR THE UTILITY'S LOW-INCOME 1737
CUSTOMERS. THE TERM EXCLUDES THE LEVEL OF ANY SUCH FUNDS COMMITTED 1738
TO A SPECIFIC NONPROFIT ORGANIZATION OR ORGANIZATIONS PURSUANT TO 1739
A STIPULATION OR CONTRACT. 1740

(16) "Low-income customer assistance programs" means the 1741
percentage of income payment plan program as PRESCRIBED IN RULES 1742
4901:1-18-02(B) TO (G) and 4901:1-18-04(B) OF THE OHIO 1743
ADMINISTRATIVE CODE IN EFFECT on the effective date of this 1744
section or, if modified pursuant to AUTHORITY under section 1745
4928.53 of the Revised Code, THE PROGRAM AS MODIFIED; the home 1746
energy assistance program AS PRESCRIBED IN section 5117.21 of the 1747
Revised Code and IN EXECUTIVE ORDER 97-1023-V or, if modified 1748

pursuant to AUTHORITY under section 4928.53 of the Revised Code, 1749
THE PROGRAM AS MODIFIED; the home weatherization assistance 1750
program AS PRESCRIBED in division (A)(6) of section 122.011 and in 1751
section 122.02 of the Revised Code or, if modified pursuant to 1752
AUTHORITY under section 4928.53 of the Revised Code, THE PROGRAM 1753
AS MODIFIED; THE OHIO ENERGY CREDIT PROGRAM AS PRESCRIBED IN 1754
sections 5117.01 to 5117.05, 5117.07 to 5117.12, and 5117.99 OF 1755
THE REVISED CODE or, if modified pursuant to AUTHORITY under 1756
section 4928.53 of the Revised Code, THE PROGRAM AS MODIFIED; and 1757
the TARGETED energy EFFICIENCY and WEATHERIZATION PROGRAM 1758
established under section 4928.55 of the Revised Code. 1759

(17) "Market development period" for an electric utility 1760
means the period of time beginning on the starting date of 1761
competitive retail electric service and ending on the applicable 1762
date for that utility as specified in section 4928.40 of the 1763
Revised Code, irrespective of whether the utility applies to 1764
receive transition revenues under this chapter. 1765

(18) "Market power" means the ability to impose on customers 1766
a sustained price for a product or service ABOVE the price that 1767
would prevail in a COMPETITIVE market. 1768

(19) "MERCANTILE COMMERCIAL CUSTOMER" MEANS A COMMERCIAL OR 1769
INDUSTRIAL CUSTOMER IF THE ELECTRICITY CONSUMED IS FOR 1770
NONRESIDENTIAL USE AND THE CUSTOMER CONSUMES MORE THAN SEVEN 1771
HUNDRED THOUSAND KILOWATT HOURS PER YEAR OR IS PART OF A NATIONAL 1772
ACCOUNT INVOLVING MULTIPLE FACILITIES IN ONE OR MORE STATES. 1773

(20) "Municipal electric utility" means a municipal 1774
corporation that owns or operates facilities to generate, 1775
transmit, or distribute electricity. 1776

(21) "Noncompetitive retail electric service" means a 1777
component of retail electric service that is noncompetitive as 1778
provided under division (B) of this section. 1779

(22) "NONFIRM ELECTRIC SERVICE" MEANS ELECTRIC SERVICE 1780
PROVIDED PURSUANT TO A SCHEDULE FILED UNDER SECTION 4905.30 OF THE 1781
REVISED CODE OR PURSUANT TO AN ARRANGEMENT UNDER SECTION 4905.31 1782
OF THE REVISED CODE, WHICH SCHEDULE OR ARRANGEMENT INCLUDES 1783
CONDITIONS THAT MAY REQUIRE THE CUSTOMER TO CURTAIL OR INTERRUPT 1784
ELECTRIC USAGE DURING NONEMERGENCY CIRCUMSTANCES UPON NOTIFICATION 1785
BY AN ELECTRIC UTILITY. 1786

(23) "Percentage of income payment plan arrears" means funds 1787
eligible for collection through the percentage of income payment 1788
plan rider, but uncollected as of July 1, 2000. 1789

(24) "Person" has the same meaning as in section 1.59 of the 1790
Revised Code. 1791

(25) "Project" means any real or personal property connected 1792
with all or part of an industrial, distribution, commercial, or 1793
research facility, not-for-profit facility, or residence that is 1794
to be acquired, constructed, RECONSTRUCTED, enlarged, improved, 1795
furnished, or equipped, or any combination of those activities, 1796
with aid furnished pursuant to sections 4928.61 to 4928.63 of the 1797
Revised Code for the purposes of not-for-profit, industrial, 1798
commercial, distribution, residential, and research development in 1799
this state. "Project" includes, but is not limited to, any 1800
small-scale renewables project. 1801

(26) "REGULATORY ASSETS" MEANS THE UNAMORTIZED NET REGULATORY 1802
ASSETS THAT ARE CAPITALIZED OR DEFERRED ON THE REGULATORY BOOKS OF 1803
THE ELECTRIC UTILITY, PURSUANT TO AN ORDER OR PRACTICE OF THE 1804
PUBLIC UTILITIES COMMISSION OR PURSUANT TO GENERALLY ACCEPTED 1805
ACCOUNTING PRINCIPLES AS A RESULT OF A PRIOR COMMISSION 1806
RATE-MAKING DECISION, AND THAT WOULD OTHERWISE HAVE BEEN CHARGED 1807
TO EXPENSE AS INCURRED OR WOULD NOT HAVE BEEN CAPITALIZED OR 1808
OTHERWISE DEFERRED FOR FUTURE REGULATORY CONSIDERATION ABSENT 1809
COMMISSION ACTION. "REGULATORY ASSETS" INCLUDES, BUT IS NOT 1810

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

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

(31) "Net metering" means measuring the difference in an

applicable billing period between the electricity supplied by an 1842
electric service provider and the electricity generated by a 1843
customer-generator which is fed back to the electric service 1844
provider. 1845

(32) "Net metering system" means a facility for the 1846
production of electrical energy that does all of the following: 1847

(a) Uses as its fuel either solar, wind, biomass, landfill 1848
gas, or hydropower, or uses a microturbine or a fuel cell; 1849

(b) Is located on a customer-generator's premises; 1850

(c) Operates in parallel with the electric utility's 1851
transmission and distribution facilities; 1852

(d) Is intended primarily to offset part or all of the 1853
customer-generator's requirements for electricity. 1854

(33) "Self-Generator" means an entity in this state that owns 1855
an electric generation facility that produces electricity 1856
primarily for the owner's consumption and that may provide any 1857
such excess electricity to retail electric service providers, 1858
whether the facility is installed or operated by the owner or by 1859
an agent under a contract. 1860

(B) For the purposes of this chapter, a retail electric 1861
service component shall be deemed a competitive retail electric 1862
service if the service component is competitive pursuant to a 1863
declaration by a provision of the Revised Code or pursuant to an 1864
order of the public utilities commission authorized under division 1865
(A) of section 4928.04 of the Revised Code. Otherwise, the service 1866
component shall be deemed a noncompetitive retail electric 1867
service. 1868

(C) Prior to January 1, 2001, and after application by an 1869
electric utility, notice, and an opportunity to be heard, the 1870
public utilities commission may issue an order delaying the 1871

january 1, 2001, starting date of competitive retail electric 1872
service for the electric utility for a specified number of days 1873
not to exceed six months, but only for extreme technical 1874
conditions precluding the start of competitive retail electric 1875
service on January 1, 2001. 1876

Sec. 4928.02. It is the policy of this state to do the 1877
following throughout this state beginning on the starting date of 1878
competitive retail electric service: 1879

(A) Ensure the availability to consumers of adequate, 1880
reliable, safe, efficient, nondiscriminatory, and reasonably 1881
priced retail electric service; 1882

(B) Ensure the availability of unbundled and comparable 1883
retail electric service that provides consumers with the supplier, 1884
price, terms, conditions, and quality options they elect to meet 1885
their respective needs; 1886

(C) Ensure diversity of electricity supplies and suppliers, 1887
by giving consumers effective choices over the selection of those 1888
supplies and suppliers and by encouraging the development of 1889
distributed and small generation facilities; 1890

(D) Encourage innovation and market access for cost-effective 1891
supply- and demand-side retail electric service; 1892

(E) Encourage cost-effective and efficient access to 1893
information regarding the operation of the transmission and 1894
distribution systems of electric utilities in order to promote 1895
effective customer choice of retail electric service; 1896

(F) Recognize the continuing emergence of competitive 1897
electricity markets through the development and implementation of 1898
flexible regulatory treatment; 1899

(G) Ensure effective competition in the provision of retail 1900
electric service by avoiding anticompetitive subsidies flowing 1901

from a noncompetitive retail electric service to a competitive 1902
retail electric service or to a product or service other than 1903
retail electric service, and vice versa; 1904

(H) Ensure retail electric service consumers protection 1905
against unreasonable sales practices, market deficiencies, and 1906
market power; 1907

(I) Facilitate the state's effectiveness in the global 1908
economy. 1909

Sec. 4928.03. Beginning on The starting date of competitive 1910
retail electric service, retail electric generation, aggregation, 1911
power marketing, and power brokerage services supplied to 1912
consumers within the certified territory of an electric utility 1913
are competitive retail electric services that the consumers may 1914
obtain subject to this chapter from any supplier or suppliers. In 1915
accordance with a filing under division (F) of section 4933.81 of 1916
the Revised Code, retail electric generation, aggregation, power 1917
marketing, or power brokerage services supplied to consumers 1918
within the certified territory of an electric cooperative that has 1919
made the filing are competitive retail electric services that the 1920
consumers may obtain subject to this chapter from any supplier or 1921
suppliers. 1922

Beginning on The starting date of competitive retail electric 1923
service and Notwithstanding any other provision of law, each 1924
consumer in this state and the suppliers to a consumer shall have 1925
comparable and nondiscriminatory access to noncompetitive retail 1926
electric services of an electric utility in this state within its 1927
certified territory for the purpose of satisfying the consumer's 1928
electricity requirements in keeping with the policy specified in 1929
section 4928.02 of the Revised Code. 1930

Sec. 4928.04. (A) The public utilities commission by order 1931

may declare that retail ancillary, metering, or billing and 1932
collection service supplied to consumers within the certified 1933
territory of an electric utility on or after the starting date of 1934
competitive retail electric service is a competitive retail 1935
electric service that the consumers may obtain from any supplier 1936
or suppliers subject to this chapter. The commission may issue 1937
such order, after investigation and public hearing, only if it 1938
first determines either of the following: 1939

(1) There will be effective competition with respect to the 1940
service. 1941

(2) The customers of the service have reasonably available 1942
alternatives. 1943

The commission shall initiate a proceeding on or before march 1944
31, 2003, on the question of the desirability, feasibility, and 1945
timing of any such competition. 1946

(B) In carrying out division (A) of this section, the 1947
commission may prescribe different classifications, procedures, 1948
terms, or conditions for different electric utilities and for the 1949
retail electric services they provide that are declared 1950
competitive pursuant to that division, provided the 1951
classifications, procedures, terms, or conditions are reasonable 1952
and do not confer any undue economic, competitive, or market 1953
advantage or preference upon any electric utility. 1954

Sec. 4928.05. (A)(1) On and after the starting date of 1955
competitive retail electric service, a competitive retail electric 1956
service supplied by an electric utility or electric services 1957
company shall not be subject to supervision and regulation by a 1958
municipal corporation under Chapter 743. of the Revised Code or by 1959
the public utilities commission under Chapters 4901. to 4909., 1960
4933., 4935., and 4963. of the Revised Code, except section 1961

4905.10, division (B) of 4905.33, and sections 4905.35 and 4933.81 1962
to 4933.90; except sections 4905.06, 4935.03, 4963.40, and 4963.41 1963
of the Revised Code only to the extent related to service 1964
reliability and public safety; and except as otherwise provided in 1965
this chapter. The commission's AUTHORITY to enforce those excepted 1966
provisions with respect to a COMPETITIVE retail electric service 1967
shall be such AUTHORITY as is provided for their enforcement under 1968
Chapters 4901. to 4909., 4933., 4935., and 4963. of the Revised 1969
Code and this chapter. 1970

On and after the starting date of competitive retail electric 1971
service, a competitive retail electric service supplied by an 1972
electric cooperative shall not be subject to supervision and 1973
regulation by the commission under Chapters 4901. to 4909., 4933., 1974
4935., and 4963. of the Revised Code, except as otherwise 1975
expressly provided in sections 4928.01 to 4928.10 and 4928.16 of 1976
the Revised Code. 1977

(2) On and after the starting date of competitive retail 1978
electric service, a noncompetitive retail electric service 1979
supplied by an electric utility shall be subject to supervision 1980
and regulation by the commission under Chapters 4901. to 4909., 1981
4933., 4935., and 4963. of the Revised Code and this chapter, to 1982
the extent that AUTHORITY is not preempted by federal law. The 1983
commission's AUTHORITY to enforce those provisions with respect to 1984
a noncompetitive retail electric service shall be the AUTHORITY 1985
provided under those chapters and this chapter, to the extent the 1986
AUTHORITY is not preempted by federal law. 1987

The commission shall exercise its jurisdiction with respect 1988
to the delivery of electricity by an electric utility in this 1989
state on or after The starting date of competitive retail electric 1990
service so as to ensure that no aspect of the delivery of 1991
electricity by the utility to consumers in this state that 1992

consists of a noncompetitive retail electric service is 1993
unregulated. 1994

On and after that starting date, a noncompetitive retail 1995
electric service supplied by an electric cooperative shall not be 1996
subject to supervision and regulation by the commission under 1997
Chapters 4901. to 4909., 4933., 4935., and 4963. of the Revised 1998
Code, except sections 4933.81 to 4933.90 and 4935.03 of the 1999
Revised Code. The commission's authority to enforce those excepted 2000
sections with respect to a noncompetitive retail electric service 2001
of an electric cooperative shall be such authority as is provided 2002
for their enforcement under Chapters 4933. and 4935. of the 2003
Revised Code. 2004

(B) Nothing in this chapter affects the authority of the 2005
commission under Title XLIX of the Revised Code to regulate an 2006
electric light company in this state or an electric service 2007
supplied in this state prior to the starting date of COMPETITIVE 2008
retail electric SERVICE. 2009

Sec. 4928.06. (A) Beginning on the starting date of 2010
competitive retail electric service, the public utilities 2011
commission shall ensure that the policy specified in section 2012
4928.02 of the Revised Code is effectuated. To the extent 2013
necessary, the commission shall adopt rules to carry out this 2014
chapter. Initial rules necessary for the commencement of the 2015
competitive retail electric service under this chapter shall be 2016
adopted within one hundred eighty days after the effective date of 2017
this section. Except as otherwise provided in this chapter, the 2018
proceedings and orders of the commission under the chapter shall 2019
be subject to and governed by Chapter 4903. of the Revised Code. 2020

(B) If the commission determines, on or after The starting 2021
date of competitive retail electric service, that there is a 2022
decline or loss of effective competition with respect to a 2023

competitive retail electric service of an electric utility, which 2024
service was declared competitive by commission order issued 2025
pursuant to division (A) of section 4928.04 of the Revised Code, 2026
the commission shall ensure that that service is provided at 2027
compensatory, fair, and nondiscriminatory prices and terms and 2028
conditions. 2029

(C) In addition to its authority under section 4928.04 of the 2030
Revised Code and divisions (A) and (B) of this section, the 2031
commission, on an ongoing basis, shall monitor and evaluate the 2032
provision of retail electric service in this state for the purpose 2033
of discerning any noncompetitive retail electric service that 2034
should be available on a competitive basis on or after The 2035
starting date of competitive retail electric service pursuant to a 2036
declaration in the revised code, and for the purpose of discerning 2037
any competitive retail electric service that is no longer subject 2038
to effective competition on or after that date. Upon such 2039
evaluation, the commission periodically shall report its findings 2040
and any recommendations for legislation to the standing committees 2041
of both houses of the general assembly that have primary 2042
jurisdiction regarding public utility legislation. Until 2008, the 2043
commission and the consumer's counsel also shall provide BIENNIAL 2044
reports to those standing committees, regarding the effectiveness 2045
of competition in the supply of competitive retail electric 2046
services in this state. In addition, until the end of all market 2047
development periods as determined by the commission under section 2048
4928.40 of the Revised Code, those standing committees shall meet 2049
at least biennially to consider the effect on this state of 2050
electric service restructuring and to receive reports from the 2051
commission, consumers' counsel, and director of development. 2052

2053

(D) In determining, for purposes of division (B) or (C) of 2054
this section, whether there is effective competition in the 2055

provision of a retail electric service or reasonably available 2056
alternatives for that service, the commission shall consider 2057
factors including, but not limited to, all of the following: 2058

(1) The number and size of alternative providers of that 2059
service; 2060

(2) The extent to which the service is available from 2061
alternative suppliers in the relevant market; 2062

(3) The ability of alternative suppliers to make functionally 2063
equivalent or substitute services readily available at competitive 2064
prices, terms, and conditions; 2065

(4) Other indicators of market power, which may include 2066
market share, growth in market share, ease of entry, and the 2067
affiliation of suppliers of services. 2068

the burden of proof shall be on Any entity requesting, under 2069
division (b) or (c) of this section, a determination by the 2070
commission of the existence of or a lack of effective competition 2071
or reasonably available alternatives. 2072

(E)(1) beginning on The starting date of competitive retail 2073
electric service, The commission has authority under Chapters 2074
4901. to 4909. of the Revised Code, and shall exercise that 2075
authority, to resolve abuses of market power by any electric 2076
utility that interfere with effective competition in the provision 2077
of retail electric service. 2078

(2) In addition to the commission's AUTHORITY under division 2079
(E)(1) of this section, THE COMMISSION, BEGINNING THE FIRST YEAR 2080
AFTER THE MARKET DEVELOPMENT PERIOD OF A PARTICULAR ELECTRIC 2081
UTILITY AND AFTER REASONABLE NOTICE AND OPPORTUNITY FOR HEARING, 2082
MAY TAKE SUCH MEASURES WITHIN A TRANSMISSION CONSTRAINED AREA IN 2083
THE UTILITY'S CERTIFIED TERRITORY as are necessary TO ENSURE THAT 2084
RETAIL ELECTRIC GENERATION SERVICE IS PROVIDED AT REASONABLE RATES 2085
within that area. THE COMMISSION MAY EXERCISE THIS AUTHORITY ONLY 2086

UPON FINDINGS THAT an electric UTILITY is or has engaged in the 2087
abuse of MARKET POWER AND THAT that abuse IS NOT ADEQUATELY 2088
MITIGATED BY RULES AND PRACTICES OF ANY INDEPENDENT TRANSMISSION 2089
ENTITY CONTROLLING THE TRANSMISSION FACILITIES. ANY SUCH MEASURE 2090
SHALL BE TAKEN ONLY TO THE EXTENT NECESSARY TO PROTECT CUSTOMERS 2091
IN THE AREA FROM THE particular abuse of MARKET POWER AND TO THE 2092
EXTENT the COMMISSION'S AUTHORITY IS NOT PREEMPTED BY FEDERAL LAW. 2093
THE measure SHALL REMAIN in effect UNTIL THE COMMISSION, AFTER 2094
reasonable NOTICE AND OPPORTUNITY FOR HEARING, DETERMINES THAT THE 2095
particular abuse of MARKET POWER HAS BEEN MITIGATED. 2096

(E) An electric utility, electric services company, electric 2097
cooperative, or governmental aggregator subject to certification 2098
under section 4928.08 of the Revised code shall provide the 2099
commission with such information, regarding a competitive retail 2100
electric service for which it is subject to certification, as the 2101
commission considers necessary to carry out this chapter. An 2102
electric utility shall provide the commission with such 2103
information as the commission considers necessary to carry out 2104
divisions (B) to (E) of this section. The commission shall take 2105
such measures as it considers necessary to protect the 2106
confidentiality of any such information. 2107

The commission shall require each electric utility to file 2108
with the commission on and after the starting date of competitive 2109
retail electric service an annual report of its intrastate gross 2110
receipts and sales of kilowatt hours of electricity, and shall 2111
require each electric services company, electric cooperative, and 2112
governmental aggregator subject to certification to file an annual 2113
report on and after that starting date of such receipts and sales 2114
from the provision of those retail electric services for which it 2115
is subject to certification. for the purpose of the reports, sales 2116
of kilowatt hours of electricity are deemed to occur at the meter 2117
of the retail customer. 2118

Sec. 4928.07. To the maximum extent practicable on or after 2119
The starting date of competitive retail electric service, an 2120
electric utility, electric services company, electric cooperative, 2121
or governmental aggregator subject to certification under section 2122
4928.08 of the Revised Code shall separately price competitive 2123
retail electric services, and the PRICES SHALL BE ITEMIZED on the 2124
bill of a customer or otherwise disclosed to the customer. 2125
Although a competitive retail electric service shall be supplied 2126
to any consumer on such a basis, such an electric utility, 2127
electric services company, electric cooperative, or governmental 2128
AGGREGATOR may repackage the service on or after The starting date 2129
and offer it on a bundled basis with other retail electric 2130
services to meet consumer preferences. Such repackaging by an 2131
electric utility shall be subject to sections 4905.33 to 4905.35 2132
of the Revised Code. repackaging by such an electric services 2133
company, electric cooperative, or governmental aggregator shall be 2134
subject to the limitation that no such entity, as to a competitive 2135
retail electric service for which the company, cooperative, or 2136
aggregator is subject to certification, shall furnish free service 2137
or service for less than actual cost for the purpose of destroying 2138
competition. 2139

Sec. 4928.08. (A) This section applies to an electric 2140
cooperative, or to a governmental AGGREGATOR that is a municipal 2141
electric utility, only to the extent of a competitive retail 2142
electric service it provides to a customer to whom it does not 2143
provide a noncompetitive retail electric service through 2144
transmission or distribution facilities it singly or jointly owns 2145
or operates. 2146

(B) No electric utility, electric services company, electric 2147
cooperative, or governmental aggregator shall provide a 2148
competitive retail electric service to a consumer in this state on 2149

and after the starting date of competitive retail electric service 2150
without first being certified by the public utilities commission 2151
regarding its managerial, technical, and financial capability to 2152
provide that service and providing a financial guarantee 2153
sufficient to protect customers and electric distribution 2154
utilities from default. Certification shall be granted pursuant to 2155
procedures and standards the commission shall prescribe in 2156
accordance with division (C) of this section, except that 2157
certification or certification renewal shall be deemed approved 2158
thirty days after the filing of an application with the commission 2159
unless the commission suspends that approval for good cause shown. 2160
In the case of such a suspension, the commission shall act to 2161
approve or deny certification or certification renewal to the 2162
applicant not later than ninety days after the date of the 2163
suspension 2164

(C) Capability standards adopted in rules under division (B) 2165
of this section shall be sufficient to ensure compliance with the 2166
minimum service requirements established under section 4928.10 of 2167
the Revised Code and with section 4928.09 of the Revised Code. The 2168
standards shall allow flexibility for voluntary aggregation, to 2169
encourage market creativity in responding to consumer needs and 2170
demands, AND SHALL ALLOW FLEXIBILITY FOR ELECTRIC SERVICES 2171
COMPANIES THAT EXCLUSIVELY PROVIDE INSTALLATION OF SMALL ELECTRIC 2172
GENERATION FACILITIES, TO PROVIDE EASE OF MARKET ACCESS. The rules 2173
shall include procedures for biennially renewing certification. 2174

2175

(d) The commission may suspend, rescind, or conditionally 2176
rescind the certification of any electric utility, electric 2177
services company, electric cooperative, or governmental aggregator 2178
issued under this section if the commission determines, after 2179
reasonable notice and opportunity for hearing, that the utility, 2180
company, cooperative, or AGGREGATOR has failed to comply with any 2181

applicable certification standards or has engaged in 2182
anticompetitive or unfair, deceptive, or unconscionable acts or 2183
practices in this state. 2184

(e) no electric distribution utility on and after the 2185
starting date of competitive retail electric service shall 2186
knowingly distribute electricity, to a retail consumer in this 2187
state, for any supplier of electricity that has not been certified 2188
by the commission pursuant to this section. 2189

Sec. 4928.09. (A)(1) No person shall operate in this state as 2190
an electric utility, an electric services company, or a billing 2191
and collection agent on and after the starting date of competitive 2192
retail electric service unless that person first does both of the 2193
following: 2194

(a) Consents irrevocably to the jurisdiction of the courts of 2195
this state and service of process in this state, including, 2196
without limitation, service of summonses and subpoenas, for any 2197
civil or criminal proceeding arising out of or relating to such 2198
operation, by providing that irrevocable consent in ACCORDANCE 2199
with division (A)(4) of this section; 2200

(b) Designates an agent authorized to receive that service of 2201
process in this state, by filing with the commission a document 2202
designating that agent. 2203

(2) No person shall continue to operate as such an electric 2204
utility, electric services company, or billing and collection 2205
agent unless that person continues to consent to such jurisdiction 2206
and service of process in this state and continues to designate an 2207
agent as provided under this division, by refileing in accordance 2208
with division (A)(4) of this section the appropriate documents 2209
filed under division (A)(1) of this section or, as applicable, the 2210
appropriate amended documents filed under division (A)(3) of this 2211
section. Such refileing shall occur during the month of December of 2212

every fourth year after the initial filing of a document under 2213
division (A)(1) of this section. 2214

(3) If the address of the person filing a document under 2215
division (A)(1) or (2) of this section changes, or if a person's 2216
agent or the address of the agent changes, from that listed on the 2217
most recently filed of such documents, the person shall file an 2218
amended document containing the new information. 2219

(4) The consent and designation required by divisions (A)(1) 2220
to (3) of this section shall be in writing, on forms prescribed by 2221
the public utilities commission. The original of each such 2222
document or amended document shall be legible and shall be filed 2223
with the commission, with a copy filed with the office of the 2224
consumers' counsel and with the attorney general's office. 2225

(B) A person who enters this state pursuant to a summons, 2226
subpoena, or other form of process authorized by this section is 2227
not subject to arrest or service of process, whether civil or 2228
criminal, in connection with other matters that arose before the 2229
person's entrance into this state pursuant to such summons, 2230
subpoena, or other form of process. 2231

(C) Divisions (A) and (B) of this section do not apply to any 2232
of the following: 2233

(1) A corporation incorporated under the laws of this state 2234
that has appointed a statutory agent pursuant to section 1701.07 2235
or 1702.06 of the Revised Code; 2236

(2) A foreign corporation licensed to transact business in 2237
this state that has appointed a designated agent pursuant to 2238
section 1703.041 of the Revised Code; 2239

(3) Any OTHER person that is a resident of this state or that 2240
files consent to service of process and designates a statutory 2241
agent pursuant to other laws of this state. 2242

Sec. 4928.10. For the protection of consumers in this state, 2243
the public utilities commission shall adopt rules under division 2244
(A) of section 4928.06 of the Revised Code specifying the 2245
necessary minimum service requirements, on or after The starting 2246
date of competitive retail electric service, of an electric 2247
utility, electric services company, electric cooperative, or 2248
governmental aggregator subject to certification under section 2249
4928.08 of the Revised Code regarding the provision directly or 2250
through its billing and collection agent of competitive retail 2251
electric services for which it is subject to certification. Rules 2252
adopted under this section shall include a prohibition against 2253
unfair, deceptive, and unconscionable acts and practices in the 2254
marketing, solicitation, and sale of such a competitive retail 2255
electric service and in the administration of any contract for 2256
service, and also shall include additional consumer protections 2257
concerning all of the following: 2258

(A) Contract disclosure. The rules shall include requirements 2259
that an electric utility, electric services company, electric 2260
cooperative, or governmental aggregator subject to certification 2261
under section 4928.08 of the Revised Code do both of the 2262
following: 2263

(1) Provide consumers with adequate, accurate, and 2264
understandable pricing and terms and conditions of service, 2265
including any switching fees, and with a document containing the 2266
terms and conditions of pricing and service before the consumer 2267
enters into the contract for service; 2268

(2) Disclose the conditions under which a customer may 2269
rescind a contract without penalty. 2270

(B) Service termination. The rules shall include disclosure 2271
of the terms identifying how customers may switch or terminate 2272
service, including any required notice and any penalties. 2273

(C) Minimum content of customer bills. The rules shall 2274
include all of the following requirements, which shall be 2275
standardized: 2276

(1) Price disclosure and Disclosures of total billing units 2277
for the billing period and historical annual usage; 2278

(2) To the maximum extent practicable, separate listing of 2279
each service component to enable a customer to recalculate its 2280
bill for accuracy; 2281

(3) Identification of the supplier of each service; 2282

(4) Statement of where and how payment may be made and 2283
provision of a toll-free or local customer assistance and 2284
complaint number for the electric utility, electric services 2285
company, electric cooperative, or governmental aggregator, as well 2286
as a consumer assistance telephone number or numbers for state 2287
agencies, such as the commission, the office of the consumers' 2288
counsel, and the attorney general's office, with the available 2289
hours noted; 2290

(5) Other than for the first billing after the starting date 2291
of competitive retail electric service, highlighting and clear 2292
explanation on each customer bill, for two consecutive billing 2293
periods, of any changes in the rates, terms, and conditions of 2294
service. 2295

(D) Disconnection and service termination, including 2296
requirements with respect to master-metered buildings. The rules 2297
shall include policies and procedures that are consistent with 2298
sections 4933.121 and 4933.122 of the Revised Code and the 2299
commission's rules adopted under those sections, and that provide 2300
for all of the following: 2301

(1) Coordination between suppliers for the purpose of 2302
maintaining service; 2303

- (2) The allocation of partial payments between suppliers when 2304
service components are jointly billed; 2305
- (3) A prohibition against blocking, or authorizing the 2306
blocking of, customer access to a noncompetitive retail electric 2307
service when a customer is delinquent in payments to the electric 2308
utility or electric services company for a competitive retail 2309
electric service; 2310
- (4) A prohibition against switching, or authorizing the 2311
switching of, a customer's supplier of competitive retail electric 2312
service without the prior consent of the customer in accordance 2313
with appropriate confirmation practices, which may include 2314
independent, third-party verification procedures. 2315
- (5) A requirement of disclosure of the conditions under which 2316
a customer may rescind a decision to switch its supplier without 2317
penalty; 2318
- (6) Specification of any required notice and any penalty for 2319
early termination of contract. 2320
- (E) Minimum service quality, safety, and reliability. 2321
However, service quality, SAFETY, and reliability requirements for 2322
electric generation service shall be determined primarily through 2323
market expectations and contractual relationships. 2324
- (f) Generation resource mix and environmental characteristics 2325
of power supplies. the rules shall include requirements for 2326
determination of the approximate generation resource mix and 2327
environmental characteristics of the power supplies and disclosure 2328
to the customer prior to the customer entering into a contract to 2329
purchase and four times per year under the contract. The rules 2330
also shall require that the electric utility, electric services 2331
company, electric cooperative, or governmental AGGREGATOR provide, 2332
or cause its billing and collection agent to provide, a customer 2333
with standardized information comparing the projected, with the 2334

actual and verifiable, resource mix and environmental 2335
characteristics. This disclosure shall occur not less than 2336
annually or not less than once during the contract period if the 2337
contract period is less than one year, and prior to any renewal of 2338
a contract. 2339

(g) Customer information. The rules shall include 2340
requirements that the electric utility, electric services company, 2341
electric cooperative, or governmental aggregator make generic 2342
customer load pattern information available to other electric 2343
light companies on a comparable and nondiscriminatory basis, and 2344
make customer-specific information available to other electric 2345
light companies on a comparable and nondiscriminatory basis 2346
unless, as to customer-specific information, the customer objects. 2347
The rules shall ensure that each such utility, company, 2348
cooperative, or aggregator provide clear and frequent notice to 2349
its customers of the right to object and of applicable procedures. 2350
The rules shall establish the exact language that shall be used in 2351
all such notices. 2352

Sec. 4928.11. (A) For the protection of consumers in this 2353
state, the public utilities commission shall adopt rules under 2354
division (A) of section 4928.06 of the Revised Code that specify 2355
minimum service quality, safety, and reliability requirements for 2356
NONCOMPETITIVE retail electric services supplied by an electric 2357
utility in this state, to the extent such AUTHORITY is not 2358
preempted by federal law. The rules shall include prescriptive 2359
standards for inspection, maintenance, repair, and replacement of 2360
the transmission and distribution systems of electric utilities; 2361
shall apply to each substantial type of transmission or 2362
distribution equipment or facility; shall establish uniform 2363
interconnection standards to ensure transmission and distribution 2364
system safety and reliability and shall otherwise provide for high 2365
quality, safe, and reliable electric service; shall include 2366

standards for operation, reliability, and SAFETY during periods of 2367
emergency and disaster; and shall include voltage standards for 2368
efficient operation of single-phase motors. The rules regarding 2369
interconnection shall seek to prevent barriers to new technology 2370
and shall not make compliance unduly burdensome or expensive. when 2371
questions arise about specific equipment to meet interconnection 2372
standards, the commission shall initiate proceedings open to the 2373
public to solicit comments from all interested parties. 2374
additionally, rules under this division shall include 2375
nondiscriminatory metering standards. 2376

(B) The commission shall require each electric utility to 2377
report annually to the commission on and after the starting date 2378
of competitive retail electric service, regarding its compliance 2379
with the rules required under division (A) of this section. the 2380
commission shall make the filed reports available to the public. 2381
Periodically as determined by commission rule under division (A) 2382
of section 4928.06 of the Revised Code and in a proceeding 2383
initiated under division (B) of section 4928.16 of the Revised 2384
Code, the commission shall review a utility's report to determine 2385
the utility's compliance and may act pursuant to DIVISION (B) of 2386
section 4928.16 of the Revised Code to enforce compliance. 2387

Sec. 4928.12. (A) Except as otherwise provided in sections 2388
4928.31 to 4928.40 of the Revised Code, no entity shall own or 2389
control transmission facilities as defined under federal law and 2390
located in this state on or after the starting date of competitive 2391
retail electric service unless that entity is a member of, and 2392
transfers control of those facilities to, one or more qualifying 2393
transmission entities, as described in division (B) of this 2394
section, that are operational. 2395

(B) An entity that owns or controls TRANSMISSION FACILITIES 2396
LOCATED IN THIS STATE complies with division (A) of this section 2397

if each transmission entity of which it is a member meets all of 2398
the following specifications: 2399

(1) The transmission entity is APPROVED BY THE FEDERAL ENERGY 2400
REGULATORY COMMISSION. 2401

(2) the transmission entity effects SEPARATE CONTROL OF 2402
TRANSMISSION FACILITIES FROM CONTROL OF GENERATION FACILITIES. 2403

(3) The transmission entity implements, to the extent 2404
reasonably possible, policies and procedures designed to minimize 2405
pancaked transmission rates within this state. 2406

(4) The transmission entity IMPROVES SERVICE RELIABILITY 2407
WITHIN THIS STATE. 2408

(5) the transmission entity achieves the objectives of an 2409
open and competitive electric generation marketplace, elimination 2410
of barriers to market entry, and preclusion of control of 2411
bottleneck electric transmission facilities in the provision of 2412
retail electric service. 2413

(6) The TRANSMISSION entity is of sufficient scope or 2414
otherwise operates to substantially increase economical supply 2415
options for consumers. 2416

(7) the governance structure or control of the transmission 2417
entity is independent of the users of the TRANSMISSION facilities, 2418
and no member of its board of directors has an affiliation, with 2419
such a user or with an affiliate of a user during the member's 2420
tenure on the board, such as to unduly affect the transmission 2421
entity's performance. FOR THE PURPOSE OF DIVISION (B)(7) OF THIS 2422
SECTION, A "USER" IS ANY ENTITY OR AFFILIATE OF THAT ENTITY THAT 2423
BUYS OR SELLS ELECTRIC ENERGY IN THE TRANSMISSION ENTITY'S REGION 2424
OR IN A NEIGHBORING REGION. 2425

(8) The transmission entity operates under policies that 2426
promote positive performance designed to satisfy the electricity 2427

requirements of customers. 2428

(9) The transmission entity is capable of maintaining 2429
real-time reliability of the electric transmission system, 2430
ensuring comparable and nondiscriminatory transmission access and 2431
necessary services, minimizing system congestion, and further 2432
addressing real or potential transmission constraints. 2433

(C) to the extent that a transmission entity under division 2434
(A) of this section is authorized to build transmission 2435
facilities, that TRANSMISSION entity has the powers provided in 2436
and is subject to sections 1723.01 to 1723.08 of the Revised Code. 2437

(D) For the purpose of forming or participating in a regional 2438
regulatory oversight body or mechanism developed for any 2439
transmission entity under division (A) of this section that is of 2440
regional scope and operates within this state: 2441

(1) The commission shall make joint investigations, hold 2442
joint hearings, within or outside this state, and issue joint or 2443
concurrent orders in conjunction or concurrence with any official 2444
or agency of any state or of the United States, whether in the 2445
holding of those investigations or hearings, or in the making of 2446
those orders, the commission is functioning under agreements or 2447
compacts between states, under the concurrent power of states to 2448
regulate interstate commerce, as an agency of the United States, 2449
or otherwise. 2450

(2) The commission shall negotiate and enter into agreements 2451
or compacts with agencies of other states for cooperative 2452
regulatory efforts and for the enforcement of the respective state 2453
laws regarding the transmission entity. 2454

(E) If a qualifying transmission entity is not operational as 2455
contemplated in division (A) of this section, division (A)(13) of 2456
section 4928.34 of the Revised Code, or division (G) of section 2457
4928.35 of the Revised Code, the commission by rule or order shall 2458

take such measures or impose such requirements on all for-profit 2459
entities that own or control electric transmission FACILITIES 2460
located in this state as the commission determines necessary and 2461
proper to achieve independent, nondiscriminatory operation of, and 2462
separate ownership and control of, such electric transmission 2463
facilities on or after the starting date of competitive retail 2464
electric service. 2465

Sec. 4928.13. through a periodic filing with the public 2466
utilities commission in such form as the commission shall 2467
prescribe by rule under division (A) of section 4928.06 of the 2468
Revised Code, each electric utility that owns nuclear generation 2469
facilities located in this state shall demonstrate compliance with 2470
DECOMMISSIONING requirements of the nuclear regulatory commission 2471
and public utilities commission and shall demonstrate adequate 2472
financing mechanisms to fund facility DECOMMISSIONING. 2473

Sec. 4928.14. (A) After its market development period, an 2474
ELECTRIC DISTRIBUTION utility in this state shall provide 2475
consumers, on a comparable and nondiscriminatory basis within its 2476
certified territory, a market-based standard service offer of all 2477
competitive retail electric services necessary to maintain 2478
essential electric service to consumers, including a firm supply 2479
of electric generation service. such offer shall be filed with the 2480
public utilities commission under section 4909.18 of the Revised 2481
Code. 2482

(B) AFTER THAT MARKET DEVELOPMENT PERIOD, EACH ELECTRIC 2483
DISTRIBUTION UTILITY ALSO SHALL OFFER CUSTOMERS WITHIN ITS 2484
CERTIFIED TERRITORY AN OPTION TO PURCHASE COMPETITIVE RETAIL 2485
ELECTRIC SERVICE THE PRICE OF WHICH IS DETERMINED THROUGH A 2486
COMPETITIVE BIDDING PROCESS. PRIOR TO JANUARY 1, 2004, THE 2487
COMMISSION SHALL ADOPT RULES CONCERNING THE CONDUCT OF THE 2488
COMPETITIVE BIDDING PROCESS, INCLUDING THE INFORMATION 2489

REQUIREMENTS NECESSARY FOR CUSTOMERS TO CHOOSE THIS OPTION AND THE 2490
REQUIREMENTS TO EVALUATE QUALIFIED BIDDERS. THE COMMISSION MAY 2491
REQUIRE THAT THE COMPETITIVE BIDDING PROCESS BE REVIEWED BY AN 2492
INDEPENDENT THIRD PARTY. NO GENERATION SUPPLIER SHALL BE 2493
PROHIBITED FROM PARTICIPATING IN THE BIDDING PROCESS, PROVIDED 2494
THAT ANY WINNING BIDDER SHALL BE CONSIDERED A CERTIFIED SUPPLIER 2495
FOR PURPOSES OF OBLIGATIONS TO CUSTOMERS. AT THE ELECTION OF THE 2496
ELECTRIC DISTRIBUTION UTILITY, AND APPROVAL OF THE COMMISSION, THE 2497
COMPETITIVE BIDDING OPTION UNDER THIS DIVISION MAY BE USED AS THE 2498
MARKET-BASED STANDARD OFFER REQUIRED BY DIVISION (A) OF THIS 2499
SECTION. THE COMMISSION MAY DETERMINE AT ANY TIME THAT A 2500
COMPETITIVE BIDDING PROCESS IS NOT REQUIRED, IF OTHER MEANS TO 2501
ACCOMPLISH GENERALLY THE SAME OPTION FOR CUSTOMERS IS READILY 2502
AVAILABLE IN THE MARKET AND A REASONABLE MEANS FOR CUSTOMER 2503
PARTICIPATION IS DEVELOPED. 2504

(C) After the market development period, the failure of a 2505
supplier to provide retail electric generation service to 2506
customers within the certified territory of the electric 2507
distribution utility shall result in the supplier's customers, 2508
after reasonable notice, defaulting to the utility's standard 2509
service offer filed under division (A) of this section until the 2510
customer chooses an alternative supplier. A supplier is deemed 2511
under this division to have failed to provide such service if the 2512
commission finds, after reasonable notice and opportunity for 2513
hearing, that any of the following conditions are MET: 2514

(1) the supplier has defaulted on its contracts with 2515
customers, is in receivership, or has filed for bankruptcy. 2516

(2) the supplier is no longer capable of providing the 2517
service. 2518

(3) the supplier is unable to provide delivery to 2519
transmission or distribution facilities for such period of time as 2520
may be reasonably specified by commission rule adopted under 2521

division (A) of section 4928.06 of the Revised Code. 2522

(4) The supplier's certification has been suspended, 2523
conditionally rescinded, or rescinded under division (D) of 2524
section 4928.08 of the Revised Code. 2525

Sec. 4928.15. (A) Except as otherwise provided in sections 2526
4928.31 to 4928.40 of the Revised Code, no electric utility shall 2527
supply noncompetitive retail electric DISTRIBUTION service in this 2528
state on or after The starting date of competitive retail electric 2529
service except pursuant to a schedule for that service that is 2530
consistent with the state policy specified in section 4928.02 of 2531
the Revised Code and filed with the public utilities COMMISSION 2532
under section 4909.18 of the Revised Code. the schedule shall 2533
provide that electric distribution service under the schedule is 2534
available to all consumers within the utility's certified 2535
territory and to any supplier to those consumers on a 2536
nondiscriminatory and comparable basis. distribution service rates 2537
and charges under the schedule shall be established in accordance 2538
with Chapters 4905. and 4909. of the Revised Code. The schedule 2539
shall include an obligation to build distribution facilities when 2540
necessary to provide adequate distribution service, provided that 2541
a customer requesting that service may be required to pay all or 2542
part of the reasonable incremental cost of the new facilities, in 2543
accordance with rules, policy, precedents, or orders of the 2544
commission. 2545

(B) Except as otherwise provided in sections 4928.31 to 2546
4928.40 of the Revised Code and except as preempted by federal 2547
law, no electric utility shall supply the transmission service or 2548
ancillary service component of noncompetitive retail electric 2549
service in this state on or after The starting date of competitive 2550
retail electric service except pursuant to a schedule for that 2551
service component that is consistent with the state policy 2552

specified in section 4928.02 of the Revised Code and filed with 2553
the COMMISSION under section 4909.18 of the Revised Code. The 2554
schedule shall provide that transmission or ancillary service 2555
under the schedule is available to all consumers and to any 2556
supplier to those consumers on a nondiscriminatory and comparable 2557
basis. Service rates and charges under the schedule shall be 2558
established in accordance with Chapters 4905. and 4909. of the 2559
Revised Code. 2560

(C) A self-generator shall have access to backup electricity 2561
supply from its competitive electric generation service provider 2562
at a rate to be determined by contract. 2563

Sec. 4928.16. (A)(1) The public utilities commission has 2564
jurisdiction under section 4905.26 of the Revised Code, upon 2565
complaint of any person or upon complaint or initiative of the 2566
commission on or after the starting date of competitive retail 2567
electric service, regarding the provision by an electric utility, 2568
electric services company, electric cooperative, or governmental 2569
aggregator subject to certification under section 4928.08 of the 2570
Revised Code of any service for which it is subject to 2571
certification. 2572

(2) The commission also has jurisdiction under section 2573
4905.26 of the Revised Code, upon complaint of any person or upon 2574
complaint or initiative of the commission on or after the starting 2575
date of competitive retail electric service, to determine whether 2576
an electric utility has violated or failed to comply with any 2577
provision of sections 4928.01 to 4928.15, any provision of 2578
divisions (A) to (D) of section 4928.35 of the Revised Code, or 2579
any rule or order adopted or issued under those sections; or 2580
whether an electric services company, electric cooperative, or 2581
governmental aggregator subject to certification under section 2582
4928.08 of the Revised Code has violated or failed to comply with 2583

any provision of sections 4928.01 to 4928.10 of the Revised Code 2584
regarding a competitive retail electric service for which it is 2585
subject to certification or any rule or order adopted or issued 2586
under those sections. 2587

(3) If a contract between a mercantile commercial customer 2588
and an electric services company states that the forum for a 2589
commercial dispute involving that company is through a certified 2590
commercial arbitration process, that process set forth in the 2591
contract and agreed to by the signatories shall be the exclusive 2592
forum unless all parties to the contract agree in writing to an 2593
amended process. the company shall notify the commission for 2594
informational purposes of all matters for which a contract remedy 2595
is invoked to resolve a dispute. 2596

(4) The commission, by rule adopted pursuant to division (A) 2597
of section 4928.06 of the Revised Code, shall adopt alternative 2598
dispute resolution procedures for complaints by nonmercantile, 2599
nonresidential customers, including arbitration through a 2600
certified commercial arbitration process and at the commission. 2601
the commission also by such rule may adopt alternative dispute 2602
resolution procedures for complaints by residential customers. 2603

(B) In addition to its authority under division (C) of 2604
section 4928.08 of the Revised Code and to any other remedies 2605
provided by law, the commission, after reasonable notice and 2606
opportunity for hearing in accordance with section 4905.26 of the 2607
Revised Code, may do any of the following: 2608

(1) Order rescission of a contract, or restitution to 2609
customers including damages due to electric power fluctuations, in 2610
any complaint brought pursuant to division (A)(1) or (2) of this 2611
section; 2612

(2) Order any remedy or forfeiture provided under sections 2613
4905.54 to 4905.60 and 4905.64 of the Revised Code upon a finding 2614

under division (A)(2) of this section that the electric utility 2615
has violated or failed to comply with any provision of sections 2616
4928.01 to 4928.15, any provision of divisions (A) to (D) of 2617
section 4928.35 of the Revised Code, or any rule or order adopted 2618
or issued under those sections. in addition, the commission may 2619
order any remedy provided under section 4905.22, 4905.37, or 2620
4905.38 of the Revised Code if the violation or failure to comply 2621
by an electric utility related to the provision of a 2622
noncompetitive retail electric service. 2623

(3) Order any remedy or forfeiture provided under sections 2624
4905.54 to 4905.60 and 4905.64 of the Revised Code upon a finding 2625
under division (A)(2) of this section that the electric services 2626
company, electric cooperative, or governmental aggregator subject 2627
to certification under section 4928.08 of the Revised Code has 2628
violated or failed to comply, regarding a competitive retail 2629
electric service for which it is subject to certification, with 2630
any provision of sections 4928.01 to 4928.10 of the Revised Code 2631
or any rule or order adopted or issued under those sections. 2632

(C)(1) In addition to the authority conferred under section 2633
4911.15 of the Revised Code, the consumers' counsel may file a 2634
complaint under division (A)(1) or (2) of this section on behalf 2635
of residential consumers in this state or appear before the 2636
commission as a representative of those consumers pursuant to any 2637
complaint filed under division (A)(1) or (2) of this section. 2638

(2) In addition to the authority conferred under section 2639
4911.19 of the Revised Code, the consumers' counsel, upon 2640
reasonable grounds on and after the starting date of competitive 2641
retail electric service, may file with the commission under 2642
section 4905.26 of the Revised Code a complaint for discovery if 2643
the recipient of an inquiry under section 4911.19 of the Revised 2644
Code fails to provide a response within the time specified in that 2645
section. 2646

(D) Section 4905.61 of the Revised Code applies to a 2647
violation by an electric utility of, or to a failure of an 2648
electric utility to comply with, any provision of sections 4928.01 2649
to 4928.15, any provision of divisions (A) to (D) of section 2650
4928.35 of the Revised Code, or any rule or order adopted or 2651
issued under those sections. 2652

Sec. 4928.17. (A) except as otherwise provided in sections 2653
4928.31 to 4928.40 of the Revised Code and beginning on The 2654
starting date of competitive retail electric service, no electric 2655
utility shall engage in this state, either directly or through an 2656
affiliate, in the businesses of supplying a noncompetitive retail 2657
electric service and supplying a competitive retail electric 2658
service, or in the businesses of supplying a noncompetitive retail 2659
electric service and supplying a product or service other than 2660
retail electric service, unless the utility implements and 2661
operates under a corporate separation plan that is approved by the 2662
public utilities commission under this section, is consistent with 2663
the policy specified in section 4928.02 of the Revised Code, and 2664
achieves all of the following: 2665

(1) The plan provides, at minimum, for the provision of the 2666
competitive retail electric service or the nonelectric product or 2667
service through a fully separated affiliate of the utility, and 2668
the plan includes separate accounting requirements, the code of 2669
conduct as ordered by the commission pursuant to a rule it shall 2670
adopt under division (A) of section 4928.06 of the Revised Code, 2671
and such other measures as are necessary to effectuate the policy 2672
specified in section 4928.02 of the Revised Code. 2673

(2) The plan satisfies the public interest in preventing 2674
unfair competitive advantage and preventing the abuse of market 2675
power. 2676

(3) The plan is sufficient to ensure that the utility will 2677

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

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

commission shall afford a hearing upon those aspects of the plan 2710
that the commission determines reasonably require a hearing. the 2711
commission may reject and require refiling of a substantially 2712
inadequate plan under this section. 2713

(C) The commission shall issue an order approving or 2714
modifying and approving a corporate separation plan under this 2715
section, to be effective on the date specified in the order, only 2716
upon findings that the plan reasonably complies with the 2717
requirements of division (A) of this section and will provide for 2718
ongoing compliance with the policy specified in section 4928.02 of 2719
the Revised Code. HOWEVER, FOR GOOD CAUSE SHOWN, THE COMMISSION 2720
MAY ISSUE AN ORDER APPROVING OR MODIFYING AND APPROVING A 2721
CORPORATE SEPARATION PLAN UNDER THIS SECTION THAT DOES NOT COMPLY 2722
WITH DIVISION (A)(1) OF THIS SECTION BUT COMPLIES WITH SUCH 2723
FUNCTIONAL SEPARATION REQUIREMENTS AS THE COMMISSION AUTHORIZES TO 2724
APPLY FOR AN INTERIM PERIOD PRESCRIBED IN THE ORDER, UPON A 2725
FINDING THAT SUCH ALTERNATIVE PLAN WILL PROVIDE FOR ONGOING 2726
COMPLIANCE WITH THE POLICY SPECIFIED IN SECTION 4928.02 OF THE 2727
REVISED CODE. 2728

(D) Any party may seek an amendment to a CORPORATE separation 2729
plan approved under this section, and the commission, pursuant to 2730
a request from any party or on its own initiative, may order as it 2731
considers necessary the filing of an amended CORPORATE separation 2732
plan to reflect changed circumstances. 2733

(E) Notwithstanding section 4905.20, 4905.21, 4905.46, or 2734
4905.48 of the Revised Code, an electric utility may divest itself 2735
of any generating asset at any time without commission approval, 2736
subject to the provisions of Title XLIX of the Revised Code 2737
relating to the transfer of transmission, distribution, or 2738
ancillary service provided by such generating asset. 2739

Sec. 4928.18. (A) Notwithstanding division (D)(2)(a) of 2740

section 4909.15 of the Revised Code, nothing in this chapter 2741
prevents the public utilities commission from exercising its 2742
AUTHORITY under Title XLIX of the Revised Code to protect 2743
customers of retail electric service supplied by an electric 2744
utility FROM any adverse effect of the utility's provision of a 2745
product or service other than retail electric service. 2746

(B) The commission has jurisdiction under section 4905.26 of 2747
the Revised Code, upon complaint of any person or upon complaint 2748
or initiative of the commission on or after the starting date of 2749
competitive retail electric service, to determine whether an 2750
electric utility or its affiliate has violated any provision of 2751
section 4928.17 of the Revised Code or an order issued or rule 2752
adopted under that section. for this purpose, the commission may 2753
examine such books, accounts, or other records kept by an electric 2754
utility or its affiliate as may relate to the businesses for which 2755
corporate separation is required under section 4928.17 of the 2756
Revised Code, and may investigate such utility or affiliate 2757
operations as may relate to those businesses and investigate the 2758
interrelationship of those operations. any such examination or 2759
investigation by the commission shall be governed by chapter 4903. 2760
OF the revised code. 2761

(C) In addition to any remedies otherwise provided by law, 2762
the commission, regarding a determination of a violation pursuant 2763
to division (B) of this section, may do any of the following: 2764

(1) Issue an order directing the utility or affiliate to 2765
comply; 2766

(2) Modify an order as the commission finds reasonable and 2767
appropriate and order the utility or affiliate to comply with the 2768
modified order; 2769

(3) Suspend or abrogate an order, in whole or in part; 2770

(4) Issue an order that the utility or affiliate pay 2771
restitution to any person injured by the violation or failure to 2772
comply; 2773

(D) IN ADDITION TO ANY REMEDIES OTHERWISE PROVIDED BY LAW, 2774
THE COMMISSION, REGARDING A DETERMINATION OF A VIOLATION PURSUANT 2775
TO DIVISION (B) OF THIS SECTION AND COMMENSURATE WITH THE SEVERITY 2776
OF THE VIOLATION, THE SOURCE OF THE VIOLATION, ANY PATTERN OF 2777
VIOLATIONS, OR ANY MONETARY DAMAGES CAUSED BY THE VIOLATION, MAY 2778
DO EITHER OF THE FOLLOWING: 2779

(1) Impose a forfeiture on the utility or affiliate of up to 2780
twenty-five thousand dollars per day per violation. The recovery 2781
and deposit of any such forfeiture shall be subject to sections 2782
4905.57 and 4905.59 of the Revised Code. 2783

(2) Regarding a violation by an electric utility relating to 2784
a corporate separation plan involving competitive retail electric 2785
service, suspend or abrogate all or part of an order, to the 2786
extent it is in effect, authorizing an opportunity for the utility 2787
to receive transition revenues under a transition plan approved by 2788
the commission under section 4928.33 of the Revised Code. 2789

Corporate separation under this section does not prohibit the 2790
common use of employee benefit plans, facilities, equipment, or 2791
employees, subject to proper accounting and the code of conduct 2792
ordered by the commission as provided in division (A)(1) of this 2793
section. 2794

(E) Section 4905.61 of the Revised Code applies in the CASE 2795
OF any violation of section 4928.17 of the Revised Code or of any 2796
rule adopted or order issued under that section. 2797

Sec. 4928.19. As part of their ongoing consumer education 2798
efforts, the public utilities commission and the office of the 2799
consumers' counsel shall ENGAGE in cooperative agency efforts to 2800

educate consumers in this state regarding electric industry 2801
restructuring under this chapter. 2802

Sec. 4928.20. (A) on or after the starting date of 2803
competitive retail electric service, the legislative authority of 2804
a municipal corporation may adopt an ordinance, or the board of 2805
township trustees of a township or the board of county 2806
commissioners of a county may adopt a resolution, under which it 2807
may aggregate in accordance with this section the retail 2808
electrical loads located, RESPECTIVELY, within THE MUNICIPAL 2809
CORPORATION, TOWNSHIP, OR UNINCORPORATED AREA OF THE COUNTY and, 2810
for that purpose, may enter into service agreements to facilitate 2811
for those loads the sale and purchase of electricity. the 2812
legislative authority or board also may exercise such authority 2813
jointly with any other such legislative authority or board. an 2814
ordinance or resolution under this division shall specify whether 2815
the aggregation will occur only with the prior consent of each 2816
person owning, occupying, controlling, or using an electric load 2817
center proposed to be aggregated or will occur automatically for 2818
all such persons pursuant to the opt-out requirements of division 2819
(D) of this section. nothing in this division, however, AUTHORIZES 2820
the aggregation of such retail electric loads of an electric load 2821
center, as defined in section 4933.81 of the Revised Code, that is 2822
located in the certified territory of a nonprofit electric 2823
supplier under sections 4933.81 to 4933.90 of the Revised Code or 2824
an electric load center served by transmission or distribution 2825
facilities of a municipal electric utility. 2826

(B) if an ordinance or resolution adopted under division (A) 2827
of this section specifies that aggregation will occur 2828
automatically as described in that division, the ordinance or 2829
resolution SHALL direct the board of elections to submit the 2830
question of the AUTHORITY to aggregate to the electors of the 2831

respective municipal corporation, township, or UNINCORPORATED AREA 2832
OF A county at a special election on the day of the next primary 2833
or general election in the municipal corporation, township, or 2834
county. the legislative authority or board shall certify a copy of 2835
the ordinance or resolution to the board of elections not less 2836
than seventy-five days before the day of the special election. no 2837
ordinance or resolution adopted under division (A) of this section 2838
that provides for an election under this division shall take 2839
effect unless approved by a majority of the electors voting upon 2840
the ordinance or resolution at the election held pursuant to this 2841
division. 2842

(C) upon the applicable requisite authority under divisions 2843
(A) and (b) of this section, the legislative authority or board 2844
shall develop a plan of operation and governance for the 2845
aggregation program so authorized. before adopting a plan under 2846
this division, the legislative authority or board shall hold at 2847
least two public hearings on the plan. before the first hearing, 2848
the legislative authority or board shall publish notice of the 2849
hearings once a week for two consecutive weeks in a newspaper of 2850
general circulation in the jurisdiction. the notice shall 2851
summarize the plan and state the date, time, and location of each 2852
hearing. 2853

(D) no legislative authority or board, pursuant to an 2854
ordinance or resolution under divisions (a) and (b) of this 2855
section that provides for automatic aggregation as described in 2856
division (a) of this section, shall aggregate the electrical load 2857
of any electric load center located within its jurisdiction unless 2858
it in advance clearly DISCLOSES to the person owning, occupying, 2859
controlling, or using the load center that the person will be 2860
enrolled automatically in the aggregation program and will remain 2861
so enrolled unless the person affirmatively elects by a stated 2862
procedure not to be so enrolled. the disclosure shall state 2863

prominently the rates, charges, and other terms and conditions of 2864
enrollment. The stated procedure shall allow any person enrolled 2865
in the aggregation program the opportunity to opt out of the 2866
program every two years, without paying a switching fee. Any such 2867
person that opts out of the aggregation program pursuant to the 2868
stated procedure shall default to the standard service offer 2869
provided under division (A) of section 4928.14 or division (D) of 2870
section 4928.35 of the Revised Code until the person chooses an 2871
alternative supplier. 2872

(E)(1) with respect to a governmental aggregation for a 2873
municipal corporation that is authorized pursuant to DIVISION (A) 2874
to (D) of this section, resolutions may be proposed by initiative 2875
or referendum petitions in accordance with sections 731.28 to 2876
731.41 of the Revised Code. 2877

(2) with respect to a governmental aggregation for a township 2878
or the unincorporated area of a county, which aggregation is 2879
authorized pursuant to DIVISION (A) to (D) of this section, 2880
resolutions may be proposed by initiative or referendum petitions 2881
in accordance with sections 731.28 to 731.40 of the Revised Code, 2882
except that: 2883

(a) the petitions shall be filed, respectively, with the 2884
township clerk or the board of county commissioners, who shall 2885
perform those duties imposed under those sections upon the city 2886
auditor or village clerk. 2887

(b) the PETITIONS shall contain the signatures of not less 2888
than ten per cent of the total number of ELECTORS in, 2889
respectively, the township or the unincorporated area of the 2890
county who voted for the office of governor at the preceding 2891
general election for that office in that area. 2892

(F) a governmental aggregator under division (A) of this 2893
section is not a public utility engaging in the WHOLESALE purchase 2894

and resale of electricity, and provision of the AGGREGATED service 2895
is not a wholesale utility transaction. a governmental aggregator 2896
shall be subject to supervision and regulation by the public 2897
utilities commission only to the extent of any competitive retail 2898
electric service it provides and commission authority under this 2899
chapter. 2900

(G) This section does not apply in the case of a municipal 2901
corporation that supplies such aggregated service to electric load 2902
centers to which its municipal electric utility also supplies a 2903
noncompetitive retail electric service through transmission or 2904
distribution facilities the utility singly or jointly owns or 2905
operates. 2906

Sec. 4928.31. (A) Not later than ninety days after the 2907
effective date of this section, an electric utility supplying 2908
retail electric service in this state on that date shall file with 2909
the public utilities commission a plan for the utility's provision 2910
of retail electric service in this state during the market 2911
development period. this transition plan shall be in such form as 2912
the commission shall prescribe by rule adopted under division (A) 2913
of section 4928.06 of the Revised Code and shall include all of 2914
the following: 2915

(1) A RATE UNBUNDLING PLAN that specifies, consistent with 2916
divisions (A)(1) to (7) of section 4928.34 of the Revised Code and 2917
any rules adopted by the commission under division (A) of section 2918
4928.06 of the Revised Code, THE UNBUNDLED COMPONENTS FOR ELECTRIC 2919
GENERATION, TRANSMISSION, AND DISTRIBUTION SERVICE AND SUCH OTHER 2920
UNBUNDLED service COMPONENTS AS THE COMMISSION requires, to BE 2921
CHARGED BY THE UTILITY beginning on THE STARTING DATE OF 2922
COMPETITIVE RETAIL ELECTRIC SERVICE and that includes information 2923
the commission requires to fix and determine those components; 2924

(2) A corporate separation plan consistent with section 2925

4928.17 of the Revised Code and any rules adopted by the 2926
commission under division (A) of section 4928.06 of the Revised 2927
Code; 2928

(3) Such plan or plans as the commission requires to address 2929
operational support systems and any other technical implementation 2930
issues pertaining to COMPETITIVE retail electric service 2931
consistent with any rules adopted by the commission under division 2932
(A) of section 4928.06 of the Revised Code; 2933

(4) An employee assistance plan for providing severance, 2934
retraining, early retirement, retention, outplacement, and other 2935
assistance for the utility's employees whose employment is 2936
affected by electric industry restructuring under this chapter; 2937

(5) A consumer education plan consistent with section 4928.42 2938
of the Revised Code and any rules adopted by the commission under 2939
division (A) of section 4928.06 of the Revised Code. 2940
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a transition plan under this section may include tariff terms 2942
and conditions to address reasonable requirements for changing 2943
suppliers, length of commitment by a customer for service, and 2944
such other matters as are necessary to ACCOMMODATE electric 2945
restructuring. Additionally, a transition plan under this SECTION 2946
MAY include An application for the opportunity to receive 2947
transition revenues as authorized under sections 4928.31 to 2948
4928.40 of the Revised Code, which application shall be consistent 2949
with those sections and any rules adopted by the commission under 2950
division (A) of section 4928.06 of the Revised Code. The 2951
transition plan also may include a plan for the independent 2952
operation of THE UTILITY'S transmission facilities consistent with 2953
section 4928.12 of the Revised Code, division (A)(13) of section 2954
4928.34 of the Revised Code, and any rules adopted by the 2955
commission under division (A) of section 4928.06 of the Revised 2956

Code. 2957

The commission may reject and require refileing, in whole or 2958
in part, of any substantially inadequate transition plan. 2959

(B) The electric utility shall provide public notice of its 2960
filing under division (A) of this section, in a form and manner 2961
that the commission shall prescribe by rule adopted under division 2962
(A) of section 4928.06 of the Revised Code. however, the adoption 2963
of rules regarding the public notice under this division, 2964
regarding the form of the transition plan under division (A) of 2965
this section, and regarding procedures for expedited discovery 2966
under division (A) of section 4928.32 of the Revised Code are not 2967
subject to division (D) of section 111.15 of the Revised Code. 2968

Sec. 4928.32. (A) the public utilities commission shall 2969
establish reasonable procedures for expedited discovery in any 2970
proceeding initiated to consider a transition plan filed under 2971
section 4928.31 of the Revised Code. 2972

(B) Not later than forty-five days after the date on which an 2973
electric utility files a transition plan under section 4928.31 of 2974
the Revised Code, any person having a real and substantial 2975
interest in the transition plan may file with the commission 2976
preliminary objections to the transition plan, which shall 2977
identify with specificity issues pertaining to any aspect of the 2978
transition plan, and any such person may propose specific 2979
responses to those issues. The commission shall address THOSE 2980
OBJECTIONS and RESponses in its final order. 2981

In addition, not later than ninety days after the plan's 2982
filing, the commission staff shall file with the commission a 2983
report of its recommendations with respect to the plan. Prior to 2984
commission approval of the plan, the commission shall afford a 2985
hearing upon those aspects of the plan that the commission 2986
determines reasonably require a hearing. 2987

(C) The commission shall maintain a complete record of all 2988
proceedings relative to a transition plan filed under section 2989
4928.31 of the Revised Code and shall issue and file with the 2990
record of the case findings of fact and written opinions setting 2991
forth the reasons for any modification to or its approval of a 2992
transition plan. 2993

Sec. 4928.33. (A) Not later than two hundred seventy-five 2994
days after the date an electric utility files a transition plan 2995
under section 4928.31 of the Revised Code, but, in any event, not 2996
later THAN october 31, 2000, the public utilities commission shall 2997
issue a final order approving the transition plan as filed under 2998
section 4928.31 of the Revised Code or an order modifying and 2999
approving that plan. The order is subject to section 4903.15 of 3000
the Revised Code and is subject to review and appeal under chapter 3001
4903. of the Revised Code. 3002

(B) If the COMMISSION fails to issue, by october 31, 2000, a 3003
final order approving a transition plan, or such a final order has 3004
been enjoined in whole or in part pending appeal to a court, the 3005
commission shall issue an interim order prescribing a transition 3006
plan, to have effect on an interim basis only, and containing the 3007
plan components required by division (A) of section 4928.31 of the 3008
Revised Code and providing for the opportunity for transition 3009
revenue receipt if such an application were included in the plan 3010
filed by the utility under that section. the interim order is 3011
subject to section 4903.15 of the Revised Code but is not subject 3012
to review and appeal under Chapter 4903. of the Revised Code. 3013

An interim plan prescribed under the interim order shall be 3014
effective for the electric utility beginning on the starting date 3015
of competitive retail electric service and shall continue in 3016
effect until such time as any other replacement transition plan 3017
takes effect pursuant to a final commission order or resolution of 3018

an appeal. any interim plan so prescribed shall comply with THE
aPPlicable provisions of section 4928.34 of the revised Code. A
final commission order shall provide for a reconciliation of those
amounts determined in the final order relative to division (A) of
section 4928.31 of the Revised Code as compared to the interim
amounts as determined under this division.

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

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

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

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(2) the unbundled components for retail electric distribution

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service in the rate unbundling plan equal the difference between 3050
the costs ATTRIBUTABLE to the utility's transmission and 3051
distribution rates and charges under its schedule of rates and 3052
charges in effect on the effective date of this section, based 3053
upon the record in the most recent rate proceeding of the utility 3054
for which the utility's schedule was established, and the tariff 3055
rates for electric transmission service determined by the federal 3056
energy regulatory commission as described in division (A)(1) of 3057
this section. 3058

(3) all other unbundled components required by the commission 3059
in the rate unbundling plan equal the costs attributable to the 3060
particular service as reflected in the utility's schedule of rates 3061
and charges in effect on the effective date of this section. 3062
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(4) the unbundled components for retail electric generation 3064
service in the rate unbundling plan equal the residual amount 3065
remaining after the determination of the transmission, 3066
distribution, and other unbundled components, and after any 3067
adjustments necessary to reflect the effects of the amendment of 3068
section 5727.111 of the Revised Code by Sub. S. B. No. 3 of the 3069
123rd general assembly. 3070

(5) all unbundled components in the rate unbundling plan have 3071
been adjusted to reflect any base rate reductions on file with the 3072
commission and as scheduled to be in effect by December 31, 2005, 3073
under rate settlements in effect on the effective date of this 3074
section. However, all earnings obligations, RESTRICTIONS, or caps 3075
imposed on an electric utility in a commission order prior to the 3076
effective date of this section are void. 3077

(6) Subject to division (A)(5) of this section, the total of 3078
all unbundled components in the rate UNBUNDLING plan are capped 3079
and shall equal during the market development period, except as 3080

specifically provided in this chapter, the total of all rates and
charges in effect under the applicable bundled schedule of the
electric utility PURSUANT TO SECTION 4905.30 OF THE REVISED CODE
in effect on the day before the effective date of this section,
including the transition charge determined under section 4928.40
of the Revised Code, adjusted for any changes in the taxation of
electric UTILITIES and retail electric service under Sub. S.B. No.
3 of the 123rd General Assembly, the universal service rider
authorized by section 4928.51 of the Revised Code, and the
temporary rider authorized by section 4928.61 of the Revised Code.
for the purpose of this division, the rate cap applicable to a
customer receiving electric service pursuant to an arrangement
approved by the commission under section 4905.31 of the Revised
Code is, for the term of the arrangement, the total of all rates
and charges in effect under the arrangement. FOR ANY RATE SCHEDULE
FILED PURSUANT TO SECTION 4905.30 OF THE REVISED CODE OR ANY
ARRANGEMENT SUBJECT TO APPROVAL PURSUANT TO SECTION 4905.31 OF THE
REVISED CODE, THE INITIAL TAX-RELATED ADJUSTMENT TO THE RATE CAP
REQUIRED BY THIS DIVISION SHALL BE EQUAL TO THE RATE OF TAXATION
SPECIFIED IN SECTION 5727.81 OF THE REVISED CODE AND APPLICABLE TO
THE SCHEDULE OR ARRANGEMENT. TO THE EXTENT SUCH TOTAL ANNUAL
AMOUNT OF THE TAX-RELATED ADJUSTMENT IS GREATER THAN OR LESS THAN
THE COMPARABLE AMOUNT OF THE TOTAL ANNUAL TAX REDUCTION
EXPERIENCED BY THE ELECTRIC UTILITY AS A RESULT OF THE PROVISIONS
OF SUB. S.B. NO. 3 OF THE 123rd GENERAL ASSEMBLY, SUCH DIFFERENCE
SHALL BE ADDRESSED BY THE COMMISSION THROUGH ACCOUNTING
PROCEDURES, REFUNDS, OR AN ANNUAL SURCHARGE OR CREDIT TO
CUSTOMERS, OR THROUGH OTHER APPROPRIATE MEANS, TO AVOID PLACING
THE FINANCIAL RESPONSIBILITY FOR THE DIFFERENCE UPON THE ELECTRIC
UTILITY OR ITS SHAREHOLDERS. ANY ADJUSTMENTS IN THE RATE OF
TAXATION SPECIFIED IN 5727.81 of the Revised Code SECTION SHALL
NOT OCCUR WITHOUT A CORRESPONDING ADJUSTMENT TO THE RATE CAP FOR
EACH SUCH RATE SCHEDULE OR ARRANGEMENT. THE DEPARTMENT OF TAXATION

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SHALL ADVISE THE COMMISSION AND SELF-ASSESSORS UNDER SECTION 3114
5727.81 OF THE REVISED CODE PRIOR TO THE EFFECTIVE DATE OF ANY 3115
CHANGE IN THE RATE OF TAXATION SPECIFIED UNDER THAT SECTION, AND 3116
THE COMMISSION SHALL MODIFY THE RATE CAP TO REFLECT THAT 3117
ADJUSTMENT SO THAT THE RATE CAP ADJUSTMENT IS EFFECTIVE AS OF THE 3118
EFFECTIVE DATE OF THE CHANGE IN THE RATE OF TAXATION. THIS 3119
DIVISION SHALL BE APPLIED, TO THE EXTENT POSSIBLE, TO ELIMINATE 3120
ANY INCREASE IN THE PRICE OF ELECTRICITY FOR CUSTOMERS THAT 3121
OTHERWISE MAY OCCUR AS A RESULT OF ESTABLISHING THE TAXES 3122
CONTEMPLATED IN SECTION 5727.81 OF THE REVISED CODE. 3123

(7) The rate unbundling plan complies with any rules adopted 3124
by the commission under division (A) of section 4928.06 of the 3125
Revised Code. 3126

(8) The corporate separation plan required by division (a)(2) 3127
of section 4928.31 of the Revised Code complies with section 3128
4928.17 of the Revised Code and any rules adopted by the 3129
commission under division (A) of section 4928.06 of the Revised 3130
Code. 3131

(9) any plan or plans the commission requires to address 3132
operational support systems and any other technical implementation 3133
issues pertaining to COMPETITIVE retail electric service COMPLY 3134
WITH any rules adopted by the commission under division (A) of 3135
section 4928.06 of the Revised Code. 3136

(10) The employee assistance plan required by division (A)(4) 3137
of section 4928.31 of the Revised Code sufficiently provides 3138
severance, retraining, early retirement, retention, outplacement, 3139
and other assistance for the utility's employees whose employment 3140
is affected by electric industry restructuring under this chapter. 3141
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(11) The consumer education plan required under division 3143
(A)(5) of section 4928.31 of the Revised Code complies with 3144

section 4928.42 of the Revised Code and any rules adopted by the 3145
commission under division (A) of section 4928.06 of the Revised 3146
Code. 3147

(12) The TRANSITION REVENUES FOR WHICH AN ELECTRIC UTILITY IS 3148
AUTHORIZED A REVENUE OPPORTUNITY UNDER SECTIONS 4928.31 TO 4928.40 3149
OF THE REVISED CODE ARE THE ALLOWABLE TRANSITION COSTS OF THE 3150
UTILITY AS SUCH COSTS ARE DETERMINED BY THE COMMISSION PURSUANT TO 3151
SECTION 4928.39 OF THE REVISED CODE, AND THE transition charges 3152
for the customer classes and rate schedules of the utility are the 3153
charges determined pursuant to section 4928.40 of the Revised 3154
Code. 3155

(13) Any independent transmission plan included in the 3156
transition plan filed under section 4928.31 of the Revised Code 3157
reasonably complies with section 4928.12 of the Revised Code and 3158
any rules adopted by the commission under division (A) of section 3159
4928.06 of the Revised Code, unless the commission, for good cause 3160
shown, authorizes the utility to defer compliance until an order 3161
is issued under division (G) of section 4928.35 of the Revised 3162
Code. 3163

(14) The utility is in compliance with sections 4928.01 to 3164
4928.11 of the Revised Code and any rules or orders of the 3165
commission adopted or issued under those sections. 3166

(15) All unbundled components in the rate unbundling plan 3167
have been adjusted to reflect the elimination of the tax on gross 3168
receipts imposed by section 5727.30 of the Revised Code. 3169

In addition, a transition plan approved by the commission 3170
under section 4928.33 of the Revised Code but not containing an 3171
approved independent transmission plan shall contain the express 3172
conditions that the utility will comply with an order issued under 3173
division (G) of section 4928.35 of the Revised Code. 3174

(B) Subject to division (E) of section 4928.17 of the Revised 3175

Code, if the commission finds that any part of the transition plan 3176
would constitute an abandonment under sections 4905.20 and 4905.21 3177
of the Revised Code, the commission shall not approve that part of 3178
the transition plan unless it makes the finding required for 3179
approval of an abandonment application under section 4905.21 of 3180
the Revised Code. sections 4905.20 and 4905.21 of the Revised Code 3181
otherwise shall not apply to a transition plan under sections 3182
4928.31 to 4928.40 of the Revised Code. 3183

Sec. 4928.35. (A) Upon approval of its transition plan under 3184
sections 4928.31 to 4928.40 of the Revised Code, an electric 3185
utility shall file in accordance with section 4905.30 of the 3186
Revised Code schedules containing the unbundled rate components 3187
set in the approved plan in accordance with section 4928.34 of the 3188
Revised Code. the schedules shall be in effect for the duration of 3189
the utility's market development period, shall be subject to the 3190
cap specified in division (A)(6) of section 4928.34 of the Revised 3191
Code, and shall not be adjusted during that period by the public 3192
UTILITIES commission except as otherwise AUTHORIZED by division 3193
(B) of this section or as otherwise AUTHORIZED by federal law or 3194
except to reflect any change in tax law or tax regulation that has 3195
a material effect on the electric utility. 3196

(B) Efforts shall be made to reach agreements with electric 3197
UTILITIES in matters of LITIGATION regarding property valuation 3198
issues. Irrespective of those efforts, the unbundled components 3199
for an electric utility's retail electric generation service and 3200
distribution service, as provided in division (A) of this section, 3201
are not subject to adjustment for the utility's market development 3202
period, except that the commission shall order an equitable 3203
reduction in those components for all customer classes to reflect 3204
any refund a utility receives as a result of the resolution of 3205
utility personal property tax valuation litigation that is 3206

resolved on or after the effective date of this section and not 3207
later than December 31, 2005. immediately upon the issuance of 3208
that order, the electric utility shall file revised rate schedules 3209
under section 4909.18 of the Revised Code to effect the order. 3210

(C) The schedule under division (A) of this section 3211
containing the unbundled distribution components shall provide 3212
that electric distribution service under the schedule will be 3213
available to all retail electric service customers in the electric 3214
utility's certified territory and their suppliers on a 3215
nondiscriminatory and comparable basis on and after the starting 3216
date of competitive retail electric service. The schedule also 3217
shall include an obligation to build distribution facilities when 3218
necessary to provide adequate distribution service, provided that 3219
a customer requesting that service may be required to pay all or 3220
part of the reasonable incremental cost of the new facilities, in 3221
accordance with rules, policy, precedents, or orders of the 3222
commission. 3223

(D) during the market development period, an electric 3224
distribution utility shall provide consumers on a comparable and 3225
nondiscriminatory basis within its certified territory a standard 3226
service offer of all competitive retail electric services 3227
necessary to maintain essential electric service to CONSUMERS, 3228
including a firm supply of electric generation service priced in 3229
accordance with the schedule containing the utility's UNBUNDLED 3230
generation service component. IMMEDIATELY upon approval of its 3231
transition plan, the utility shall file the standard service offer 3232
with the commission under section 4909.18 of the Revised Code. 3233
during the market development period, the failure of a supplier to 3234
deliver retail electric generation service shall result in the 3235
supplier's customers, after reasonable notice, defaulting to the 3236
utility's standard service offer filed under this division until 3237
the customer chooses an alternative supplier. a supplier is deemed 3238

under this section to have failed to deliver such service if any 3239
of the conditions specified in divisions (b)(1) to (4) of section 3240
4928.14 of the Revised Code is met. 3241

(E) An amendment of a corporate separation plan contained in 3242
a transition plan approved by the commission under section 4928.33 3243
of the Revised Code shall be filed and approved as a corporate 3244
separation plan pursuant to section 4928.17 of the Revised Code. 3245

(F) Any change to an electric utility's opportunity to 3246
receive transition revenues under a transition plan approved in 3247
accordance with section 4928.33 of the Revised Code shall be 3248
authorized only as provided in sections 4928.31 to 4928.40 of the 3249
Revised Code. 3250

(G) The commission, by order, shall require each electric 3251
utility whose approved transition plan did not include an 3252
independent transmission plan as described in division (A)(13) of 3253
section 4928.34 of the Revised Code to be a member of, and 3254
transfer control of transmission facilities it owns or controls in 3255
this state to, one or more qualifying transmission entities, as 3256
described in division (B) of section 4928.12 of the Revised Code, 3257
that are planned to be operational on and after december 31, 2003. 3258
HOWEVER, THE COMMISSION MAY EXTEND THAT DATE IF, FOR REASONS 3259
BEYOND THE CONTROL OF THE UTILITY, A QUALIFYING TRANSMISSION 3260
ENTITY IS NOT PLANNED TO BE OPERATIONAL ON THAT DATE. The 3261
commission's order may specify an earlier date on which the 3262
transmission entity or entities are planned to be operational if 3263
the commission considers it necessary to carry out the policy 3264
specified in section 4928.02 of the Revised Code or to encourage 3265
effective competition in retail electric service in this state. 3266

Upon the issuance of the order, each such utility shall file 3267
with the commission a plan for such independent operation of the 3268
utility's transmission facilities consistent with this division. 3269

the commission may reject and require refiling of any 3270
substantially inadequate plan submitted under this division. 3271

after REasonable notice and opportunity for hearing, the 3272
commission shall approve the plan upon a finding that the plan 3273
will result in the utility's COMPLiaNCE with the order, this 3274
division, and any rules adopted under division (A) of section 3275
4928.06 of the Revised Code. the approved independent transmission 3276
plan shall be deemed a part of the utility's transition plan for 3277
purposes of sections 4928.31 to 4928.40 of the Revised Code. 3278

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Sec. 4928.36. The public utilities commission has 3280
jurisdiction under section 4905.26 of the Revised Code, upon 3281
complaint by any person or upon complaint or initiative of the 3282
commission on or after the starting date of competitive retail 3283
electric service, to determine whether an electric utility has 3284
failed to implement, in conformance with an order under section 3285
4928.33 of the Revised Code or in ongoing compliance with 3286
applicable provisions of the policy specified in section 4928.02 3287
of the Revised Code, a transition plan approved under section 3288
4928.33 of the Revised Code. If, after reasonable notice and 3289
opportunity for hearing as provided in section 4905.26 of the 3290
Revised Code, the commission determines that the utility has 3291
failed to so comply, the commission, in addition to any other 3292
remedies provided by law, may use the remedies specified in 3293
divisions (C)(1) to (3) and (D)(1) and (2) of section 4928.18 of 3294
the Revised Code to enforce compliance. 3295

Sec. 4928.37. (A)(1) Sections 4928.31 to 4928.40 of the 3296
Revised Code provide an electric utility the opportunity to 3297
receive transition revenues that may assist it in making the 3298
transition to a fully competitive retail electric generation 3299

market. An electric Utility for which transition revenues are 3300
approved pursuant to sections 4928.31 to 4928.40 of the Revised 3301
Code shall receive those revenues through both of the following 3302
mechanisms beginning on the starting date of competitive retail 3303
electric service and ending on the expiration date of its market 3304
development period as determined under section 4928.40 of the 3305
Revised Code: 3306

(a) payment of unbundled rates for retail electric services 3307
by each customer that is supplied retail electric generation 3308
service during the market development period by the customer's 3309
electric distribution utility, which rates shall be specified in 3310
schedules filed under section 4928.35 of the Revised Code; 3311

(b) Payment of a nonbypassable and competitively neutral 3312
transition charge by each customer that is supplied retail 3313
electric generation service during the market development period 3314
by an entity other than the customer's electric distribution 3315
utility, as such transition charge is determined under section 3316
4928.40 of the Revised Code. the transition charge shall be 3317
payable by each such retail electric distribution service customer 3318
in the certified territory of the electric utility for which the 3319
transition revenues are approved and shall be billed on each 3320
kilowatt hour of electricity delivered to the customer by the 3321
electric distribution utility as registered on the customer's 3322
meter during the utility's market development period as kilowatt 3323
hour is defined in section 4909.161 of the Revised Code or, if no 3324
meter is used, as based on an estimate of kilowatt hours used or 3325
consumed by the customer. The transition charge for each customer 3326
class shall reflect the cost allocation to that class as provided 3327
under bundled rates and charges in effect on the day before the 3328
effective date of this section. Additionally, as reflected in 3329
section 4928.40 of the Revised Code, the transition charges shall 3330
be structured to provide shopping incentives to customers 3331

sufficient to encourage the development of effective competition 3332
in the supply of retail electric generation service. TO THE EXTENT 3333
POSSIBLE, THE LEVEL AND STRUCTURE OF THE TRANSITION CHARGE SHALL 3334
BE DESIGNED TO AVOID REVENUE RESPONSIBILITY SHIFTS AMONG THE 3335
UTILITY'S CUSTOMER CLASSES AND RATE SCHEDULES. 3336

(2)(a) Notwithstanding division (A)(1)(b) of this section, 3337
the transition charge shall not be payable on electricity supplied 3338
by a municipal electric utility to a retail electric distribution 3339
service customer in the certified territory of the electric 3340
utility for which the transition revenues are approved, if the 3341
municipal electric utility provides electric transmission or 3342
distribution service, or both services, through transmission or 3343
distribution facilities singly or jointly owned or operated by the 3344
municipal electric utility, and if the municipal electric utility 3345
was in existence, operating, and providing service as of January 3346
1, 1999. 3347

(b) The transition charge shall not be payable on electricity 3348
supplied or consumed in this state except such electricity as is 3349
delivered to a retail customer by an electric distribution utility 3350
and is registered on the customer's meter during the utility's 3351
market development period or, if no meter is used, is based on an 3352
estimate of kilowatt hours used or consumed by the customer. 3353
However, no transition charge shall be payable on electricity that 3354
is both produced and consumed in this state by a self-generator. 3355
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(3) the transition charge shall not be discounted by any 3357
party. 3358

(4) Nothing prevents payment of all or part of the transition 3359
charge by another party on a customer's behalf if that payment 3360
does not contravene sections 4905.33 to 4905.35 of the Revised 3361
Code or this chapter. 3362

(B) The electric utility shall separately itemize and 3363
disclose, or cause its billing and collection agent to separately 3364
itemize and disclose, the transition charge on the customer's bill 3365
in accordance with reasonable SPECIFICATIONS the commission shall 3366
prescribe by rule under division (A) of section 4928.06 of the 3367
Revised Code. 3368

Sec. 4928.38. Pursuant to a transition plan approved under 3369
section 4928.33 of the Revised Code, An electric utility in this 3370
state may receive transition revenues under sections 4928.31 to 3371
4928.40 of the Revised Code, beginning on The starting date of 3372
competitive retail electric service. Except as provided in 3373
sections 4905.33 to 4905.35 of the Revised Code and this Chapter, 3374
an electric utility that receives such transition revenues shall 3375
be wholly responsible for how to use those revenues and wholly 3376
responsible for whether it is in a competitive position after the 3377
market development period. The utility's receipt of transition 3378
revenues shall terminate at the end of the market development 3379
period. With the termination of that approved revenue source, the 3380
utility shall be fully on its own in the competitive market. The 3381
commission shall not authorize the receipt of transition revenues 3382
or any equivalent revenues by an electric utility except as 3383
expressly authorized in sections 4928.31 to 4928.40 of the Revised 3384
Code. 3385

Sec. 4928.39. Upon the filing of an application by an 3386
electric utility under section 4928.31 of the Revised Code for the 3387
opportunity to receive transition revenues under sections 4928.31 3388
to 4928.40 of the Revised Code, the public utilities commission, 3389
by order under section 4928.33 of the Revised Code, shall 3390
determine the total allowable amount of the transition costs of 3391
the utility to be received as transition revenues under those 3392
sectionS. such amount shall be the just and reasonable transition 3393

COSTS of the utility, which costs the commission finds meet all of 3394
the following criteria: 3395

(A) The costs were prudently incurred. 3396

(B) the costs are LEGITIMATE, net, verifiable, and directly 3397
assignable or allocable to retail electric generation service 3398
provided to electric consumers in this state. 3399

(C) The costs are unrecoverable in a competitive market. 3400

(D) The utility would OTHERWISE be entitled an opportunity to 3401
recover the costs. 3402

Transition costs under this section shall include the costs 3403
of employee assistance under the employee assistance plan included 3404
in the utility's approved transition plan under section 4928.33 of 3405
the Revised Code, which costs exceed those costs contemplated in 3406
labor contracts in effect on the effective date of this section. 3407

Further, the commission's order under this section shall 3408
separately identify regulatory assets of the utility that are a 3409
part of the total allowable amount of transition costs determined 3410
under this section and separately identify that portion of a 3411
transition charge determined under section 4928.40 of the Revised 3412
Code that is allocable to those assets, WHICH PORTION OF A 3413
TRANSITION CHARGE SHALL BE SUBJECT TO ADJUSTMENT ONLY 3414
PROSPECTIVELY AND AFTER December 31, 2004, unless the commission 3415
authorizes an adjustment prospectively with an earlier date for 3416
any customer class based upon an earlier termination of the 3417
utility's market development period pursuant to division (B)(2) of 3418
section 4928.40 of the Revised Code. 3419

The electric utility shall have the burden of demonstrating 3420
allowable transition costs as AUTHORIZED under this section. the 3421
commission may impose reasonable commitments upon the utility's 3422
collection of the transition revenues to ensure that those 3423

revenues are used to eliminate the allowable transition costs of 3424
the utility during the market development period and are not 3425
available for use by the utility to achieve an undue competitive 3426
advantage, or to impose an undue disadvantage, in the provision by 3427
the utility of regulated or unregulated products or services. 3428

Sec. 4928.40. (A) UPON determining under section 4928.39 of 3429
the Revised Code the allowable transition costs of an electric 3430
utility AUTHORIZED for collection as transition revenues under 3431
sections 4928.31 to 4928.40 of the Revised Code, the public 3432
utilities commission, by order under section 4928.33 of the 3433
Revised Code, shall establish the transition charge for each 3434
customer class of the electric utility and, to the extent 3435
possible, each rate schedule within each such customer class, with 3436
all such transition charges being collected as provided in 3437
division (A)(1)(b) of section 4928.37 of the Revised Code during a 3438
market development period for the utility, ending on such date as 3439
the commission shall reasonably prescribe. The market development 3440
period shall end on December 31, 2005, unless otherwise authorized 3441
under division (B)(2) of this section. HOWEVER, THE COMMISSION MAY 3442
SET THE UTILITY'S RECOVERY OF THE REVENUE REQUIREMENTS ASSOCIATED 3443
WITH REGULATORY ASSETS, as established pursuant to section 4928.39 3444
of the Revised Code, TO END NOT LATER THAN DECEMBER 31, 2010. The 3445
commission shall not permit the creation or amortization of 3446
additional regulatory assets without notice and an opportunity to 3447
be heard through an evidentiary hearing and SHALL NOT INCREASE THE 3448
CHARGE RECOVERING SUCH REVENUE REQUIREMENTS ASSOCIATED WITH 3449
REGULATORY ASSETS. 3450

factors the commission shall consider in prescribing the 3451
expiration date of the utility's market development period and the 3452
transition charge for each customer class and rate schedule of the 3453
utility include, but are not limited to, the total allowable 3454

amount of transition costs of the electric utility as determined 3455
under section 4928.39 of the Revised Code; the relevant market 3456
price for the delivered supply of electricity to customers in that 3457
customer class and, to the extent possible, in each rate schedule 3458
as determined by the commission; and such shopping incentives by 3459
customer class as are considered necessary to induce, at the 3460
minimum, a twenty per cent load switching rate by customer class 3461
halfway through the utility's market development period but not 3462
later than December 31, 2003. In no case shall the commission 3463
establish a shopping incentive in an amount exceeding the 3464
unbundled component for retail electric generation service set in 3465
the utility's approved transition plan under section 4928.33 of 3466
the Revised Code, and in no case shall the commission establish a 3467
transition charge in an amount less than zero. 3468

(B)(1) THE COMMISSION may CONDUCT A PERIODIC REVIEW no more 3469
often than annually AND, AS IT DETERMINES NECESSARY, ADJUST THE 3470
TRANSITION CHARGES OF THE ELECTRIC UTILITY as INITIALLY 3471
established under division (A) of this section or subsequently 3472
adjusted under this division. any such adjustment shall be in 3473
accordance with division (A) of this section and may reflect 3474
changes in the relevant market. 3475

(2) FOR PURPOSES OF THIS CHAPTER, THE MARKET DEVELOPMENT 3476
PERIOD SHALL NOT END EARLIER THAN DECEMBER 31, 2005, UNLESS, UPON 3477
APPLICATION BY AN ELECTRIC UTILITY, THE COMMISSION ISSUES AN ORDER 3478
AUTHORIZING SUCH EARLIER DATE FOR ONE OR MORE CUSTOMER CLASSES AS 3479
IS SPECIFIED IN THE ORDER, UPON A DEMONSTRATION BY THE UTILITY AND 3480
A FINDING BY THE COMMISSION OF EITHER OF THE FOLLOWING: 3481

(a) THERE IS A TWENTY PER CENT SWITCHING RATE OF THE 3482
UTILITY'S LOAD BY THE CUSTOMER CLASS. 3483

(b) effective competition exists in the utility's certified 3484
territory. 3485

(C) Notwithstanding any provision of this chapter, the 3486
commission shall issue an order under section 4928.33 of the 3487
Revised Code approving a transition plan for an electric utility 3488
that contains a rate reduction for residential customers of that 3489
utility, provided that the rate reduction shall not increase the 3490
rates or transition cost RESPONSIBILITY of any other customer 3491
class of the utility. the rate reduction shall be in effect only 3492
for such portion of the UTILITY'S market development period as the 3493
commission shall specify AND shall be applied to the unbundled 3494
generation component for retail electric generation service as set 3495
in the utility's approved transition plan under section 4928.33 of 3496
the Revised Code subject to the price cap for residential 3497
customers required under division (A)(6) of section 4928.34 of the 3498
Revised Code. The amount of the rate reduction shall be FIVE PER 3499
CENT OF THE AMOUNT OF THAT UNBUNDLED GENERATION COMPONENT, but 3500
shall not unduly discourage market entry by alternative suppliers 3501
seeking to serve the residential market in this state. THE 3502
COMMISSION, AFTER REASONABLE NOTICE AND OPPORTUNITY FOR HEARING, 3503
may terminate the rate reduction by order UPON A FINDING THAT THE 3504
RATE REDUCTION IS UNDULY DISCOURAGING MARKET ENTRY BY SUCH 3505
ALTERNATIVE SUPPLIERS. No such termination of the rate reduction 3506
shall take effect prior to the midpoint of the utility's market 3507
development period. 3508

(D) Beginning on the starting date of competitive retail 3509
electric service, no electric utility in this state SHALL prohibit 3510
the resale of electric generation service OR impose unreasonable 3511
or discriminatory conditions or limitations on the resale of 3512
electric generation service. 3513

(E) NOTWITHSTANDING ANY PROVISION OF TITLE XLIX OF THE 3514
REVISED CODE TO THE CONTRARY, ANY CUSTOMER THAT RECEIVES A 3515
NONCOMPETITIVE RETAIL ELECTRIC SERVICE FROM AN ELECTRIC 3516
DISTRIBUTION UTILITY SHALL BE A RETAIL ELECTRIC DISTRIBUTION 3517

SERVICE CUSTOMER, IRRESPECTIVE OF THE VOLTAGE LEVEL AT WHICH 3518
SERVICE IS TAKEN. 3519

Sec. 4928.41. The transition revenue authority provided under 3520
sections 4928.31 to 4928.40 of the Revised Code for electric 3521
utilities does not affect the authority of an electric cooperative 3522
in this state to receive transition revenues. 3523

Sec. 4928.42. PRIOR TO THE STARTING DATE OF COMPETITIVE 3524
RETAIL ELECTRIC SERVICE, THE public utilities COMMISSION, IN 3525
CONSULTATION WITH THE CONSUMERS' COUNSEL AND WITH OTHER STATE 3526
AGENCIES AS CONSIDERED NECESSARY, SHALL PRESCRIBE AND ADOPT BY 3527
ORDER A GENERAL PLAN BY WHICH EACH ELECTRIC UTILITY shall PROVIDE 3528
DURING ITS MARKET DEVELOPMENT PERIOD CONSUMER EDUCATION ON 3529
ELECTRIC RESTRUCTURING UNDER this chapter. THE GENERAL PLAN SHALL 3530
REQUIRE the UTILITIES TO SPEND ON SUCH CONSUMER EDUCATION WITHIN 3531
their respective CERTIFIED SERVICE TERRITORIES IN THE AGGREGATE UP 3532
TO SIXTEEN MILLION DOLLARS IN THE FIRST YEAR OF THAT PERIOD AND AN 3533
ADDITIONAL SEVENTEEN MILLION DOLLARS IN THE AGGREGATE IN 3534
DECREASING AMOUNTS OVER THE REMAINING YEARS OF each utility's 3535
MARKET DEVELOPMENT PERIOD, WITH THE AGGREGATE AMOUNTS DIVIDED 3536
AMONG THE UTILITIES BASED ON THEIR RESPECTIVE NUMBER OF CUSTOMERS 3537
AS OF DECEMBER 31, 1997. THE GENERAL PLAN SHALL PROHIBIT SUCH 3538
CONSUMER EDUCATION FROM OCCURRING IN COMBINATION WITH MARKETING 3539
FOR THE UTILITY'S OR ITS AFFILIATE'S RETAIL ELECTRIC SERVICES. 3540

Sec. 4928.43. (A) Each state agency that provides employment 3541
assistance and job training programs, including the bureau of 3542
employment services and the department of development, shall 3543
provide concentrated attention through those programs to assisting 3544
employees whose employment is affected by electric industry 3545
restructuring under this chapter. 3546

(B) TO THE EXTENT NOT PROHIBITED BY FEDERAL LAW OR ANY LAW OF 3547

THIS STATE AND EXCEPT AS OTHERWISE PROVIDED IN A LABOR CONTRACT OR 3548
OTHER AGREEMENT, NO UNENCUMBERED MONEY IN A PENSION FUND FOR 3549
EMPLOYEES OF ELECTRIC UTILITIES SHALL BE USED FOR ANY PURPOSE 3550
OTHER THAN TO PAY ALLOWABLE PENSIONS OR EARLY RETIREMENT BUYOUTS 3551
FOR THE EMPLOYEES. 3552

Sec. 4928.431. (A)(1) there is hereby created an electric 3553
EMPLOYEE assistance advisory board, CONSISTING of twelve members, 3554
as follows: two members of the house of representatives appointed 3555
by the speaker of the house of representatives, neither of the 3556
same political party; two members of the senate appointed by the 3557
president of the senate, neither of the same political party; and 3558
four representatives of electric utilities in this state and four 3559
representatives of electric industry employees, all appointed by 3560
the governor. initial APPOINTMENTS shall be made not later than 3561
december 31, 1999. 3562

(2) initial terms of the members appointed by the governor 3563
shall end on december 31, 2001. thereafter, terms of APPOINTED 3564
members shall be for two years with each term ending on the same 3565
day OF the same month as the term it succeeds. each member shall 3566
hold office from the date of the member's appointment UNTIL the 3567
end of the term for which the member was appointed. members may be 3568
reappointed. 3569

Vacancies shall be filled in the manner provided for original 3570
appointments. any member appointed to fill a vacancy occurring 3571
prior to the expiration date of the term for which the member's 3572
predecessor was appointed shall hold office as a member for the 3573
remainder of that term. a member shall continue in office after 3574
the expiration date of the member's term UNTIL the member's 3575
successor takes office or UNTIL A period of SIXTY days has 3576
elapsed, whichever occurs first. Board members shall receive no 3577
compensation or REIMBURSEMENT for expenses. 3578

(3) The advisory board shall select a chairperson from among 3579
its members. Only board members appointed by the governor shall be 3580
VOTING members of the board; each shall have one vote in all 3581
deliberations of the board. A majority of the VOTING members 3582
constitutes a quorum. 3583

(B) The duties of the advisory board shall be to make 3584
recommendations to the public utilities commission regarding its 3585
approval of an Employee assistance plan filed in accordance with 3586
section 4928.31 of the Revised Code and regarding general 3587
eligibility standards applicable to benefits under the plan for 3588
affected EMPLOYEES. 3589

Sec. 4928.44. (A) The public utilities commission may 3590
determine, by order and after reasonable notice and opportunity 3591
for hearing, that CUSTOMERS THAT ARE NONFIRM ELECTRIC SERVICE 3592
customers of electric UTILITIES ON THE EFFECTIVE DATE OF THIS 3593
SECTION would be assisted by the implementation by each such 3594
utility of a service schedule that complies with division (C) of 3595
this section. in the order, the commission shall specify the 3596
period of time, ending not later than december 31, 2005, during 3597
which the service OFFERING would be available to ANY SUCH NONFIRM 3598
ELECTRIC SERVICE customers or A group of such customers. upon the 3599
issuance of the order, ANY SUCH NONFIRM ELECTRIC SERVICE customer 3600
or A group of SUCH customers shall be, for the purposes of this 3601
section, eligible customers in each electric utility's 3602
transmission tariff subject to the JURISDICTION of the federal 3603
energy regulatory commission FOR THE PERIOD SPECIFIED IN THE 3604
ORDER, and each electric UTILITY with nonfirm customers shall file 3605
a service schedule pursuant to section 4909.18 of the Revised Code 3606
to effectuate this service offering. 3607

(b) the service schedule AUTHORIZED under division (A) of 3608
this section, FOR THE PERIOD ENDING NOT LATER THAN DECEMBER 31, 3609

2005, AS SPECIFIED IN THE COMMISSION'S ORDER UNDER THAT DIVISION, 3610
shall PROVIDE for direct, comparable and nondiscriminatory access 3611
to the transmission and distribution services, capacities, 3612
functions, and facilities of the electric UTILITY BY any CUSTOMER 3613
THAT IS A nonFIRM ELECTRIC SERVICE customer ON THE EFFECTIVE DATE 3614
OF THIS SECTION or BY A group of ANY SUCH customers, for the 3615
purpose of securing from a supplier or suppliers of the customer's 3616
or group's choice all or a portion of the customer's or group's 3617
electric power and energy requirements not served by an electric 3618
utility during a time of nonemergency curtailment or interruption. 3619

the failure of an electric UTILITY to file such schedule 3620
constitutes inadequate service under title XLIX of the Revised 3621
Code. 3622

(C) the service offering authorized pursuant to this section 3623
shall be in addition to any service options otherwise available to 3624
A NONFIRM ELECTRIC SERVICE customer or group of NONFIRM ELECTRIC 3625
SERVICE customers. if a CUSTOMER THAT IS A NONFIRM ELECTRIC 3626
SERVICE customer ON THE EFFECTIVE DATE OF THIS SECTION or A group 3627
of SUCH customers elects to meet all or a portion of the 3628
customer's or group's electric power and energy requirements not 3629
served by an electric utility during a time of nonemergency 3630
curtailment or interruption, by purchasing electricity and related 3631
services from a supplier or suppliers other than that electric 3632
utility, any existing service arrangement under section 4905.31 of 3633
the Revised Code or any existing schedule under section 4905.30 of 3634
the Revised Code shall be modified to permit this election to 3635
occur without economic penalty and to facilitate the customer's or 3636
group's access to the electric market for the purpose of managing 3637
supply and price volatility risks. 3638

(d) NOTHING IN DIVISIONS (a) TO (c) OF THIS SECTION AFFECTS 3639
ANY OBLIGATION OF an electric utility TO curtail or interrupt 3640
electric transmission or distribution service to the extent 3641

required to protect the interests of firm ELECTRIC SERVICE 3642
customers from an injury that is otherwise unavoidable but for the 3643
curtailment or interruption. Nothing in those divisions shall be 3644
construed or applied to increase rates and charges for firm 3645
electric service customers including residential firm electric 3646
service customers. 3647

Sec. 4928.51. (A) There is hereby established in the state 3648
treasury a universal service fund, into which shall be deposited 3649
all universal service revenues remitted to the director of 3650
development under this section, for the exclusive purposes of 3651
providing funding for the low-income customer assistance programs 3652
and for the consumer education program authorized under section 3653
4928.56 of the Revised Code, and paying the administrative costs 3654
of the low-income customer assistance programs and the consumer 3655
education program. Interest on the fund shall be credited to the 3656
fund. Disbursements from the fund shall be made to any supplier 3657
that provides a competitive retail electric service or a 3658
noncompetitive retail electric service to a customer who is 3659
approved to receive assistance under a specified low-income 3660
customer assistance program and to any authorized provider of 3661
weatherization or energy efficiency service to a customer approved 3662
to receive such assistance under a specified low-income customer 3663
ASSISTANCE program. 3664

(B) universal service revenues shall include all of the 3665
following: 3666

(1) Revenues remitted to the director after collection by an 3667
electric distribution utility beginning July 1, 2000, attributable 3668
to the collection from customers of the universal service rider 3669
prescribed under section 4928.52 of the Revised Code; 3670

(2) Revenues remitted to the director that have been 3671
collected by an electric distribution utility beginning July 1, 3672

2000, as customer payments under the percentage of income payment 3673
plan program, including revenues remitted under division (c) of 3674
this section; 3675

(3) adequate revenues remitted to the director after 3676
collection by a MUNICIPAL electric utility or electric cooperative 3677
in this state not earlier than July 1, 2000, upon the utility's or 3678
cooperative's decision to participate in the low-income customer 3679
assistance programs. 3680

(C)(1) Beginning July 1, 2000, an electric distribution 3681
utility shall transfer to the director the right to collect all 3682
arrearage payments of a customer for percentage of income payment 3683
plan program debt owed to the utility on the day before that date 3684
or retain the right to collect that debt but remit to the director 3685
all program revenues received by the utility for that customer. 3686

(2) A CURRENT OR PAST PERCENTAGE OF INCOME PAYMENT PLAN 3687
PROGRAM CUSTOMER IS RELIEVED OF ANY PAYMENT OBLIGATION UNDER THE 3688
PERCENTAGE OF INCOME PAYMENT PROGRAM FOR ANY UNPAID ARREARS 3689
ACCRUED BY THE CUSTOMER UNDER THE PROGRAM AS OF THE EFFECTIVE DATE 3690
OF THIS SECTION IF THE CUSTOMER, AS DETERMINED BY THE DIRECTOR, 3691
MEETS BOTH OF THE FOLLOWING CRITERIA: 3692

(a) THE CUSTOMER AS OF THAT DATE HAS COMPLIED WITH CUSTOMER 3693
PAYMENT RESPONSIBILITIES UNDER THE PROGRAM. 3694

(b) THE CUSTOMER IS PERMANENTLY AND TOTALLY DISABLED AS 3695
DEFINED IN SECTION 5117.01 OF THE REVISED CODE OR IS SIXTY-FIVE 3696
YEARS OF AGE OR OLDER AS DEFINED IN THAT SECTION. 3697

(D) THE PUBLIC UTILITIES COMMISSION SHALL COMPLETE AN AUDIT 3698
OF EACH ELECTRIC UTILITY BY JULY 1, 2000, FOR THE PURPOSE OF 3699
ESTABLISHING A BASELINE FOR THE PERCENTAGE OF INCOME PAYMENT PLAN 3700
PROGRAM COMPONENT OF THE LOW-INCOME ASSISTANCE PROGRAMS. 3701

Sec. 4928.52. (A) Beginning July 1, 2000, the universal 3702

service rider shall replace the percentage of income payment plan 3703
rider in existence on the effective date of this section and ANY 3704
AMOUNT IN THE RATES OF AN ELECTRIC UTILITY FOR THE FUNDING OF 3705
LOW-INCOME customer ENERGY EFFICIENCY PROGRAMS. THE UNIVERSAL 3706
SERVICE RIDER shall be a rider on retail electric distribution 3707
service rates as such rates are determined by the public utilities 3708
commission pursuant to this chapter. the universal service rider 3709
for the first five years after the starting date of competitive 3710
retail electric service shall be the sum of all of the following: 3711

(1) the level of the percentage of income payment plan 3712
program rider in existence on the effective date of this section; 3713

(2) an amount equal to the level of funding for low-income 3714
customer energy efficiency programs provided through electric 3715
utility rates in effect on the effective date of this section; 3716

(3) any additional amount necessary and SUFFICIENT to fund 3717
through the universal service rider the ADMINISTRATIVE costs of 3718
the low-income customer AssISTANCE programs and the consumer 3719
education program created in section 4928.56 of the Revised Code. 3720

(B) If, during or after the five-year period specified in 3721
division (a) of this section, the director of development, after 3722
CONSULTATION with the public benefits advisory board created under 3723
section 4928.58 of the Revised Code, determines that revenues in 3724
the universal service fund and revenues from federal or other 3725
sources of funding for those programs, including general revenue 3726
fund appropriations for the ohio energy credit program, will be 3727
insufficient to cover the administrative costs of the low-income 3728
customer AssISTANCE programs and the consumer education program 3729
and provide adequate funding for THOSE PROGRAMS, the director 3730
shall file a petition with the commission for an increase in the 3731
universal service rider. the commission, after reasonable notice 3732
and OPPORTUNITY for hearing, may adjust the universal service 3733

rider by the minimum amount necessary to provide the additional 3734
revenues. the commission shall not decrease the universal service 3735
rider without the approval of the director, after consultation by 3736
the director with the advisory board. 3737

(c) the universal service rider established under DIVISION 3738
(A) or (B) of this section shall be set in such a manner so as not 3739
to shift among the customer classes of electric distribution 3740
utilities the costs of funding low-income customer ASSISTANCE 3741
programs. 3742

Sec. 4928.53. (A) Beginning July 1, 2000, the director of 3743
development is hereby authorized to administer the low-income 3744
customer assistance programs. for that purpose, the public 3745
utilities commission shall cooperate with and provide such 3746
assistance as the director REQUIRES FOR ADMINISTRATION of the 3747
low-income customer assistance programs. The director shall 3748
consolidate the administration of and redesign and coordinate the 3749
operations of those programs within the department to provide, to 3750
the maximum extent possible, for efficient program administration 3751
and a one-stop application and ELIGIBILITY determination process 3752
at the local level for consumers. 3753

(B)(1) not later than March 1, 2000, the director, in 3754
accordance with chapter 119. of the Revised Code, shall adopt 3755
rules to carry out sections 4928.51 to 4928.58 of the Revised Code 3756
and ensure the effective and EFFICIENT ADMINISTRATION and 3757
operation of the low-income customer assistance programs. the 3758
rules shall take effect on the July 1, 2000. 3759

(2) the director's authority to adopt rules under this 3760
division for the Ohio energy credit program shall be subject to 3761
such rule-making AUTHORITY as is conferred on the director by 3762
sections 5117.01 to 5117.12 of the Revised Code, as amended by 3763
Sub. S.B. No. 3 of the 123rd general assembly, except that rules 3764

initially adopted by the director for the Ohio energy credit 3765
program shall incorporate the substance of those sections as they 3766
exist on the effective date of this section. 3767

(3) the director's AUTHORITY to adopt rules under this 3768
division for the percentage of income payment plan program shall 3769
include authority to adopt rules prescribing criteria for customer 3770
eligibility and policies REGARDING payment and crediting 3771
arrangements and responsibilities, procedures for verifying 3772
customer eligibility, procedures for disbursing public funds to 3773
suppliers and otherwise administering funds under the director's 3774
jurisdiction, and requirements as to timely remittances of 3775
revenues described in division (B) of section 4928.51 of the 3776
Revised Code. The director's authority in division (B)(3) of this 3777
section excludes authority to prescribe service disconnection and 3778
customer billing policies and procedures and to address complaints 3779
against suppliers under the percentage of payment plan program, 3780
which excluded authority shall be exercised by the public 3781
utilities commission, in coordination with the director. RULES 3782
ADOPTED BY THE DIRECTOR UNDER THIS DIVISION FOR THE PERCENTAGE OF 3783
INCOME PAYMENT PLAN PROGRAM SHALL SPECIFY A LEVEL OF PAYMENT 3784
RESPONSIBILITY TO BE BORNE BY AN ELIGIBLE CUSTOMER BASED ON A 3785
PERCENTAGE OF THE CUSTOMER'S INCOME. Rules initially adopted by 3786
the director for the percentage of income payment plan program 3787
shall incorporate the eligibility criteria and payment arrangement 3788
and responsibility policies set forth in rule 4901:1-18-04(B) of 3789
the Ohio Administrative Code in effect on the effective date of 3790
this section. 3791

Sec. 4928.54. Beginning on the starting date of competitive 3792
retail electric service, the director of development may aggregate 3793
percentage of income payment plan program customers for the 3794
purpose of competitively auctioning the supply of competitive 3795
retail electric generation service to bidders certified under 3796

section 4928.08 of the Revised Code and further qualified under 3797
ELIGIBILITY criteria the director prescribes by rule under 3798
division (b) of section 4928.53 of the Revised Code after 3799
consultation with the commission and electric light companies 3800
regarding any such rule. the objectives of the auction shall be to 3801
provide reliable retail electric generation service to customers, 3802
based on selection criteria that the winning bid provide the 3803
lowest cost and best value to customers. The rules adopted by the 3804
director under division (b) of section 4928.53 of the Revised Code 3805
shall ensure a fair and unbiased auction process and the 3806
performance of any winning bidder. 3807

Sec. 4928.55. The director of development shall establish an 3808
energy efficiency and weatherization program targeted, to the 3809
extent practicable, to high-cost, high-volume use structures 3810
occupied by customers eligible for the percentage of income 3811
PAYMENT plan program, with the goal of reducing the energy bills 3812
of the occupants. Acceptance of energy efficiency and 3813
WEATHERIZATION services provided by the program shall be a 3814
condition for the eligibility of any such customer to participate 3815
in the percentage of income payment plan program. Any difference 3816
between universal service fund revenues under section 4928.51 of 3817
the Revised Code and any savings in percentage of income payment 3818
plan program costs as a result of competitive auctioning under 3819
section 4928.54 of the Revised Code shall be reinvested in the 3820
targeted energy EFFICIENCY and WEATHERIZATION program. 3821

Sec. 4928.56. The director of development may adopt rules in 3822
accordance with Chapter 119. of the Revised Code establishing an 3823
education program for consumers eligible to participate in the 3824
low-income customer assistance programs. the education program 3825
shall provide information to consumers regarding energy efficiency 3826

and energy conservation. 3827

Sec. 4928.57. On and after the starting date of competitive 3828
retail electric service, the director of development shall provide 3829
a report every two years until 2008 to the standing committees of 3830
the general assembly that deal with public utility matters, 3831
regarding the effectiveness of the low-income customer assistance 3832
programs and the consumer education program, and the effectiveness 3833
of the energy EFFICIENCY revolving loan program created under 3834
sections 4928.61 to 4928.63 of the Revised Code. 3835

Sec. 4928.58. (A) there is hereby created the public benefits 3836
ADVISORY board, WHICH HAS THE PURPOSE OF ENSURING THAT ENERGY 3837
SERVICES BE PROVIDED TO LOW-INCOME CONSUMERS IN THIS STATE IN AN 3838
AFFORDABLE MANNER CONSISTENT WITH THE POLICY SPECIFIED IN SECTION 3839
4928.02 OF THE REVISED CODE. THE ADVISORY BOARD SHALL CONSIST of 3840
twenty-one members as follows: the director of development, the 3841
CHAIRPERSON of the public utilities commission, the consumers' 3842
counsel, and the director of the air quality development 3843
authority, each serving ex officio and represented by a designee 3844
at the official's discretion; two members of the house of 3845
representatives appointed by the speaker of the house of 3846
representatives, NEITHER of the SAME POLITICAL party, and two 3847
members of the senate appointed by the president of the senate, 3848
neither of the same political party; and thirteen members 3849
appointed by the governor with the advice and consent of the 3850
senate, consisting of one representative of suppliers of 3851
competitive retail electric service; one representative of the 3852
residential class of electric utility customers; one 3853
representative of the industrial class of electric utility 3854
customers; one representative of the commercial class of electric 3855
utility customers; one representative of agricultural or rural 3856

customers of an electric utility; two customers RECEIVING 3857
assistance under one or more of the low-income customer assistance 3858
programs, to represent customers eligible for any such assistance, 3859
including senior citizens; one representative of the general 3860
public; one representative of local intake agencies; one 3861
representative of a community-based organization serving 3862
low-income customers; one representative of environmental 3863
protection interests; one representative of lending institutions; 3864
and one person considered an expert in energy efficiency or 3865
renewables technology. Initial appointments shall be made not 3866
later than November 1, 1999. 3867

(B) Initial terms of six of the appointed members shall end 3868
on June 30, 2003, and initial terms of the remaining seven 3869
appointed MEMBERS shall end on June 30, 2004. thereafter, terms of 3870
appointed members shall be for three years, with each term ending 3871
on the same day of the same month as the term it succeeds. each 3872
member shall hold office from the date of the member's appointment 3873
until the end of the term for which the member was appointed. 3874
members may be reappointed. 3875

Vacancies shall be filled in the manner provided for original 3876
appointments. Any member APPOINTED to fill a vacancy occurring 3877
prior to the expiration date of the term for which the member's 3878
predecessor was appointed shall hold office as a member for the 3879
REMAINDER of that term. a member shall continue in office after 3880
the expiration date of the member's term until the member's 3881
successor takes office or until a period of sixty days has 3882
elapsed, whichever occurs first. 3883

(C) Board members shall be reimbursed for their actual and 3884
necessary expenses incurred in the performance of board duties. 3885
such REIMBURSEMENTS constitute, as applicable, administrative 3886
costs of the low-income customer assistance programs for the 3887

purpose of division (A) of section 4928.51 of the Revised Code or 3888
administrative costs of the energy efficiency revolving loan 3889
program for the purpose of division (A) of section 4528.61 of the 3890
Revised Code. 3891

(D) The advisory board shall select a chairperson from among 3892
its members. only board members appointed by the governor with THE 3893
advice and consent of the senate shall be voting members of the 3894
board; each shall have one vote in all deliberations of the board. 3895
a majority of the voting members constitute a quorum. 3896

(E) The duties of the advisory board shall be as follows: 3897

(1) Advise the director in the administration of the 3898
UNIVERSAL service fund and the low-income customer assistance 3899
programs and advise the director on the director's recommendation 3900
to the commission regarding the appropriate level of the universal 3901
service rider; 3902

(2) Advise the director on the administration of the energy 3903
efficiency revolving loan program and the energy efficiency 3904
revolving loan program fund under sections 4928.61 to 4928.63 of 3905
the Revised Code. 3906

(F) the advisory board is not an agency, as defined in 3907
section 101.82 of the Revised Code, for purposes of divisions (A) 3908
and (B) of section 101.84 of the Revised Code. 3909

Sec. 4928.61. (A) There is hereby established in the state 3910
treasury an energy efficiency revolving loan fund, into which 3911
shall be deposited all energy EFFICIENCY revenues remitted to the 3912
director of development under division (B) of this section, for 3913
the exclusive purposes of funding the energy efficiency revolving 3914
loan program created under section 4928.62 of the Revised Code and 3915
paying the program's administrative costs. Interest on the fund 3916
shall be credited to the fund. 3917

(B) energy efficiency revenues shall include all of the 3918
following: 3919

(1) Revenues remitted to the director after collection by 3920
each electric DISTRIBUTION utility in this state of a temporary 3921
rider on retail electric distribution service rates as such rates 3922
are determined by the public utilities commission pursuant to this 3923
chapter. The rider shall be a uniform amount statewide, determined 3924
by the director of development, after consultation with the public 3925
benefits advisory board created by section 4928.58 of the Revised 3926
Code. The amount shall be determined by dividing an aggregate 3927
revenue target for a given year as determined by the director, 3928
after consultation with the advisory board, by the number of 3929
customers of electric distribution utilities in this state in the 3930
prior year. Such aggregate revenue target shall not exceed more 3931
than fifteen million dollars in any year through 2005 and shall 3932
not exceed more than five million dollars in any year after 2005. 3933
The rider shall be imposed beginning on the starting date of 3934
competitive retail electric service and shall terminate at the end 3935
of ten years following that starting date or until the energy 3936
efficiency revolving loan fund, including interest, reaches one 3937
hundred million dollars, whichever is first. 3938

(2) Revenues from energy efficiency revolving loan program 3939
loan repayments and payments from energy efficiency revolving loan 3940
program loan collections pursuant to section 4928.62 of the 3941
Revised Code; 3942

(3) Adequate revenues remitted to the director after 3943
collection by a MUNICIPAL electric utility or electric cooperative 3944
in this state not earlier than the starting date of competitive 3945
retail electric service upon the utility's or cooperative's 3946
decision to participate in the energy efficiency revolving loan 3947
PROGRAM. 3948

(C)(1) Each electric distribution utility in this state shall 3949
remit to the director on a quarterly basis the revenues described 3950
in divisions (B)(1) and (2) of this section. Such remittances 3951
shall begin with the first quarter following the starting date of 3952
competitive RETAIL ELECTRIC service. 3953

(2) Each participating electric cooperative and participating 3954
municipal electric utility shall remit to the director on a 3955
quarterly basis the revenues described in division (B)(3) of this 3956
section. such remittances shall begin with the first quarter 3957
following the participating cooperative's or utility's decision to 3958
participate. 3959

(3) All remittances under divisions (C)(1) and (2) of this 3960
section shall continue only until the end of ten years following 3961
that starting date or until the energy efficiency revolving loan 3962
fund, including interest, reaches one hundred million dollars, 3963
whichever is first. 3964

(D) Any moneys collected in rates for non-low-income customer 3965
energy efficiency programs, as of the effective date of this 3966
section and not contributed to the energy efficiency revolving 3967
loan fund under division (B)(1) of this section, shall be used to 3968
continue to fund cost-effective, residential energy efficiency 3969
programs, be contributed into the universal service fund as a 3970
supplement to that required under section 4928.53 of the Revised 3971
Code, or be returned to ratepayers in the form of a rate reduction 3972
at the option of the affected electric distribution utility. 3973

3974

Sec. 4928.62. (A) Beginning on the starting date of 3975
competitive retail electric service, there is hereby created the 3976
energy EFFICIENCY revolving loan program, which shall be 3977
administered by the director of development. Under the program, 3978
the director may AUTHORIZE the use of moneys in the energy 3979

efficiency revolving loan fund for financial assistance for 3980
projects in this state. To the extent feasible given approved 3981
applications for assistance, the assistance shall be distributed 3982
among the certified territories of electric distribution utilities 3983
and participating electric cooperatives, and among the service 3984
areas of participating municipal electric utilities, in amounts 3985
proportionate to the remittances of each utility and cooperative 3986
under divisions (B)(1) and (3) of section 4928.61 of the Revised 3987
Code. The assistance shall be made or provided through approved 3988
lending institutions in the form of loans at below market rates, 3989
loan GUARANTEES for such loans, and linked deposits for such 3990
loans. the director shall not AUTHORIZE financial assistance under 3991
the program unless the director first DETERMINES all of the 3992
following: 3993

(1) the project will include an investment in products, 3994
technologies, or services, including energy efficiency for 3995
low-income housing, for residential, small commercial and small 3996
industrial business, local government, educational institution, 3997
nonprofit ENTITY, or agricultural customers of an electric 3998
distribution utility in this state or a participating MUNICIPAL 3999
electric utility or electric cooperative in this state. 4000

(2) the project will IMPROVE energy efficiency in a 4001
cost-efficient manner by using both the most appropriate national, 4002
federal, or other standards for products as determined by the 4003
director, and the best practices for use of technology, products, 4004
or services in the context of the total facility or building. 4005

(3) the project will benefit the economic and environmental 4006
welfare of the citizens of this state. 4007

(4) the receipt of financial assistance is a major factor in 4008
the applicant's decision to proceed with or invest in the project. 4009

(B) In carrying out sections 4928.61 to 4928.63 of the 4010

Revised Code, the director may do all of the following for THE 4011
PURPOSE of the energy efficiency revolving loan program: 4012

(1) acquire in the name of the director any property of any 4013
kind or character in accordance with this section, by purchase, 4014
purchase at foreclosure, or EXCHANGE, on such terms and in such 4015
manner as the director considers proper; 4016

(2) make and enter into all contracts and agreements 4017
necessary or incidental to the performance of the director's 4018
duties and the exercise of the director's powers under those 4019
sections; 4020

(3) employ or enter into contracts with financial 4021
consultants, marketing consultants, consulting engineers, 4022
architects, managers, construction experts, attorneys, technical 4023
MONITORS, energy evaluators, OR OTHER EMPLOYEES or agents as the 4024
director considers necessary, and shall fix their compensation; 4025

(4) adopt rules prescribing the application procedures for 4026
financial assistance under the program; the terms and conditions 4027
of any loans, loan guarantees, linked deposits, and contracts; 4028
criteria pertaining to the eligibility of participating lending 4029
institutions; and any OTHER MATTERS necessary for the 4030
implementation of the program; 4031

(5) do all things necessary and appropriate for the operation 4032
of the program. 4033

(C) financial statements, financial data, and trade secrets 4034
submitted to or received by the director from an applicant or 4035
recipient of financial assistance under sections 4928.61 to 4036
4928.63 of the Revised Code, or any INFORMATION taken from those 4037
statements, data, or trade secrets for any purpose, are not public 4038
records for the purpose of section 149.43 of the Revised Code. 4039

Sec. 4928.63. The director of development and the public 4040

benefits advisory board have the powers and duties provided in 4041
sections 4928.61 and 4928.62 of the Revised Code, in order to 4042
promote the welfare of the people of this state, to stabilize the 4043
economy, to ASSIST in the improvement and development within this 4044
state of not-for-profit entity, industrial, commercial, 4045
DISTRIBUTION, residential, and research buildings and activities 4046
required for the people of this state, to improve the ECONOMIC 4047
welfare of the people of this state, and also to ASSIST in the 4048
improvement of air, water, or thermal POLLUTION control facilities 4049
and SOLID waste disposal facilities. it is hereby determined that 4050
the accomplishment of those purposes is essential so that the 4051
people of this state may maintain their present high standards in 4052
comparison with the people of other states and so that 4053
opportunities for improving the economic welfare of the people of 4054
this state, for improving the housing of residents of this state, 4055
and for favorable markets for the products of this state's natural 4056
resources, agriculture, and manufacturing shall be improved; and 4057
that it is necessary for this state to establish the program 4058
authorized pursuant to sections 4928.61 and 4928.62 of the Revised 4059
Code, to establish the energy efficiency revolving loan program 4060
and program fund and the energy efficiency REVOLVING loan program 4061
advisory board, and to vest the director and the board with the 4062
powers and duties PROVIDED in sections 4928.61 and 4928.62 of the 4063
Revised Code. 4064

Sec. 4928.67. (A)(1) Beginning on the starting date of 4065
competitive retail electric service, a retail electric service 4066
provider in this state shall develop a standard contract or tariff 4067
providing for net energy metering. Any time that the total rated 4068
generating capacity used by customer-generators is less than one 4069
per cent of the provider's aggregate customer peak demand in this 4070
state, the provider shall make this contract or tariff available 4071

to customer-generators, upon request and on a first-come, 4072
first-served basis. The contract or tariff shall be identical in 4073
rate structure, all retail rate components, and any monthly 4074
charges, to the contract or tariff to which the same customer 4075
would be assigned if that customer were not a customer-generator. 4076

(2) Net metering under this section shall be accomplished 4077
using a single meter capable of registering the flow of 4078
electricity in each direction. If its existing electrical meter is 4079
not capable of measuring the flow of electricity in two 4080
directions, the customer-generator shall be responsible for all 4081
expenses involved in purchasing and installing a meter that is 4082
capable of measuring electricity flow in two directions. 4083

(3) Such an electric service provider, at its own expense and 4084
with the written consent of the customer-generator, may install 4085
one or more additional meters to monitor the flow of electricity 4086
in each direction. 4087

(B) Consistent with the other provisions of this section, the 4088
measurement of net electricity supplied or generated shall be 4089
calculated in the following manner: 4090

(1) The electric service provider shall measure the net 4091
electricity produced or consumed during the billing period, in 4092
accordance with normal metering practices. 4093

(2) If the electricity supplied by the electric service 4094
provider exceeds the ELECTRICITY generated by the 4095
customer-generator and fed back to the electric service provider 4096
during the billing period, the customer-generator shall be billed 4097
for the net ELECTRICITY SUPPLIED by the electric service provider, 4098
in accordance with normal metering practices. If electricity is 4099
provided to the electric service provider, the credits for that 4100
electricity shall appear in the next billing cycle. 4101

(c)(1) A net metering system used by a customer-generator shall meet all applicable safety and performance standards established by the national electrical code, the institute of electrical and ELECTRONICS engineers, and underwriters LABORATORIES. 4102
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(2) The public utilities commission shall adopt rules relating to additional control and testing requirements for customer-generators which the commission determines are necessary to protect public and worker safety and system reliability. 4107
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4110

(D) An electric service provider shall not require a customer-generator whose net metering system meets the standards and requirements provided for in divisions (C)(1) and (D) of this section to do any of the following: 4111
4112
4113
4114

(1) Comply with additional safety or performance standards; 4115

(2) Perform or pay for additional tests; 4116

(3) Purchase additional liability insurance. 4117

Sec. 4933.14. (A) Except section 4931.08 of the Revised Code and except as otherwise provided in division (B) of this section, sections 4931.01 to 4931.23, inclusive, and 4933.13 to 4933.16, inclusive, of the Revised Code, apply to companies a company organized for supplying public and private buildings, manufacturing establishments, streets, alleys, lanes, lands, squares, and public places with electric light and power, and to an automatic package carrier. Except as provided by section 4931.08 of the Revised Code and except as otherwise provided in division (B) of this section, every such company shall have has the powers and be is subject to the restrictions prescribed for a telegraph companies company by sections 4931.01 to 4931.23, inclusive, of the Revised Code. 4118
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(B) Sections 4931.04, 4931.06, 4931.07, 4931.12, and 4931.13 4131

of the Revised Code apply to a company organized for supplying 4132
electricity only if the company transmits or distributes 4133
electricity, and every such company has the powers and is subject 4134
to the restrictions prescribed for a telegraph company by those 4135
sections except for the purpose of erecting, operating, or 4136
maintaining an electric generating station. 4137

Sec. 4933.15. ~~Any company organized for manufacturing,~~ 4138
~~generating, selling, supplying, or transmitting electricity, for~~ 4139
~~public and private use, may, for~~ For the purpose of making 4140
preliminary examinations and surveys, any company transmitting or 4141
distributing electricity in the state for public or private use 4142
may enter upon any land held by any individual or corporation, 4143
whether acquired by purchase, appropriation proceedings, or 4144
otherwise, unless such land is owned by and essential to the 4145
purposes of another corporation possessing the power of eminent 4146
domain, ~~and.~~ The company also may appropriate so much of such 4147
land, or any right or interest ~~therein~~ in the land, including any 4148
trees, edifices, or buildings ~~thereon~~ on the land, as is deemed 4149
necessary for ~~the~~ either of the following purposes: 4150

(A) The erection, operation, or maintenance of an electric 4151
plant, including its ~~generating stations,~~ substations, switching 4152
stations, transmission and distribution lines, poles, towers, 4153
piers, conduits, cables, and wires, ~~and~~ other necessary structures 4154
and appliances, ~~or for rights~~ but excluding its generating 4155
stations; 4156

(B) Rights-of-way over such land and adjacent lands for the 4157
purpose of access to any part of such land. ~~The~~ 4158

The right of appropriation shall be exercised in the same 4159
manner provided by sections 163.01 to 163.22, ~~inclusive,~~ of the 4160
Revised Code. 4161

Sec. 4933.33. Annually, each electric ~~light distribution~~ 4162
company as defined in section 5727.80 of the Revised Code shall 4163
cause to appear on each customer bill, or shall distribute to each 4164
of its customers, the following statement: 4165

"Under state law, the amount you are being billed includes: 4166

(1) ~~Gross receipts~~ Kilowatt-hour taxes that have been in 4167
effect since ~~1969~~ 2001 and are currently at \$.....% (The 4168
current ~~total percentage~~ dollar figure of the ~~total gross receipts~~ 4169
kilowatt-hour taxes levied in ~~Chapter 5727.~~ by section 5727.81 of 4170
the Revised Code ~~and any other section of law~~ shall be placed in 4171
the blank); and 4172

(2) Assessments to assist in the support of the operations of 4173
the PUCO and the office of the consumers' counsel that have been 4174
in effect since 1912 and 1977, respectively." 4175

Nothing in this section shall be construed to mean ~~either~~ 4176
that an electric ~~light distribution~~ company ~~operated not for~~ 4177
~~profit or one that is owned or operated by a municipal corporation~~ 4178
~~is subject to this section or that an electric light company~~ 4179
subject to this section may not cause such appearance or 4180
distribute such statement on a more frequent basis. 4181

Sec. 4933.81. As used in sections 4933.81 to 4933.90 of the 4182
Revised Code: 4183

(A) "Electric supplier" means any electric light company as 4184
defined in section 4905.03 of the Revised Code, including electric 4185
light companies organized as nonprofit corporations, but not 4186
including ~~a municipal corporation~~ corporations or other ~~unit~~ units 4187
of local government that ~~provides~~ provide electric service. 4188

(B) "Adequate facilities" means distribution lines or 4189
facilities having sufficient capacity to meet the maximum 4190

estimated electric service requirements of its existing customers 4191
and of any new customer occurring during the year following the 4192
commencement of permanent electric service, and to assure all such 4193
customers of reasonable continuity and quality of service. 4194
Distribution facilities and lines of an electric supplier shall be 4195
considered "adequate facilities" if such supplier offers to 4196
undertake to make its distribution facilities and lines meet such 4197
service requirements and ~~can~~, in the determination of the public 4198
utilities commission, can do so within a reasonable time. 4199

(C) "Distribution line" means any electric line ~~having a~~ 4200
~~design voltage below thirty-five thousand volts phase to phase~~ 4201
~~which~~ that is being or has been used primarily to provide electric 4202
service directly to electric load centers by the owner of such 4203
line. 4204

(D) "Existing distribution line" means any distribution line 4205
of an electric supplier which was in existence on January 1, 1977, 4206
or under ~~construction~~ CONSTRUCTION on ~~such~~ that date. 4207

(E) "Electric load center" means all the electric-consuming 4208
facilities of any type or character owned, occupied, controlled, 4209
or used by a person at a single location, which facilities have 4210
been, are, or will be connected to and served at a metered point 4211
of delivery and to which electric service has been, is, or will be 4212
rendered. 4213

(F) "Electric service" means retail electric service 4214
furnished to an electric load center for ultimate consumption ~~and~~ 4215
~~does not include, but excludes~~ furnishing electric power or energy 4216
at wholesale for resale. In the case of a for-profit electric 4217
supplier and beginning on the starting date of competitive retail 4218
electric service as defined in section 4928.01 of the Revised 4219
Code, "electric service" also excludes a competitive retail 4220
electric service. In the case of a not-for-profit electric 4221

supplier and beginning on that starting date, "electric service" 4222
also excludes any service component of competitive retail electric 4223
service that is specified in an irrevocable filing the electric 4224
supplier makes with the public utilities commission for 4225
informational purposes only to eliminate permanently its certified 4226
territory under sections 4933.81 to 4933.90 of the Revised Code as 4227
to that service component. the filing shall specify the date on 4228
which such territory is so eliminated. notwithstanding division 4229
(B) of section 4928.01 of the Revised Code, such a service 4230
component may include retail ancillary, metering, or billing and 4231
collection service irrespective of whether that service component 4232
has or has not been declared competitive under section 4928.04 of 4233
the Revised Code. upon receipt of the filing by the commission, 4234
the not-for-profit electric supplier's certified territory shall 4235
be eliminated permanently as to the service component specified in 4236
the filing as of the date specified in the filing. As used in this 4237
division, "competitive retail electric service" and "retail 4238
electric service" have the same meanings as in section 4928.01 of 4239
the Revised Code. 4240

(G) "Certified territory" means a geographical area the 4241
boundaries of which have been established pursuant to sections 4242
4933.81 to 4933.90 of the Revised Code within which an electric 4243
supplier is authorized and required to provide electric service. 4244

(H) "Other unit of local government" means any governmental 4245
unit or body that may come into existence after ~~the effective date~~ 4246
~~of this section~~ July 12, 1978, with powers and authority similar 4247
to those of a municipal corporation, or ~~which~~ that is created to 4248
replace or exercise the relevant powers of any one or more 4249
municipal corporations. 4250

Sec. 4935.03. (A) The public utilities commission shall 4251
adopt, and may amend or rescind, rules in accordance with section 4252

111.15 of the Revised Code, with the approval of the governor, 4253
defining various foreseen types and levels of energy emergency 4254
conditions for critical shortages or interruptions in the supply 4255
of electric power, natural gas, coal, or individual petroleum 4256
fuels and specifying appropriate measures to be taken at each 4257
level or for each type of energy emergency as necessary to protect 4258
the public health or safety or prevent unnecessary or avoidable 4259
damage to property. The rules may prescribe different measures for 4260
each different type or level of declared energy emergency, and for 4261
any type or level shall empower the governor to: 4262

(1) Restrict the energy consumption of state and local 4263
government offices and industrial and commercial establishments; 4264

(2) Restrict or curtail public or private transportation or 4265
require or encourage the use of car pools or mass transit systems; 4266

(3) Order, during a declared energy emergency, any electric 4267
light, natural gas or gas, or pipeline company; any supplier 4268
subject to certification under section 4928.08 of the Revised 4269
Code; electric power or gas utility that is owned by a municipal 4270
corporation or not for profit; coal producer or supplier; electric 4271
power producer or marketer; or petroleum fuel producer, refiner, 4272
wholesale distributor, or retail dealer to sell electricity, gas, 4273
coal, or petroleum fuel in order to alleviate hardship, or if 4274
possible to acquire or produce emergency supplies to meet 4275
emergency needs; 4276

(4) Order, during a declared energy emergency, other energy 4277
conservation or emergency energy production or distribution 4278
measures to be taken in order to alleviate hardship; 4279

(5) Mobilize emergency management, national guard, law 4280
enforcement, or emergency medical services. 4281

The rules shall be designed to protect the public health and 4282

safety and prevent unnecessary or avoidable damage to property. 4283
They shall encourage the equitable distribution of available 4284
electric power and fuel supplies among all geographic regions in 4285
the state. 4286

(B) The governor may, after consultation with the chairman of 4287
the commission, declare an energy emergency by filing with the 4288
secretary of state a written declaration of an energy emergency at 4289
any time he finds that the health, safety, or welfare of the 4290
residents of this state or of one or more counties of this state 4291
is so imminently and substantially threatened by an energy 4292
shortage that immediate action of state government is necessary to 4293
prevent loss of life, protect the public health or safety, and 4294
prevent unnecessary or avoidable damage to property. The 4295
declaration shall state the counties, utility service areas, or 4296
fuel market areas affected, or its statewide effect, and what 4297
fuels or forms of energy are in critically short supply. An energy 4298
emergency goes into immediate effect upon filing and continues in 4299
effect for the period prescribed in the declaration, but not more 4300
than thirty days. At the end of any thirty-day or shorter energy 4301
emergency, the governor may issue another declaration extending 4302
the emergency. The general assembly may by concurrent resolution 4303
terminate any declaration of an energy emergency. The emergency is 4304
terminated at the time of filing of the concurrent resolution with 4305
the secretary of state. When an energy emergency is declared, the 4306
commission shall implement the measures which it determines are 4307
appropriate for the type and level of emergency in effect. 4308

4309

(C) Energy emergency orders issued by the governor pursuant 4310
to this section shall take effect immediately upon issuance, and 4311
the person to whom the order is directed shall initiate compliance 4312
measures immediately upon receiving the order. During an energy 4313
emergency the attorney general or the prosecuting attorney of the 4314

county where violation of a rule adopted or order issued under 4315
this section occurs may bring an action for immediate injunction 4316
or other appropriate relief to secure prompt compliance. The court 4317
may issue an ex parte temporary order without notice which shall 4318
enforce the prohibitions, restrictions, or actions that are 4319
necessary to secure compliance with the rule or order. Compliance 4320
with rules or orders issued under this section is a matter of 4321
statewide concern. 4322

(D) During a declared energy emergency the governor may use 4323
the services, equipment, supplies, and facilities of existing 4324
departments, offices, and agencies of the state and of the 4325
political subdivisions thereof to the maximum extent practicable 4326
and necessary to meet the energy emergency, and the officers and 4327
personnel of all such departments, offices, and agencies shall 4328
cooperate with and extend such services and facilities to the 4329
governor upon request. 4330

(E) During an energy emergency declared under this section, 4331
no person shall violate any rule adopted or order issued under 4332
this section. Whoever violates this division is guilty of a minor 4333
misdemeanor on a first offense, and a misdemeanor of the first 4334
degree upon subsequent offenses or if the violation was purposely 4335
committed. 4336

Sec. 4935.04. (A) As used in this chapter: 4337

(1) "Major utility facility" means: 4338

(a) ~~An electric generating plant and associated facilities~~ 4339
~~designed for, or capable of, operation at a capacity of fifty~~ 4340
~~megawatts or more;~~ 4341

~~(b)~~ An electric transmission line and associated facilities 4342
of a design capacity of one hundred twenty-five kilovolts or more; 4343

~~(c)~~(b) A gas or natural gas transmission line and associated 4344

facilities designed for, or capable of, transporting gas or 4345
natural gas at pressures in excess of one hundred twenty-five 4346
pounds per square inch. 4347

"Major utility facility" does not include electric, gas, or 4348
natural gas distributing lines and gas or natural gas gathering 4349
lines and associated facilities as defined by the public utilities 4350
commission; facilities owned or operated by industrial firms, 4351
persons, or institutions that produce or transmit gas, or natural 4352
gas, or electricity primarily for their own use or as a byproduct 4353
of their operations; gas or natural gas transmission lines and 4354
associated facilities over which an agency of the United States 4355
has certificate jurisdiction; facilities owned or operated by a 4356
person furnishing gas or natural gas directly to fifteen thousand 4357
or fewer customers within this state. 4358

(2) "Person" has the meaning set forth in section 4906.01 of 4359
the Revised Code. 4360

(B) Each person owning or operating a gas or natural gas 4361
transmission line and associated facilities within this state over 4362
which an agency of the United States has certificate jurisdiction 4363
shall furnish to the commission a copy of the energy information 4364
filed by the person with that agency of the United States. 4365

(C) Each person owning or operating a major utility facility 4366
within this state, or furnishing gas, natural gas, or electricity 4367
directly to more than fifteen thousand customers within this state 4368
annually shall furnish a report to the commission for its review. 4369
The report shall be termed the long-term forecast report and shall 4370
contain: 4371

(1) A year-by-year, ten-year forecast of annual energy 4372
demand, peak load, reserves, and a general description of the 4373
resource plan to meet demand; 4374

(2) A range of projected loads during the period; 4375

(3) A description of major utility facilities planned to be 4376
added or taken out of service in the next ten years, including 4377
~~prospective sites for generating plants and~~, to the extent the 4378
information is available, prospective sites for transmission line 4379
locations; 4380

(4) For gas and natural gas, a projection of anticipated 4381
supply, supply prices, and sources of supply over the forecast 4382
period; 4383

~~(5) For electricity, a range of projected loads and a 4384
projection of annual energy demand, anticipated generating 4385
capacity, and system seasonal peak demand for a twenty-year 4386
period; 4387~~

~~(6)~~ A description of proposed changes in the transmission 4388
system planned for the next five years; 4389

~~(7)~~(6) A month-by-month forecast of both energy demand and 4390
peak load for electric utilities, and gas sendout for gas and 4391
natural gas utilities, for the next two years. The report shall 4392
describe the major utility facilities that, in the judgment of 4393
such person, will be required to supply system demands during the 4394
forecast period. The report from a gas or natural gas utility 4395
shall cover the ten- and five-year periods next succeeding the 4396
date of the report, and the report from an electric utility shall 4397
cover the twenty-, ten-, and five-year periods next succeeding the 4398
date of the report. Each report shall be made available to the 4399
public and furnished upon request to municipal corporations and 4400
governmental agencies charged with the duty of protecting the 4401
environment or of planning land use. The report shall be in such 4402
form and shall contain such information as may be prescribed by 4403
the commission. 4404

Each person not owning or operating a major utility facility 4405
within this state and serving fifteen thousand or fewer gas, or 4406

natural gas, or electric customers within this state shall furnish 4407
such information as the commission ~~may require~~ requires. 4408

(D) The commission shall: 4409

(1) Review and comment on the reports filed under division 4410
(C) of this section, and make the information contained ~~therein~~ in 4411
the reports readily available to the public and other interested 4412
government agencies; 4413

(2) Compile and publish each year the ~~general locations of~~ 4414
~~the proposed power plant sites and~~ general locations of proposed 4415
and existing transmission line routes within its jurisdiction as 4416
identified in the reports filed under division (C) of this 4417
section, identifying the general location of such sites and routes 4418
and the approximate year when construction is expected to 4419
commence, and to make such information readily available to the 4420
public, to each newspaper of daily or weekly circulation within 4421
the area affected by the proposed site and route, and to 4422
interested federal, state, and local agencies; 4423

(3) Hold a public hearing: 4424

(a) On the first long-term forecast report filed after 4425
January 11, 1983; 4426

(b) At least once in every five years, on the latest report 4427
furnished by any person subject to this section; 4428

(c) On the latest report furnished by any person subject to 4429
this section if the report contains a substantial change from the 4430
preceding report furnished by that person. "Substantial change" 4431
includes, but is not limited to: 4432

(i) ~~The addition or cancellation of a generating facility of~~ 4433
~~fifty megawatts or more in the report furnished pursuant to~~ 4434
~~division (C) of this section;~~ 4435

~~(ii)~~ A change in forecasted peak loads or energy consumption 4436

over the forecast period of greater than an average of one-half of 4437
one per cent per year; 4438

~~(iii)~~(ii) Demonstration of good cause to the commission by an 4439
interested party. 4440

The commission shall fix a time for the hearing, which shall 4441
be not later than ninety days after the report is filed, and 4442
publish notice of the date, time of day, and location of the 4443
hearing in a newspaper of general circulation in each county in 4444
which the person furnishing the report has or intends to locate a 4445
major utility facility and will provide service during the period 4446
covered by the report. The notice shall be published not less than 4447
fifteen nor more than thirty days before the hearing and shall 4448
state the matters to be considered. 4449

Absent a showing of good cause, the commission shall not hold 4450
hearings under division (D)(3) of this section with respect to 4451
persons who, as the primary purpose of their business, furnish 4452
gas, or natural gas, or electricity directly to fifteen thousand 4453
or fewer customers within this state solely for direct consumption 4454
by those customers. 4455

(4) Require such information from persons subject to its 4456
jurisdiction as necessary to assist in the conduct of hearings and 4457
any investigation or studies it may undertake; 4458

(5) Conduct any studies or investigations that are necessary 4459
or appropriate to carry out its responsibilities under this 4460
section. 4461

(E)(1) The scope of the hearing held under division (D)(3) of 4462
this section shall be limited to issues relating to forecasting. 4463
The power siting board, the office of consumers' counsel, and all 4464
other persons having an interest in the proceedings shall be 4465
afforded the opportunity to be heard and to be represented by 4466
counsel. The commission may adjourn the hearing from time to time. 4467

4468

(2) The hearing shall include, but not be limited to, a 4469
review of: 4470

(a) The projected loads and energy requirements for each year 4471
of the period; 4472

(b) The estimated installed capacity and supplies to meet the 4473
projected load requirements. 4474

(F) Based upon the report furnished pursuant to division (C) 4475
of this section and the hearing record, the commission, within 4476
ninety days from the close of the record in the hearing, shall 4477
determine if: 4478

(1) All information relating to current activities, 4479
facilities agreements, and published energy policies of the state 4480
has been completely and accurately represented; 4481

(2) The load requirements are based on substantially accurate 4482
historical information and adequate methodology; 4483

(3) The forecasting methods consider the relationships 4484
between price and energy consumption; 4485

(4) The report identifies and projects reductions in energy 4486
demands due to energy conservation measures in the industrial, 4487
commercial, residential, transportation, and energy production 4488
sectors in the service area; 4489

(5) Utility company forecasts of loads and resources are 4490
reasonable in relation to population growth estimates made by 4491
state and federal agencies, transportation, and economic 4492
development plans and forecasts, and make recommendations where 4493
possible for necessary and reasonable alternatives to meet 4494
forecasted electric power demand; 4495

(6) The report considers plans for expansion of the regional 4496
power grid and the planned facilities of other utilities in the 4497

state; 4498

(7) All assumptions made in the forecast are reasonable and 4499
adequately documented. 4500

(G) The commission shall adopt rules under section 111.15 of 4501
the Revised Code to establish criteria for evaluating the 4502
long-term forecasts of needs for gas and electric ~~power~~ 4503
transmission service, to conduct hearings held under this section, 4504
to establish reasonable fees to defray the direct cost of the 4505
hearings and the review process, and such other rules as are 4506
necessary and convenient to implement this section. 4507

(H) The hearing record produced under this section and the 4508
determinations of the commission shall be introduced into evidence 4509
and shall be considered in determining the basis of need for power 4510
siting board deliberations under division (A)(1) of section 4511
4906.10 of the Revised Code. The hearing record produced under 4512
this section shall be introduced into evidence and shall be 4513
considered by the public utilities commission in its initiation of 4514
programs, examinations, and findings, ~~investigations, and remedies~~ 4515
under section 4905.70 of the Revised Code, and shall be considered 4516
in ~~their~~ the commission's determinations with respect to the 4517
establishment of just and reasonable rates under section 4909.15 4518
of the Revised Code and financing utility facilities and 4519
authorizing issuance of all securities under sections 4905.40, 4520
4905.401, 4905.41, and 4905.42 of the Revised Code. The forecast 4521
findings also shall serve as the basis for all other energy 4522
planning and development activities of the state government where 4523
electric and gas data are required. 4524

(I)(1) No court other than the supreme court shall have power 4525
to review, suspend, or delay any determination made by the 4526
commission under this section, or enjoin, restrain, or interfere 4527
with the commission in the performance of official duties. A writ 4528

of mandamus shall not be issued against the commission by any 4529
court other than the supreme court. 4530

(2) A final determination made by the commission shall be 4531
reversed, vacated, or modified by the supreme court on appeal, if, 4532
upon consideration of the record, such court is of the opinion 4533
that such determination was unreasonable or unlawful. 4534

The proceeding to obtain such reversal, vacation, or 4535
modification shall be by notice of appeal, filed with the 4536
commission by any party to the proceeding before it, against the 4537
commission, setting forth the determination appealed from and 4538
errors complained of. The notice of appeal shall be served, unless 4539
waived, upon the commission by leaving a copy at the office of the 4540
~~chairman~~ chairperson of the commission at Columbus. The court may 4541
permit an interested party to intervene by cross-appeal. 4542

(3) No proceeding to reverse, vacate, or modify a 4543
determination of the commission is commenced unless the notice of 4544
appeal is filed within sixty days after the date of the 4545
determination. 4546

Sec. 5117.01. ~~(A)~~ As used in ~~this chapter~~ sections 5117.01 to 4547
5117.12 of the Revised Code: 4548

~~(1)~~(A) "Credit" means the credit on utility heating bills 4549
granted under division (A) of section 5117.09 of the Revised Code. 4550

~~(2)~~(B) "Current monthly bill" means the amount charged for 4551
energy consumed in the most recent monthly billing period and does 4552
not include any past due balance. 4553

~~(3)~~(C) "Current total income" means the adjusted gross income 4554
of the head of household and the person's spouse for the six-month 4555
period beginning the first day of January and ending the thirtieth 4556
day of June of the year in which an application is made, as 4557
determined under the "Internal Revenue Code of 1954," 68A Stat. 3, 4558

26 U.S.C. 1, as amended, minus the amount of disability benefits 4559
included in adjusted gross income but not to exceed twenty-six 4560
hundred dollars, plus old age and survivors benefits received 4561
pursuant to the "Social Security Act," retirement, pension, 4562
annuity, or other retirement payments or benefits not included in 4563
federal adjusted gross income; payments received pursuant to the 4564
"Railroad Retirement Act," 50 Stat. 307, 45 U.S.C. 228, and 4565
interest on federal, state, and local government obligations. 4566
Disability benefits paid by the veterans administration or a 4567
branch of the armed forces of the United States on account of an 4568
injury or disability are not included in current total income. 4569

4570

~~(4)~~(D) "Energy company" means every retail propane dealer 4571
that distributes propane by pipeline, and every electric light, 4572
rural electric, gas, or natural gas company. 4573

~~(5)~~(E) "Energy dealer" means every retail dealer of fuel oil, 4574
propane, coal, wood, and kerosene. 4575

~~(6)~~(F) "Head of household" means a person who occupies a 4576
household as the person's homestead and who is financially 4577
responsible for its other occupants, if any, or the spouse of such 4578
a person if both occupy the same household. No person is a head of 4579
household if the person occupies a household for the taxable year 4580
prior to the year in which an application is filed and was claimed 4581
as a dependent on the federal income tax return of another 4582
occupant of the same household and was not the taxpayer's spouse 4583
or if the person could have been claimed if such a return had been 4584
filed for such year and was not the other occupant's spouse. 4585

~~(7)~~(G) "Household" means any dwelling unit, including a unit 4586
in a multiple unit dwelling, a manufactured home, or a mobile 4587
home, to which utility heating services or energy commodities are 4588
provided. 4589

~~(8)~~(H) "Payment" means the one hundred twenty-five-dollar 4590
payment provided under division (A) of section 5117.10 of the 4591
Revised Code. 4592

~~(9)~~(I) "Permanently and totally disabled" refers to a person 4593
who has, on the first day of July of the year an application is 4594
made, some impairment in body or mind that makes the person unfit 4595
to work at any substantially remunerative employment that the 4596
person would otherwise be reasonably able to perform and that 4597
will, with reasonable probability, continue for an indefinite 4598
period of at least twelve months without any present indication of 4599
recovery therefrom, or who has been certified as permanently and 4600
totally disabled by a state or federal agency having the function 4601
of so classifying persons. 4602

~~(10)~~(J) "Sixty-five years of age or older" refers to a person 4603
who has attained age sixty-four prior to the first day of January 4604
of the year of an application ~~for reduction in utility charges~~ is 4605
made. 4606

~~(11)~~(K) "Total income" means the adjusted gross income of the 4607
head of household and the person's spouse for the year preceding 4608
the year in which an application is made, as determined under the 4609
"Internal Revenue Code of 1954," 68A Stat. 3, 26 U.S.C. 1, as 4610
amended, minus the amount of disability benefits included in 4611
adjusted gross income but not to exceed fifty-two hundred dollars, 4612
plus old age and survivors benefits received pursuant to the 4613
"Social Security Act," retirement, pension, annuity, or other 4614
retirement payments or benefits not included in federal adjusted 4615
gross income; payments received pursuant to the "Railroad 4616
Retirement Act," 50 Stat. 307, 45 U.S.C. 228; and interest on 4617
federal, state, and local government obligations. Disability 4618
benefits paid by the ~~veteran's administration~~ department of 4619
veterans affairs or a branch of the armed forces of the United 4620
States on account of an injury or disability shall not be included 4621

in total income. 4622

~~(B) As used in sections 5117.01 to 5117.12 of the Revised~~ 4623
~~Code.~~ 4624

~~(1) "Applicant" means any person who has submitted an~~ 4625
~~application under division (C) of section 5117.03 of the Revised~~ 4626
~~Code.~~ 4627

~~(2) "Application" means the application in section 5117.03 of~~ 4628
~~the Revised Code.~~ 4629

~~(3) "Program" means the Ohio energy credit program~~ 4630
~~established under sections 5117.01 to 5117.12 of the Revised Code.~~ 4631

~~(4)(L)~~ "Purchased power costs" means charges for the costs of 4632
power purchased by an electric light company under Chapters 4905. 4633
and 4909. of the Revised Code and includes charges resulting from 4634
the exchange of electric power. 4635

Sec. 5117.02. (A) The ~~tax commissioner~~ director of 4636
development shall adopt rules, or amendments and rescissions of 4637
rules, pursuant to section 4928.52 of the Revised Code, for the 4638
administration of the Ohio energy credit program under sections 4639
5117.01 to 5117.12 of the Revised Code. 4640

(B) As a means of efficiently administering the program 4641
~~established by sections 5117.01 to 5117.12 of the Revised Code,~~ 4642
the ~~tax commissioner~~ director may extend, by as much as a total of 4643
thirty days, any date specified in such sections for the 4644
performance of a particular action by an individual or an officer. 4645

(C)(1) Except as provided in division (C)(2) of this section, 4646
the ~~tax commissioner~~ director shall adopt, in accordance with 4647
divisions (A), (B), (C), (D), (E), and (H) of section 119.03 and 4648
section 119.04 of the Revised Code, ~~adopt~~ whatever rules, or 4649
amendments or rescissions of rules are required by or are 4650
otherwise necessary to implement sections 5117.01 to 5117.12 of 4651

the Revised Code. A rule, amendment, or rescission adopted under 4652
this division is not exempt from the hearing requirements of 4653
section 119.03 of the Revised Code pursuant to division (G) of 4654
that section, or subject to section 111.15 ~~or 5703.14~~ of the 4655
Revised Code. 4656

(2) If an emergency necessitates the immediate adoption of a 4657
rule, or the immediate adoption of an amendment or rescission of a 4658
rule that is required by or otherwise necessary to implement 4659
sections 5117.01 to 5117.12 of the Revised Code, the ~~tax~~ 4660
~~commissioner~~ may director immediately may adopt the emergency 4661
rule, amendment, or rescission without complying with division 4662
(A), (B), (C), (D), (E), or (H) of section 119.03 of the Revised 4663
Code so long as ~~he~~ the director states the reasons for the 4664
necessity in the emergency rule, amendment, or rescission. The 4665
emergency rule, amendment, or rescission is effective on the day 4666
copies of the emergency rule, amendment, or rescission, in final 4667
form and in compliance with division (A)(2) of section 119.04 of 4668
the Revised Code, are filed as follows: two certified copies of 4669
the emergency rule, amendment, or rescission shall be filed with 4670
both the secretary of state and the director of the legislative 4671
service commission, and one certified copy of the emergency rule, 4672
amendment, or rescission shall be filed with the joint committee 4673
on agency rule review. If all copies are not filed on the same 4674
day, the emergency rule, amendment, or rescission is effective on 4675
the day on which the latest filing is made. An emergency rule, 4676
amendment, or rescission adopted under this division is not 4677
subject to section 111.15, or division (F) of section 119.03, ~~or~~ 4678
~~section 5703.14~~ of the Revised Code. An emergency rule, amendment, 4679
or rescission adopted under this division continues in effect 4680
until amended or rescinded by the ~~tax commissioner~~ director in 4681
accordance with division (C)(1) or (2) of this section, except 4682
that the rescission of an emergency rescission does not revive the 4683
rule rescinded. 4684

(D) Except where otherwise provided, each form, application, 4685
notice, and the like used in fulfilling the requirements of 4686
sections 5117.01 to 5117.12 of the Revised Code shall be approved 4687
by the ~~tax commissioner~~ director. 4688

Sec. 5117.03. (A)(1) The ~~tax commissioner~~ director of 4689
development shall prescribe the form of the application for 4690
assistance under the Ohio energy credit program. The application 4691
shall be in the form of a signed statement, shall require no more 4692
information than is necessary to establish an applicant's 4693
eligibility under section 5117.07 of the Revised Code, and shall 4694
be clear and concise in its format, requirements, and 4695
instructions. The form shall request the following information: 4696

(a) The name and address of the applicant; 4697

(b) The type of energy or commodity that is the source of the 4698
heat produced by the primary heating system in the residence of 4699
the applicant; 4700

(c) The name of the energy company or energy dealer that 4701
supplies the energy or commodity that is the source of the heat 4702
produced by the primary heating system in the residence of the 4703
applicant and, if the applicant receives ~~his~~ the applicant's 4704
energy from a company, the applicant's account number; 4705

(d) The applicant's total income or current total income; 4706

(e) In the case of an application based upon physical 4707
disability, a certification signed by a physician, in the case of 4708
an application based upon mental disability, a certification 4709
signed by a physician or psychologist, or in the case of either 4710
such disability, a certification from a state or federal agency 4711
having the function of so classifying persons; 4712

(f) The age of the applicant; 4713

(g) Any other information required to make eligibility 4714

determinations under section 5117.07 of the Revised Code. 4715

Each form shall contain a statement that signing such 4716
application constitutes a delegation of authority by the applicant 4717
to the ~~commissioner~~ director to examine any financial records that 4718
relate to income earned by the applicant as stated on the 4719
application for the purpose of determining eligibility under 4720
section 5117.07 of the Revised Code and possible violation of 4721
division (B) of section 5117.11 of the Revised Code. 4722

(2) The ~~tax commissioner~~ director shall mail or otherwise 4723
provide an application form to each person requesting such form. 4724

(B)(1) The ~~tax commissioner~~ director shall devise and 4725
prescribe an application renewal form on which the head of 4726
household may indicate by check mark that ~~he~~ the head of household 4727
received a credit or payment for the preceding heating season. 4728
Application renewal forms shall seek from persons applying on such 4729
basis a certification by the applicant attesting to ~~his~~ the 4730
applicant's permanent and total disability and the name of a 4731
physician, psychologist, or government agency willing to provide 4732
an additional certification if so requested under division (D) of 4733
section 5117.07 of the Revised Code. Such forms shall also include 4734
such other information as the ~~tax commissioner~~ director requires 4735
and shall be clear and concise in format, requirements, and 4736
instructions. 4737

(2) On or before the fifteenth day of June, the ~~tax~~ 4738
~~commissioner~~ director shall mail or otherwise provide an 4739
application renewal form to each head of household who received a 4740
credit or payment during the preceding heating season. 4741

(3) Application renewal forms shall be reviewed and disposed 4742
of in the same manner provided for application forms in section 4743
5117.07 of the Revised Code. 4744

(C) Applications and application renewal forms shall be 4745

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

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

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

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locations. The distribution system shall be designed to make 4777
application forms available to as many qualified persons as 4778
possible. 4779

(C) The ~~tax commissioner~~ director shall arrange for the 4780
establishment of a toll-free telephone number to enable all 4781
persons in this state to make inquiries and obtain information 4782
concerning the credits or payments. 4783

Sec. 5117.05. The ~~tax commissioner~~ director of development, 4784
in consultation with the commission on Hispanic-Latino affairs, 4785
shall develop an outreach program, including Spanish-speaking 4786
communication formats, designed to make all Spanish-speaking 4787
persons who meet the eligibility requirements for participation in 4788
the Ohio energy credit program aware of the nature and extent of 4789
available benefits and methods for acquiring and making 4790
applications. The program shall include assistance to such persons 4791
in making applications. The ~~commissioner~~ director shall implement 4792
the program in cooperation with the commission ~~on Hispanic-Latino~~ 4793
~~affairs~~. 4794

Sec. 5117.07. (A) On or before the first day of October, the 4795
~~tax commissioner~~ director of development shall review all 4796
applications submitted under division (C) of section 5117.03 of 4797
the Revised Code and shall determine the eligibility of each 4798
applicant to receive a credit or payment. 4799

(1) An applicant is eligible for a credit of thirty per cent 4800
if the applicant is a head of household, has a total income of 4801
five thousand dollars or less or a current total income of two 4802
thousand five hundred dollars or less, owns and occupies or rents 4803
and occupies a household receiving the source of energy for its 4804
primary heating system from an energy company and such energy is 4805
separately metered, and is either of the following: 4806

(a) Sixty-five years of age or older; 4807

(b) Permanently and totally disabled. 4808

(2) An applicant is eligible for a credit of twenty-five per 4809
cent if the applicant is a head of household, has a total income 4810
of more than five thousand dollars but not more than nine thousand 4811
dollars or a current total income of more than two thousand five 4812
hundred dollars but not more than four thousand five hundred 4813
dollars, is sixty-five years of age or older or permanently and 4814
totally disabled, and owns and occupies or rents and occupies a 4815
household receiving the source of energy for its primary heating 4816
system from an energy company and such energy is separately 4817
metered. 4818

(3) An applicant is eligible for a payment if either of the 4819
following applies to the applicant: 4820

(a) ~~He~~ The applicant would be eligible for the credit under 4821
division (A)(1) or (2) of this section but for the fact that the 4822
source of energy for the primary heating system of the applicant's 4823
household is not separately metered; 4824

(b) ~~He~~ The applicant is a head of household, has a total 4825
income of no more than nine thousand dollars or a current total 4826
income of no more than four thousand five hundred dollars, is 4827
sixty-five years of age or older or permanently and totally 4828
disabled, and owns and occupies or rents and occupies a household 4829
receiving the source of energy for its primary heating system from 4830
an energy dealer. 4831

(4) In the case of a multiple unit dwelling for which 4832
separate metering for the source of energy for its primary heating 4833
system is not provided, more than one applicant occupying such 4834
dwelling may be determined eligible for a payment under division 4835
(A)(3)(a) of this section. 4836

(B) Notwithstanding division (A) of this section: 4837

(1) No head of household who resides in public housing or 4838
receives a rent subsidy from a government agency is eligible for a 4839
credit or payment unless the person's rent subsidy does not 4840
reflect the costs of ~~his~~ that person's household receiving the 4841
source of energy for its primary heating system; 4842

(2) A resident of a nursing home, hospital, or other extended 4843
health care facility is not eligible for a credit or payment for 4844
the costs of providing the source of energy for the primary 4845
heating system of the facility. 4846

(C) The ~~tax commissioner~~ director shall establish a procedure 4847
whereby ~~he~~ the director can verify total income and current total 4848
income for the calendar year in which an applicant is determined 4849
eligible for a payment or credit. If a person receives a credit or 4850
payment that ~~he~~ the person is ineligible to receive under division 4851
(A) of this section as determined by the director, that person 4852
shall refund to the ~~tax commissioner~~ director the credit or 4853
payment, or excess portion of a credit or payment, ~~he~~ that person 4854
received. The sum refunded shall be deposited in the state 4855
treasury to the credit of the ~~general revenue fund~~ universal 4856
service fund created in section 4928.51 of the Revised Code. 4857

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(D) The ~~tax commissioner~~ director may request an additional 4859
certification of permanent and total disability for any applicant 4860
claiming such status on an application renewal form submitted 4861
under section 5117.03 of the Revised Code. Such certification 4862
shall be requested from the person or agency named on the form 4863
pursuant to division (B)(1) of section 5117.03 of the Revised 4864
Code. If such additional certification is refused due to a 4865
conclusion by the person or agency that the applicant is not 4866
permanently and totally disabled, the ~~commissioner~~ director shall 4867

determine the applicant ineligible for any credit or payment. If 4868
such additional certification is unavailable or refused for any 4869
other reason, the ~~tax commissioner~~ director may determine the 4870
applicant to be eligible for a credit or payment provided ~~he~~ the 4871
director has good cause to believe the applicant is permanently 4872
and totally disabled. 4873

(E) On or before the first day of October, the ~~tax~~ 4874
~~commissioner~~ director shall notify each applicant of the 4875
disposition of ~~his~~ the applicant's application under divisions (A) 4876
and (B) of this section. At the same time, ~~he~~ the director shall 4877
notify the applicant, regardless of whether ~~his~~ the applicant's 4878
application is approved or disapproved, that the applicant may be 4879
eligible to participate in a state or federal weatherization 4880
program and should contact ~~his~~ the applicant's community action 4881
agency for further information. If an application is disapproved, 4882
the applicant may appeal to the ~~tax commissioner~~ director for a 4883
hearing on the matter. A notice of disapproval shall include a 4884
detailed explanation of the applicant's right of appeal under this 4885
chapter. Any such appeal shall be on an appeal form prescribed by 4886
the ~~tax commissioner~~ director and shall be filed with the ~~tax~~ 4887
~~commissioner~~ director within twenty days of the receipt of the 4888
notice of disapproval. 4889

Sec. 5117.08. (A)(1) On or before the tenth day of October, 4890
the ~~tax commissioner~~ director of development shall begin to 4891
prepare and certify to each energy company that provides energy 4892
for home heating a list containing the name and account number of 4893
each head of household determined eligible for a credit under 4894
divisions (A) and (B) of section 5117.07 of the Revised Code and 4895
served by that company, the address of the household, and the 4896
source of the heat produced by the primary heating system in the 4897
residence of the applicant. The ~~tax commissioner may~~ director, for 4898
good cause, may certify addenda to such lists, containing the 4899

names of any heads of household whose names were not included in 4900
the earlier lists but who, except for failure to meet the deadline 4901
requirements of sections 5117.01 to 5117.12 of the Revised Code, 4902
would have been certified in the original lists. Within thirty 4903
days of receipt of such list and in any month for which a credit 4904
is required under sections 5117.01 to 5117.12 of the Revised Code, 4905
the company may verify that each head of household on the 4906
~~commissioner's~~ director's list receives energy for home heating at 4907
the household address appearing on such list or that the source of 4908
heat produced by the primary heating system in the household is 4909
energy supplied by the company. If the company determines that a 4910
person listed does not receive energy for home heating at such 4911
address or that the source of the heat produced by the primary 4912
heating system in the residence of such person is not supplied by 4913
the company, it shall notify the ~~commissioner~~ director of such 4914
fact and may refuse to grant the credit provided under division 4915
(A) of section 5117.07 of the Revised Code. Upon receipt of such 4916
notice, the ~~commissioner~~ director shall determine the accuracy of 4917
the determination of the company and, should ~~he~~ the director not 4918
concur with the company, shall order the company to provide the 4919
credit. 4920

(2) The good faith exercise by any company of any power of 4921
refusal granted under division (A)(1) of this section does not 4922
subject such company to any penalty or liability provided under 4923
division (A) of section 5117.11 of the Revised Code. 4924

(B)(1) Nothing in sections 5117.01 to 5117.12 of the Revised 4925
Code shall be construed to abridge the right of an otherwise 4926
eligible applicant to receive a credit or payment because ~~he~~ the 4927
applicant has either changed the location of ~~his~~ the applicant's 4928
residence or the nature of the occupancy of ~~his~~ the applicant's 4929
residence, as between a tenant or an owner, at a time that could, 4930
as a result of the operation of sections 5117.01 to 5117.12 of the 4931

Revised Code, cause ~~him~~ the applicant to be disqualified from 4932
receiving, or continuing to receive, the credit or payment. 4933

(2) Where a person who submits a form or information required 4934
under sections 5117.01 to 5117.10 of the Revised Code does so in a 4935
timely fashion but, because of the occurrence of an error or 4936
omission with respect to such form or information, either on ~~his~~ 4937
the person's own part or on the part of those persons required by 4938
sections 5117.01 to 5117.12 of the Revised Code to take 4939
administrative, executive, or ministerial action regarding such 4940
form or information, the certification of eligibility by the ~~tax~~ 4941
~~commissioner~~ director to an energy company takes place after the 4942
expiration of a deadline imposed under sections 5117.01 to 5117.12 4943
of the Revised Code, the company shall grant the credit within 4944
thirty days and, whenever appropriate, grant the credit on a 4945
retroactive basis. 4946

(3) The ~~tax commissioner~~ director shall adopt a rule ensuring 4947
that the requirements of divisions (B)(1) and (2) of this section 4948
are effectuated. 4949

Sec. 5117.09. (A) With respect to each of its residential 4950
customers, every energy company shall, after receipt of a 4951
certification list provided under division (A) of section 5117.08 4952
of the Revised Code, cause the granting of a credit in accordance 4953
with this section against the monthly billing of each household 4954
appearing on the list except as provided in division (A) of 4955
section 5117.08 of the Revised Code. In the case of an applicant 4956
who has a total income of five thousand dollars or less or a 4957
current total income of two thousand five hundred dollars or less, 4958
the credit shall amount to thirty per cent of the current monthly 4959
bill rendered to such household by the company for the billing 4960
months of December, January, February, March, and April following 4961
the receipt of a list on which the household appears. In the case 4962

of an applicant who has a total income of more than five thousand 4963
dollars but not more than nine thousand dollars or a current total 4964
income of more than two thousand five hundred dollars but not more 4965
than four thousand five hundred dollars, the credit shall amount 4966
to twenty-five per cent of the current monthly bill rendered to 4967
such household by the company for the billing months of December, 4968
January, February, March, and April following the receipt of a 4969
list on which the household appears. If purchased power costs are 4970
incurred by an energy company during the billing month for which a 4971
credit is provided under this division, the credit shall also be 4972
applied to such costs, whether or not the costs are charged to a 4973
current ~~monthly~~ MONTHLY bill for such months. 4974

(B) Every energy company shall read the meter of each of its 4975
qualified residential customers who may receive a credit under 4976
division (A) of this section at least one time for the service 4977
period of November and at least one time in the service period for 4978
the current monthly bill rendered for the billing month of April. 4979
In the event a company is unable to read a meter because of 4980
failure to gain access after a good faith effort or because a 4981
certification list was supplied to the utility fewer than thirty 4982
days prior to the normal date of meter reading, the company may 4983
render a calculated bill. In such instances, the company shall 4984
make an adjustment to the amount of the credit granted to the 4985
customer based upon the next actual reading of the meter if the 4986
reading shows the previous calculation to have been in error and 4987
set forth the amount of such adjustments in the report required to 4988
be filed with the ~~tax commissioner~~ director of development under 4989
division (D) of this section. 4990

(C) On each billing that is subject to a credit under 4991
division (A) of this section, there shall appear in ten-point type 4992
both the amount of the credit and to the left of such amount "Ohio 4993
Energy Credit." 4994

(D) On or before the fifteenth day of each month following 4995
one in which credits were provided under division (A) of this 4996
section, each energy company shall, on a form prescribed by the 4997
~~tax commissioner~~ director and requesting information that ~~he~~ the 4998
director determines is necessary for the purpose of verifying the 4999
propriety of the payment of credits, certify to the ~~commissioner~~ 5000
director the total amount of all credits it granted pursuant to 5001
division (A) of this section during the preceding month. Not later 5002
than thirty days after ~~his~~ receipt of such certification, the 5003
~~commissioner~~ director shall pay the company the amount certified. 5004
If the ~~commissioner~~ director determines that a company previously 5005
received amounts greater than the amounts of credits properly 5006
granted, such company, upon notice from the ~~commissioner~~ director, 5007
shall reimburse the ~~commissioner~~ director in the amount of the 5008
overpayments. Such reimbursements shall be deposited in the 5009
general revenue fund. 5010

(E)(1) Any energy company that purposely fails to grant the 5011
credit provided under division (A) of this section is liable to 5012
each person entitled to the credit and certified to the company by 5013
the ~~tax commissioner~~ director pursuant to division (A) of section 5014
5117.08 of the Revised Code in treble the amount of the total 5015
credit not granted. The consumers' counsel ~~may~~, on behalf of any 5016
person or persons not granted the credit, may bring an action to 5017
recover such treble damages in the court of common pleas of the 5018
county in which is located the office of the company nearest the 5019
household of any such person or persons. The consumers' counsel 5020
~~may~~ also, on behalf of any persons not granted the credit, may 5021
bring a class action to recover such treble damages in the court 5022
of common pleas of any county in which is located an office of the 5023
company and, if feasible, in which is located a significant number 5024
of members of the class. Any treble damage recovery under this 5025
division does not, in any manner, diminish any other liability 5026

provided under sections 5117.01 to 5117.12 of the Revised Code. 5027
Clerical errors shall not be considered an offense or incur 5028
liability under this division. 5029

(2) An action shall be brought by the consumers' counsel 5030
under division (E)(1) of this section only after ~~he~~ the consumers' 5031
counsel has made a good faith attempt to dispose of the claim by 5032
settlement, including a good faith request for only such 5033
information in the possession of an energy company as is needed to 5034
determine the existence or extent of such a right of action. 5035

(3) Nothing in division (E)(1) of this section shall be 5036
construed to prevent persons acting without the assistance of the 5037
consumers' counsel from bringing an action or class action under 5038
such division. 5039

Sec. 5117.10. (A) On or before the fifteenth day of January, 5040
the ~~tax commissioner~~ director of development shall pay each 5041
applicant determined eligible for a payment under divisions (A) 5042
and (B) of section 5117.07 of the Revised Code one hundred 5043
twenty-five dollars. 5044

(B) The ~~tax commissioner~~ director may withhold from any 5045
payment to which a person would otherwise be entitled under 5046
division (A) of this section any amount that the ~~tax commissioner~~ 5047
director determines was erroneously received by such person in a 5048
preceding year under this or the program established under Am. 5049
Sub. H.B. 230, as amended by Am. H.B. 937, Am. Sub. H.B. 1073, Am. 5050
Sub. S.B. 493, and Am. Sub. S.B. 523 of the 112th general 5051
assembly, provided the ~~tax commissioner~~ director has employed all 5052
other legal methods reasonably available to obtain reimbursement 5053
for the erroneous payment or credit prior to the commencement of 5054
the current program year. 5055

(C) Payments made under this section and credits granted 5056
under section 5117.09 of the Revised Code shall not be considered 5057

income for the purpose of determining eligibility or the level of 5058
benefits or assistance under section 329.042 or Chapters 5107., 5059
5111., and 5115. of the Revised Code; supplemental security income 5060
payments under Title XVI of the "Social Security Act," 49 Stat. 5061
620 (1935), 42 U.S.C. 301, as amended; or any other program under 5062
which eligibility or the level of benefits or assistance is based 5063
upon need measured by income. 5064

Sec. 5117.12. (A) On or before the thirty-first day of August 5065
of each year, each energy company shall file a written report with 5066
the ~~tax commissioner~~ director of development regarding the impact, 5067
if any, of the requirements of division (E) of section 5117.11 of 5068
the Revised Code on the number of uncollectible and past due 5069
residential accounts for the twelve-month period ending on the 5070
preceding thirty-first day of July. The report shall include such 5071
information as is prescribed by the ~~tax commissioner~~ director. The 5072
information shall be based on actual reviews of residential 5073
customer accounts and shall be presented in verifiable form. The 5074
~~tax commissioner~~ director may consult with the public utilities 5075
commission and the consumers' counsel in prescribing the contents 5076
of such reports and complying with the requirements of division 5077
(C)(4) of this section. 5078

(B) Before the thirty-first day of January of each year, the 5079
~~tax commissioner~~ director shall prepare a written report including 5080
a final review of the Ohio energy credit program for which 5081
applications were required to be mailed or provided by the 5082
fifteenth day of June of the second preceding calendar year 5083
pursuant to section 5117.03 of the Revised Code and an interim 5084
review of the program for which applications were required to be 5085
mailed or provided by the fifteenth day of June of the preceding 5086
calendar year under such section. On or before the thirty-first 5087
day of January of each year, the ~~commissioner~~ director shall 5088

provide written copies of such report to the speaker of the house 5089
of representatives, president of the senate, minority leaders of 5090
the house of representatives and senate, chairpersons of the house 5091
finance and appropriations committee and senate finance committee, 5092
chairpersons of the committees of the house of representatives and 5093
senate customarily entrusted with matters concerning public 5094
utilities, clerk of the house of representatives, and clerk of the 5095
senate. 5096

(C) Each report prepared under division (B) of this section 5097
shall include a review of: 5098

(1) Program costs; 5099

(2) The number of persons receiving credits or payments under 5100
the program; 5101

(3) Progress in the implementation of any changes in the 5102
program made by the general assembly within the period covered by 5103
the report; 5104

(4) The impact, if any, of the requirements of division (E) 5105
of section 5117.11 of the Revised Code on the number of 5106
uncollectible and past due residential accounts of energy 5107
companies for the twelve-month period ending on the preceding 5108
thirty-first day of July; 5109

(5) The impact of any federal energy assistance programs 5110
available to the same groups of people as are eligible for the 5111
energy credit program under sections 5117.01 to 5117.12 of the 5112
Revised Code, together with any recommendations on modifications 5113
that may, because of the federal programs, be needed in the energy 5114
credit program; 5115

(6) Any suggestions for improving the program; 5116

(7) Any other matters considered appropriate by the 5117
~~commissioner~~ director. 5118

(D) The ~~tax commissioner~~ director shall consult with the 5119
auditor of state, energy companies, energy dealers, department of 5120
aging, and commission on Hispanic-Latino affairs in the 5121
preparation of any report under this section. The ~~commissioner~~ 5122
director may require information from such agencies for the 5123
purpose of preparing such report. 5124

Sec. 5701.03. As used in Title LVII of the Revised Code: 5125

(A) "Personal property" includes every tangible thing that is 5126
the subject of ownership, whether animate or inanimate, including 5127
a business fixture, and that does not constitute real property as 5128
defined in section 5701.02 of the Revised Code. "Personal 5129
property" also includes every share, portion, right, or interest, 5130
either legal or equitable, in and to every ship, vessel, or boat, 5131
used or designed to be used in business either exclusively or 5132
partially in navigating any of the waters within or bordering on 5133
this state, whether such ship, vessel, or boat is within the 5134
jurisdiction of this state or elsewhere. "Personal property" does 5135
not include money as defined in section 5701.04 of the Revised 5136
Code, motor vehicles registered by the owner thereof, electricity, 5137
or, for purposes of any tax levied on personal property, patterns, 5138
jigs, dies, or drawings that are held for use and not for sale in 5139
the ordinary course of business, except to the extent that the 5140
value of the electricity, patterns, jigs, dies, or drawings is 5141
included in the valuation of inventory produced for sale. 5142

5143

(B) "Business fixture" means an item of tangible personal 5144
property that has become permanently attached or affixed to the 5145
land or to a building, structure, or improvement, and that 5146
primarily benefits the business conducted by the occupant on the 5147
premises and not the realty. "Business fixture" includes, but is 5148
not limited to, machinery, equipment, signs, storage bins and 5149

tanks, whether above or below ground, and broadcasting, 5150
transportation, transmission, and distribution systems, whether 5151
above or below ground. "Business fixture" also means those 5152
portions of buildings, structures, and improvements that are 5153
specially designed, constructed, and used for the business 5154
conducted in the building, structure, or improvement, including, 5155
but not limited to, foundations and supports for machinery and 5156
equipment. "Business fixture" does not include fixtures that are 5157
common to buildings, including, but not limited to, heating, 5158
ventilation, and air conditioning systems primarily used to 5159
control the environment for people or animals, tanks, towers, and 5160
lines for potable water or water for fire control, electrical and 5161
communication lines, and other fixtures that primarily benefit the 5162
realty and not the business conducted by the occupant on the 5163
premises. 5164

Sec. 5703.052. There is hereby created in the state treasury 5165
the tax refund fund, from which refunds shall be paid for taxes 5166
illegally or erroneously assessed or collected, or for any other 5167
reason overpaid, that are levied by Chapter 4301., 4305., 5728., 5168
5729., 5733., 5735., 5739., 5741., 5743., 5747., 5748., 5749., or 5169
5753., and sections 3737.71, 3905.35, 3905.36, 4303.33, 5707.03, 5170
5725.18, 5727.38 ~~and former sections 5727.27, and 5727.40~~ 5727.81 5171
of the Revised Code. Refunds for fees illegally or erroneously 5172
assessed or collected, or for any other reason overpaid, that are 5173
levied by sections 3734.90 to 3734.9014 of the Revised Code also 5174
shall be paid from the fund. However, refunds for taxes levied 5175
under section 5739.101 of the Revised Code shall not be paid from 5176
the tax refund fund, but shall be paid as provided in section 5177
5739.104 of the Revised Code. 5178

Upon certification by the tax commissioner to the treasurer 5179
of state of a tax refund, fee refund, or tax credit due, or by the 5180

superintendent of insurance of a domestic or foreign insurance tax 5181
refund, the treasurer of state may place the amount certified to 5182
the credit of the fund. The certified amount transferred shall be 5183
derived from current receipts of the same tax or the fee for which 5184
the refund arose or, in the case of a tax credit refund, from the 5185
current receipts of the taxes levied by sections 5739.02 and 5186
5741.02 of the Revised Code. 5187

If the tax refund arises from a tax payable to the general 5188
revenue fund, and current receipts from that source are inadequate 5189
to make the transfer of the amount so certified, the treasurer of 5190
state may transfer such certified amount from current receipts of 5191
the sales tax levied by section 5739.02 of the Revised Code. 5192

Sec. 5703.053. As used in this section, "postal service" 5193
means the United States postal service. 5194

An application to the tax commissioner for a tax refund under 5195
sections 4307.05, 4307.07, 5727.91, 5728.061, 5735.122, 5735.13, 5196
5735.14, 5735.141, 5735.142, 5739.07, 5741.10, 5743.05, 5743.53, 5197
5749.08, and 5753.06 of the Revised Code or division (B) of 5198
section 5703.05 of the Revised Code, or a fee refunded under 5199
section 3734.905 of the Revised Code, that is received after the 5200
last day for filing under such section shall be considered to have 5201
been filed in a timely manner if: 5202

(A) The application is delivered by the postal service and 5203
the earliest postal service postmark on the cover in which the 5204
application is enclosed is not later than the last day for filing 5205
the application; 5206

(B) The application is delivered by the postal service, the 5207
only postmark on the cover in which the application is enclosed 5208
was affixed by a private postal meter, the date of that postmark 5209
is not later than the last day for filing the application, and the 5210

application is received within seven days of such last day; or 5211

(C) The application is delivered by the postal service, no 5212
postmark date was affixed to the cover in which the application is 5213
enclosed or the date of the postmark so affixed is not legible, 5214
and the application is received within seven days of the last day 5215
for making the application. 5216

Sec. 5703.14. (A) Any rule adopted by the board of tax 5217
appeals and any rule of the department of taxation adopted by the 5218
tax commissioner shall be effective on the tenth day after the day 5219
on which the rule in final form and in compliance with division 5220
(B) of this section is filed by the board or the commissioner as 5221
follows: 5222

(1) Two certified copies of the rule shall be filed with both 5223
the secretary of state and the director of the legislative service 5224
commission; 5225

(2) Two certified copies of the rule shall be filed with the 5226
joint committee on agency rule review. Division (A)(2) of this 5227
section does not apply to any rule to which division (H) of 5228
section 119.03 of the Revised Code does not apply. 5229

If all copies are not filed on the same day, the rule shall 5230
be effective on the tenth day after the day on which the latest 5231
filing is made. If the board or the commissioner in adopting a 5232
rule designates an effective date that is later than the effective 5233
date provided for by this division, the rule if filed as required 5234
by this division shall become effective on the later date 5235
designated by the board or commissioner. 5236

(B) The board and commissioner shall file the rule in 5237
compliance with the following standards and procedures: 5238

(1) The rule shall be numbered in accordance with the 5239
numbering system devised by the director for the Ohio 5240

administrative code. 5241

(2) The rule shall be prepared and submitted in compliance 5242
with the rules of the legislative service commission. 5243

(3) The rule shall clearly state the date on which it is to 5244
be effective and the date on which it will expire, if known. 5245

(4) Each rule that amends or rescinds another rule shall 5246
clearly refer to the rule that is amended or rescinded. Each 5247
amendment shall fully restate the rule as amended. 5248

If the director of the legislative service commission or ~~his~~ 5249
the director's designee gives the board or commissioner written 5250
notice pursuant to section 103.05 of the Revised Code that a rule 5251
filed by the board or commissioner is not in compliance with the 5252
rules of the legislative service commission, the board or 5253
commissioner shall within thirty days after receipt of the notice 5254
conform the rule to the rules of the legislative service 5255
commission as directed in the notice. 5256

All rules of the department and board filed pursuant to 5257
division (A)(1) of this section shall be recorded by the secretary 5258
of state and the director under the name of the department or 5259
board and shall be numbered in accordance with the numbering 5260
system devised by the director. The secretary of state and the 5261
director shall preserve the rules in an accessible manner. Each 5262
such rule shall be a public record open to public inspection and 5263
may be lent to any law publishing company that wishes to reproduce 5264
it. Each such rule shall also be made available to interested 5265
parties upon request directed to the department. 5266

(C) Applications for review of any rule adopted and 5267
promulgated by the commissioner may be filed with the board by any 5268
person who has been or may be injured by the operation of the 5269
rule. The appeal may be taken at any time after the rule is filed 5270
with the secretary of the state, the director of the legislative 5271

service commission, and, if applicable, the joint committee on 5272
agency rule review. Failure to file an appeal does not preclude 5273
any person from seeking any other remedy against the application 5274
of the rule to ~~him~~ the person. The applications shall set forth, 5275
or have attached thereto and incorporated by reference, a true 5276
copy of the rule, and shall allege that the rule complained of is 5277
unreasonable and shall state the grounds upon which the allegation 5278
is based. Upon the filing of the application, the board shall 5279
notify the commissioner of the filing of the application, fix a 5280
time for hearing the application, notify the commissioner and the 5281
applicant of the time for the hearing, and afford both an 5282
opportunity to be heard. The appellant, the tax commissioner, and 5283
any other interested persons that the board permits, may introduce 5284
evidence. The burden of proof to show that the rule is 5285
unreasonable shall be upon the appellant. After the hearing, the 5286
board shall determine whether the rule complained of is reasonable 5287
or unreasonable. A determination that the rule complained of is 5288
unreasonable shall require a majority vote of the three members of 5289
the board, and the reasons for the determination shall be entered 5290
on the journal of the board. 5291

Upon determining that the rule complained of is unreasonable, 5292
the board shall file copies of its determination as follows: 5293

(1) Two certified copies of the determination shall be filed 5294
with both the secretary of state and the director of the 5295
legislative service commission, who shall note the date of their 5296
receipt of the certified copies conspicuously in their files of 5297
the rules of the department; 5298

(2) Two certified copies of the determination shall be filed 5299
with the joint committee on agency rule review. Division (C)(2) of 5300
this section does not apply to any rule to which division (H) of 5301
section 119.03 of the Revised Code does not apply. 5302

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

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

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

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

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

If a taxing authority levies a tax for a fixed sum of money 5333
or to pay debt charges for the tax year for which the tax budget 5334
is prepared, and the tax was levied in tax year 1998, the county 5335
auditor, when estimating the rate at which the tax shall be levied 5336
in the current year, shall estimate the rate necessary to raise 5337
the required sum less the estimated amount of any payments made 5338
for the tax year to a taxing unit under sections 5727.85 and 5339
5727.86 of the Revised Code. The estimated rate shall be the rate 5340
of the levy that the budget commission certifies with its action 5341
under this section. 5342

Each taxing authority, by ordinance or resolution, shall 5343
authorize the necessary tax levies and certify them to the county 5344
auditor before the first day of October in each year, or at such 5345
later date as is approved by the tax commissioner, except that the 5346
certification by a board of education shall be made by the first 5347
day of April or at such later date as is approved by the 5348
commissioner, and except that a township board of park 5349
commissioners that is appointed by the board of township trustees 5350
and oversees a township park district that contains only 5351
unincorporated territory shall authorize only those taxes approved 5352
by, and only at the rate approved by, the board of township 5353
trustees as required by division (C) of section 511.27 of the 5354
Revised Code. If the levying of a tax to be placed on the 5355
duplicate of the current year is approved by the electors of the 5356
subdivision under sections 5705.01 to 5705.47 of the Revised Code; 5357
if the rate of a school district tax is increased due to the 5358
repeal of a school district income tax and property tax rate 5359
reduction at an election held pursuant to section 5748.04 of the 5360
Revised Code; or if refunding bonds to refund all or a part of the 5361
principal of bonds payable from a tax levy for the ensuing fiscal 5362
year are issued or sold and in the process of delivery, the budget 5363
commission shall reconsider and revise its action on the budget of 5364

the subdivision or school library district for whose benefit the 5365
tax is to be levied after the returns of such election are fully 5366
canvassed, or after the issuance or sale of such refunding bonds 5367
is certified to it. 5368

Sec. 5727.01. As used in this chapter: 5369

(A) "Public utility" means each person referred to as a 5370
telephone company, telegraph company, electric company, natural 5371
gas company, pipe-line company, water-works company, water 5372
transportation company, heating company, rural electric company, 5373
or railroad company. 5374

(B) "Gross receipts" means the entire receipts for business 5375
done by any person from operation as a public utility, or 5376
incidental thereto, or in connection therewith, including any 5377
receipts received under Chapter 4928. of the Revised Code. The 5378
gross receipts for business done by an incorporated company 5379
engaged in operation as a public utility includes the entire 5380
receipts for business done by such company under the exercise of 5381
its corporate powers, whether from the operation as a public 5382
utility or from any other business. 5383

(C) "Rural electric company" means any nonprofit corporation, 5384
organization, association, or cooperative engaged in the business 5385
of supplying electricity to its members or persons owning an 5386
interest therein in an area the major portion of which is rural. 5387
5388

(D) Any person: 5389

(1) Is a telegraph company when engaged in the business of 5390
transmitting telegraphic messages to, from, through, or in this 5391
state; 5392

(2) Is a telephone company when primarily engaged in the 5393
business of providing local exchange telephone service, excluding 5394

cellular radio service, in this state; 5395

(3) Is an electric company when engaged in the business of 5396
generating, transmitting, or distributing electricity within this 5397
state for use by others, but excludes a rural electric company; 5398

(4) Is a natural gas company when engaged in the business of 5399
supplying natural gas for lighting, power, or heating purposes to 5400
consumers within this state; 5401

(5) Is a pipe-line company when engaged in the business of 5402
transporting natural gas, oil, or coal or its derivatives through 5403
pipes or tubing, either wholly or partially within this state; 5404

(6) Is a water-works company when engaged in the business of 5405
supplying water through pipes or tubing, or in a similar manner, 5406
to consumers within this state; 5407

(7) Is a water transportation company when engaged in the 5408
transportation of passengers or property, by boat or other 5409
watercraft, over any waterway, whether natural or artificial, from 5410
one point within this state to another point within this state, or 5411
between points within this state and points without this state; 5412

(8) Is a heating company when engaged in the business of 5413
supplying water, steam, or air through pipes or tubing to 5414
consumers within this state for heating purposes; 5415

(9) Is a railroad company when engaged in the business of 5416
owning or operating a railroad either wholly or partially within 5417
this state on rights-of-way acquired and held exclusively by such 5418
company, or otherwise, and includes a passenger, street, suburban, 5419
or interurban railroad company. 5420

As used in division (D)(2) of this section, "local exchange 5421
telephone service" means making available or furnishing access and 5422
a dial tone to all persons within a local calling area for use in 5423
originating and receiving voice grade communications over a 5424

switched network operated by the provider of the service within 5425
the area and for gaining access to other telecommunication 5426
services. 5427

(E) "Taxable property" means the property required by section 5428
5727.06 of the Revised Code to be assessed by the tax 5429
commissioner, but does not include either of the following: 5430

(1) An item of tangible personal property that for the period 5431
subsequent to the effective date of an air, water, or noise 5432
pollution control certificate and continuing so long as the 5433
certificate is in force, has been certified as part of the 5434
pollution control facility with respect to which the certificate 5435
has been issued; 5436

(2) An item of tangible personal property that during the 5437
construction of a plant or facility and until the item is first 5438
capable of operation, whether actually used in operation or not, 5439
is incorporated in or being held exclusively for incorporation in 5440
that plant or facility. 5441

(F) "Taxing district" means a municipal corporation or 5442
township, or part thereof, in which the aggregate rate of taxation 5443
is uniform. 5444

(G) "Telecommunications service" has the same meaning as in 5445
division (AA) of section 5739.01 of the Revised Code. 5446

(H) "Interexchange telecommunications company" means a person 5447
that is engaged in the business of transmitting telephonic 5448
messages to, from, through, or in this state, but that is not a 5449
telephone company. 5450

(I) "Sale and leaseback transaction" means a transaction in 5451
which a public utility or interexchange telecommunications company 5452
sells any tangible personal property to a person other than a 5453
public utility or interexchange telecommunications company and 5454

~~within the same calendar year~~ leases that property back from the 5455
buyer. 5456

(J) "Production equipment" means all taxable steam, nuclear, 5457
hydraulic, and other production plant equipment used to generate 5458
electricity. For tax years prior to 2001, "production equipment" 5459
includes taxable station equipment that is located at a production 5460
plant. 5461

(K) "Tax year" means the year for which property or gross 5462
receipts are subject to assessment under this chapter. This 5463
division does not limit the tax commissioner's ability to assess 5464
and value property or gross receipts outside the tax year. 5465

(L) "Combined company" means any person engaged in the 5466
activity of an electric company or rural electric company that is 5467
also engaged in the activity of a heating company or a natural gas 5468
company, or any combination thereof. 5469

Sec. 5727.02. As used in this chapter, "public utility," 5470
"electric company," "natural gas company," "pipe-line company," 5471
"water-works company," "water transportation company" or "heating 5472
company" does not include any of the following: 5473

(A) Any person that is engaged in some other primary business 5474
to which the supplying of electricity, heat, natural gas, water, 5475
water transportation, steam, or air to others is incidental; ~~or.~~ 5476
As used in this division, "supplying of electricity" means 5477
generating, transmitting, or distributing electricity. 5478
5479

(B) Any person that supplies electricity, natural gas, water, 5480
water transportation, steam, or air to its tenants, whether for a 5481
separate charge or otherwise; ~~or~~ 5482

(C) Any person whose primary business in this state consists 5483
of producing, refining, or marketing petroleum or its products. 5484

Sec. 5727.03. (A) A combined company shall file a separate 5485
report under section 5727.08 of the Revised Code for each listed 5486
activity of a combined company. The tax commissioner shall 5487
separately value, apportion, and assess the company's property. 5488
Divisions (B)(1), (2), and (3) of this section shall be used to 5489
determine the taxable property that cannot directly be attributed 5490
to providing one of the listed activities of a combined company. 5491
Beginning with the public utility excise tax assessed by the tax 5492
commissioner on or before the first Monday in November 2002, 5493
division (C) of this section shall be used by the tax commissioner 5494
to separate the gross receipts of a combined company attributed to 5495
the activity of an electric company or a rural electric company. 5496

(B)(1) The taxable property to attribute to an electric 5497
company or a rural electric company activity shall be the taxable 5498
cost of the property that cannot be directly attributed to a 5499
listed activity of a combined company multiplied by a numerator 5500
that is the taxable cost of property that can be directly 5501
attributed to the activity of an electric company or a rural 5502
electric company and a denominator that is the sum of the taxable 5503
cost that can be directly attributed to all the listed activities 5504
of a combined company. 5505

(2) The taxable property to attribute to a heating company 5506
shall be the taxable cost of the property that cannot be directly 5507
attributed to a listed activity of a combined company multiplied 5508
by a numerator that is the taxable cost of property that can be 5509
directly attributed to the activity of a heating company and a 5510
denominator that is the sum of the taxable cost that can be 5511
directly attributed to all listed activities of a combined 5512
company. 5513

(3) The taxable property to attribute to a natural gas 5514
company shall be the taxable cost of the property that cannot be 5515

directly attributed to a listed activity of a combined company 5516
multiplied by a numerator that is the taxable cost of property 5517
that can be directly attributed to the activity of a natural gas 5518
company and a denominator that is the sum of the taxable cost that 5519
can be directly attributed to all the listed activities of a 5520
combined company. 5521

(C) Notwithstanding any other provision of the Revised Code, 5522
a combined company shall continue to be subject to the excise tax 5523
imposed by section 5727.30 of the Revised Code. From the report 5524
filed by a combined company under section 5727.31 of the Revised 5525
Code, the tax commissioner shall exclude the taxable gross 5526
receipts directly ATTRIBUTABLE to the activity of an electric 5527
company or a rural electric company. In addition, the tax 5528
commissioner shall exclude the portion of taxable gross receipts 5529
that cannot be attributed to a listed combined public utility 5530
activity or another public utility activity subject to the excise 5531
tax imposed by section 5727.30 of the Revised Code by multiplying 5532
those taxable gross receipts by a numerator that is the taxable 5533
gross receipts that can be attributed to an electric company or a 5534
rural electric company activity, and a denominator that is the sum 5535
of the taxable GROSS receipts that can be directly attributed to a 5536
listed combined company activity or another public utility 5537
activity subject to the excise tax imposed by section 5727.30 of 5538
the Revised Code. For purposes of determining the taxable gross 5539
receipts for providing electric company or rural electric company 5540
service under this division, the taxable gross receipts as 5541
reported under section 5727.32 of the Revised Code and determined 5542
under section 5727.33 of the Revised Code, prior to the amendment 5543
of those sections by Substitute Senate Bill No. 3 of the 123rd 5544
general assembly, shall be used. 5545

Sec. 5727.05. This chapter does Sections 5727.01 to 5727.61 5546

of the Revised Code do not apply to either of the following: 5547

(A) Nonprofit corporations as defined in division (C) of 5548
section 1702.01 of the Revised Code that are engaged exclusively 5549
in the treatment, distribution, and sale of water to consumers; 5550

(B) Municipal corporations within this state. 5551

Sec. 5727.06. (A) Except as otherwise provided by law, the 5552
following constitutes the taxable property of a public utility or 5553
interexchange telecommunications company that shall be assessed by 5554
the tax commissioner: 5555

(1) In the case of a railroad company, all real property and 5556
tangible personal property owned or operated by the railroad 5557
company in this state on the thirty-first day of December of the 5558
preceding year; 5559

(2) In the case of a water transportation company, all 5560
tangible personal property, except watercraft, owned or operated 5561
by the water transportation company in this state on the 5562
thirty-first day of December of the preceding year and all 5563
watercraft owned or operated by the water transportation company 5564
in this state during the preceding calendar year; 5565

(3) In the case of all other public utilities and 5566
interexchange telecommunications companies, all tangible personal 5567
property that on the thirty-first day of December of the preceding 5568
year was both located in this state and: 5569

(a) Owned by the public utility or interexchange 5570
telecommunications company; or 5571

(b) Leased by the public utility or interexchange 5572
telecommunications company under a sale and leaseback transaction. 5573

(B) In the case of an interexchange telecommunications 5574
company, all taxable property shall be subject to the provisions 5575

of this chapter and shall be valued by the commissioner in 5576
accordance with division ~~(B)~~(A) of section 5727.11 of the Revised 5577
Code ~~and assessed by the commissioner in accordance with division~~ 5578
~~(G) of section 5727.111 of the Revised Code~~ A person described by 5579
this division shall file the report required by section 5727.08 of 5580
the Revised Code. Persons described in this division shall not be 5581
considered taxpayers, as defined in division (B) of section 5582
5711.01 of the Revised Code, and shall not be required to file a 5583
return and list their taxable property under any provision of 5584
Chapter 5711. of the Revised Code. 5585

(C) The lien of the state for taxes levied each year on the 5586
real and personal property of public utilities and interexchange 5587
telecommunications companies shall attach thereto on the 5588
thirty-first day of December of the preceding year. 5589

(D) Property that is required by division (A)(3)(b) of this 5590
section to be assessed by the tax commissioner under this chapter 5591
shall not be listed by the owner of the property under Chapter 5592
5711. of the Revised Code. 5593

(E) The tax commissioner may adopt rules governing the 5594
listing of the taxable property of public utilities and 5595
interexchange telecommunications companies and the determination 5596
of true value. 5597

Sec. 5727.11. (A) ~~As used in this section, section 5727.111,~~ 5598
~~and division (C) of section 5727.15 of the Revised Code,~~ 5599
~~"production equipment" means all taxable steam, nuclear,~~ 5600
~~hydraulic, and other production plant equipment, and all taxable~~ 5601
~~station equipment that is located at a production plant.~~ 5602

~~(B)~~ Except as otherwise provided in ~~divisions (C), (D), (E),~~ 5603
~~and (G)~~ of this section, the true value of all taxable property 5604
required by division (A)(2) or (3) of section 5727.06 of the 5605

Revised Code to be assessed by the tax commissioner shall be 5606
determined by a method of valuation using cost as capitalized on 5607
the public utility's books and records less composite annual 5608
allowances as prescribed by the commissioner. If the commissioner 5609
finds that application of this method will not result in the 5610
determination of true value of the public utility's taxable 5611
property, ~~he~~ the commissioner may use another method of valuation. 5612
~~The cost of property subject to a sale and leaseback transaction~~ 5613
~~is the cost of the property as capitalized on the books and~~ 5614
~~records of the public utility owning the property immediately~~ 5615
~~prior to the sale and leaseback transaction.~~ 5616

~~(C)~~(B) The true value of current gas stored underground is 5617
the cost of that gas shown on the books and records of the public 5618
utility on the thirty-first day of December of the preceding year. 5619

~~(D)~~(C) The true value of noncurrent gas stored underground is 5620
thirty-five per cent of the cost of that gas shown on the books 5621
and records of the public utility on the thirty-first day of 5622
December of the preceding year. 5623

~~(E)~~ The (D)(1) Except as provided in division (D)(2) of this 5624
section, the true value of the production equipment of an electric 5625
company and the true value of all taxable property of a rural 5626
electric company is the equipment's or property's cost as 5627
capitalized on the company's books and records less fifty per cent 5628
of that cost as an allowance for depreciation and obsolescence. 5629
~~The cost of equipment or property subject to a sale and leaseback~~ 5630
~~transaction is the cost of the property as capitalized on the~~ 5631
~~books and records of the public utility owning the equipment or~~ 5632
~~property immediately prior to the sale and leaseback transaction.~~ 5633

(2) The true value of the production equipment of an electric 5634
company or rural electric company purchased, transferred, or 5635
placed into service after the effective date of this amendment is 5636
the purchase price of the equipment as capitalized on the 5637

company's books and records less composite annual allowances as 5638
prescribed by the tax commissioner. 5639

~~(F)~~(E) The true value of taxable property described in 5640
division (A)(2) or (3) of section 5727.06 of the Revised Code 5641
shall not include the allowance for funds used during construction 5642
or interest during construction ~~which~~ that has been capitalized on 5643
the public utility's books and records as part of the total cost 5644
of the taxable property. This division shall not apply to the 5645
taxable property of an electric company or a rural electric 5646
company, excluding transmission and distribution property, first 5647
placed into service after December 31, 2000, or to the taxable 5648
property a person purchases, which includes transfers, if that 5649
property was used in business by the seller prior to the purchase. 5650

~~(G)~~(F) The true value of watercraft owned or operated by a 5651
water transportation company shall be determined by multiplying 5652
the true value of the watercraft as determined under division 5653
~~(B)~~(A) of this section by a fraction, the numerator of which is 5654
the number of revenue-earning miles traveled by the watercraft in 5655
the waters of this state and the denominator of which is the 5656
number of revenue-earning miles traveled by the watercraft in all 5657
waters. 5658

(G) The cost of property subject to a sale and leaseback 5659
transaction is the cost of the property as capitalized on the 5660
books and records of the public utility owning the property 5661
immediately prior to the sale and leaseback transaction. 5662

(H) THE COST AS CAPITALIZED ON THE BOOKS AND RECORDS OF A 5663
PUBLIC UTILITY INCLUDES AMOUNTS CAPITALIZED THAT REPRESENT 5664
REGULATORY ASSETS, IF SUCH AMOUNTS PREVIOUSLY WERE INCLUDED ON THE 5665
COMPANY'S BOOKS AND RECORDS AS CAPITALIZED COSTS OF TAXABLE 5666
PERSONAL PROPERTY. 5667

Sec. 5727.111. The taxable property of each public utility, 5668

except a railroad company, and of each interexchange 5669
telecommunications company shall be assessed at the following 5670
percentages of true value: 5671

(A) Fifty per cent in the case of the taxable transmission 5672
and distribution property of a rural electric company, and 5673
twenty-five per cent for all its other taxable property; 5674

(B) In the case of a telephone or telegraph company, ~~the~~ 5675
~~percentage provided under division (E) of section 5711.22 of the~~ 5676
~~Revised Code~~ twenty-five per cent for taxable property first 5677
subject to taxation in this state for tax year 1995 or thereafter, 5678
and eighty-eight per cent for all other taxable property; 5679

(C) Eighty-eight per cent in the case of a natural gas or 5680
pipe-line company; 5681

(D) Eighty-eight per cent in the case of a water-works or 5682
heating company; 5683

(E) ~~One hundred per cent in the case of the taxable~~ 5684
~~production equipment of an electric company;~~ 5685

~~(F) Eighty-eight~~ (1) Except as provided in division (E)(2) of 5686
this section, eighty-eight per cent in the case of ~~all taxable~~ 5687
~~personal~~ the taxable transmission and distribution property of an 5688
electric company, ~~other than its production equipment and~~ 5689
twenty-five per cent for all its other taxable property; 5690

(2) Property listed and assessed under divisions (B)(1) and 5691
(2) of section 5711.22 of the Revised Code shall continue to be 5692
assessed at one hundred per cent for production equipment and 5693
eighty-eight per cent for all other taxable property until January 5694
1, 2002. 5695

~~(G) The percentage provided under division (E) of section~~ 5696
~~5711.22 of the Revised Code~~ (F) Twenty-five per cent in the case 5697
of an interexchange telecommunications company; 5698

~~(H)~~(G) Twenty-five per cent in the case of a water 5699
transportation company. 5700

Sec. 5727.15. When all the taxable property of a public 5701
utility is located in one taxing district, the tax commissioner 5702
shall apportion the total taxable value thereof to that taxing 5703
district. 5704

When taxable property of a public utility is located in more 5705
than one taxing district, the commissioner shall apportion the 5706
total taxable value thereof among the taxing districts as follows: 5707

(A)(1) In the case of a telegraph, interexchange 5708
telecommunications, or telephone company that owns miles of wire 5709
in this state, the value apportioned to each taxing district shall 5710
be the same percentage of the total value apportioned to all 5711
taxing districts as the miles of wire owned by the company within 5712
the taxing district are to the total miles of wire owned by the 5713
company within this state; 5714

(2) In the case of a telegraph, interexchange 5715
telecommunications, or telephone company that does not own miles 5716
of wire in this state, the value apportioned to each taxing 5717
district shall be the same percentage of the total value 5718
apportioned to all taxing districts as the cost of the taxable 5719
property physically located in the taxing district is of the total 5720
cost of all taxable property physically located in this state. 5721

(B) In the case of a railroad company: 5722

(1) The taxable value of real and personal property not used 5723
in railroad operations shall be apportioned according to its 5724
situs; 5725

(2) The taxable value of personal property used in railroad 5726
operations shall be apportioned to each taxing district in 5727
proportion to the miles of track and trackage rights, weighted to 5728

reflect the relative use of such personal property in each taxing district; 5729
5730

(3) The taxable value of real property used in railroad operations shall be apportioned to each taxing district in proportion to its relative value in each taxing district. 5731
5732
5733

(C) In the case of an electric company: 5734

(1) ~~Seventy per cent of the~~ The taxable value of all production equipment ~~and of all station equipment that is not production equipment~~ shall be apportioned to the taxing district in which such property is physically located; and 5735
5736
5737
5738

(2) ~~The remaining value of such property, together with the~~ value of all other taxable personal property, shall be apportioned to each taxing district in the ~~per cent~~ proportion that the cost of ~~all transmission and distribution~~ the taxable personal property physically located in the each taxing district is of the total cost of all ~~transmission and distribution~~ taxable personal property physically located in this state. 5739
5740
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~~(3) If an electric company's taxable value for the current year includes the value of any production equipment at a plant at which the initial cost of the plant's production equipment exceeded one billion dollars, then prior to making the apportionments required for that company by divisions (C)(1) and (2) of this section, the tax commissioner shall do the following:~~ 5746
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5748
5749
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5751

~~(a) Subtract four hundred twenty million dollars from the total taxable value of the production equipment at that plant for the current tax year.~~ 5752
5753
5754

~~(b) Multiply the difference thus obtained by a fraction, the numerator of which is the portion of the taxable value of that plant's production equipment included in the company's total value for the current tax year, and the denominator of which is the~~ 5755
5756
5757
5758

~~total taxable value of such equipment included in the total~~ 5759
~~taxable value of all electric companies for such year.~~ 5760

~~(c) Apportion the product thus obtained to taxing districts~~ 5761
~~in the manner prescribed in division (C)(2) of this section.~~ 5762

~~(d) Deduct the amounts so apportioned from the taxable value~~ 5763
~~of the company's production equipment at the plant, prior to~~ 5764
~~making the apportionments required by divisions (C)(1) and (2) of~~ 5765
~~this section.~~ 5766

~~For purposes of division (C) of this section, "initial cost"~~ 5767
~~applies only to production equipment of plants placed in~~ 5768
~~commercial operation on or after January 1, 1987, and means the~~ 5769
~~cost of all production equipment at a plant for the first year the~~ 5770
~~plant's equipment was subject to taxation.~~ 5771

~~(D) In the case of all other public utilities, the value of~~ 5772
~~the property to be apportioned shall be apportioned to each taxing~~ 5773
~~district in proportion to the entire value of such property within~~ 5774
~~this state.~~ 5775

Sec. 5727.30. Each public utility, except electric companies, 5776
rural electric companies, and railroad companies, shall be subject 5777
to an annual excise tax, as provided by sections 5727.31 to 5778
5727.62 of the Revised Code, for the privilege of owning property 5779
in this state or doing business in this state during the 5780
twelve-month period next succeeding the period upon which the tax 5781
is based. The tax shall be imposed against each such public 5782
utility ~~which~~ that, on the first day of such twelve-month period, 5783
owns property in this state or is doing business in this state, 5784
and the lien for the tax, including any penalties and interest 5785
accruing thereon, shall attach on such day to the property of the 5786
public utility in this state. 5787

Sec. 5727.31. (A) Each public utility, ~~except railroad~~ 5788

~~companies, doing business or owning property in this state shall~~ 5789
~~subject to the tax imposed under section 5727.30 of the Revised~~ 5790
~~Code,~~ annually, on or before the first day of August, shall file 5791
with the tax commissioner a statement in such form as the 5792
commissioner prescribes. 5793

(B)(1) Annually, on or before the fifteenth day of October of 5794
the current year, each public utility ~~subject to the excise taxes~~ 5795
~~levied by this chapter~~ whose estimated excise taxes for the 5796
current year as based upon the statement required to be filed in 5797
that year by division (A) of this section are, in the case of a 5798
public utility other than a natural gas company, one thousand 5799
dollars or more, or are, in the case of a natural gas company, 5800
three hundred twenty-five thousand dollars or more, shall file 5801
with the treasurer of state a report, in such form as the tax 5802
commissioner prescribes, showing the amount of excise tax 5803
estimated to be charged or levied pursuant to law for the current 5804
year upon the basis of such annual statement, and shall remit a 5805
portion of the estimated excise taxes shown to be due by the 5806
report. The portion of the estimated excise taxes due at the time 5807
the report is filed shall be one-third of its total excise taxes 5808
estimated to be charged or levied for the current year based upon 5809
the annual statement filed under division (A) of this section. 5810

(2) Annually, on or before the first day of March and June, 5811
each public utility ~~subject to the excise taxes levied by this~~ 5812
~~chapter~~ whose excise taxes as based upon its last preceding annual 5813
statement filed under division (A) of this section prior to the 5814
first day of January were, in the case of a public utility other 5815
than a natural gas company, one thousand dollars or more, or were, 5816
in the case of a natural gas company, three hundred twenty-five 5817
thousand dollars or more, shall file with the treasurer of state a 5818
report, in such form as the tax commissioner prescribes, showing 5819
the amount of excise tax charged or levied pursuant to law upon 5820

the basis of such annual statement, and shall remit a portion of 5821
the excise taxes shown to be due by each such report. The portion 5822
of the excise taxes due at the time each such report is filed 5823
shall be one-third of its total excise taxes so charged or levied 5824
based upon such annual statement. 5825

(C) Any public utility subject to the excise taxes imposed by 5826
~~this chapter~~ section 5727.30 of the Revised Code whose tax as 5827
certified under section 5727.38 of the Revised Code in a year 5828
equals or exceeds the amount specified for that year in section 5829
5727.311 of the Revised Code shall make the payments required 5830
under this section in the second ensuing and each succeeding year 5831
in the manner prescribed by section 5727.311 of the Revised Code, 5832
except as otherwise prescribed by that section. 5833

(D)(1) For purposes of this section, a report required to be 5834
filed under division (B) of this section is considered filed when 5835
it is received by the treasurer of state. 5836

(2) For purposes of this section and sections 5727.311 and 5837
5727.42 of the Revised Code, remittance of an excise tax required 5838
to be made under this section is considered to be made when the 5839
remittance is received by the treasurer of state, or when credited 5840
to an account designated by the treasurer of state for the receipt 5841
of tax remittances. 5842

Sec. 5727.311. (A) Any public utility subject to an excise 5843
tax imposed by ~~this chapter~~ section 5727.30 of the Revised Code 5844
whose tax as certified by the tax commissioner under section 5845
5727.38 of the Revised Code ~~in the year indicated in the following~~ 5846
~~schedule~~ equals or exceeds ~~the amount indicated for that year in~~ 5847
~~the schedule~~ fifty thousand dollars shall make each payment 5848
required under division (B) of section 5727.31 of the Revised Code 5849
for the second ensuing and each succeeding year by electronic 5850
funds transfer as prescribed by division (B) of this section. 5851

Year for which			5852
tax was certified	1992	1993 and thereafter	5853
Amount of tax	\$100,000	\$50,000	5854
certified			

If the tax certified by the tax commissioner in each of two 5855
consecutive years ~~beginning with 1993~~ is less than fifty thousand 5856
dollars, the public utility is relieved of the requirement to 5857
remit taxes by electronic funds transfer for the year that next 5858
follows the second of the consecutive years in which the tax 5859
certified is less than fifty thousand dollars, and is relieved of 5860
that requirement for each succeeding year unless the tax certified 5861
in a subsequent year equals or exceeds fifty thousand dollars. The 5862
tax commissioner shall notify each public utility required to 5863
remit taxes by electronic funds transfer of the public utility's 5864
obligation to do so, shall maintain an updated list of those 5865
public utilities, and shall timely certify the list and any 5866
additions thereto or deletions therefrom to the treasurer of 5867
state. Failure by the tax commissioner to notify a public utility 5868
subject to this section to remit taxes by electronic funds 5869
transfer does not relieve the public utility of its obligation to 5870
remit taxes by electronic funds transfer. 5871

(B) Public utilities required by this section to remit 5872
periodic payments by electronic funds transfer shall remit such 5873
payments to the treasurer of state in the manner prescribed by 5874
rules adopted by the treasurer of state under section 113.061 of 5875
the Revised Code. The payment of public utility excise taxes by 5876
electronic funds transfer does not affect a public utility's 5877
obligation to file the annual statement and periodic reports in 5878
the manner and at the times prescribed by section 5727.31 of the 5879
Revised Code. 5880

A public utility required by this section to remit taxes by 5881
electronic funds transfer may apply to the treasurer of state in 5882

the manner prescribed by the treasurer of state to be excused from 5883
that requirement. The treasurer of state may excuse the public 5884
utility from remittance by electronic funds transfer for good 5885
cause shown for the period of time requested by the public utility 5886
or for a portion of that period. The treasurer of state shall 5887
notify the tax commissioner and the public utility of the 5888
~~treasurer's~~ treasurer of state's decision as soon as is 5889
practicable. 5890

(C) If a public utility required by this section to remit 5891
taxes by electronic funds transfer remits those taxes by some 5892
means other than by electronic funds transfer as prescribed by 5893
this section and the rules adopted by the treasurer of state, and 5894
the treasurer of state determines that the failure to remit taxes 5895
as required was not due to reasonable cause or was due to willful 5896
neglect, the treasurer of state may impose an additional charge on 5897
the public utility equal to five per cent of the amount of the 5898
taxes required to be paid by electronic funds transfer, but not to 5899
exceed five thousand dollars. Any additional charge imposed under 5900
this section is in addition to any other penalty or charge imposed 5901
under this chapter, and shall be considered as revenue arising 5902
from excise taxes imposed by this chapter. 5903

No additional charge shall be assessed under this division 5904
against a public utility that has been notified of its obligation 5905
to remit taxes under this section and that remits its first two 5906
tax payments after such notification by some means other than 5907
electronic funds transfer. The additional charge may be assessed 5908
upon the remittance of any subsequent tax payment that the public 5909
utility remits by some means other than electronic funds transfer. 5910

Sec. 5727.32. The statement required by section 5727.31 of 5911
the Revised Code for the purpose of the public utility excise tax 5912
shall contain: 5913

(A) The name of the company;	5914
(B) The nature of the company, whether a person, association, or corporation, and under the laws of what state or country organized;	5915 5916 5917
(C) The location of its principal office;	5918
(D) The name and post-office address of the president, secretary, auditor, treasurer, and superintendent or general manager;	5919 5920 5921
(E) The name and post-office address of the chief officer or managing agent of the company in this state;	5922 5923
(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;	5924 5925 5926
(G) In the case of telegraph and telephone companies:	5927
(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:	5928 5929 5930 5931 5932 5933 5934 5935
(a) All of the receipts derived wholly from interstate business or business done for or with the federal government;	5936 5937
(b) The receipts of amounts billed on behalf of other entities;	5938 5939
(c) The receipts from sales to other telephone companies for resale;	5940 5941
(d) For the year ending June 30, 1990, and each subsequent	5942

~~year, receipts~~ Receipts from sales to providers of 5943
telecommunications service for resale, receipts from incoming or 5944
outgoing wide area transmission service or wide area transmission 5945
type service, including eight hundred or eight-hundred-type 5946
service, and receipts from private communications service. 5947

As used in this division, "receipts from sales to other 5948
telephone companies for resale" and "receipts from sales to 5949
providers of telecommunications service for resale" include, but 5950
are not limited to, receipts of carrier access charges. "Carrier 5951
access charges" means compensation paid to the taxpayer telephone 5952
company by another telephone company or by a provider of 5953
telecommunications service for the use of the taxpayer's 5954
facilities to originate or terminate telephone calls or 5955
telecommunications service. 5956

(2) The total gross receipts for such period from business 5957
done within this state. 5958

(H) In the case of all public utilities, except electric 5959
companies, rural electric companies, telegraph companies, and 5960
telephone companies: 5961

(1) The gross receipts of the company, actually received, 5962
from all sources for business done within this state for the year 5963
next preceding the first day of May, including the company's 5964
proportion of gross receipts for business done by it within this 5965
state in connection with other companies, firms, corporations, 5966
persons, or associations, but excluding all of the following: 5967

(a) Receipts from interstate business or business done for 5968
the federal government; 5969

(b) Receipts from sales to other public utilities for resale, 5970
provided such other public utility is required to file a statement 5971
pursuant to section 5727.31 of the Revised Code; 5972

(c) ~~For the year ending April 30, 1990, and each subsequent~~ 5973

~~year, receipts from the transmission or delivery of electricity to 5974~~
~~or for a rural electric company, provided that the electricity 5975~~
~~that has been so transmitted or delivered is for resale by the 5976~~
~~rural electric company; 5977~~

~~(d) Receipts of an electric company, derived from the 5978~~
~~provision of electricity and other services to a qualified former 5979~~
~~owner of the production facilities which generated the electricity 5980~~
~~from which those receipts were derived. As used in this division, 5981~~
~~a "qualified former owner" means a person who meets both of the 5982~~
~~following conditions: 5983~~

~~(i) On or before October 11, 1991, the person had sold to an 5984~~
~~electric company part of the production facility at which the 5985~~
~~electricity is generated, and, for at least twenty years prior to 5986~~
~~that sale, the facility was used to generate electricity, but it 5987~~
~~was not owned in whole or in part during that period by an 5988~~
~~electric company. 5989~~

~~(ii) At the time the electric company provided the 5990~~
~~electricity or other services for which the exclusion is claimed, 5991~~
~~the person, or a successor or assign of the person, owned not less 5992~~
~~than a twenty per cent ownership of the production facility and 5993~~
~~the rights to not less than twenty per cent of the production of 5994~~
~~that facility; and the person, or a successor or assign of the 5995~~
~~person, engaged primarily in a business other than providing 5996~~
~~electricity to others. 5997~~

~~(e) Receipts of a natural gas company of amounts billed on 5998~~
~~behalf of other entities. Transportation and billing and 5999~~
~~collection fees charged to other entities shall be included in the 6000~~
~~gross receipts of a natural gas company. 6001~~

~~(2) The total gross receipts of such company for such period 6002~~
~~in this state from business done within the state. 6003~~

~~The reports required by section 5727.31 of the Revised Code 6004~~

shall contain: 6005

(a) The name and principal mailing address of the company; 6006

(b) The total amount of the gross receipts excise taxes 6007
charged or levied as based upon its last preceding annual 6008
statement filed prior to the first day of January of the year in 6009
which such report is filed; 6010

(c) The amount of the excise taxes due with the report as 6011
provided by section 5727.31 of the Revised Code. 6012

Sec. 5727.33. (A) For the purpose of computing the public 6013
utility excise tax, the tax commissioner shall ascertain and 6014
determine the entire gross receipts actually received from all 6015
sources, excluding the receipts described in divisions (B), (C), 6016
~~and (D), and (E)~~ of this section, of each ~~electric, rural~~ 6017
~~electric,~~ natural gas, pipe-line, water-works, heating, and water 6018
transportation company for business done within this state for the 6019
year ending on the thirtieth day of April, and of each telegraph 6020
and telephone company for business done within this state for the 6021
year ending on the thirtieth day of June. 6022

(B) In ascertaining and determining the gross receipts of 6023
each of the companies named in this section, the commissioner 6024
shall exclude all of the following: 6025

(1) All receipts derived wholly from interstate business; 6026

(2) All receipts derived wholly from business done for or 6027
with the federal government; 6028

(3) ~~For the year ending April 30, 1990, and each subsequent~~ 6029
~~year, all receipts derived wholly from the transmission or~~ 6030
~~delivery of electricity to or for a rural electric company,~~ 6031
~~provided that the electricity that has been so transmitted or~~ 6032
~~delivered is for resale by the rural electric company;~~ 6033

~~(4)~~ All receipts from the sale of merchandise; 6034

~~(5)~~~~(4)~~ All receipts from sales to other public utilities, 6035
except railroad, telegraph, and telephone companies, for resale, 6036
provided the other public utility is required to file a statement 6037
pursuant to section 5727.31 of the Revised Code. 6038

(C) In ascertaining and determining the gross receipts of a 6039
telephone company, the commissioner shall exclude all of the 6040
following: 6041

~~(1) For the year ending June 30, 1988, and each subsequent~~ 6042
~~year, receipts~~ Receipts of amounts billed on behalf of other 6043
entities; 6044

~~(2) For the year ending June 30, 1988, and each subsequent~~ 6045
~~year, receipts~~ Receipts from sales to other telephone companies 6046
for resale, as defined in division (G) of section 5727.32 of the 6047
Revised Code; 6048

~~(3) For the year ending June 30, 1990, and each subsequent~~ 6049
~~year, receipts~~ Receipts from incoming or outgoing wide area 6050
transmission service or wide area transmission type service, 6051
including eight hundred or eight-hundred-type service; 6052

~~(4) For the year ending June 30, 1990, and each subsequent~~ 6053
~~year, receipts~~ Receipts from private communications service as 6054
described in division (AA)(2) of section 5739.01 of the Revised 6055
Code; 6056

~~(5) For the year ending June 30, 1990, and each subsequent~~ 6057
~~year, receipts~~ Receipts from sales to providers of 6058
telecommunications service for resale, as defined in division (G) 6059
of section 5727.32 of the Revised Code. 6060

~~(D) In ascertaining and determining the gross receipts of an~~ 6061
~~electric company, the commissioner shall exclude receipts derived~~ 6062
~~from the provision of electricity and other services to a~~ 6063

~~qualified former owner of the production facilities which~~ 6064
~~generated the electricity from which those receipts were derived.~~ 6065
~~As used in this division, a "qualified former owner" means a~~ 6066
~~person who meets both of the following conditions:~~ 6067

~~(1) On or before October 11, 1991, the person had sold to an~~ 6068
~~electric company part of the production facility at which the~~ 6069
~~electricity is generated, and, for at least twenty years prior to~~ 6070
~~that sale, the facility was used to generate electricity, but it~~ 6071
~~was not owned in whole or in part during that period by an~~ 6072
~~electric company.~~ 6073

~~(2) At the time the electric company provided the electricity~~ 6074
~~or other services for which the exclusion is claimed, the person,~~ 6075
~~or a successor or assign of the person, owned not less than a~~ 6076
~~twenty per cent ownership of the production facility and the~~ 6077
~~rights to not less than twenty per cent of the production of that~~ 6078
~~facility.~~ 6079

~~(E)~~ In ascertaining and determining the gross receipts of a 6080
natural gas company, the commissioner shall exclude receipts of 6081
amounts billed on behalf of other entities. Transportation and 6082
billing and collection fees charged to other entities shall be 6083
included in the gross receipts of a natural gas company. 6084

The amount ascertained by the commissioner under this 6085
section, less a deduction of twenty-five thousand dollars, shall 6086
be the gross receipts of such companies for business done within 6087
this state for that year. 6088

Sec. 5727.38. On or before the first Monday of November, 6089
annually, the tax commissioner shall assess an excise tax against 6090
each public utility ~~except railroad companies~~ subject to the 6091
excise tax under section 5727.30 of the Revised Code. The tax 6092
shall be computed by multiplying the gross receipts as determined 6093
by the commissioner under section 5727.33 of the Revised Code by 6094

six and three-fourths per cent in the case of pipe-line companies 6095
and four and three-fourths per cent in the case of all other 6096
companies. The minimum tax for any such company for owning 6097
property or doing business in this state shall be ~~ten~~ fifty 6098
dollars. The assessment shall be certified to the taxpayer and 6099
treasurer of state. 6100

Sec. 5727.42. (A) The treasurer of state shall maintain a 6101
list of all ~~excise~~ taxes levied and payments made pursuant to ~~this~~ 6102
~~chapter~~ the annual excise tax imposed by section 5727.30 of the 6103
Revised Code. The treasurer of state shall collect and the 6104
taxpayer shall pay all taxes and any penalties thereon. Payments 6105
may be made by mail, in person, by electronic funds transfer if 6106
required to do so by section 5727.311 of the Revised Code, or by 6107
any other means authorized by the treasurer of state. The 6108
treasurer of state may adopt rules concerning the methods and 6109
timeliness of payment. 6110

(B) Each tax bill issued pursuant to this section shall 6111
separately reflect the taxes due, due date, and any other 6112
information considered necessary. Except as otherwise provided in 6113
division (F) of this section, the last day on which payment may be 6114
made without penalty shall be at least twenty but not more than 6115
thirty days from the date of mailing the tax bill. The treasurer 6116
of state shall mail the tax bill, and the mailing thereof shall be 6117
prima-facie evidence of receipt thereof by the taxpayer. 6118

(C) The treasurer of state shall refund taxes as provided in 6119
this section, but no refund shall be made to a taxpayer having a 6120
delinquent claim certified pursuant to this section that remains 6121
unpaid. The treasurer of state may consult the attorney general 6122
regarding such claims. 6123

(D) Within twenty days after receipt of any excise tax 6124

assessment certified to ~~him~~ the treasurer of state, the treasurer
of state shall: 6125
6126

(1) Ascertain the difference between the total taxes shown on 6127
such assessment and the sum of all ~~advance~~ estimated payments, 6128
exclusive of any penalties thereon, previously made for that year. 6129

(2) If the difference is a deficiency, the treasurer of state 6130
shall issue a tax bill. 6131

(3) If the difference is an excess, the treasurer of state 6132
shall certify the name of the taxpayer and the amount to be 6133
refunded to the director of budget and management for payment to 6134
the taxpayer. 6135

If the taxpayer has a deficiency for one tax year and an 6136
excess for another tax year, or any combination thereof for more 6137
than two years, the treasurer of state may determine the net 6138
result and, depending on such result, proceed to mail a tax bill 6139
or certify a refund. 6140

(E) If a taxpayer fails to pay all taxes on or before the due 6141
date shown on the tax bill, or fails to make an ~~advance~~ estimated 6142
payment on or before the due date prescribed in division (B) of 6143
section 5727.31 of the Revised Code, but makes payment within ten 6144
calendar days of such date, the treasurer of state shall add a 6145
penalty equal to five per cent of the amount that should have been 6146
timely paid. If payment is not made within ten days of such date, 6147
the treasurer of state shall add a penalty equal to fifteen per 6148
cent of the amount that should have been timely paid. The 6149
treasurer of state shall prepare a delinquent claim for each tax 6150
bill on which penalties were added and certify such claims to the 6151
attorney general and tax commissioner. The attorney general shall 6152
proceed to collect the delinquent taxes and penalties thereon in 6153
the manner prescribed by law and notify the treasurer of state and 6154
tax commissioner of all collections. 6155

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

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

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

Sec. 5727.47. A copy of each assessment certified pursuant to
section 5727.23, ~~5727.231,~~ or 5727.38 of the Revised Code shall be
mailed to the public utility, and its mailing shall be prima-facie
evidence of its receipt by the public utility to which it is

addressed. If a public utility objects to any assessment certified 6186
to it pursuant to such sections, it may file a petition for 6187
reassessment with the tax commissioner. The petition must be made 6188
in writing, signed by the authorized agent of the utility having 6189
knowledge of the facts, and filed with the commissioner, in person 6190
or by certified mail, within thirty days from the date that the 6191
assessment was mailed. If the petition is filed by certified mail, 6192
the date of the United States postmark placed on the sender's 6193
receipt by the postal employee to whom the petition is presented 6194
shall be treated as the date of filing. A true copy of the 6195
assessment objected to shall be attached to the petition and shall 6196
be incorporated by reference into the petition, but the failure to 6197
attach a copy of the assessment and incorporate it by reference 6198
does not invalidate the petition. The petition also shall indicate 6199
the utility's objections, but additional objections may be raised 6200
in writing if received prior to the date shown on the final 6201
determination by the commissioner. 6202

Notwithstanding the fact that a petition has been filed, the 6203
tax with respect to the assessment objected to shall be paid as 6204
required by law. The acceptance of the tax payment by the 6205
treasurer of state or any county treasurer shall not prejudice any 6206
claim for taxes on final determination by the commissioner or 6207
final decision by the board of tax appeals or any court. 6208

Upon receipt of a properly filed petition, the commissioner 6209
shall notify the treasurer of state or the auditor of each county 6210
to which the assessment objected to has been certified. 6211

Unless the petitioner waives a hearing, the commissioner 6212
shall assign a time and place for the hearing on the petition and 6213
notify the petitioner of the time and place of the hearing by 6214
personal service or certified mail, but the commissioner may 6215
continue the hearing from time to time if necessary. 6216

The commissioner may make such correction to the assessment 6217
as ~~he~~ the commissioner finds proper. The commissioner shall serve 6218
a copy of ~~his~~ the commissioner's final determination on the 6219
petitioner by personal service or certified mail, and ~~his~~ the 6220
commissioner's decision in the matter shall be final, subject to 6221
appeal as provided in section 5717.02 of the Revised Code. The 6222
commissioner also shall transmit a copy of ~~his~~ the final 6223
determination to the treasurer of state or applicable county 6224
auditor. In the absence of any further appeal, or when a decision 6225
of the board of tax appeals or of any court to which the decision 6226
has been appealed becomes final, the commissioner shall notify the 6227
public utility and, as appropriate, the treasurer of state who 6228
shall proceed under section 5727.42 of the Revised Code, or the 6229
applicable county auditor who shall proceed under section 5727.471 6230
of the Revised Code. The notification is not subject to further 6231
appeal. 6232

Sec. 5727.53. The taxes, fees, and penalties provided by 6233
~~sections 5727.01 to 5727.62, inclusive, of the Revised Code, this~~ 6234
~~chapter that are remitted to the treasurer of state~~ may be 6235
recovered by an action brought in the name of the state in the 6236
court of common pleas of Franklin ~~County~~ county, or of any county 6237
in which such public utility is doing business, or in which the 6238
line of any ~~street, suburban, or interurban railroad company or~~ 6239
railroad company is located, and such court of common pleas shall 6240
have jurisdiction of ~~such~~ the action regardless of the amount 6241
involved. The attorney general, on request of the tax 6242
commissioner, shall institute such action in the court of common 6243
pleas of Franklin ~~County~~ county or of any of such counties the 6244
commissioner directs. In any such action it shall be sufficient to 6245
allege that the tax, fee, or penalty sought to be recovered stands 6246
charged on the delinquent duplicate of the treasurer of state, and 6247
that the same has been unpaid for a period of thirty days after 6248

having been placed thereon. Sums recovered in any such action 6249
shall be paid into the state treasury ~~to the credit of the general~~ 6250
~~revenue fund in the same manner as the tax.~~ 6251

Sec. 5727.60. ~~If a public utility required to file a report~~ 6252
~~with the tax commissioner by sections 5727.02 to 5727.62,~~ 6253
~~inclusive, of the Revised Code, person fails to make such file a~~ 6254
~~report, it shall be subject to a penalty of ten dollars per day~~ 6255
~~for each day's omission after the time limited for making such~~ 6256
~~report within the time prescribed by section 5727.08 or 5727.31 of~~ 6257
~~the Revised Code, including any extensions of time granted by the~~ 6258
~~tax commissioner, a penalty of fifty dollars per month, not to~~ 6259
~~exceed five hundred dollars, may be imposed for each month or~~ 6260
~~fraction of a month elapsing between the due date of the report,~~ 6261
~~including any extensions, and the date the report was filed. The~~ 6262
~~penalty under this section for failing to file a report required~~ 6263
~~by section 5727.08 of the Revised Code shall be paid into the~~ 6264
~~state general revenue fund. If the penalty is not paid within~~ 6265
~~fifteen days after notice of the penalty is mailed to the person~~ 6266
~~who failed to timely file the report, the tax commissioner shall~~ 6267
~~certify the penalty as a claim to the attorney general for~~ 6268
~~collection. The penalty under this section for failing to file the~~ 6269
~~report required by section 5727.31 of the Revised Code shall be~~ 6270
~~deposited into the state treasury in the same manner as the tax is~~ 6271
~~deposited, and the commissioner may collect the penalty by~~ 6272
~~assessment pursuant to section 5727.38 of the Revised Code. The~~ 6273
~~tax commissioner may abate this penalty in full or in part.~~ 6274

Sec. 5727.61. Every public utility required by law to make 6275
returns, statements, or reports to the tax commissioner under 6276
sections 5727.01 to 5727.62 of the Revised Code shall file 6277
therewith, in such form as the commissioner prescribes, an 6278

affidavit subscribed and sworn to by a person or officer having 6279
knowledge of the facts setting forth that such public utility has 6280
not, during the preceding year, except as permitted by sections 6281
3517.082, 3599.03, and 3599.031 of the Revised Code, directly or 6282
indirectly paid, used or offered, consented, or agreed to pay or 6283
use any of its money or property for or in aid of or opposition to 6284
a political party, a candidate for election or nomination to 6285
public office, or a political action committee, legislative 6286
campaign fund, or organization that supports or opposes any such 6287
candidate or in any manner used any of its money or property for 6288
any partisan political purpose whatever, or for the reimbursement 6289
or indemnification of any person for money or property so used. 6290
Such forms of affidavit as the commissioner prescribes shall be 6291
attached to or made a part of the return, statement, or report 6292
required to be made by such public utility under sections 5727.01 6293
to 5727.62 of the Revised Code. 6294

Sec. 5727.72. No officer, employee, or agent of a ~~telegraph~~ 6295
~~or telephone company~~ person subject to this chapter shall refuse 6296
to attend before a ~~lawful board of appraisers and assessors~~ the 6297
department of taxation when required to do so, or refuse to bring 6298
with ~~him~~ the officer, employee, or agent and submit for inspection 6299
any books or papers of such ~~company~~ person in ~~his~~ the officer's, 6300
employee's, or agent's possession, custody, or control, or refuse 6301
to answer any questions put to ~~him~~ the officer, employee, or agent 6302
concerning the organization, business, or property of such ~~company~~ 6303
person. 6304

Sec. 5727.80. As used in sections 5727.80 to 5727.95 of the 6305
Revised Code: 6306

(A) "Electric distribution company" means either of the 6307
following: 6308

(1) A person who distributes electricity through a meter of 6309
an end user in this state; 6310

(2) The end user of electricity in this state, if the end 6311
user obtains electricity that is not distributed or transmitted to 6312
the end user by an electric distribution company that is required 6313
to remit the tax imposed by section 5727.81 of the Revised Code. 6314
"Electric distribution company" does not include the end user of 6315
electricity in this state who self-generates electricity that is 6316
used directly by that end user on the same site that the 6317
electricity is generated. 6318

(B) "Kilowatt hour" means one thousand watt hours of 6319
electricity. 6320

(C) "Meter of an end user in this state" means the last meter 6321
used to measure the kilowatt hours distributed by an electric 6322
distribution company to a location in this state, the last meter 6323
located outside of this state that is used to measure the kilowatt 6324
hours consumed at a location in this state, or, if no meter is 6325
used, the estimated kilowatt hours distributed to an unmetered 6326
location in this state. 6327

(D) "Person" has the same meaning as in section 5701.01 of 6328
the Revised Code, but also includes a political subdivision of the 6329
state. 6330

(E) "Municipal electric utility" means a municipal 6331
corporation that owns or operates a system for the distribution of 6332
electricity. 6333

(E) "Qualified end user" means an end user of electricity 6334
that uses more than three million kilowatt hours of electricity at 6335
one manufacturing location in this state for a calendar day for 6336
use in a manufacturing process that features an electrochemical 6337
reaction in which electrons from direct current electricity remain 6338
a part of the product being manufactured. 6339

(G) "Self-assessing purchaser" means a purchaser that meets 6340
all the requirements of, and pays the excise tax in accordance 6341
with, division (C) of section 5727.81 of the Revised Code. 6342

(H) "SIX MONTH REVENUE DIFFERENTIAL FOR SELF-ASSESSING 6343
PURCHASERS" MEANS THIRTY-ONE MILLION SIX HUNDRED FIFTY THOUSAND 6344
DOLLARS LESS THE AMOUNT PAID UNDER DIVISION (C)(1)(a) OF SECTION 6345
5727.81 OF THE REVISED CODE BY ALL SELF-ASSESSING PURCHASERS FOR 6346
THE SIX-MONTH PERIOD ENDING IN THE MONTH PRIOR TO THE DATE OF THE 6347
CALCULATIONS REQUIRED UNDER DIVISIONS (C)(1)(b) AND (c) OF SECTION 6348
5727.81 OF THE REVISED CODE. 6349

(I) "TWELVE MONTH REVENUE DIFFERENTIAL FOR SELF-ASSESSING 6350
PURCHASERS" MEANS SIXTY-THREE MILLION THREE HUNDRED THOUSAND 6351
DOLLARS LESS THE AMOUNT PAID UNDER DIVISION (C)(1)(a) OF SECTION 6352
5727.81 OF THE REVISED CODE BY ALL SELF-ASSESSING PURCHASERS FOR 6353
THE TWELVE-MONTH PERIOD ENDING IN THE MONTH PRIOR TO THE DATE OF 6354
THE CALCULATION REQUIRED UNDER DIVISION (C)(1)(d) OF SECTION 6355
5727.81 OF THE REVISED CODE. 6356

Sec. 5727.81. (A) For the purpose of raising revenue for 6357
public education and state and local government operations, an 6358
excise tax is hereby levied and imposed on an electric 6359
distribution company for all electricity distributed by such 6360
company that has May 1, 2001, as part of its measurement period, 6361
at the following rates per kilowatt hour of electricity 6362
distributed in a thirty-day period by the company through a meter 6363
of an end user in this state: 6364

<u>KILOWATT HOURS DISTRIBUTED TO</u>	<u>RATE PER</u>	
<u>AN END USER</u>	<u>KILOWATT HOUR</u>	
<u>For the first 2,000</u>	<u>\$.00465</u>	6365
<u>For the next 2,001 to 15,000</u>	<u>\$.00419</u>	6366
<u>For 15,001 and above</u>	<u>\$.00363</u>	6367

The electric distribution company shall base the monthly tax 6370

on the kilowatt hours of electricity distributed to an end user 6371
through the meter of the end user that is not measured for a 6372
thirty-day period by dividing the days in the measurement period 6373
into the total kilowatt hours measured during the measurement 6374
period to obtain a daily average usage. The tax shall be 6375
determined by obtaining the sum of divisions (A)(1), (2), and (3) 6376
of this section and multiplying that amount by the number of days 6377
in the measurement period: 6378

(1) Multiplying \$0.00465 per kilowatt hour for the first 6379
sixty-seven kilowatt hours distributed using a daily average; 6380

(2) Multiplying \$0.00419 for the next sixty-eight to five 6381
hundred kilowatt hours distributed using a daily average; 6382

(3) Multiplying \$0.00363 for the remaining kilowatt hours 6383
distributed using a daily average. 6384

Except as provided in division (C) of this section, the 6385
electric distribution company shall pay the tax to the treasurer 6386
of state in accordance with section 5727.82 of the Revised Code. 6387

Only the distribution of electricity through a meter of an 6388
end user in this state shall be used by the electric distribution 6389
company to compute the amount or estimated amount of tax due. In 6390
the event a meter is not actually read for a measurement period, 6391
the estimated kilowatt hours distributed by an electric 6392
distribution company to collect its distribution charges may be 6393
used. 6394

(B) Except as provided in division (C) of this section, each 6395
electric distribution company shall pay the tax imposed by this 6396
section in all of the following circumstances: 6397

(1) The electricity is distributed by the company through a 6398
meter of an end user in this state; 6399

(2) the company is distributing electricity through a meter 6400

located in another state, but the electricity is consumed in this 6401
state in the manner prescribed by the tax commissioner; 6402

(3) the company is distributing electricity in this state 6403
without the use of a meter, but the electricity is consumed in 6404
this state as estimated and in the manner prescribed by the tax 6405
commissioner. 6406

(C)(1)(a) A commercial or industrial purchaser that receives 6407
electricity through a meter of an end user in this state and 6408
consumes, over the course of the previous calendar year, more than 6409
one hundred twenty million kilowatt hours of electricity may elect 6410
to self-assess the excise tax imposed by this section at the rate 6411
of \$.00075 per kilowatt hour and four per cent of the total price 6412
of electricity delivered through a meter of an end user in this 6413
state. Payment of the tax shall be made directly to the treasurer 6414
of state in accordance with divisions (A)(3) and (4) of section 6415
5727.82 of the Revised Code or, if the electric distribution 6416
company serving the self-assessing purchaser is a municipal 6417
electric utility and the purchaser is within the municipal 6418
corporation's corporate limits, to such municipal corporation's 6419
general fund in accordance with division (a)(2) of section 5727.82 6420
of the Revised Code, and upon paying in this manner, the 6421
self-assessing purchaser shall not be required to pay the excise 6422
tax to the electric distribution company from which its 6423
electricity is delivered. 6424

(b) ON OR BEFORE DECEMBER 10, 2001, THE TAX COMMISSIONER 6425
SHALL CALCULATE THE SIX MONTH REVENUE DIFFERENTIAL FOR 6426
SELF-ASSESSING PURCHASERS. IF THE SIX MONTH REVENUE DIFFERENTIAL 6427
IS GREATER THAN FIVE HUNDRED THOUSAND DOLLARS, THE TAX 6428
COMMISSIONER SHALL INCREASE THE PERCENTAGE OF TOTAL PRICE TAX RATE 6429
TO BE CHARGED FOR THE SIX-MONTH PERIOD BEGINNING IN THE MONTH 6430
FOLLOWING THAT IN WHICH THE CALCULATION IS DONE. THE NEW TAX RATE 6431
SHALL BE THE RATE IN EFFECT DURING THE CURRENT PERIOD MULTIPLIED 6432

BY THE SUM OF ONE PLUS THE PRODUCT OF (i) A FRACTION, THE 6433
NUMERATOR OF WHICH IS THE SIX MONTH REVENUE DIFFERENTIAL 6434
MULTIPLIED BY TWO AND THE DENOMINATOR OF WHICH IS THE AMOUNT PAID 6435
DURING THE PERIOD BY ALL SELF-ASSESSING PURCHASERS ON THE 6436
PERCENTAGE OF TOTAL PRICE BASIS AND (ii) A FRACTION, THE NUMERATOR 6437
OF WHICH IS TOTAL KILOWATT HOURS CONSUMED DURING THE PERIOD BY 6438
SELF-ASSESSING PURCHASERS AND THE DENOMINATOR OF WHICH IS ELEVEN 6439
BILLION TWENTY-FIVE MILLION. 6440

IF THE SIX MONTH REVENUE DIFFERENTIAL IS LESS THAN NEGATIVE 6441
FIVE HUNDRED THOUSAND DOLLARS, THE TAX COMMISSIONER SHALL DECREASE 6442
THE PERCENTAGE OF TOTAL PRICE TAX RATE TO BE CHARGED FOR THE SIX 6443
MONTH PERIOD BEGINNING IN THE MONTH FOLLOWING THAT IN WHICH THE 6444
CALCULATION IS MADE. THE NEW TAX RATE SHALL BE THE RATE IN EFFECT 6445
DURING THE CURRENT PERIOD MULTIPLIED BY THE SUM OF ONE PLUS THE 6446
PRODUCT OF (i) A FRACTION, THE NUMERATOR OF WHICH IS THE SIX MONTH 6447
REVENUE DIFFERENTIAL MULTIPLIED BY TWO AND THE DENOMINATOR OF 6448
WHICH IS THE AMOUNT PAID DURING THE PERIOD BY ALL SELF-ASSESSING 6449
PURCHASERS ON THE PERCENTAGE OF TOTAL PRICE BASIS AND (ii) A 6450
FRACTION, THE NUMERATOR OF WHICH IS ELEVEN BILLION TWENTY-FIVE 6451
MILLION AND THE DENOMINATOR OF WHICH IS TOTAL KILOWATT HOURS 6452
CONSUMED DURING THE PERIOD BY SELF-ASSESSING PURCHASERS. 6453

(c) ON OR BEFORE JUNE 10, 2002, THE TAX COMMISSIONER SHALL 6454
CALCULATE THE SIX MONTH REVENUE DIFFERENTIAL FOR SELF-ASSESSING 6455
PURCHASERS. IF THE SIX MONTH REVENUE DIFFERENTIAL IS GREATER THAN 6456
FIVE HUNDRED THOUSAND DOLLARS, THE TAX COMMISSIONER SHALL INCREASE 6457
THE PERCENTAGE OF TOTAL PRICE TAX RATE TO BE CHARGED FOR THE 6458
TWELVE MONTH PERIOD BEGINNING IN THE MONTH FOLLOWING THAT IN WHICH 6459
THE CALCULATION IS MADE. THE NEW TAX RATE SHALL BE THE RATE IN 6460
EFFECT DURING THE CURRENT PERIOD MULTIPLIED BY THE SUM OF ONE PLUS 6461
THE PRODUCT OF (i) A FRACTION, THE NUMERATOR OF WHICH IS THE SIX 6462
MONTH REVENUE DIFFERENTIAL AND THE DENOMINATOR OF WHICH IS THE 6463
AMOUNT PAID DURING THE PERIOD BY ALL SELF-ASSESSING PURCHASERS ON 6464

THE PERCENTAGE OF TOTAL PRICE BASIS AND (ii) A FRACTION, THE 6465
NUMERATOR OF WHICH IS TOTAL KILOWATT HOURS CONSUMED DURING THE 6466
PERIOD BY SELF-ASSESSING PURCHASERS AND THE DENOMINATOR OF WHICH 6467
IS ELEVEN BILLION TWENTY-FIVE MILLION. 6468

IF THE SIX MONTH REVENUE DEFERENTIAL IS LESS THAN NEGATIVE 6469
FIVE HUNDRED THOUSAND DOLLARS, THE TAX COMMISSIONER SHALL DECREASE 6470
THE PERCENTAGE OF TOTAL PRICE TAX RATE TO BE CHARGED FOR THE 6471
TWELVE MONTH PERIOD BEGINNING IN THE MONTH FOLLOWING THAT IN WHICH 6472
THE CALCULATION IS MADE. THE NEW TAX RATE SHALL BE THE RATE IN 6473
EFFECT DURING THE CURRENT PERIOD MULTIPLIED BY THE SUM OF ONE PLUS 6474
THE PRODUCT OF (i) A FRACTION, THE NUMERATOR OF WHICH IS THE SIX 6475
MONTH REVENUE DIFFERENTIAL AND THE DENOMINATOR OF WHICH IS THE 6476
AMOUNT PAID DURING THE PERIOD BY ALL SELF-ASSESSING PURCHASERS ON 6477
THE PERCENTAGE OF TOTAL PRICE BASIS AND (ii) A FRACTION, THE 6478
NUMERATOR OF WHICH IS ELEVEN BILLION TWENTY-FIVE MILLION AND THE 6479
DENOMINATOR OF WHICH IS TOTAL KILOWATT HOURS CONSUMED DURING THE 6480
PERIOD BY SELF-ASSESSING PURCHASERS. 6481

(d) ON OR BEFORE JUNE 10, 2003, 2004, 2005, 2006, AND 2007, 6482
THE TAX COMMISSIONER SHALL CALCULATE THE TWELVE MONTH REVENUE 6483
DIFFERENTIAL FOR SELF-ASSESSING PURCHASERS. IF THE TWELVE MONTH 6484
REVENUE DIFFERENTIAL IS GREATER THAN ONE MILLION DOLLARS, THE TAX 6485
COMMISSIONER SHALL INCREASE THE PERCENTAGE OF TOTAL PRICE TAX RATE 6486
TO BE CHARGED FOR THE TWELVE MONTH PERIOD BEGINNING IN THE MONTH 6487
FOLLOWING THAT IN WHICH THE CALCULATION IS MADE, EXCEPT THAT THE 6488
RATE CALCULATED IN 2007 SHALL BECOME THE PERMANENT TAX RATE. IN 6489
EACH YEAR, THE NEW TAX RATE SHALL BE THE RATE IN EFFECT DURING THE 6490
CURRENT PERIOD MULTIPLIED BY THE SUM OF ONE PLUS A FRACTION, THE 6491
NUMERATOR OF WHICH IS THE TWELVE MONTH REVENUE DIFFERENTIAL AND 6492
THE DENOMINATOR OF WHICH IS THE AMOUNT PAID DURING THE PERIOD BY 6493
ALL SELF-ASSESSING PURCHASERS ON THE PERCENTAGE OF TOTAL PRICE 6494
BASIS. 6495

IF THE REVENUE DIFFERENTIAL IS LESS THAN NEGATIVE ONE MILLION 6496

DOLLARS, THE TAX COMMISSIONER SHALL DECREASE THE PERCENTAGE OF
TOTAL PRICE TAX RATE TO BE CHARGED FOR THE TWELVE MONTH PERIOD
BEGINNING IN THE MONTH FOLLOWING THAT IN WHICH THE CALCULATION IS
MADE, EXCEPT THAT THE RATE CALCULATED IN 2007 SHALL BECOME THE
PERMANENT TAX RATE. IN EACH YEAR, THE NEW TAX RATE SHALL BE THE
RATE IN EFFECT DURING THE CURRENT PERIOD MULTIPLIED BY THE SUM OF
ONE PLUS A FRACTION, THE NUMERATOR OF WHICH IS THE TWELVE MONTH
REVENUE DIFFERENTIAL AND THE DENOMINATOR OF WHICH IS THE AMOUNT
PAID DURING THE PERIOD BY ALL SELF-ASSESSING PURCHASERS ON THE
PERCENTAGE OF PRICE BASIS.

(2) Application for registration as a self-assessing
purchaser shall be made on a form prescribed by the tax
commissioner. At the time of making the application and by the
first day of May of each year, excluding May 1, 2000, a
self-assessing purchaser shall pay a fee of five hundred dollars
to the Treasurer of State for deposit to the kilowatt hour excise
tax administration fund, which is hereby created in the state
treasury. Money in the fund shall be used to defray the tax
commissioner's cost in administering the tax owed under section
5727.81 of the Revised Code by self-assessing purchasers. After
the application is approved by the tax commissioner, the
registration shall remain in effect until canceled by the
registrant upon written notification to the commissioner of the
election to pay the tax in accordance with division (A) of this
section, or by the tax commissioner for not paying the tax or fee
under division (C) of this section, or meeting the qualifications
in division (C)(1) of this section. The tax commissioner shall
give written notice to the electric distribution company from
which electricity is delivered to a self-assessing purchaser of
the purchaser's self-assessing status, and the electric
distribution company is relieved of the obligation to pay the tax
imposed by division (A) of this section for electricity

distributed to that self-assessing purchaser until it is notified 6529
by the tax commissioner that the self-assessing purchaser's 6530
registration is CANCELED. Within fifteen days of notification of 6531
the CANCELED registration, the electric distribution company shall 6532
be responsible for payment of the tax imposed by division (A) of 6533
this section on electricity distributed to a purchaser that is no 6534
longer registered as a self-ASSESSING purchaser. A self-assessing 6535
purchaser with a CANCELED registration must file a report and 6536
remit the tax imposed by division (A) of this section on all 6537
electricity it receives for any measurement period prior to the 6538
tax being reported and paid by the electric distribution company. 6539
A self-assessing purchaser whose registration is CANCELED by the 6540
tax commissioner is not eligible to register as a self-assessing 6541
purchaser for two years after the registration is CANCELED. 6542

(D) The tax imposed by this section does not apply to the 6543
distribution of any kilowatt hours of electricity to the federal 6544
government, to an end user located at a federal facility that uses 6545
electricity for the enrichment of uranium, or to an end user for 6546
any day the end user is a qualified end user. The exemption under 6547
this division for a qualified end user only applies to the 6548
manufacturing location where the qualified end user uses more than 6549
three million kilowatt hours per day. 6550

Sec. 5727.82. (A)(1) Except as provided in divisions (A)(2) 6551
and (D) of this section, by the twentieth day of each month, each 6552
electric distribution company required to pay the tax imposed by 6553
section 5727.81 of the Revised Code shall file with the treasurer 6554
of state a return as prescribed by the tax commissioner and shall 6555
make payment of the full amount of tax due for the preceding 6556
month. The first payment of this tax shall be made on or before 6557
June 20, 2001. 6558

(2) If the electric distribution company required to pay the 6559

tax imposed by section 5727.81 of the Revised Code is a municipal 6560
electric utility, it may retain in its general fund that portion 6561
of the tax on the kilowatt hours distributed to end users located 6562
within the boundaries of the municipal corporation. However, the 6563
municipal electric utility shall make payment in accordance with 6564
division (A)(1) of this section of the tax due on the kilowatt 6565
hours distributed to end users located outside the boundaries of 6566
the municipal corporation. 6567

(3) By the twentieth day of each month, each self-assessing 6568
purchaser that under division (C) of section 5727.81 of the 6569
Revised Code pays directly to the treasurer of state the tax 6570
imposed by section 5727.81 of the Revised Code shall file with the 6571
treasurer of state a return as prescribed by the tax commissioner 6572
and shall make payment of the full amount of the tax due for the 6573
preceding month. 6574

(4) As prescribed by the tax commissioner, the return shall 6575
be signed by the company or self-assessing purchaser required to 6576
file it, or an authorized employee, officer, or agent of the 6577
company or purchaser. The treasurer of state shall mark on the 6578
return the date it was received and indicate payment or nonpayment 6579
of the tax shown to be due on the return. The treasurer of state 6580
immediately shall transmit all returns to the tax commissioner. 6581
The return shall be deemed filed when received by the treasurer of 6582
state. 6583

(B) Any electric distribution company or self-assessing 6584
purchaser required by this section to file a return who fails to 6585
file it and pay the tax within the period prescribed shall pay an 6586
additional charge of fifty dollars or ten per cent of the tax 6587
required to be paid for the reporting period, whichever is 6588
greater. The tax commissioner may collect the additional charge by 6589
assessment pursuant to section 5727.89 of the Revised Code. The 6590
commissioner may abate all or a portion of the additional charge 6591

and may adopt rules governing such abatements. 6592

(C) If any tax due is not paid timely in accordance with this 6593
section, the electric distribution company or self-assessing 6594
purchaser liable for the tax shall pay interest, calculated at the 6595
rate per annum prescribed by section 5703.47 of the Revised Code, 6596
from the date the tax payment was due to the date of payment or to 6597
the date an assessment is issued, whichever occurs first. Interest 6598
shall be paid in the same manner as the tax, and the commissioner 6599
may collect the interest by assessment pursuant to section 5727.89 6600
of the Revised Code. 6601

(D) Not later than the tenth day of each month, a qualified 6602
end user shall report in writing to the electric distribution 6603
company that distributes electricity to the end user the kilowatt 6604
hours that were consumed as a qualified end user for the prior 6605
month and the number of days, if any, on which the end user was 6606
not a qualified end user. For each calendar day the end user was 6607
not a qualified end user, the end user shall report in writing to 6608
the electric distribution company the number of kilowatt hours 6609
used on that day, and the electric distribution company shall pay 6610
the tax imposed under section 5727.81 of the Revised Code on each 6611
kilowatt hour that was not distributed to a qualified end user. 6612
The electric distribution company may rely in good faith on a 6613
qualified end user's report filed under this division. If it is 6614
determined that the end user was not a qualified end user for any 6615
calendar day or the quantity of electricity used by the qualified 6616
end user was overstated, the tax commissioner shall assess and 6617
collect any tax imposed under section 5727.81 of the Revised Code 6618
directly from the qualified end user. As requested by the 6619
commissioner, each end user reporting to an electric distribution 6620
company that it is a qualified end user shall provide 6621
documentation to the commissioner that establishes the volume of 6622
electricity consumed daily by the qualified end user. 6623

Sec. 5727.83. (A) an electric distribution company or 6624
self-assessing purchaser shall remit each monthly tax payment by 6625
electronic funds transfer as prescribed by divisions (B) and (C) 6626
of this section. 6627

The tax commissioner shall notify each electric distribution 6628
company and self-assessing purchaser of the obligation to remit 6629
taxes by electronic funds transfer, shall maintain an updated list 6630
of those companies and purchasers, and shall timely certify to the 6631
treasurer of state the list and any additions thereto or deletions 6632
therefrom. Failure by the tax commissioner to notify a company or 6633
self-assessing purchaser subject to this section to remit taxes by 6634
electronic funds transfer does not relieve the company or 6635
self-assessing purchaser of its obligation to remit taxes in that 6636
manner. 6637

(B) An electric distribution company or self-assessing 6638
purchaser required by this section to remit payments by electronic 6639
funds transfer shall remit such payments to the treasurer of state 6640
in the manner prescribed by rules adopted by the treasurer of 6641
state under section 113.061 of the Revised Code, and on or before 6642
the dates specified under section 5727.82 of the Revised Code. The 6643
payment of taxes by electronic funds transfer does not affect a 6644
company's or self-assessing purchaser's obligation to file the 6645
monthly return as required under section 5727.82 of the Revised 6646
Code. 6647

(C) An electric distribution company or self-assessing 6648
purchaser required by this section to remit taxes by electronic 6649
funds transfer may apply to the treasurer of state in the manner 6650
prescribed by the treasurer of state to be excused from that 6651
requirement. The treasurer of state may excuse the company or 6652
self-assessing purchaser from remittance by electronic funds 6653
transfer for good cause shown for the period of time requested by 6654

the company or self-assessing purchaser or for a portion of that 6655
period. The treasurer of state shall notify the tax commissioner 6656
and the company or self-assessing purchaser of the treasurer of 6657
state's decision as soon as is practicable. 6658

(D) If an electric distribution company or self-assessing 6659
purchaser required by this section to remit taxes by electronic 6660
funds transfer remits those taxes by some means other than by 6661
electronic funds transfer as prescribed by this section and the 6662
rules adopted by the treasurer of state, and the treasurer of 6663
state determines that such failure was not due to reasonable cause 6664
or was due to willful neglect, the treasurer of state shall notify 6665
the tax commissioner of the failure to remit by electronic funds 6666
transfer and shall provide the commissioner with any information 6667
used in making that determination. The tax commissioner may 6668
collect an additional charge by assessment in the manner 6669
prescribed by section 5727.89 of the Revised Code. The additional 6670
charge shall equal five per cent of the amount of the taxes 6671
required to be paid by electronic funds transfer, but shall not 6672
exceed five thousand dollars. Any additional charge assessed under 6673
this section is in addition to any other penalty or charge imposed 6674
under this chapter, and shall be considered as revenue arising 6675
from the tax imposed under this chapter. The tax commissioner may 6676
abate all or a portion of such a charge and may adopt rules 6677
governing such abatements. 6678

No additional charge shall be assessed under this division 6679
against an electric distribution company or self-assessing 6680
purchaser that has been notified of its obligation to remit taxes 6681
under this section and that remits its first two tax payments 6682
after such notification by some means other than electronic funds 6683
transfer. The additional charge may be assessed upon the 6684
remittance of any subsequent tax payment that the company or 6685
purchaser remits by some means other than electronic funds 6686

transfer. 6687

Sec. 5727.84. (A) As used in this section and sections 6688
5727.85, 5727.86, and 5727.87 of the Revised Code: 6689

(1) "School district" means a city, local, or exempted 6690
village school district. 6691

(2) "Joint vocational school district" means a joint 6692
vocational school district created under section 3311.16 of the 6693
Revised Code, and includes a cooperative education school district 6694
created under section 3311.52 or 3311.521 of the Revised Code and 6695
a county school financing district created under section 3311.50 6696
of the Revised Code. 6697

(3) "Local taxing unit" means a subdivision or taxing unit, 6698
as defined in section 5705.01 of the Revised Code, a park district 6699
created under Chapter 1545. of the Revised Code, or a township 6700
park district established under section 511.23 of the Revised 6701
Code, but excludes school districts and joint vocational school 6702
districts. 6703

(4) "State education aid" means the sum of the state basic 6704
aid and state special education aid amounts computed for a school 6705
district under divisions (A) and (B) of section 3317.022 of the 6706
Revised Code. 6707

(5) "State education aid offset" means the amount certified 6708
for each school district under division (A)(1) of section 5727.85 6709
of the Revised Code. 6710

(6) "Adjusted total taxable value" has the same meaning as in 6711
section 3317.02 of the Revised Code. 6712

(7) "Tax value loss" means the amount determined under 6713
division (C) of this section. 6714

(8) "Fixed-rate levy" means any tax levied on property other 6715

than a fixed-sum levy. 6716

(9) "Fixed-rate levy loss" means the amount determined under 6717
division (D) of this section. 6718

(10) "Fixed-sum levy" means a tax levied on property at 6719
whatever rate is required to produce a specified amount of tax 6720
money or to pay debt charges, and includes school district 6721
emergency levies imposed pursuant to section 5705.194 of the 6722
Revised Code. 6723

(11) "Fixed-sum levy loss" means the amount determined under 6724
division (E) of this section. 6725

(12) "Consumer price index" means the consumer price index 6726
(all items, all urban consumers) prepared by the bureau of labor 6727
statistics of the United States department of labor. 6728

(B) All money arising from the tax imposed by section 5727.81 6729
of the Revised Code shall be credited as follows: 6730

(1) Fifty-nine and nine hundred seventy-six one-THOUSANDTHS 6731
per cent, plus an amount equal to the state education aid offset, 6732
shall be credited to the general revenue fund. 6733

(2) Two and six hundred forty-six one-THOUSANDTHS per cent 6734
shall be credited to the local government fund, for distribution 6735
in accordance with section 5747.50 of the Revised Code. 6736

(3) Three hundred seventy-eight one-THOUSANDTHS per cent 6737
shall be credited to the local government revenue assistance fund, 6738
for distribution in accordance with section 5747.61 of the Revised 6739
Code. 6740

(4) Twenty-five and nine-tenths per cent, less an amount 6741
equal to the state education aid offset, shall be credited to the 6742
school district property tax replacement fund, which is hereby 6743
created in the state treasury for the purpose of making the 6744
payments described in section 5727.85 of the Revised Code. 6745

(5) Eleven and one-tenth per cent shall be credited to the 6746
local government property tax replacement fund, which is hereby 6747
created in the state treasury for the purpose of making the 6748
payments described in section 5727.86 of the Revised Code. 6749

(6) Beginning in the fiscal year in which payments are 6750
required to be made under sections 5727.85 and 5727.86 of the 6751
Revised Code, if the revenue arising from the tax levied by 6752
section 5727.81 of the Revised Code is less than five hundred 6753
fifty-two million dollars, the amount credited to the general 6754
revenue fund under DIVISION (B)(1) of this section shall be 6755
reduced by the amount necessary to credit TO EACH OF THE FUNDS IN 6756
divisions (B)(2),(3),(4), and (5) of this section THE AMOUNT IT 6757
WOULD HAVE RECEIVED IF the tax did raise five hundred fifty-two 6758
million dollars FOR THAT FISCAL YEAR. THE TAX COMMISSIONER SHALL 6759
CERTIFY TO THE DIRECTOR OF BUDGET AND MANAGEMENT THE AMOUNTS THAT 6760
SHALL BE CREDITED UNDER THIS DIVISION. 6761

(C) Not later than January 1, 2002, the tax commissioner 6762
shall determine for each taxing district its tax value loss, which 6763
is the sum of the amounts described in divisions (C)(1) and (2) of 6764
this section: 6765

(1) The difference obtained by subtracting the amount 6766
described in division (C)(1)(b) from the amount described in 6767
division (C)(1)(a) of this section. 6768

(a) The value of electric company and rural electric company 6769
tangible personal property as assessed by the tax commissioner for 6770
tax year 1998 on a preliminary assessment, or an amended 6771
preliminary assessment if issued prior to March 1, 1999, and as 6772
apportioned to the taxing district for tax year 1998; 6773

(b) The value of electric company and rural electric company 6774
tangible personal property as assessed by the tax commissioner for 6775
tax year 1998 had the property been apportioned to the taxing 6776

district for tax year 2001, and assessed at the rates in effect 6777
for tax year 2001. 6778

(2) The difference obtained by subtracting the amount 6779
described in division (C)(2)(b) from the amount described in 6780
division (C)(2)(a) of this section. 6781

(a) The three-year average for tax years 1996, 1997, and 1998 6782
of the assessed value from nuclear fuel materials and assemblies 6783
assessed against a person under Chapter 5711. of the Revised Code 6784
from the leasing of them to an electric company for those 6785
respective tax years, as reflected in the preliminary assessments; 6786
6787

(b) The three-year average assessed value from nuclear fuel 6788
materials and assemblies assessed under division (C)(2)(a) of this 6789
section for tax years 1996, 1997, and 1998, as reflected in the 6790
preliminary assessments, using an assessment rate of twenty-five 6791
per cent. 6792

The tax commissioner may request that electric companies and 6793
rural electric companies file a report to help determine the tax 6794
value loss under division (C) of this section. The report shall be 6795
filed within thirty days of the commissioner's request. A company 6796
that fails to file the report or does not timely file the report 6797
is subject to the penalty in section 5727.60 of the Revised Code. 6798
6799

(D) Not later than January 1, 2002, the tax commissioner 6800
shall determine for each school district, joint vocational school 6801
district, and local taxing unit its fixed-rate levy loss, which is 6802
its tax value loss multiplied by the tax rate in effect in tax 6803
year 1998 for fixed-rate levies. 6804

(E) Not later than January 1, 2002, the tax commissioner 6805
shall determine for each school district, joint vocational school 6806
district, and local taxing unit its fixed-sum levy loss, which is 6807

the amount obtained by subtracting the amount described in 6808
division (E)(2) of this section from the amount described in 6809
division (E)(1) of this section: 6810

(1) The tax value loss multiplied by the tax rate in effect 6811
in tax year 1998 for fixed-sum levies for all taxing districts 6812
within each school district, joint vocational school district, and 6813
local taxing unit. For the years 2002 through 2006, this 6814
computation shall include school district emergency levies that 6815
existed in 1998, and all other fixed-sum levies that existed in 6816
1998 and continue to be charged in the tax year preceding the 6817
distribution year. For the years 2007 through 2016, this 6818
computation shall exclude all school district emergency levies and 6819
all other fixed-sum levies that existed in 1998 but are no longer 6820
in effect in the tax year preceding the distribution year. 6821

(2) The total taxable value in tax year 1998 in each school 6822
district, joint vocational school district, and local taxing unit 6823
multiplied by one-fourth of one mill. 6824

If the computation under division (E) of this section for any 6825
school district, joint vocational school district, or local taxing 6826
unit is greater than zero, the one-fourth of one mill that is 6827
subtracted pursuant to division (E) of section 5727.85 of the 6828
Revised Code or division (A)(2) of section 5727.86 of the Revised 6829
Code shall be apportioned among all contributing fixed-sum levies 6830
in the proportion of each levy to the sum of all fixed-sum levies 6831
within each school district, joint vocational school district, or 6832
local taxing unit. 6833

(F) Notwithstanding divisions (C), (D), and (E) of this 6834
section, in computing the tax value loss, fixed-rate levy loss, 6835
and fixed-sum levy loss, the tax commissioner shall use the 6836
greater of the 1998 tax rate or the 1999 tax rate, but the 1999 6837
tax rate shall not include for this purpose any tax levy approved 6838

by the voters after June 30, 1999. 6839

Sec. 5727.85. (A) By the thirty-first day of July of each 6840
year, beginning in 2002 and ending in 2016, the department of 6841
education shall determine the following for each school district 6842
eligible for payment under division (C) of this section: 6843

(1) The state education aid offset, which is the difference 6844
obtained by subtracting the amount described in division (A)(1)(b) 6845
of this section from the amount described in division (A)(1)(a) of 6846
this section: 6847

(a) The state education aid computed for the school district 6848
for the current fiscal year on the basis of the adjusted total 6849
taxable value; 6850

(b) The state education aid that would be computed for the 6851
school district for the current fiscal year if the district's 6852
adjusted total taxable value included the tax value loss for all 6853
taxing districts in the school district. 6854

(2) The difference obtained by subtracting the state 6855
education aid offset determined under division (A)(1) of this 6856
section from the fixed-rate levy loss determined under division 6857
(D) of section 5727.84 of the Revised Code for all taxing 6858
districts in each school district. The department of education 6859
shall certify the amount so determined to the director of budget 6860
and management. 6861

(B) Not later than the thirty-first day of October of the 6862
years 2006 through 2016, the department of education shall 6863
determine all of the following for each school district: 6864

(1) The amount obtained by subtracting the district's state 6865
education aid computed for fiscal year 2002 from the district's 6866
state education aid computed for the current fiscal year; 6867

(2) The inflation-adjusted property tax loss. The 6868

inflation-adjusted property tax loss equals the fixed-rate levy 6869
loss determined under division (D) of section 5727.84 of the 6870
Revised Code for all taxing districts in each school district plus 6871
the product obtained by multiplying that loss by the cumulative 6872
percentage increase in the consumer price index from January 1, 6873
2002, to the thirtieth day of June of the current year. 6874

(3) The difference obtained by subtracting the amount 6875
computed under division (B)(1) from the amount of the 6876
inflation-adjusted property tax loss. If this difference is zero 6877
or a negative number, no further payments shall be made under 6878
division (C) of this section to the school district from the 6879
school district property tax replacement fund. If the difference 6880
is greater than zero, the department of education shall certify 6881
the amount calculated in division (A)(2) of this section to the 6882
director of budget and management not later than the thirty-first 6883
day of December of each year, beginning in 2006 and ending in 6884
2016. 6885

(C) For all taxing districts in each school district, the 6886
director of budget and management shall pay from the school 6887
district property tax replacement fund to the county undivided 6888
income tax fund in the proper county treasury all of the 6889
following: 6890

(1) In February 2002, one-half of the fixed-rate levy loss 6891
certified under division (D) of section 5727.84 of the Revised 6892
Code on or before the day prescribed for the settlement under 6893
division (A) of section 321.24 of the Revised Code. 6894

(2) From August 2002 through August 2006, one-half of the 6895
amount certified for that fiscal year under division (A)(2) of 6896
this section on or before each of the days prescribed for the 6897
settlements under divisions (A) and (C) of section 321.24 of the 6898
Revised Code. 6899

(3) From February 2007 through August 2016, one-half of the 6900
amount certified for that calendar year under division (B)(3) of 6901
this section on or before each of the days prescribed for the 6902
settlements under divisions (A) and (C) of section 321.24 of the 6903
Revised Code. 6904

The county treasurer shall distribute amounts paid under 6905
divisions (C)(1), (2), and (3) of this section to the proper 6906
school district as if they had been levied and collected as taxes, 6907
and the school district shall apportion the amounts so received 6908
among its funds in the same proportions as if those amounts had 6909
been levied and collected as taxes. 6910

(D) Not later than January 1, 2002, for all taxing districts 6911
in each joint vocational school district, the tax commissioner 6912
shall certify to the director of budget and management the 6913
fixed-rate levy loss determined under division (D) of section 6914
5727.84 of the Revised Code. From February 2002 to August 2016, 6915
the director shall pay from the school district property tax 6916
replacement fund to the county undivided income tax fund in the 6917
proper county treasury, one-half of the fixed-rate levy loss so 6918
certified for each year on or before each of the days prescribed 6919
for the settlements under divisions (A) and (C) of section 321.24 6920
of the Revised Code. The county treasurer shall distribute such 6921
amounts to the proper joint vocational school district as if they 6922
had been levied and collected as taxes, and the joint vocational 6923
school district shall apportion the amounts so received among its 6924
funds in the same proportions as if those amounts had been levied 6925
and collected as taxes. 6926

(E)(1) Not later than January 1, 2002, for each school 6927
district and joint vocational school district, the tax 6928
commissioner shall certify to the director of budget and 6929
management the fixed-sum levy loss determined under division (E) 6930
of section 5727.84 of the Revised Code. The certification shall 6931

cover a time period sufficient to include all fixed-sum levies in 6932
effect in 1998 to June 30, 1999, until they are no longer in 6933
effect. The director shall pay from the school district property 6934
tax replacement fund to the county undivided income tax fund in 6935
the proper county treasury one-half of the fixed-sum levy loss so 6936
certified for each year on or before each of the days prescribed 6937
for the settlements under divisions (A) and (C) of section 321.24 6938
of the Revised Code. The county treasurer shall distribute the 6939
amounts to the proper school district or joint vocational school 6940
district as if they had been levied and collected as taxes, and 6941
the district shall apportion the amounts so received among its 6942
funds in the same proportions as if those amounts had been levied 6943
and collected as taxes. No payments shall be made under this 6944
division once all fixed-sum levies in effect in 1998 to June 30, 6945
1999, are no longer in effect. 6946

(2) Beginning in 2003 and ending in 2016, by the thirty-first 6947
day of January of each year, the tax commissioner shall review the 6948
certification originally made under division (E)(1) of this 6949
section. If the commissioner determines that a fixed-sum levy that 6950
had been scheduled to be reimbursed in the current year has 6951
expired, a revised certification for that and all subsequent years 6952
shall be made to the director of budget and management. 6953

(F) By August 5, 2002, the tax commissioner shall estimate 6955
the amount of money in the school district property tax 6956
replacement fund in excess of the amount necessary to make 6957
payments in that month under divisions (C), (D), and (E) of this 6958
section. Notwithstanding division (C) of this section, the 6959
department of education, in consultation with the tax commissioner 6960
and from those excess funds, may pay any school district four and 6961
one-half times the amount certified under division (A)(2) of this 6962
section. Payments shall be made in order from the smallest annual 6963

loss to the largest annual loss. A payment made under this 6964
division shall be in lieu of the payment to be made in August 2002 6965
under division (C)(2) of this section. No payments shall be made 6966
in the manner established in this division to any school district 6967
with annual losses from permanent improvement fixed-rate levies in 6968
excess of twenty thousand dollars, or annual losses from any other 6969
fixed-rate levies in excess of twenty thousand dollars. A school 6970
district receiving a payment under this division is no longer 6971
entitled to any further payments under division (C) of this 6972
section. 6973

(G) On the thirty-first day of July of 2003, 2004, 2005, AND 6974
2006, and on the thirty-first day of January and July of 2007 and 6975
each year thereafter, if THE AMOUNT CREDITED TO THE SCHOOL 6976
DISTRICT PROPERTY TAX REPLACEMENT FUND EXCEEDS THE AMOUNT NEEDED 6977
TO make payments FROM THE FUND UNDER DIVISIONS (C), (D), and (E) 6978
OF THIS SECTION IN THE FOLLOWING MONTH, THE DIRECTOR OF BUDGET AND 6979
MANAGEMENT SHALL DISTRIBUTE THE EXCESS AMONG SCHOOL DISTRICTS AND 6980
JOINT VOCATIONAL SCHOOL DISTRICTS. The AMOUNT DISTRIBUTED TO EACH 6981
DISTRICT SHALL BEAR THE SAME PROPORTION TO THE EXCESS REMAINING IN 6982
THE FUND AS THE ADM OF THE DISTRICT BEARS TO THE ADM OF ALL OF THE 6983
DISTRICTS. For THE PURPOSE OF THIS DIVISION, "ADM" MEANS THE 6984
FORMULA ADM IN THE CASE OF A SCHOOL DISTRICT, AND THE AVERAGE 6985
DAILY MEMBERSHIP REPORTED UNDER SECTION 3317.03 OF THE REVISED 6986
CODE IN THE CASE OF A JOINT VOCATIONAL SCHOOL DISTRICT. 6987

If, IN THE OPINION OF THE DIRECTOR OF BUDGET AND MANAGEMENT, 6988
THE EXCESS REMAINING IN THE SCHOOL DISTRICT PROPERTY TAX 6989
REPLACEMENT FUND IN ANY YEAR IS NOT SUFFICIENT TO WARRANT 6990
DISTRIBUTION UNDER THIS DIVISION, THE EXCESS SHALL REMAIN TO THE 6991
CREDIT OF THE FUND. 6992

Amounts RECEIVED BY A SCHOOL DISTRICT OR JOINT VOCATIONAL 6993
SCHOOL DISTRICT UNDER THIS DIVISION SHALL BE USED EXCLUSIVELY FOR 6994
CAPITAL IMPROVEMENTS. 6995

(H) If THE TOTAL AMOUNT IN THE SCHOOL DISTRICT PROPERTY TAX 6996
REPLACEMENT FUND IS INSUFFICIENT TO MAKE ALL PAYMENTS UNDER 6997
DIVISIONS (C), (D), and (E) OF THIS SECTION, THE PAYMENTS REQUIRED 6998
UNDER DIVISION (E) OF THIS SECTION SHALL BE MADE FIRST IN THEIR 6999
ENTIRETY. AFTER ALL PAYMENTS ARE MADE UNDER DIVISION (E) OF THIS 7000
SECTION, PAYMENTS UNDER DIVISIONS (C) AND (D) OF THIS SECTION 7001
SHALL BE MADE FROM THE BALANCE OF MONEY AVAILABLE IN THE 7002
PROPORTION OF EACH SCHOOL DISTRICT'S OR JOINT VOCATIONAL SCHOOL 7003
DISTRICT'S payment AMOUNT TO THE TOTAL AMOUNT of payments UNDER 7004
DIVISIONS (C) AND (D) OF THIS SECTION. 7005

(I) If ALL OR A PART OF THE TERRITORY OF A SCHOOL DISTRICT OR 7006
JOINT VOCATIONAL SCHOOL DISTRICT IS MERGED WITH OR TRANSFERRED TO 7007
ANOTHER DISTRICT, THE TAX COMMISSIONER SHALL ADJUST THE PAYMENTS 7008
MADE UNDER THIS SECTION TO EACH OF THE DISTRICTS IN PROPORTION TO 7009
THE TAX VALUE LOSS APPORTIONED TO THE MERGED OR TRANSFERRED 7010
TERRITORY. 7011

(J) THERE IS HEREBY CREATED THE ELECTRIC PROPERTY TAX STUDY 7012
COMMITTEE, EFFECTIVE January 1, 2011. The COMMITTEE SHALL CONSIST 7013
OF THE FOLLOWING SEVEN MEMBERS: the TAX COMMISSIONER, THREE 7014
MEMBERS OF THE SENATE APPOINTED BY THE PRESIDENT OF THE SENATE, 7015
AND THREE MEMBERS OF THE HOUSE OF REPRESENTATIVES APPOINTED BY THE 7016
SPEAKER OF THE HOUSE OF REPRESENTATIVES. The APPOINTMENTS SHALL BE 7017
MADE NOT LATER THAN JANUARY 31, 2011. THE TAX COMMISSIONER SHALL 7018
BE THE CHAIRPERSON OF THE COMMITTEE. 7019

The COMMITTEE SHALL STUDY THE EXTENT TO WHICH EACH SCHOOL 7020
DISTRICT OR JOINT VOCATIONAL SCHOOL DISTRICT HAS BEEN COMPENSATED, 7021
UNDER SECTIONS 5727.84 AND 5727.85 OF THE Revised Code AS ENACTED 7022
BY Substitute Senate Bill No. 3 OF THE 123rd general assembly AND 7023
ANY SUBSEQUENT ACTS, FOR THE PROPERTY TAX LOSS CAUSED BY THE 7024
REDUCTION IN THE ASSESSMENT RATES FOR ELECTRIC AND RURAL ELECTRIC 7025
COMPANY TANGIBLE PERSONAL PROPERTY. Not LATER THAN June 30, 2011, 7026
THE COMMITTEE SHALL ISSUE A REPORT OF ITS FINDINGS, INCLUDING ANY 7027

RECOMMENDATIONS FOR PROVIDING ADDITIONAL COMPENSATION FOR THE 7028
PROPERTY TAX LOSS OR REGARDING REMEDIAL LEGISLATION, TO THE 7029
PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE OF 7030
REPRESENTATIVES, AT WHICH TIME THE COMMITTEE SHALL CEASE TO EXIST. 7031

THE DEPARTMENT OF TAXATION AND DEPARTMENT OF EDUCATION SHALL 7032
PROVIDE SUCH INFORMATION AND ASSISTANCE AS IS REQUIRED FOR THE 7033
COMMITTEE TO CARRY OUT ITS DUTIES. 7034

Sec. 5727.86. (A) Not LATER THAN January 1, 2002, THE TAX 7035
COMMISSIONER SHALL CERTIFY TO THE DIRECTOR OF BUDGET AND 7036
MANAGEMENT, FOR ALL TAXING DISTRICTS IN EACH LOCAL TAXING UNIT, 7037
THE fixed-rate levy loss DETERMINED UNDER DIVISION (D), AND the 7038
fixed-sum levy loss determined under division (E), OF SECTION 7039
5727.84 OF THE Revised Code. Based ON THAT CERTIFICATION, THE 7040
DIRECTOR SHALL COMPUTE THE PAYMENTS to be made to each local 7041
taxing unit FOR EACH YEAR ACCORDING TO DIVISIONS (A)(1), (2), and 7042
(3) AND DIVISION (E) OF THIS SECTION, AND SHALL DISTRIBUTE the 7043
PAYMENTS in the manner prescribed by DIVISION (C) OF THIS SECTION. 7044
THE CERTIFICATION of the fixed-sum levy loss SHALL COVER a period 7045
of TIME sufficient to include ALL fixed-sum levies IN EFFECT IN 7046
1998 to June 30, 1999, until they ARE no longer in effect. 7047

(1) Except as provided in division (A)(3) of this section, 7048
for fixed-rate levy losses determined under division (D) of 7049
section 5727.84 of the Revised Code, pAYMENTS shall be MADE in 7050
each of the following years at the following PERCENTage OF THE 7051
fixed-rate levy loss CERTIFIED UNDER DIVISION (A) of this section: 7052

<u>YEAR</u>	<u>PERCENTAGE</u>	
2002	100%	7054
2003	100%	7055
2004	100%	7056
2005	100%	7057
2006	100%	7058

2007	80%	7059
2008	80%	7060
2009	80%	7061
2010	80%	7062
2011	80%	7063
2012	66.7%	7064
2013	53.4%	7065
2014	40.1%	7066
2015	26.8%	7067
2016	13.5%	7068
2017 <u>and thereafter</u>	0%	7069

(2) For fixed-sum levy losses determined under division (E) 7070
of section 5727.84 of the Revised Code, One HUNDRED PER CENT OF 7071
THE fixed-sum levy loss CERTIFIED UNDER DIVISION (A) OF this 7072
SECTION for payments required to be made in 2002 and thereafter. 7073

(3) A local taxing unit in a county of less than TWO HUNDRED 7074
FIFTY SQUARE MILES that receives eighty per cent or more of its 7075
combined general fund and bond retirement fund revenues from 7076
property taxes and rollbacks based on 1997 actual revenues as 7077
presented in its 1999 tax budget, and in which electric companies 7078
and rural electric companies comprise over twenty per cent of its 7079
PROPERTY VALUATION, shall receive one hundred per cent of its 7080
fixed-rate levy losses certified under division (A) of this 7081
section in years 2002 to 2016. 7082

(B) BEGINNING IN 2003, BY THE thirty-first DAY OF JANUARY of 7083
EACH YEAR, THE TAX COMMISSIONER SHALL REVIEW THE CERTIFICATION 7084
ORIGINALLY MADE UNDER division (A) of this section of the 7085
fixed-sum levy loss determined under DIVISION (E) OF SECTION 7086
5727.84 OF THE REVISED CODE. IF THE COMMISSIONER DETERMINES THAT A 7087
FIXED-SUM LEVY THAT HAD BEEN SCHEDULED TO BE REIMBURSED IN THE 7088
CURRENT YEAR HAS EXPIRED, A REVISED CERTIFICATION FOR THAT AND ALL 7089
SUBSEQUENT YEARS SHALL BE MADE. 7090

(C) Payments to local taxing units REQUIRED TO BE MADE UNDER 7091
DIVISIONS (A) AND (E) OF THIS SECTION SHALL BE PAID FROM THE LOCAL 7092
GOVERNMENT PROPERTY TAX REPLACEMENT FUND TO THE COUNTY UNDIVIDED 7093
INCOME TAX FUND IN THE PROPER COUNTY TREASURY. One-half OF THE 7094
AMOUNT CERTIFIED UNDER THOSE DIVISIONS SHALL BE PAID ON OR BEFORE 7095
EACH OF THE DAYS PRESCRIBED FOR THE SETTLEMENTS UNDER DIVISIONS 7096
(A) AND (C) OF SECTION 321.24 OF THE REVISED CODE. The COUNTY 7097
TREASURER SHALL DISTRIBUTE AMOUNTS paid UNDER DIVISION (A) OF THIS 7098
SECTION TO THE PROPER LOCAL TAXING UNIT AS IF THEY HAD BEEN LEVIED 7099
AND COLLECTED AS TAXES, AND THE LOCAL TAXING UNIT SHALL APPORTION 7100
THE AMOUNTS SO RECEIVED AMONG ITS FUNDS IN THE SAME PROPORTIONS AS 7101
IF THOSE AMOUNTS HAD BEEN LEVIED AND COLLECTED AS TAXES. Amounts 7102
DISTRIBUTED UNDER DIVISION (E) OF THIS SECTION SHALL BE CREDITED 7103
TO THE GENERAL FUND OF THE LOCAL TAXING UNIT THAT RECEIVES THEM. 7104

(D) By February 5, 2002, THE TAX COMMISSIONER SHALL ESTIMATE 7105
THE AMOUNT OF MONEY IN THE LOCAL GOVERNMENT PROPERTY TAX 7106
REPLACEMENT FUND IN EXCESS OF THE AMOUNT NECESSARY TO MAKE 7107
PAYMENTS IN THAT MONTH UNDER DIVISION (C) OF THIS SECTION. 7108
NOTWITHSTANDING DIVISION (A) OF THIS SECTION, THE TAX COMMISSIONER 7109
MAY PAY ANY LOCAL TAXING UNIT, FROM THOSE EXCESS FUNDS, nine and 7110
four-tenths TIMES THE AMOUNT computed for 2002 UNDER DIVISION 7111
(A)(1) OF THIS SECTION. Apayment made under this division SHALL BE 7112
IN LIEU OF THE PAYMENT TO BE MADE IN FEBRUARY 2002 under division 7113
(A)(1) of this section. A LOCAL TAXING UNIT RECEIVING A PAYMENT 7114
UNDER THIS DIVISION WILL NO LONGER BE ENTITLED TO ANY FURTHER 7115
PAYMENTS UNDER DIVISION (A)(1) OF THIS SECTION. 7116

(E) On the thirty-first day of July of 2002, 2003, 2004, 7117
2005, AND 2006, and on the thirty-first day of January and July of 7118
2007 and each year thereafter, if THE AMOUNT CREDITED TO THE LOCAL 7119
GOVERNMENT PROPERTY TAX REPLACEMENT FUND EXCEEDS THE AMOUNT NEEDED 7120
TO BE DISTRIBUTED FROM THE FUND UNDER DIVISION (A) OF THIS SECTION 7121
IN THE FOLLOWING MONTH, THE DIRECTOR OF BUDGET AND MANAGEMENT 7122

SHALL DISTRIBUTE THE EXCESS TO EACH COUNTY AS FOLLOWS: 7123

(1) One-half SHALL BE DISTRIBUTED TO EACH COUNTY IN 7124
PROPORTION TO EACH COUNTY'S POPULATION. 7125

(2) One-half SHALL BE DISTRIBUTED TO EACH COUNTY IN THE 7126
PROPORTION THAT THE AMOUNTS DETERMINED UNDER DIVISIONS (D) AND (E) 7127
OF SECTION 5727.84 OF THE REVISED CODE FOR ALL TAXING DISTRICTS IN 7128
THE COUNTY IS OF THE TOTAL AMOUNTS SO DETERMINED FOR ALL TAXING 7129
DISTRICTS IN THE STATE. 7130

THE AMOUNTS DISTRIBUTED TO EACH COUNTY UNDER THIS DIVISION 7131
SHALL BE DISTRIBUTED BY THE COUNTY BUDGET COMMISSION TO EACH LOCAL 7132
TAXING UNIT IN THE COUNTY IN THE PROPORTION THAT THE UNIT'S 7133
CURRENT TAXES CHARGED AND PAYABLE ARE OF THE TOTAL CURRENT TAXES 7134
CHARGED AND PAYABLE OF ALL THE LOCAL TAXING UNITS IN THE COUNTY. 7135
AS USED IN THIS DIVISION, "CURRENT TAXES CHARGED AND PAYABLE" 7136
MEANS THE TAXES CHARGED AND PAYABLE AS MOST RECENTLY DETERMINED 7137
FOR LOCAL TAXING UNITS IN THE COUNTY. 7138

IF, IN THE OPINION OF THE DIRECTOR OF BUDGET AND MANAGEMENT, 7139
THE EXCESS REMAINING IN THE LOCAL GOVERNMENT PROPERTY TAX 7140
REPLACEMENT FUND IN ANY YEAR IS NOT SUFFICIENT TO WARRANT 7141
DISTRIBUTION UNDER THIS DIVISION, THE EXCESS SHALL REMAIN TO THE 7142
CREDIT OF THE FUND. 7143

(E) If THE TOTAL AMOUNT IN THE LOCAL GOVERNMENT PROPERTY TAX 7144
REPLACEMENT FUND IS INSUFFICIENT TO MAKE ALL PAYMENTS UNDER 7145
DIVISION (C) OF THIS SECTION, THE PAYMENTS REQUIRED UNDER DIVISION 7146
(A)(2) OF THIS SECTION SHALL BE MADE FIRST IN THEIR ENTIRETY. 7147
AFTER ALL SUCH PAYMENTS ARE MADE, PAYMENTS UNDER DIVISIONS (A)(1) 7148
AND (3) OF THIS SECTION SHALL BE MADE FROM THE BALANCE OF MONEY 7149
AVAILABLE IN THE PROPORTION OF EACH LOCAL TAXING UNIT'S payment 7150
AMOUNT TO THE TOTAL AMOUNT of all payments to be made UNDER 7151
divisions (A)(1) and (3) OF THIS SECTION. 7152

(G) If ALL OR A PART OF THE TERRITORIES OF TWO OR MORE LOCAL 7153

TAXING UNITS ARE MERGED, OR UNINCORPORATED TERRITORY OF A TOWNSHIP 7154
IS ANNEXED BY A MUNICIPAL CORPORATION, THE TAX COMMISSIONER SHALL 7155
ADJUST THE PAYMENTS MADE UNDER THIS SECTION TO EACH OF THE LOCAL 7156
TAXING UNITS IN PROPORTION TO THE TAX VALUE LOSS APPORTIONED TO 7157
THE MERGED OR ANNEXED TERRITORY, OR AS OTHERWISE PROVIDED BY A 7158
WRITTEN AGREEMENT BETWEEN THE LEGISLATIVE AUTHORITIES OF THE LOCAL 7159
TAXING UNITS CERTIFIED TO THE TAX COMMISSIONER NOT LATER THAN THE 7160
FIRST DAY OF JUNE OF THE CALENDAR YEAR IN WHICH THE PAYMENT IS TO 7161
BE MADE. 7162

Sec. 5727.87. (A) As USED IN THIS SECTION: 7163

(1) "ADMINISTRATIVE FEES" MEANS THE DOLLAR PERCENTAGES 7164
ALLOWED BY THE COUNTY AUDITOR FOR SERVICES OR BY THE COUNTY 7165
TREASURER AS FEES, OR PAID TO THE CREDIT OF THE REAL ESTATE 7166
ASSESSMENT FUND, UNDER DIVISIONS (A) AND (B) OF SECTION 319.54 AND 7167
DIVISION (A) OF SECTION 321.26 OF THE Revised Code. 7168

(2) "ADMINISTRATIVE FEE LOSS" MEANS A COUNTY'S LOSS OF 7169
ADMINISTRATIVE FEES due to its TAX VALUE LOSS, DETERMINED AS 7170
FOLLOWS: 7171

(a) For PURPOSES OF THE DETERMINATION made UNDER DIVISION (B) 7172
OF THIS SECTION IN THE YEARS 2002 THROUGH 2006, THE ADMINISTRATIVE 7173
FEE LOSS SHALL BE computed BY MULTIPLYING THE AMOUNTS DETERMINED 7174
FOR ALL TAXING DISTRICTS IN THE COUNTY under DIVISIONS (D) AND (E) 7175
OF SECTION 5727.84 OF THE REVISED CODE BY NINE THOUSAND SIX 7176
HUNDRED FIFTY-NINE TEN-THOUSANDTHS OF A PER cent, IF TOTAL TAXES 7177
COLLECTED IN THE COUNTY IN TAX YEAR 1998 exceeded one hundred 7178
fifty million dollars, OR ONE AND ONE THOUSAND ONE HUNDRED 7179
FIFTY-NINE TEN-THOUSANDTHS OF A PER CENT, IF TOTAL TAXES COLLECTED 7180
IN THE COUNTY IN TAX YEAR 1998 WERE one hundred fifty million 7181
dollars or less; 7182

(b) For PURPOSES OF THE DETERMINATION UNDER DIVISION (B) OF 7183

THIS SECTION IN THE YEARS 2007 THROUGH 2011, THE ADMINISTRATIVE 7184
FEE LOSS SHALL BE DETERMINED BY SUBTRACTING FROM THE DOLLAR AMOUNT 7185
OF ADMINISTRATIVE FEES COLLECTED IN THE COUNTY IN TAX YEAR 1998, 7186
THE DOLLAR AMOUNT OF ADMINISTRATIVE FEES COLLECTED IN THE COUNTY 7187
IN THE CURRENT CALENDAR YEAR. 7188

(B) Not LATER THAN the first day of JUNE of 2002 THROUGH 7189
2011, THE COUNTY AUDITOR SHALL DETERMINE THE ADMINISTRATIVE FEE 7190
LOSS FOR THE COUNTY AND CERTIFY IT TO THE COUNTY BUDGET 7191
COMMISSION. NOTWITHSTANDING DIVISIONS (C), (D), AND (E) OF SECTION 7192
5727.85 AND DIVISION (C) OF SECTION 5727.86 OF THE REVISED CODE, 7193
PRIOR TO DISTRIBUTION BY THE COUNTY TREASURER OF THE PAYMENTS 7194
PROVIDED UNDER THOSE DIVISIONS, THE COUNTY BUDGET COMMISSION SHALL 7195
DEDUCT FROM THOSE PAYMENTS THE AMOUNT OF THE ADMINISTRATIVE FEE 7196
LOSS CERTIFIED BY THE COUNTY AUDITOR, AS FOLLOWS: 7197

7198

(1) Seventy PER CENT OF THE ADMINISTRATIVE FEE LOSS SHALL BE 7199
DEDUCTED FROM THE PAYMENTS PROVIDED UNDER DIVISIONS (C), (D), AND 7200
(E) OF SECTION 5727.85 OF THE REVISED CODE. 7201

(2) Thirty PER CENT OF THE ADMINISTRATIVE FEE LOSS SHALL BE 7202
DEDUCTED FROM THE PAYMENTS PROVIDED UNDER DIVISION (C) OF SECTION 7203
5727.86 OF THE REVISED CODE. 7204

(C) On OR BEFORE EACH OF THE DAYS PRESCRIBED FOR THE 7205
SETTLEMENTS UNDER DIVISIONS (A) AND (C) OF SECTION 321.24 OF THE 7206
REVISED CODE IN the YEARS 2002 THROUGH 2011, THE COUNTY BUDGET 7207
COMMISSION SHALL PAY ONE-HALF OF THE AMOUNT OF THE ADMINISTRATIVE 7208
FEE LOSS TO THE COUNTY AUDITOR, COUNTY TREASURER, OR REAL ESTATE 7209
ASSESSMENT FUND AS IF THE AMOUNT HAD BEEN ALLOWED AS 7210
ADMINISTRATIVE FEES, AND SHALL DEPOSIT THE AMOUNT IN THE SAME 7211
FUNDS AS IF ALLOWED AS ADMINISTRATIVE FEES. 7212

AFTER PAYMENT OF THE ADMINISTRATIVE FEE LOSS ON OR BEFORE 7213
AUGUST 10, 2011, ALL PAYMENTS UNDER THIS SECTION SHALL CEASE. 7214

Sec. 5727.88. The tax commissioner shall administer sections 5727.80 to 5727.95 of the Revised Code and may adopt such rules as are necessary to administer those sections. Upon request of the tax commissioner, the public utilities commission shall assist the tax commissioner by providing information regarding any electric distribution company that is subject to regulation by the commission.

Sec. 5727.89. (A) The tax commissioner may make an assessment, based on any information in the commissioner's possession, against any electric distribution company, self-assessing purchaser, or qualified end user that fails to file a return or pay any tax, interest, or additional charge as required by sections 5727.80 to 5727.95 of the Revised Code.

When information in the possession of the tax commissioner indicates that a person liable for the tax imposed by section 5727.81 of the Revised Code has not paid the full amount of tax due, the commissioner may audit a representative sample of the person's business and may issue an assessment based on the audit. The commissioner shall give the person assessed written notice of the assessment by personal service or certified mail.

The tax commissioner may issue an assessment for which the tax imposed by section 5727.81 of the Revised Code was due and unpaid on the date the person was informed by an agent of the tax commissioner of an investigation or audit of the person. Any payment of the tax for the period covered by the assessment, after the person is so informed, shall be credited against the assessment.

A penalty of fifteen per cent shall be added to all amounts assessed under this section. The commissioner may adopt rules providing for the remission of penalties.

(B) Unless the party assessed files with the tax commissioner 7245
within thirty days after service of the notice of assessment, 7246
either personally or by certified mail, a written petition for 7247
reassessment signed by the party assessed or the party's 7248
authorized agent having knowledge of the facts, the assessment is 7249
final and the amount of the assessment is due and payable from the 7250
party assessed to the treasurer of state. The petition shall 7251
indicate the objections of the party assessed, but additional 7252
objections may be raised in writing prior to the date shown on the 7253
final determination of the tax commissioner. The commissioner 7254
shall grant the petitioner a hearing on the petition, unless 7255
waived by the petitioner. 7256

(C) The commissioner may make any correction to the 7257
assessment that the commissioner finds proper and shall issue a 7258
final determination thereon. The commissioner shall serve a copy 7259
of the final determination on the petitioner either by personal 7260
service or by certified mail, and the commissioner's decision in 7261
the matter is final, subject to appeal under section 5717.02 of 7262
the Revised Code. 7263

(D) After an assessment becomes final, if any portion of the 7264
assessment, including accrued interest, remains unpaid, a 7265
certified copy of the commissioner's entry making the assessment 7266
final may be filed in the office of the clerk of the court of 7267
common pleas in the county in which the party assessed resides or 7268
in which the party's business is conducted. If the party assessed 7269
maintains no place of business in this state and is not a resident 7270
of this state, the certified copy of the entry may be filed in the 7271
office of the clerk of the court of common pleas of Franklin 7272
county. 7273

The clerk, immediately upon the filing of the entry, shall 7274
enter a judgment for the state against the person assessed in the 7275
amount shown on the entry. The judgment may be filed by the clerk 7276

in a loose-leaf book entitled "special judgments for the 7277
kilowatt-hour tax," and shall have the same effect as other 7278
judgments. Execution shall issue upon the judgment at the request 7279
of the tax commissioner, and all laws applicable to sales on 7280
execution shall apply to sales made under the judgment. 7281

The portion of the assessment not paid within thirty days 7282
after the day the assessment was issued shall bear interest at the 7283
rate per annum prescribed by section 5703.47 of the Revised Code 7284
from the day the tax commissioner issues the assessment until the 7285
day the assessment is paid. Interest shall be paid in the same 7286
manner as the tax and may be collected by the issuance of an 7287
assessment under this section. 7288

(E) If the tax commissioner believes that collection of the 7289
tax imposed by section 5727.81 of the Revised Code will be 7290
jeopardized unless proceedings to collect or secure collection of 7291
the tax are instituted without delay, the commissioner may issue a 7292
jeopardy assessment against the electric distribution company, 7293
self-assessing purchaser, or qualified end user liable for the 7294
tax. Upon issuance of the jeopardy assessment, the commissioner 7295
immediately shall file an entry with the clerk of the court of 7296
common pleas in the manner prescribed by division (D) of this 7297
section. Notice of the jeopardy assessment shall be served on the 7298
party assessed or the party's legal representative within five 7299
days of the filing of the entry with the clerk. The total amount 7300
assessed is immediately due and payable, unless the party assessed 7301
files a petition for reassessment in accordance with division (B) 7302
of this section and provides security in a form satisfactory to 7303
the commissioner and in an amount sufficient to satisfy the unpaid 7304
balance of the assessment. Full or partial payment of the 7305
assessment does not prejudice the commissioner's consideration of 7306
the petition for reassessment. 7307

(F) All money collected by the tax commissioner under this 7308

section shall be paid to the treasurer of state, and when paid 7309
shall be considered as revenue arising from the tax imposed by 7310
section 5727.81 of the Revised Code. 7311

Sec. 5727.90. No assessment of the tax imposed by section 7312
5727.81 of the Revised Code shall be made by the tax commissioner 7313
more than four years after the date on which the return for the 7314
period assessed was due or filed, whichever date is later. This 7315
section does not bar an assessment when any of the following 7316
occur: 7317

(A) The party assessed failed to file a return as required by 7318
section 5727.82 of the Revised Code; 7319

(B) The party assessed knowingly filed a false or fraudulent 7320
return; 7321

(C) The party assessed and the tax commissioner waived in 7322
writing the time limitation. 7323

Sec. 5727.91. (A) The treasurer of state shall refund the 7324
amount of tax paid under section 5727.81 of the Revised Code that 7325
was paid illegally or erroneously, or paid on an illegal or 7326
erroneous assessment. An electric distribution company or 7327
self-assessing purchaser shall file an application for a refund 7328
with the tax commissioner on a form prescribed by the 7329
commissioner, within four years of the illegal or erroneous 7330
payment of the tax. 7331

Upon the filing of the application, the commissioner shall 7332
determine the amount of refund due and certify that amount to the 7333
director of budget and management and the treasurer of state for 7334
payment from the tax refund fund under section 5703.052 of the 7335
Revised Code. If the application for refund is for taxes paid on 7336
an illegal or erroneous assessment, the tax commissioner shall 7337
include in the certified amount interest calculated at the rate 7338

per annum under section 5703.47 of the Revised Code from the date 7339
of overpayment to the date of the commissioner's certification. 7340

(B) If an electric distribution company entitled to a refund 7341
of taxes under this section is indebted to the state for any tax 7342
or fee administered by the tax commissioner that is paid to the 7343
state or any charge, penalty, or interest arising from such a tax 7344
or fee, the amount refundable may be applied in satisfaction of 7345
the debt. If the amount refundable is less than the amount of the 7346
debt, it may be applied in partial satisfaction of the debt. If 7347
the amount refundable is greater than the amount of the debt, the 7348
amount remaining after satisfaction of the debt shall be refunded. 7349
If the electric distribution company has more than one such debt, 7350
any debt subject to section 5739.33 or division (G) of section 7351
5747.07 of the Revised Code shall be satisfied first. This section 7352
applies only to debts that have become final. 7353

(C) Any electric distribution company that can substantiate 7354
to the tax commissioner that the tax imposed by section 5727.81 of 7355
the Revised Code was paid on electricity distributed via wires and 7356
consumed at a location outside of this state may claim a refund in 7357
the manner and within the time period prescribed in division (A) 7358
of this section. 7359

(D) Before a refund is issued under this section, an electric 7360
distribution company shall certify, as prescribed by the tax 7361
commissioner, that it either did not include the tax imposed by 7362
section 5727.81 of the Revised Code in its distribution charge to 7363
an electric customer upon which a refund of the tax is claimed, or 7364
it has refunded or credited to the electric customer the excess 7365
distribution charge related to the tax that was erroneously 7366
included in the electric customer's distribution charge. 7367

Sec. 5727.92. Every person liable for the tax imposed by 7368
section 5727.81 of the Revised Code shall keep complete and 7369

accurate records of all electric distributions and other records 7370
as required by the tax commissioner. The records shall be 7371
preserved for four years after the return for the taxes to which 7372
the records pertain is due or filed, whichever is later. The 7373
records shall be available for inspection by the tax commissioner 7374
or the commissioner's authorized agent, upon request of the 7375
commissioner or such agent. 7376

Sec. 5727.93. (A) No person shall distribute electricity to a 7377
meter of an end user in this state who is not registered with the 7378
tax commissioner as an electric distribution company. 7379

(B) Each person required to register under division (A) of 7380
this section shall register prior to distributing electricity to a 7381
meter of an end user in this state. The tax commissioner shall 7382
prescribe the form of the registration application. The 7383
commissioner shall assign an identification number to each 7384
registration and notify the registrant of that number. The 7385
registration shall remain in effect until canceled in writing by 7386
the registrant upon the cessation of distributing electricity to a 7387
meter of an end user in this state or until such registration is 7388
denied, revoked, or canceled by the commissioner. A registration 7389
may be revoked or canceled by the tax commissioner as provided by 7390
Chapter 119. of the Revised Code, for failure of an electric 7391
distribution company to pay the tax imposed by section 5727.81 of 7392
the Revised Code or to comply with sections 5727.80 to 5727.95 of 7393
the Revised Code. An electric distribution company whose 7394
registration is denied may petition for a hearing, in accordance 7395
with the procedures set forth in divisions (B) and (C) of section 7396
5727.89 of the Revised Code, not later than thirty days after 7397
receiving the denial, and the final determination is subject to 7398
appeal under section 5717.02 of the Revised Code. 7399

(C) The tax commissioner shall maintain a list of the 7400

electric distribution companies registered under this section. The 7401
list shall contain the name and address of each company registered 7402
by the commissioner. The list and subsequent updates of it shall 7403
be open to public inspection. 7404

Sec. 5727.94. Each electric distribution company required to 7405
pay the tax imposed by section 5727.81 of the Revised Code shall 7406
provide to its customers in this state the statement required by 7407
section 4933.33 of the Revised Code. 7408

Sec. 5727.95. (A) No electric distribution company or 7409
self-assessing purchaser shall fail to file any return or report 7410
required to be filed pursuant to section 5727.82 of the Revised 7411
Code, or file or cause to be filed any incomplete, false, or 7412
fraudulent return, report, or statement, or aid or abet another in 7413
the filing of any false or fraudulent return, report, or 7414
statement. 7415

(B) No person shall distribute electricity to a meter of an 7416
end user in this state without holding a valid registration issued 7417
under section 5727.93 of the Revised Code. 7418

Sec. 5727.99. (A) Whoever violates section 5727.55 of the 7419
Revised Code shall be ~~fines~~ fined not less than one hundred nor 7420
more than one thousand dollars. 7421

(B) Whoever violates section 5727.71 of the Revised Code 7422
shall be fined not more than five hundred dollars and imprisoned 7423
not more than thirty days. 7424

(C) Whoever violates section 5727.72 ~~or 5727.73~~ of the 7425
Revised Code shall be fined not more than five hundred dollars or 7426
imprisoned not more than thirty days, or both. 7427

(D) Whoever violates sections 5727.80 to 5727.83, or sections 7428
5727.88 to 5727.95 of the Revised Code or any rule adopted by the 7429

tax commissioner under those sections, is guilty of a misdemeanor 7430
of the first degree on the first offense; on each subsequent 7431
offense, the person is guilty of a felony of the fourth degree. 7432

7433

Sec. 5733.04. As used in this chapter: 7434

(A) "Issued and outstanding shares of stock" applies to 7435
nonprofit corporations, as provided in section 5733.01 of the 7436
Revised Code, and includes, but is not limited to, membership 7437
certificates and other instruments evidencing ownership of an 7438
interest in such nonprofit corporations, and with respect to a 7439
financial institution ~~which~~ that does not have capital stock, 7440
"issued and outstanding shares of stock" includes, but is not 7441
limited to, ownership interests of depositors in the capital 7442
employed in such an institution. 7443

(B) "Taxpayer" means a corporation subject to the tax imposed 7444
by section 5733.06 of the Revised Code. 7445

(C) "Resident" means a corporation organized under the laws 7446
of this state. 7447

(D) "Commercial domicile" means the principal place from 7448
which the trade or business of the taxpayer is directed or 7449
managed. 7450

(E) "Taxable year" means the period prescribed by division 7451
(A) of section 5733.031 of the Revised Code upon the net income of 7452
which the value of the taxpayer's issued and outstanding shares of 7453
stock is determined under division (B) of section 5733.05 of the 7454
Revised Code or the period prescribed by division (A) of section 7455
5733.031 of the Revised Code that immediately precedes the date as 7456
of which the total value of the corporation is determined under 7457
division (A) or (C) of section 5733.05 of the Revised Code. 7458

(F) "Tax year" means the calendar year in and for which the 7459

tax imposed by section 5733.06 of the Revised Code is required to 7460
be paid. 7461

(G) "Internal Revenue Code" means the "Internal Revenue Code 7462
of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 7463

(H) "Federal income tax" means the income tax imposed by the 7464
Internal Revenue Code. 7465

(I) Except as provided in section 5733.058 of the Revised 7466
Code, "net income" means the taxpayer's taxable income before 7467
operating loss deduction and special deductions, as required to be 7468
reported for the taxpayer's taxable year under the Internal 7469
Revenue Code, subject to the following adjustments: 7470

(1)(a) Deduct any net operating loss incurred in any taxable 7471
years ending in 1971 or thereafter but exclusive of any net 7472
operating loss incurred in taxable years ending prior to January 7473
1, 1971. This deduction shall not be allowed in any tax year 7474
commencing before December 31, 1973, but shall be carried over and 7475
allowed in tax years commencing after December 31, 1973, until 7476
fully utilized in the next succeeding taxable year or years in 7477
which the taxpayer has net income, but in no case for more than 7478
the designated carryover period as described in division (I)(1)(b) 7479
of this section. The amount of such net operating loss, as 7480
determined under the allocation and apportionment provisions of 7481
section 5733.051 and division (B) of section 5733.05 of the 7482
Revised Code for the year in which the net operating loss occurs, 7483
shall be deducted from net income, as determined under the 7484
allocation and apportionment provisions of section 5733.051 and 7485
division (B) of section 5733.05 of the Revised Code, to the extent 7486
necessary to reduce net income to zero with the remaining unused 7487
portion of the deduction, if any, carried forward to the remaining 7488
years of the designated carryover period as described in division 7489
(I)(1)(b) of this section, or until fully utilized, whichever 7490

occurs first. 7491

(b) For losses incurred in taxable years ending on or before 7492
December 31, 1981, the designated carryover period shall be the 7493
five consecutive taxable years after the taxable year in which the 7494
net operating loss occurred. For losses incurred in taxable years 7495
ending on or after January 1, 1982, the designated carryover 7496
period shall be the fifteen consecutive taxable years after the 7497
taxable year in which the net operating loss occurs. 7498

(c) The tax commissioner may require a taxpayer to furnish 7499
any information necessary to support a claim for deduction under 7500
division (I)(1)(a) of this section and no deduction shall be 7501
allowed unless the information is furnished. 7502

(2) Deduct any amount included in net income by application 7503
of section 78 or 951 of the Internal Revenue Code, amounts 7504
received for royalties, technical or other services derived from 7505
sources outside the United States, and dividends received from a 7506
subsidiary, associate, or affiliated corporation that neither 7507
transacts any substantial portion of its business nor regularly 7508
maintains any substantial portion of its assets within the United 7509
States. For purposes of determining net foreign source income 7510
deductible under division (I)(2) of this section, the amount of 7511
gross income from all such sources other than income derived by 7512
application of section 78 or 951 of the Internal Revenue Code 7513
shall be reduced by: 7514

(a) The amount of any reimbursed expenses for personal 7515
services performed by employees of the taxpayer for the 7516
subsidiary, associate, or affiliated corporation; 7517

(b) Ten per cent of the amount of royalty income and 7518
technical assistance fees; 7519

(c) Fifteen per cent of the amount of dividends and all other 7520
income. 7521

The amounts described in divisions (I)(2)(a) to (c) of this section are deemed to be the expenses attributable to the production of deductible foreign source income unless the taxpayer shows, by clear and convincing evidence, less actual expenses, or the tax commissioner shows, by clear and convincing evidence, more actual expenses.

(3) Add any loss or deduct any gain resulting from the sale, exchange, or other disposition of a capital asset, or an asset described in section 1231 of the Internal Revenue Code, to the extent that such loss or gain occurred prior to the first taxable year on which the tax provided for in section 5733.06 of the Revised Code is computed on the corporation's net income. For purposes of division (I)(3) of this section, the amount of the prior loss or gain shall be measured by the difference between the original cost or other basis of the asset and the fair market value as of the beginning of the first taxable year on which the tax provided for in section 5733.06 of the Revised Code is computed on the corporation's net income. At the option of the taxpayer, the amount of the prior loss or gain may be a percentage of the gain or loss, which percentage shall be determined by multiplying the gain or loss by a fraction, the numerator of which is the number of months from the acquisition of the asset to the beginning of the first taxable year on which the fee provided in section 5733.06 of the Revised Code is computed on the corporation's net income, and the denominator of which is the number of months from the acquisition of the asset to the sale, exchange, or other disposition of the asset. The adjustments described in this division do not apply to any gain or loss where the gain or loss is recognized by a qualifying taxpayer, as defined in section 5733.0510 of the Revised Code, with respect to a qualifying taxable event, as defined in that section.

(4) Deduct the dividend received deduction provided by

section 243 of the Internal Revenue Code. 7554

(5) Deduct any interest or interest equivalent on public 7555
obligations and purchase obligations to the extent included in 7556
federal taxable income. As used in divisions (I)(5) and (6) of 7557
this section, "public obligations," "purchase obligations," and 7558
"interest or interest equivalent" have the same meanings as in 7559
section 5709.76 of the Revised Code. 7560

(6) Add any loss or deduct any gain resulting from the sale, 7561
exchange, or other disposition of public obligations to the extent 7562
included in federal taxable income. 7563

(7) To the extent not otherwise allowed, deduct any dividends 7564
or distributions received by a taxpayer from a public utility, 7565
excluding an electric company, if the taxpayer owns at least 7566
eighty per cent of the issued and outstanding common stock of the 7567
public utility. As used in division (I)(7) of this section, 7568
"public utility" ~~or "utility"~~ means a public utility as defined in 7569
Chapter 5727. of the Revised Code, whether or not the public 7570
utility is doing business in the state. 7571

(8) To the extent not otherwise allowed, deduct any dividends 7572
received by a taxpayer from an insurance company, if the taxpayer 7573
owns at least eighty per cent of the issued and outstanding common 7574
stock of the insurance company. As used in division (I)(8) of this 7575
section, "insurance company" means an insurance company ~~which~~ that 7576
is taxable under Chapter 5725. or 5729. of the Revised Code. 7577
7578

(9) Deduct expenditures for modifying existing buildings or 7579
structures to meet American national standards institute standard 7580
A-117.1-1961 (R-1971), as amended; provided, that no deduction 7581
shall be allowed to the extent that such deduction is not 7582
permitted under federal law or under rules of the tax 7583
commissioner. Those deductions as are allowed may be taken over a 7584

period of five years. The tax commissioner shall adopt rules under 7585
Chapter 119. of the Revised Code establishing reasonable 7586
limitations on the extent that expenditures for modifying existing 7587
buildings or structures are attributable to the purpose of making 7588
the buildings or structures accessible to and usable by physically 7589
handicapped persons. 7590

(10) Deduct the amount of wages and salaries, if any, not 7591
otherwise allowable as a deduction but that would have been 7592
allowable as a deduction in computing federal taxable income 7593
before operating loss deduction and special deductions for the 7594
taxable year, had the targeted jobs credit allowed and determined 7595
under sections 38, 51, and 52 of the Internal Revenue Code not 7596
been in effect. 7597

(11) Deduct net interest income on obligations of the United 7598
States and its territories and possessions or of any authority, 7599
commission, or instrumentality of the United States to the extent 7600
the laws of the United States prohibit inclusion of the net 7601
interest for purposes of determining the value of the taxpayer's 7602
issued and outstanding shares of stock under division (B) of 7603
section 5733.05 of the Revised Code. As used in division (I)(11) 7604
of this section, "net interest" means interest net of any expenses 7605
taken on the federal income tax return that would not have been 7606
allowed under section 265 of the Internal Revenue Code if the 7607
interest were exempt from federal income tax. 7608

(12)(a) Except as set forth in division (I)(12)(d) of this 7609
section, to the extent not included in computing the taxpayer's 7610
federal taxable income before operating loss deduction and special 7611
deductions, add gains and deduct losses from direct or indirect 7612
sales, exchanges, or other dispositions, made by a related entity 7613
who is not a taxpayer, of the taxpayer's indirect, beneficial, or 7614
constructive investment in the stock or debt of another entity, 7615
unless the gain or loss has been included in computing the federal 7616

taxable income before operating loss deduction and special 7617
deductions of another taxpayer with a more closely related 7618
investment in the stock or debt of the other entity. The amount of 7619
gain added or loss deducted shall not exceed the product obtained 7620
by multiplying such gain or loss by the taxpayer's proportionate 7621
share, directly, indirectly, beneficially, or constructively, of 7622
the outstanding stock of the related entity immediately prior to 7623
the direct or indirect sale, exchange, or other disposition. 7624

7625
(b) Except as set forth in division (I)(12)(e) of this 7626
section, to the extent not included in computing the taxpayer's 7627
federal taxable income before operating loss deduction and special 7628
deductions, add gains and deduct losses from direct or indirect 7629
sales, exchanges, or other dispositions made by a related entity 7630
who is not a taxpayer, of intangible property other than stock, 7631
securities, and debt, if such property was owned, or used in whole 7632
or in part, at any time prior to or at the time of the sale, 7633
exchange, or disposition by either the taxpayer or by a related 7634
entity that was a taxpayer at any time during the related entity's 7635
ownership or use of such property, unless the gain or loss has 7636
been included in computing the federal taxable income before 7637
operating loss deduction and special deductions of another 7638
taxpayer with a more closely related ownership or use of such 7639
intangible property. The amount of gain added or loss deducted 7640
shall not exceed the product obtained by multiplying such gain or 7641
loss by the taxpayer's proportionate share, directly, indirectly, 7642
beneficially, or constructively, of the outstanding stock of the 7643
related entity immediately prior to the direct or indirect sale, 7644
exchange, or other disposition. 7645

(c) As used in division (I)(12) of this section, "related 7646
entity" means those entities described in divisions (I)(12)(c)(i) 7647
to (iii) of this section: 7648

(i) An individual stockholder, or a member of the 7649
stockholder's family enumerated in section 318 of the Internal 7650
Revenue Code, if the stockholder and the members of the 7651
stockholder's family own, directly, indirectly, beneficially, or 7652
constructively, in the aggregate, at least fifty per cent of the 7653
value of the taxpayer's outstanding stock; 7654

(ii) A stockholder, or a stockholder's partnership, estate, 7655
trust, or corporation, if the stockholder and the stockholder's 7656
partnerships, estates, trusts, and corporations own directly, 7657
indirectly, beneficially, or constructively, in the aggregate, at 7658
least fifty per cent of the value of the taxpayer's outstanding 7659
stock; 7660

(iii) A corporation, or a party related to the corporation in 7661
a manner that would require an attribution of stock from the 7662
corporation to the party or from the party to the corporation 7663
under division (I)(12)(c)(iv) of this section, if the taxpayer 7664
owns, directly, indirectly, beneficially, or constructively, at 7665
least fifty per cent of the value of the corporation's outstanding 7666
stock. 7667

(iv) The attribution rules of section 318 of the Internal 7668
Revenue Code apply for purposes of determining whether the 7669
ownership requirements in divisions (I)(12)(c)(i) to (iii) of this 7670
section have been met. 7671

(d) For purposes of the adjustments required by division 7672
(I)(12)(a) of this section, the term "investment in the stock or 7673
debt of another entity" means only those investments where the 7674
taxpayer and the taxpayer's related entities directly, indirectly, 7675
beneficially, or constructively own, in the aggregate, at any time 7676
during the twenty-four month period commencing one year prior to 7677
the direct or indirect sale, exchange, or other disposition of 7678
such investment at least fifty per cent or more of the value of 7679

either the outstanding stock or such debt of such other entity. 7680

(e) For purposes of the adjustments required by division 7681
(I)(12)(b) of this section, the term "related entity" excludes all 7682
of the following: 7683

(i) Foreign corporations as defined in section 7701 of the 7684
Internal Revenue Code; 7685

(ii) Foreign partnerships as defined in section 7701 of the 7686
Internal Revenue Code; 7687

(iii) Corporations, partnerships, estates, and trusts created 7688
or organized in or under the laws of the Commonwealth of Puerto 7689
Rico or any possession of the United States; 7690

(iv) Foreign estates and foreign trusts as defined in section 7691
7701 of the Internal Revenue Code. 7692

The exclusions described in divisions (I)(12)(e)(i) to (iv) 7693
of this section do not apply if the corporation, partnership, 7694
estate, or trust is described in any one of divisions (C)(1) to 7695
(5) of section 5733.042 of the Revised Code. 7696

(f) Nothing in division (I)(12) of this section shall require 7697
or permit a taxpayer to add any gains or deduct any losses 7698
described in divisions (I)(12)(f)(i) and (ii) of this section: 7699

(i) Gains or losses recognized for federal income tax 7700
purposes by an individual, estate, or trust without regard to the 7701
attribution rules described in division (I)(12)(c) of this 7702
section, ~~and;~~ 7703

(ii) A related entity's gains or losses described in division 7704
(I)(12)(b) if the taxpayer's ownership of or use of such 7705
intangible property was limited to a period not exceeding nine 7706
months and was attributable to a transaction or a series of 7707
transactions executed in accordance with the election or elections 7708
made by the taxpayer or a related entity pursuant to section 338 7709

of the Internal Revenue Code. 7710

(13) Any adjustment required by section 5733.042 of the 7711
Revised Code. 7712

(14) Add any amount claimed as a credit under section 7713
5733.0611 of the Revised Code to the extent that such amount 7714
satisfies either of the following: 7715

(a) It was deducted or excluded from the computation of the 7716
corporation's taxable income before operating loss deduction and 7717
special deductions as required to be reported for the 7718
corporation's taxable year under the Internal Revenue Code; 7719

(b) It resulted in a reduction of the corporation's taxable 7720
income before operating loss deduction and special deductions as 7721
required to be reported for any of the corporation's taxable years 7722
under the Internal Revenue Code. 7723

(15) Deduct the amount contributed by the taxpayer to an 7724
individual development account program established by a county 7725
department of human services pursuant to sections 329.11 to 329.14 7726
of the Revised Code for the purpose of matching funds deposited by 7727
program participants. On request of the tax commissioner, the 7728
taxpayer shall provide any information that, in the tax 7729
commissioner's opinion, is necessary to establish the amount 7730
deducted under division (I)(15) of this section. 7731

(16) Any adjustment required by section 5733.0510 of the 7732
Revised Code. 7733

(J) Any term used in this chapter has the same meaning as 7734
when used in comparable context in the laws of the United States 7735
relating to federal income taxes unless a different meaning is 7736
clearly required. Any reference in this chapter to the Internal 7737
Revenue Code includes other laws of the United States relating to 7738
federal income taxes. 7739

(K) "Financial institution" has the meaning given by section 7740
5725.01 of the Revised Code but does not include a production 7741
credit association as described in 85 Stat. 597, 12 U.S.C.A. 2091. 7742

(L)(1) A "qualifying holding company" is any corporation 7743
satisfying all of the following requirements: 7744

(a) Subject to divisions (L)(2) and (3) of this section, the 7745
net book value of the corporation's intangible assets is greater 7746
than or equal to ninety per cent of the net book value of all of 7747
its assets and at least fifty per cent of the net book value of 7748
all of its assets represents direct or indirect investments in the 7749
equity of, loans and advances to, and accounts receivable due from 7750
related members; 7751

(b) At least ninety per cent of the corporation's gross 7752
income for the taxable year is attributable to the following: 7753

(i) The maintenance, management, ownership, acquisition, use, 7754
and disposition of its intangible property, its aircraft the use 7755
of which is not subject to regulation under 14 C.F.R. part 121 or 7756
part 135, and any real property described in division (L)(2)(c) of 7757
this section; 7758

(ii) The collection and distribution of income from such 7759
property. 7760

(c) The corporation is not a financial institution on the 7761
last day of the taxable year ending prior to the first day of the 7762
tax year; 7763

(d) The corporation's related members make a good faith and 7764
reasonable effort to make timely and fully the adjustments 7765
required by division (C)(2) of section 5733.05 of the Revised Code 7766
and to pay timely and fully all uncontested taxes, interest, 7767
penalties, and other fees and charges imposed under this chapter; 7768

(e) Subject to division (L)(4) of this section, the 7769

corporation elects to be treated as a qualifying holding company 7770
for the tax year. 7771

A corporation otherwise satisfying divisions (L)(1)(a) to (e) 7772
of this section that does not elect to be a qualifying holding 7773
company is not a qualifying holding company for the purposes of 7774
this chapter. 7775

(2)(a)(i) For purposes of making the ninety per cent 7776
computation under division (L)(1)(a) of this section, the net book 7777
value of the corporation's assets shall not include the net book 7778
value of aircraft or real property described in division 7779
(L)(1)(b)(i) of this section. 7780

(ii) For purposes of making the fifty per cent computation 7781
under division (L)(1)(a) of this section, the net book value of 7782
assets shall include the net book value of aircraft or real 7783
property described in division (L)(1)(b)(i) of this section. 7784

(b)(i) As used in division (L) of this section, "intangible 7785
asset" includes, but is not limited to, the corporation's direct 7786
interest in each pass-through entity only if at all times during 7787
the corporation's taxable year ending prior to the first day of 7788
the tax year the corporation's and the corporation's related 7789
members' combined direct and indirect interests in the capital or 7790
profits of such pass-through entity do not exceed fifty per cent. 7791
If the corporation's interest in the pass-through entity is an 7792
intangible asset for that taxable year, then the distributive 7793
share of any income from the pass-through entity shall be income 7794
from an intangible asset for that taxable year. 7795

(ii) If a corporation's and the corporation's related 7796
members' combined direct and indirect interests in the capital or 7797
profits of a pass-through entity exceed fifty per cent at any time 7798
during the corporation's taxable year ending prior to the first 7799
day of the tax year, "intangible asset" does not include the 7800

corporation's direct interest in the pass-through entity, and the
corporation shall include in its assets its proportionate share of
the assets of any such pass-through entity and shall include in
its gross income its distributive share of the gross income of
such pass-through entity in the same form as was earned by the
pass-through entity.

(iii) A pass-through entity's direct or indirect
proportionate share of any other pass-through entity's assets
shall be included for the purpose of computing the corporation's
proportionate share of the pass-through entity's assets under
division (L)(2)(b)(ii) of this section, and such pass-through
entity's distributive share of any other pass-through entity's
gross income shall be included for purposes of computing the
corporation's distributive share of the pass-through entity's
gross income under division (L)(2)(b)(ii) of this section.

(c) For the purposes of divisions (L)(1)(b)(i), (1)(b)(ii),
(2)(a)(i), and (2)(a)(ii) of this section, real property is
described in division (L)(2)(c) of this section only if all of the
following conditions are present at all times during the taxable
year ending prior to the first day of the tax year:

(i) The real property serves as the headquarters of the
corporation's trade or business, or is the place from which the
corporation's trade or business is principally managed or
directed;

(ii) Not more than ten per cent of the value of the real
property and not more than ten per cent of the square footage of
the building or buildings that are part of the real property is
used, made available, or occupied for the purpose of providing,
acquiring, transferring, selling, or disposing of tangible
property or services in the normal course of business to persons
other than related members, the corporation's employees and their

families, and such related members' employees and their families. 7832

(d) As used in division (L) of this section, "related member" 7833
has the same meaning as in division (A)(6) of section 5733.042 of 7834
the Revised Code without regard to division (B) of that section. 7835
7836

(3) The percentages described in division (L)(1)(a) of this 7837
section shall be equal to the quarterly average of those 7838
percentages as calculated during the corporation's taxable year 7839
ending prior to the first day of the tax year. 7840

(4) With respect to the election described in division 7841
(L)(1)(e) of this section: 7842

(a) The election need not accompany a timely filed report; 7843

(b) The election need not accompany the report; rather, the 7844
election may accompany a subsequently filed but timely application 7845
for refund and timely amended report, or a subsequently filed but 7846
timely petition for reassessment; 7847

(c) The election is not irrevocable; 7848

(d) The election applies only to the tax year specified by 7849
the corporation; 7850

(e) The corporation's related members comply with division 7851
(L)(1)(d) of this section. 7852

Nothing in division (L)(4) of this section shall be construed 7853
to extend any statute of limitations set forth in this chapter. 7854

(M) "Qualifying controlled group" means two or more 7855
corporations that satisfy the ownership and control requirements 7856
of division (A) of section 5733.052 of the Revised Code. 7857

(N) "Limited liability company" means any limited liability 7858
company formed under Chapter 1705. of the Revised Code or under 7859
the laws of any other state. 7860

(O) "Pass-through entity" means a corporation that has made an election under subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code for its taxable year under that code, or a partnership, limited liability company, or any other person, other than an individual, trust, or estate, if the partnership, limited liability company, or other person is not classified for federal income tax purposes as an association taxed as a corporation.

(P) "Electric company" 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 7892
be the values as calculated in accordance with divisions (B) and 7893
(C) of this section. 7894

(A) The total value, as shown by the books of the financial 7895
institution, of its capital, surplus, whether earned or unearned, 7896
undivided profits, and reserves shall be determined as prescribed 7897
by section 5733.056 of the Revised Code for tax years 1998 and 7898
thereafter. 7899

(B) The sum of the corporation's net income during the 7900
corporation's taxable year, allocated or apportioned to this state 7901
as prescribed in divisions (B)(1) and (2) of this section, and 7902
subject to sections 5733.052, 5733.053, 5733.057, ~~and 5733.058,~~ 7903
5733.059, and 5733.0510 of the Revised Code: 7904

(1) The net income allocated to this state as provided by 7905
section 5733.051 of the Revised Code. 7906

(2) The amount of Ohio apportioned net income from sources 7907
other than those allocated under section 5733.051 of the Revised 7908
Code, which shall be determined by multiplying the corporation's 7909
net income by a fraction. The numerator of the fraction is the sum 7910
of the following products: the property factor multiplied by 7911
twenty, the payroll factor multiplied by twenty, and the sales 7912
factor multiplied by sixty. The denominator of the fraction is one 7913
hundred, provided that the denominator shall be reduced by twenty 7914
if the property factor has a denominator of zero, by twenty if the 7915
payroll factor has a denominator of zero, and by sixty if the 7916
sales factor has a denominator of zero. 7917

The property, payroll, and sales factors shall be determined 7918
as follows: 7919

(a) The property factor is a fraction the numerator of which 7920
is the average value of the corporation's real and tangible 7921
personal property owned or rented, and used in the trade or 7922

business in this state during the taxable year, and the 7923
denominator of which is the average value of all the corporation's 7924
real and tangible personal property owned or rented, and used in 7925
the trade or business everywhere during such year. There shall be 7926
excluded from the numerator and denominator of the property factor 7927
the original cost of all of the following property within Ohio: 7928
property with respect to which a "pollution control facility" 7929
certificate has been issued pursuant to section 5709.21 of the 7930
Revised Code; property with respect to which an "industrial water 7931
pollution control certificate" has been issued pursuant to section 7932
6111.31 of the Revised Code; and property used exclusively during 7933
the taxable year for qualified research. 7934

(i) Property owned by the corporation is valued at its 7935
original cost. Property rented by the corporation is valued at 7936
eight times the net annual rental rate. "Net annual rental rate" 7937
means the annual rental rate paid by the corporation less any 7938
annual rental rate received by the corporation from subrentals. 7939

(ii) The average value of property shall be determined by 7940
averaging the values at the beginning and the end of the taxable 7941
year, but the tax commissioner may require the averaging of 7942
monthly values during the taxable year, if reasonably required to 7943
reflect properly the average value of the corporation's property. 7944

(b) The payroll factor is a fraction the numerator of which 7945
is the total amount paid in this state during the taxable year by 7946
the corporation for compensation, and the denominator of which is 7947
the total compensation paid everywhere by the corporation during 7948
such year. There shall be excluded from the numerator and the 7949
denominator of the payroll factor the total compensation paid in 7950
this state to employees who are primarily engaged in qualified 7951
research. 7952

(i) Compensation means any form of remuneration paid to an 7953

employee for personal services. 7954

(ii) Compensation is paid in this state if: (1) the 7955
recipient's service is performed entirely within this state, (2) 7956
the recipient's service is performed both within and without this 7957
state, but the service performed without this state is incidental 7958
to the recipient's service within this state, (3) some of the 7959
service is performed within this state and either the base of 7960
operations, or if there is no base of operations, the place from 7961
which the service is directed or controlled is within this state, 7962
or the base of operations or the place from which the service is 7963
directed or controlled is not in any state in which some part of 7964
the service is performed, but the recipient's residence is in this 7965
state. 7966

(iii) Compensation is paid in this state to any employee of a 7967
common or contract motor carrier corporation, who performs the 7968
employee's regularly assigned duties on a motor vehicle in more 7969
than one state, in the same ratio by which the mileage traveled by 7970
such employee within the state bears to the total mileage traveled 7971
by such employee everywhere during the taxable year. 7972

(c) ~~The~~ Except as provided in section 5733.059 of the Revised 7973
Code, the sales factor is a fraction the numerator of which is the 7974
total sales in this state by the corporation during the taxable 7975
year, and the denominator of which is the total sales by the 7976
corporation everywhere during such year. In determining the 7977
numerator and denominator of the sales factor, receipts from the 7978
sale or other disposal of a capital asset or an asset described in 7979
section 1231 of the Internal Revenue Code shall be eliminated. 7980
Also, in determining the numerator and denominator of the sales 7981
factor, in the case of a reporting corporation owning at least 7982
eighty per cent of the issued and outstanding common stock of one 7983
or more ~~public utilities or~~ insurance companies or public 7984
utilities, except an electric company, or owning at least 7985

twenty-five per cent of the issued and outstanding common stock of 7986
one or more financial institutions, receipts received by the 7987
reporting corporation from such utilities, insurance companies, 7988
and financial institutions shall be eliminated. 7989

For the purpose of this section and section 5733.03 of the 7990
Revised Code, sales of tangible personal property are in this 7991
state where such property is received in this state by the 7992
purchaser. In the case of delivery of tangible personal property 7993
by common carrier or by other means of transportation, the place 7994
at which such property is ultimately received after all 7995
transportation has been completed shall be considered as the place 7996
at which such property is received by the purchaser. Direct 7997
delivery in this state, other than for purposes of transportation, 7998
to a person or firm designated by a purchaser constitutes delivery 7999
to the purchaser in this state, and direct delivery outside this 8000
state to a person or firm designated by a purchaser does not 8001
constitute delivery to the purchaser in this state, regardless of 8002
where title passes or other conditions of sale. 8003

Sales Except as provided in section 5733.059 of the Revised 8004
Code, sales, other than sales of tangible personal property, are 8005
in this state if either: 8006

(i) The income-producing activity is performed solely in this 8007
state; 8008

(ii) The income-producing activity is performed both within 8009
and without this state and a greater proportion of the 8010
income-producing activity is performed within this state than in 8011
any other state, based on costs of performance. 8012

(d) If the allocation and apportionment provisions of 8013
division (B) of this section do not fairly represent the extent of 8014
the taxpayer's business activity in this state, the taxpayer may 8015
request, which request must be in writing and must accompany the 8016

report, timely filed petition for reassessment, or timely filed
amended report, or the tax commissioner may require, in respect to
all or any part of the taxpayer's allocated or apportioned base,
if reasonable, any one or more of the following:

- (i) Separate accounting;
- (ii) The exclusion of any one or more of the factors;
- (iii) The inclusion of one or more additional factors ~~which~~
that will fairly represent the taxpayer's allocated or apportioned
base in this state.

An alternative method will be effective only with approval by
the tax commissioner.

Nothing in this section shall be construed to extend any
statute of limitations set forth in this chapter.

(C)(1) Subject to divisions (C)(2) and (3) of this section,
the total value, as shown on the books of each corporation that is
not a qualified holding company, of the net book value of a
corporation's assets less the net carrying value of its
liabilities. For the purposes of determining that total value, any
reserves shown on the corporation's books shall be considered
liabilities or contra assets, except for any reserves that are
deemed appropriations of retained earnings under generally
accepted accounting principles.

(2)(a) If, on the last day of the taxpayer's taxable year
preceding the tax year, the taxpayer is a related member to a
corporation that elects to be a qualifying holding company for the
tax year beginning after the last day of the taxpayer's taxable
year, or if, on the last day of the taxpayer's taxable year
preceding the tax year, a corporation that elects to be a
qualifying holding company for the tax year beginning after the
last day of the taxpayer's taxable year is a related member to the

taxpayer, then the taxpayer's total value shall be adjusted by the
qualifying amount. Except as otherwise provided under division
(C)(2)(b) of this section, "qualifying amount" means the amount
that, when added to the taxpayer's total value, and when
subtracted from the net carrying value of the taxpayer's
liabilities computed without regard to division (C)(2) of this
section, or when subtracted from the taxpayer's total value and
when added to the net carrying value of the taxpayer's liabilities
computed without regard to division (C)(2) of this section,
results in the taxpayer's debt-to-equity ratio equaling the
debt-to-equity ratio of the qualifying controlled group on the
last day of the taxable year ending prior to the first day of the
tax year computed on a consolidated basis in accordance with
general accepted accounting principles. For the purposes of
division (C)(2)(a) of this section, the corporation's total value,
after the adjustment required by that division, shall not exceed
the net book value of the corporation's assets.

(b)(i) The amount added to the taxpayer's total value and
subtracted from the net carrying value of the taxpayer's
liabilities shall not exceed the amount of the net carrying value
of the taxpayer's liabilities owed to the taxpayer's related
members.

(ii) A liability owed to the taxpayer's related members
includes, but is not limited to, any amount that the corporation
owes to a person that is not a related member if the corporation's
related member or related members in whole or in part guarantee
any portion or all of that amount, or pledge, hypothecate,
mortgage, or carry out any similar transactions to secure any
portion or all of that amount.

(3) The base upon which the tax is levied under division (C)
of section 5733.06 of the Revised Code shall be computed by
multiplying the amount determined under divisions (C)(1) and (2)

of this section by the fraction determined under divisions 8079
(B)(2)(a) to (c) of this section and, if applicable, divisions 8080
(B)(2)(d)(ii) to (iv) of this section but without regard to 8081
section 5733.052 of the Revised Code. 8082

(4) For purposes of division (C) of this section, "related 8083
member" has the same meaning as in division (A)(6) of section 8084
5733.042 of the Revised Code without regard to division (B) of 8085
that section. 8086

Sec. 5733.051. ~~Net~~ Subject to section 5733.0510 of the 8087
Revised Code, net income of a corporation subject to the tax 8088
imposed by section 5733.06 of the Revised Code shall be allocated 8089
and apportioned to this state as follows: 8090

(A) Net rents and royalties from real property located in 8091
this state are allocable to this state; 8092

(B) Net rents and royalties from tangible personal property, 8093
to the extent such property is utilized in this state, are 8094
allocable to this state if the taxpayer is otherwise subject to 8095
the tax imposed by section 5733.06 of the Revised Code; 8096

(C) Capital gains and losses from the sale or other 8097
disposition of real property located in this state are allocable 8098
to this state; 8099

(D) Capital gains and losses from the sale or other 8100
disposition of tangible personal property are allocable to this 8101
state if the property had a situs in this state at the time of 8102
sale and the taxpayer is otherwise subject to the tax imposed by 8103
section 5733.06 of the Revised Code; 8104

(E) Capital gains and losses from the sale or other 8105
disposition of intangible property which may produce income 8106
enumerated in division (F) of this section are allocable on the 8107
same basis as set forth in such division. Capital gains and losses 8108

from the sale or other disposition of all other intangible 8109
property are apportionable under division (H) of this section. 8110

(F) Dividends or distributions which are not otherwise 8111
deducted or excluded from net income, other than dividends or 8112
distributions from a domestic international sales corporation, are 8113
allocable to this state in accordance with the ratio of the book 8114
value of the physical assets of the payor of the dividends or 8115
distributions located in this state divided by the book value of 8116
the total physical assets of the payor located everywhere. 8117
Dividends or distributions received from a domestic international 8118
sales corporation, or from a payor the location of whose physical 8119
assets is unavailable to the taxpayer, are apportionable under 8120
division (H) of this section. 8121

(G) Patent and copyright royalties and technical assistance 8122
fees, not representing the principal source of gross receipts of 8123
the taxpayer, are allocable to this state to the extent that the 8124
activity of the payor thereof giving rise to the payment takes 8125
place in this state. If the location of the payor's activity is 8126
unavailable to the taxpayer, such royalties and fees are 8127
apportionable under division (H) of this section. 8128

(H) Any other net income, from sources other than those 8129
enumerated in divisions (A) to (G) of this section, is 8130
apportionable to this state on the basis of the mechanism provided 8131
in division (B)(2) of section 5733.05 of the Revised Code. 8132

Sec. 5733.057. As used in this section, "adjusted qualifying 8133
amount" has the same meaning as in section 5733.40 of the Revised 8134
Code. 8135

Except as otherwise provided in divisions (A) and (B) of 8136
section 5733.401 and in sections 5733.058 and 5747.401 of the 8137
Revised Code, in making ~~any computation~~ all apportionment, 8138

allocation, income, gain, loss, deduction, tax, and credit 8139
computations under this chapter and under sections ~~5733.042,~~ 8140
~~5733.05, 5733.051, 5733.052, 5733.053, 5733.40, 5733.41,~~ 5747.41, 8141
and 5747.43 of the Revised Code, each person shall include in that 8142
person's items of adjusted qualifying amounts, allocable income or 8143
loss, if any, apportionable income or loss, property, 8144
compensation, and sales, the person's entire distributive share or 8145
proportionate share of the items of adjusted qualifying amounts, 8146
allocable income or loss, apportionable income or loss, property, 8147
compensation, and sales of any pass-through entity in which the 8148
person has a direct or indirect ownership interest at any time 8149
during the person's taxable year. A pass-through entity's direct 8150
or indirect distributive share or proportionate share of any other 8151
pass-through entity's items of adjusted qualifying amounts, 8152
allocable income or loss, apportionable income or loss, property, 8153
compensation, and sales shall be included for the purposes of 8154
computing the person's distributive share or proportionate share 8155
of the pass-through entity's items of adjusted qualifying amounts, 8156
allocable income or loss, apportionable income or loss, property, 8157
compensation, and sales under this section. Those items shall be 8158
in the same form as was recognized by the pass-through entity. 8159

Sec. 5733.059. (A) As used in this section: 8160

(1) "Customer" means a person who purchases electricity for 8161
consumption either by that person or by the person's related 8162
member and the electricity is not for resale directly or 8163
indirectly to any person other than a related member. 8164

(2) "Related member" has the same meaning as in division 8165
(a)(6) of section 5733.042 of the Revised Code without regard to 8166
division (B) of that section. 8167

(B) Except as provided in division (C) of this section, this 8168
division applies only to sales of electric transmission and 8169

distribution services. For purposes of sections 5733.05 and 8170
5747.21 of the Revised Code: 8171

(1) sales of the transmission of electricity are in this 8172
state in proportion to the ratio of the wire MILEAGE of the 8173
taxpayer's transmission lines located in this state divided by the 8174
wire mileage of the taxpayer's transmission lines located 8175
everywhere. Transmission wire mileage shall be weighted for the 8176
VOLTAGE capacity of each line. 8177

(2) sales of the distribution of electricity are in this 8178
state in proportion to the ratio of the wire mileage of the 8179
taxpayer's distribution lines located in this state divided by the 8180
wire mileage of the taxpayer's DISTRIBUTION lines located 8181
everywhere. Distribution wire mileage shall not be weighted for 8182
the voltage capacity of each line. 8183

(C) This division applies only to a person that has 8184
TRANSMISSION or distribution lines in this state. If a contract 8185
for the sale of electricity includes the seller's or the seller's 8186
related member's obligation to transmit or distribute the 8187
electricity and if the sales contract separately identifies the 8188
price charged for the transmission or distribution of electricity, 8189
the price charged for the transmission and distribution of 8190
electricity shall be apportioned to this state in accordance with 8191
division (B) of this section. Any remaining portion of the sales 8192
price of the electricity shall be sitused to this state in 8193
accordance with division (D) of this section. 8194

If the sales contract does not separately identify the price 8195
charged for the transmission or distribution of electricity, the 8196
sales price of the electricity shall be sitused to this state in 8197
accordance with division (D) of this section. 8198

(D) Any person who makes a sale of electricity shall situs 8199
the following to this state: 8200

(1) A sale of electricity directly or indirectly to a 8201
customer to the extent the customer consumes the electricity in 8202
this state; 8203

(2) A sale of electricity directly or indirectly to a related 8204
member where the related member directly or indirectly sells 8205
electricity to a customer to the extent the customer consumes the 8206
electricity in this state; 8207

(3) A sale of electricity if the seller or the seller's 8208
related member directly or indirectly delivers the electricity to 8209
a location in this state or directly or indirectly delivers the 8210
electricity exactly to the border of this state and another state; 8211

(4) A sale of electricity if the seller or the seller's 8212
related member directly or indirectly directs the delivery of the 8213
electricity to a location in this state or directly or indirectly 8214
directs the delivery of the electricity exactly to the border of 8215
this state and another state. 8216

(E) If the situsing provisions of this section do not fairly 8217
represent the extent of the taxpayer's or the taxpayer's related 8218
member's activity in this state, the taxpayer may request, or the 8219
tax COMMISSIONER may require, in respect to all or part of a 8220
taxpayer's or related member's sales, if reasonable, any of the 8221
following: 8222

(1) Separate accounting; 8223

(2) The exclusion of one or more additional situsing factors 8224
that will fairly represent the taxpayer's and the related member's 8225
sales in this state; 8226

(3) The inclusion of one or more additional situsing factors 8227
that will fairly represent the taxpayer's and the related member's 8228
sales in this state. 8229

The taxpayer's request shall be in writing and shall be filed 8230

with the report required by section 5733.02 of the Revised Code, a 8231
timely filed petition for reassessment, or a timely filed amended 8232
report. An alternative situsing method shall be effective with the 8233
approval of the tax commissioner. 8234

Nothing in this section shall be construed to extend any 8235
statute of limitations set forth in this chapter. 8236

(F) If the situsing provisions of this section do not fairly 8237
represent activity in this state, the tax commissioner may 8238
promulgate rules to situs sales using a methodology that fairly 8239
reflects sales in this state. 8240

(G) Notwithstanding sections 5733.111 and 5747.131 of the 8241
Revised Code to the contrary, a person situsing a sale outside 8242
this state has the burden to establish by a preponderance of the 8243
evidence that the doctrines enumerated in those sections do not 8244
apply. 8245

Sec. 5733.0510. (A) As used in this section: 8246

(1) "qualifying taxpayer" means either of the following: 8247

(a) a person that is an electric company or a combined 8248
company, but only if the person was subject to and paid the tax 8249
imposed by section 5727.30 of the Revised Code for gross receipts 8250
received during the period of May 1, 2000, through April 30, 2001; 8251

(b) any taxpayer not described in division (A)(1)(a) of this 8252
section if a person described in division (A)(1)(a) of this section 8253
transfers all or a portion of its assets or equity directly or 8254
indirectly to the taxpayer, the transfer occurred as part of an 8255
entity organization or reorganization, or subsequent entity 8256
organization or reorganization, and the gain or loss with respect 8257
to the transfer is not recognized in whole or in part for federal 8258
income tax purposes under the Internal Revenue Code on account of 8259
a transfer as part of an equity organization or reorganization, or 8260

subsequent organization or reorganization. 8261

(2) "qualifying taxable event" means any event resulting in 8262
the recognition for federal income tax purposes of gain or loss in 8263
connection with any direct or indirect sale, direct or indirect 8264
exchange, direct or indirect transfer, or direct or indirect 8265
retirement of any qualifying asset. 8266

(3) "qualifying asset" means any asset shown on the 8267
qualifying taxpayer's books and records on December 31, 2000, in 8268
accordance with generally accepted accounting principles, 8269
including the cost of, or any portion of the cost of, any asset 8270
acquired after December 31, 2000, where such asset was acquired as 8271
a result of a tax-free or tax-deferred exchange of a qualifying 8272
asset. 8273

(4) "Net Income" has the same meaning as in division (I) of 8274
section 5733.04 of the Revised Code. 8275

(5) "book-tax differential" means the difference, if any, 8276
between an asset's net book value shown on the qualifying 8277
taxpayer's books and records on December 31, 2000, in accordance 8278
with generally accepted accounting principles, and such asset's 8279
adjusted basis on December 31, 2000. The book-tax differential may 8280
be a negative number. 8281

(6) "Qualifying regulatory asset" means those qualifying 8282
assets that, as of December 31, 2000, are no longer included in 8283
federal energy regulatory commission uniform system of accounts 8284
101 through 106 or are deferred expenses for operation or 8285
maintenance, or deferred costs associated with leaseback 8286
transactions on generating units, that have been authorized by a 8287
regulatory agency for recovery from customers in a future period 8288
and that, as of December 31, 2000, are subject to transition cost 8289
recovery under Chapter 4928. of the Revised Code or similar laws 8290
of another state. 8291

(B)(1) If, with respect to a qualifying asset, there occurs a 8292
qualifying taxable event and if the gain or loss recognized is a 8293
type of gain or loss that is apportioned as provided in division 8294
(B) of section 5733.05 of the Revised Code, the qualifying 8295
taxpayer shall reduce its net income by the amount of the book-tax 8296
differential for that qualifying asset, if the book-tax 8297
differential is positive, and the qualifying taxpayer shall 8298
increase its net income by the absolute value of the amount of the 8299
book-tax differential for that qualifying asset, if the book-tax 8300
differential is negative. 8301

(2) If, with respect to a qualifying asset, there occurs a 8302
qualifying taxable event and if the gain or loss recognized is a 8303
type of gain or loss that is allocated to this state as provided 8304
in section 5733.051 of the Revised Code, the qualifying taxpayer 8305
shall reduce its income allocated to this state by the amount of 8306
the book-tax differential for that qualifying asset, if the 8307
book-tax differential is positive, and the qualifying taxpayer 8308
shall increase its income allocated to this state by the absolute 8309
value of the amount of the book-tax differential for that 8310
qualifying asset, if the book-tax differential is negative. 8311

(3) If, with respect to a qualifying taxable event, the 8312
person uses the installment sales method to recognize gain over 8313
more than one year, the adjustments required by divisions (B)(1) 8314
and (2) of this section shall not be made entirely in the tax year 8315
immediately following the taxable year in which the qualifying 8316
taxable event occurred but shall be made in part in such tax year 8317
and in subsequent tax years in proportion to the gain recognized 8318
for federal income tax purposes in each corresponding taxable 8319
year. 8320

(4) If the recognized gain or loss to which divisions (B)(1) 8321
and (2) of this section refer is zero solely because at the time 8322
of the qualifying taxable event the amount realized by the 8323

qualifying taxpayer with respect to that event equals the 8324
qualifying asset's adjusted basis, then solely for the purposes of 8325
division (B) of this section, the amount realized shall be deemed 8326
to be one dollar greater than the qualifying asset's adjusted 8327
basis. 8328

(5) Whenever there is a qualifying taxable event, all 8329
qualifying regulatory assets directly or indirectly associated 8330
with a qualifying asset in connection with that event shall be 8331
CONSIDERED to have been disposed of as part of the event for an 8332
amount realized of one dollar. 8333

(C) Nothing in division (B) of this section shall be 8334
construed to allow for an adjustment more than once with respect 8335
to the same qualifying asset. 8336

(D) Nothing in this section shall be construed to allow more 8337
than one corporation to claim an adjustment with respect to the 8338
same qualifying asset. 8339

Sec. 5733.06. The tax hereby charged each corporation subject 8340
to this chapter shall be the greater of the sum of divisions (A) 8341
and (B) of this section, after the reduction, if any, provided by 8342
division (J) of this section, or division (C) of this section, 8343
whichever is greater after the reduction, if any, provided by 8344
division (J) of this section, except that the tax hereby charged 8345
each financial institution subject to this chapter shall be the 8346
amount computed under division (D) of this section: 8347

(A) Except as set forth in division (F) of this section, five 8348
and one-tenth per cent upon the first fifty thousand dollars of 8349
the value of the taxpayer's issued and outstanding shares of stock 8350
as determined under division (B) of section 5733.05 of the Revised 8351
Code; 8352

(B) Except as set forth in division (F) of this section, 8353

eight and one-half per cent upon the value so determined in excess 8354
of fifty thousand dollars; or 8355

(C) Except as otherwise provided under division (G) of this 8356
section, four mills times that portion of the value of the issued 8357
and outstanding shares of stock as determined under division (C) 8358
of section 5733.05 of the Revised Code. For the purposes of 8359
division (C) of this section, division (C)(2) of section 5733.065, 8360
and division (C) of section 5733.066 of the Revised Code, the 8361
value of the issued and outstanding shares of stock of a qualified 8362
holding company is zero. 8363

(D) The tax charged each financial institution subject to 8364
this chapter shall be that portion of the value of the issued and 8365
outstanding shares of stock as determined under division (A) of 8366
section 5733.05 of the Revised Code, multiplied by the following 8367
amounts: 8368

(1) For tax years prior to the 1999 tax year, fifteen mills; 8369

(2) For the 1999 tax year, fourteen mills; 8370

(3) For tax year 2000 and thereafter, thirteen mills. 8371

(E) No tax shall be charged from any corporation ~~which~~ that 8372
has been adjudicated bankrupt, or for which a receiver has been 8373
appointed, or ~~which~~ that has made a general assignment for the 8374
benefit of creditors, except for the portion of the then current 8375
tax year during which the tax commissioner finds such corporation 8376
had the power to exercise its corporate franchise unimpaired by 8377
such proceedings or act. The minimum payment for all corporations 8378
shall be fifty dollars. 8379

The tax charged to corporations under this chapter for the 8380
privilege of engaging in business in this state, which is an 8381
excise tax levied on the value of the issued and outstanding 8382
shares of stock, shall in no manner be construed as prohibiting or 8383

otherwise limiting the powers of municipal corporations, joint
economic development zones created under section 715.691 of the
Revised Code, and joint economic development districts created
under section 715.70 or 715.71 or sections 715.72 to 715.81 of the
Revised Code in this state to impose an income tax on the income
of such corporations.

(F) If two or more taxpayers satisfy the ownership or control
requirements of division (A) of section 5733.052 of the Revised
Code, each such taxpayer shall substitute "the taxpayer's pro-rata
amount" for "fifty thousand dollars" in divisions (A) and (B) of
this section. For purposes of this division, "the taxpayer's
pro-rata amount" is an amount that, when added to the other such
taxpayers' pro-rata amounts, does not exceed fifty thousand
dollars. For the purpose of making that computation, the
taxpayer's pro-rata amount shall not be less than zero. Nothing in
this division derogates from or eliminates the requirement to make
the alternative computation of tax under division (C) of this
section.

(G) The tax liability of any corporation under division (C)
of this section shall not exceed one hundred fifty thousand
dollars.

(H)(1) For the purposes of division (H) of this section,
"exiting corporation" means a corporation that satisfies all of
the following conditions:

(a) The corporation had nexus with or in this state under the
Constitution of the United States during any portion of a calendar
year;

(b) The corporation was not a taxpayer on the first day of
January immediately following that calendar year;

(c) The corporation was not a financial institution on the
first day of January immediately following that calendar year;

(d) The corporation was not a transferor as defined in 8415
section 5733.053 of the Revised Code during any portion of that 8416
calendar year; 8417

(e) During any portion of that calendar year, or any portion 8418
of the immediately preceding calendar year, the corporation had 8419
net income that was not included in a report filed pursuant to 8420
section 5733.02, 5733.021, 5733.03, or 5733.031 of the Revised 8421
Code; 8422

(f) The corporation would have been subject to the tax 8423
computed under divisions (A), (B), (C), (F), and (G) of this 8424
section if the corporation is assumed to have had nexus with or in 8425
this state under the Constitution of the United States on the 8426
first day of January immediately following the calendar year 8427
referred to in division (H)(1)(a) of this section. 8428

(2) For the purposes of division (H) of this section, 8429
"unreported net income" means net income that was not previously 8430
included in a report filed pursuant to section 5733.02, 5733.021, 8431
5733.03, or 5733.031 of the Revised Code and that was realized or 8432
recognized during the calendar year referred to in division (H)(1) 8433
of this section or the immediately preceding calendar year. 8434

(3) Each exiting corporation shall pay a tax computed by 8435
first allocating and apportioning the unreported net income 8436
pursuant to division (B) of section 5733.05 and ~~sections~~ section 8437
5733.051 and, if applicable, section 5733.052 of the Revised Code. 8438
The exiting corporation then shall compute the tax due on its 8439
unreported net income allocated and apportioned to this state by 8440
applying divisions (A), (B), and (F) of this section to that 8441
income. 8442

(4) Divisions (C) and (G) of this section, division (D)(2) of 8443
section 5733.065, and division (C) of section 5733.066 of the 8444
Revised Code do not apply to an exiting corporation, but exiting 8445

corporations are subject to every other provision of this chapter. 8446

(5) Notwithstanding sections 5733.02, 5733.021, and 5733.03 8447
of the Revised Code to the contrary, each exiting corporation 8448
shall report and pay the tax due under division (H) of this 8449
section on or before the thirty-first day of May immediately 8450
following the calendar year referred to in division (H)(1)(a) of 8451
this section. The exiting corporation shall file that report on 8452
the form most recently prescribed by the tax commissioner for the 8453
purposes of complying with sections 5733.02 and 5733.03 of the 8454
Revised Code. Upon request by the corporation, the tax 8455
commissioner may extend the date for filing the report. 8456

(6) The tax commissioner may adopt rules governing division 8457
(H) of this section. 8458

(I) Any reference in the Revised Code to "the tax imposed by 8459
section 5733.06 of the Revised Code" or "the tax due under section 8460
5733.06 of the Revised Code" includes the taxes imposed under 8461
sections 5733.065 and 5733.066 of the Revised Code. 8462

(J)(1) Division (J) of this section applies solely to a 8463
combined company. Section 5733.057 of the Revised Code shall apply 8464
when calculating the adjustments required by division (J) of this 8465
section. 8466

(2) Subject to division (J)(4) of this section, the total tax 8467
calculated in divisions (A) and (B) of this section shall be 8468
reduced by an amount calculated by multiplying such tax by a 8469
fraction, the numerator of which is the total taxable gross 8470
receipts attributed to providing public utility activity other 8471
than as an electric company under section 5727.03 of the Revised 8472
Code for the year upon which the taxable gross receipts are 8473
measured immediately preceding the tax year, and the denominator 8474
of which is the total gross receipts from all sources for the year 8475
upon which the taxable gross receipts are measured immediately 8476

preceding the tax year. Nothing herein shall be construed to 8477
exclude from the denominator any item of income described in 8478
section 5733.051 of the Revised Code. 8479

(3) Subject to division (J)(4) of this section, the total tax 8480
calculated in division (C) of this section shall be reduced by an 8481
amount calculated by multiplying such tax by the fraction 8482
described in division (J)(2) of this section. 8483

(4) In no event shall the reduction provided by division 8484
(J)(2) or (J)(3) of this section exceed the amount of the excise 8485
tax paid in accordance with section 5727.38 of the Revised Code, 8486
for the year upon which the taxable gross receipts are measured 8487
immediately preceding the tax year. 8488

Sec. 5733.09. (A) An incorporated company, whether foreign or 8489
domestic, owning and operating a public utility in this state, and 8490
~~as such~~ required by law to file reports with the tax commissioner 8491
and to pay an excise tax upon its gross receipts, and insurance, 8492
fraternal, beneficial, bond investment, and other corporations 8493
required by law to file annual reports with the superintendent of 8494
insurance and dealers in intangibles, the shares of which are, or 8495
the capital or ownership in capital employed by such dealer is, 8496
subject to the taxes imposed by section 5707.03 of the Revised 8497
Code, shall not be subject to this chapter, except for sections 8498
5733.031, 5733.042, 5733.05, 5733.052, 5733.053, 5733.069, 8499
5733.0611, 5733.40, 5733.41, and sections 5747.40 to 5747.453 of 8500
the Revised Code. An electric company subject to the filing 8501
requirements of section 5727.08 of the Revised Code or otherwise 8502
having nexus with or in this state under the Constitution of the 8503
United States, or any other corporation having any gross receipts 8504
directly attributable to providing public utility service as an 8505
electric company or having any property directly attributable to 8506
providing public utility service as an electric company, is 8507

subject to this chapter. 8508

(B) A corporation that has made an election under subchapter 8509
S, chapter one, subtitle A, of the Internal Revenue Code for its 8510
taxable year under such code is exempt from the tax imposed by 8511
section 5733.06 of the Revised Code that is based on that taxable 8512
year. 8513

A corporation that makes such an election shall file a notice 8514
of such election with the tax commissioner between the first day 8515
of January and the thirty-first day of March of each tax year that 8516
the election is in effect. 8517

(C) An entity defined to be a "real estate investment trust" 8518
by section 856 of the Internal Revenue Code, a "regulated 8519
investment company" by section 851 of the Internal Revenue Code, 8520
or a "real estate mortgage investment conduit" by section 860D of 8521
the Internal Revenue Code, is exempt from taxation for a tax year 8522
as a corporation under this chapter and is exempt from taxation 8523
for a return year as a dealer in intangibles under Chapter 5725. 8524
of the Revised Code if it provides the report required by this 8525
division. By the last day of March of the tax or return year the 8526
entity shall submit to the tax commissioner the name of the entity 8527
with a list of the names, addresses, and social security or 8528
federal identification numbers of all investors, shareholders, and 8529
other similar investors who owned any interest or invested in the 8530
entity during the preceding calendar year. The commissioner may 8531
extend the date by which the report must be submitted for 8532
reasonable cause shown by the entity. The commissioner may 8533
prescribe the form of the report required for exemption under this 8534
division. 8535

(D)(1) As used in this division: 8536

(a) "Commercial printer" means a person primarily engaged in 8537
the business of commercial printing. However, "commercial printer" 8538

does not include a person primarily engaged in the business of
providing duplicating services using photocopy machines or other
xerographic processes.

(b) "Commercial printing" means printing by one or more
common processes such as letterpress, lithography, gravure,
screen, or digital imaging, and includes related activities such
as binding, platemaking, prepress operation, cartographic
composition, and typesetting.

(c) "Contract for printing" means an oral or written
agreement for the purchase of printed materials produced by a
commercial printer.

(d) "Intangible property located at the premises of a
commercial printer" means intangible property of any kind owned or
licensed by a customer of the commercial printer and furnished to
the commercial printer for use in commercial printing.

(e) "Printed material" means any tangible personal property
produced or processed by a commercial printer pursuant to a
contract for printing.

(f) "Related member" has the same meaning as in division
(A)(6) of section 5733.042 of the Revised Code without regard to
division (B) of that section.

(2) Except as provided in divisions (D)(3) and (4) of this
section, a corporation not otherwise subject to the tax imposed by
section 5733.06 of the Revised Code for a tax year does not become
subject to that tax for the tax year solely by reason of any one
or more of the following occurring in this state during the
taxable year that ends immediately prior to the tax year:

(a) Ownership by the corporation or a related member of the
corporation of tangible personal property or intangible property
located during all or any portion of the taxable year or on the

first day of the tax year at the premises of a commercial printer 8569
with which the corporation or the corporation's related member has 8570
a contract for printing with respect to such property or the 8571
premises of a commercial printer's related member with which the 8572
corporation or the corporation's related member has a contract for 8573
printing with respect to such property; 8574

(b) Sales by the corporation or a related member of the 8575
corporation of property produced at and shipped or distributed 8576
from the premises of a commercial printer with which the 8577
corporation or the corporation's related member has a contract for 8578
printing with respect to such property or the premises of a 8579
commercial printer's related member with which the corporation or 8580
the corporation's related member has a contract for printing with 8581
respect to such property; 8582

(c) Activities of employees, officers, agents, or contractors 8583
of the corporation or a related member of the corporation on the 8584
premises of a commercial printer with which the corporation or the 8585
corporation's related member has a contract for printing or the 8586
premises of a commercial printer's related member with which the 8587
corporation or the corporation's related member has a contract for 8588
printing, where the activities are directly and solely related to 8589
quality control, distribution, or printing services, or any 8590
combination thereof, performed by or at the direction of the 8591
commercial printer or the commercial printer's related member. 8592

8593

(3) The exemption under this division does not apply for a 8594
taxable year to any corporation having on the first day of January 8595
of the tax year or at any time during the taxable year ending 8596
immediately preceding the first day of January of the tax year a 8597
related member which, on the first day of January of the tax year 8598
or during any portion of such taxable year of the corporation, has 8599
nexus in or with this state under the Constitution of the United 8600

States or holds a certificate of compliance with the laws of this 8601
state authorizing it to do business in this state. 8602

(4) With respect to allowing the exemption under this 8603
division, the tax commissioner shall be guided by the doctrines of 8604
"economic reality," "sham transaction," "step transaction," and 8605
"substance over form." A corporation shall bear the burden of 8606
establishing by a preponderance of the evidence that any 8607
transaction giving rise to an exemption claimed under this 8608
division did not have as a principal purpose the avoidance of any 8609
portion of the tax imposed by section 5733.06 of the Revised Code. 8610

Application of the doctrines listed in division (D)(4) of 8611
this section is not limited to this division. 8612

Sec. 5733.33. (A) As used in this section: 8613

(1) "Manufacturing machinery and equipment" means engines and 8614
machinery, and tools and implements, of every kind used, or 8615
designed to be used, in refining and manufacturing. "Manufacturing 8616
machinery and equipment" does not include property acquired after 8617
December 31, 1999, that is used: 8618

(a) For the transmission and distribution of electricity; 8619

(b) For the generation of electricity if fifty per cent or 8620
more of the electricity that the property generates is consumed, 8621
during the one-hundred-twenty-month period commencing with the 8622
date the property is placed in service, by persons that are not 8623
related members to the person who generates the electricity. 8624

(2) "New manufacturing machinery and equipment" means 8625
manufacturing machinery and equipment, the original use in this 8626
state of which commences with the taxpayer or with a partnership 8627
of which the taxpayer is a partner. "New manufacturing machinery 8628
and equipment" does not include property acquired after December 8629
31, 1999, that is used: 8630

(a) For the transmission and distribution of electricity; 8631

(b) For the generation of electricity if fifty per cent or 8632
more of the electricity that the property generates is consumed, 8633
during the one-hundred-twenty-month period commencing with the 8634
date the property is placed in service, by persons that are not 8635
related members to the person who generates the electricity. 8636

(3)(a) "Purchase" has the same meaning as in section 8637
179(d)(2) of the Internal Revenue Code. 8638

(b) Any purchase, for purposes of this section, is considered 8639
to occur at the time the agreement to acquire the property to be 8640
purchased becomes binding. 8641

(c) Notwithstanding section 179(d) of the Internal Revenue 8642
Code, a taxpayer's direct or indirect acquisition of new 8643
manufacturing machinery and equipment is not purchased on or after 8644
July 1, 1995, if the taxpayer, or a person whose relationship to 8645
the taxpayer is described in subparagraphs (A), (B), or (C) of 8646
section 179(d)(2) of the Internal Revenue Code, had directly or 8647
indirectly entered into a binding agreement to acquire the 8648
property at any time prior to July 1, 1995. 8649

(4) "Qualifying period" means the period that begins July 1, 8650
1995, and ends December 31, 2000. 8651

(5) "County average new manufacturing machinery and equipment 8652
investment" means either of the following: 8653

(a) The average annual cost of new manufacturing machinery 8654
and equipment purchased for use in the county during baseline 8655
years, in the case of a taxpayer or partnership that was in 8656
existence for more than one year during baseline years. 8657

(b) Zero, in the case of a taxpayer or partnership that was 8658
not in existence for more than one year during baseline years. 8659

(6) "Partnership" includes a limited liability company formed 8660

under Chapter 1705. of the Revised Code or under the laws of any 8661
other state, provided that the company is not classified for 8662
federal income tax purposes as an association taxable as a 8663
corporation. 8664

(7) "Partner" includes a member of a limited liability 8665
company formed under Chapter 1705. of the Revised Code or under 8666
the laws of any other state, provided that the company is not 8667
classified for federal income tax purposes as an association 8668
taxable as a corporation. 8669

(8) "Distressed area" means either a municipal corporation 8670
that has a population of at least fifty thousand or a county that 8671
meets two of the following criteria of economic distress, or a 8672
municipal corporation the majority of the population of which is 8673
situated in such a county: 8674

(a) Its average rate of unemployment, during the most recent 8675
five-year period for which data are available, is equal to at 8676
least one hundred twenty-five per cent of the average rate of 8677
unemployment for the United States for the same period; 8678

(b) It has a per capita income equal to or below eighty per 8679
cent of the median county per capita income of the United States 8680
as determined by the most recently available figures from the 8681
United States census bureau; 8682

(c)(i) In the case of a municipal corporation, at least 8683
twenty per cent of the residents have a total income for the most 8684
recent census year that is below the official poverty line; 8685

(ii) In the case of a county, in intercensal years, the 8686
county has a ratio of transfer payment income to total county 8687
income equal to or greater than twenty-five per cent. 8688

(9) "Eligible area" means a distressed area, a labor surplus 8689
area, an inner city area, or a situational distress area. 8690

(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;

(c) The annual payroll associated with the job loss;

(d) The amount of state and local taxes associated with the
job loss;

(e) The impact that the closing or downsizing has on the

suppliers located in the county or municipal corporation. 8721

(14) "Cost" has the same meaning and limitation as in section 8722
179(d)(3) of the Internal Revenue Code. 8723

(15) "Baseline years" means: 8724

(a) Calendar years 1992, 1993, and 1994, with regard to a 8725
credit claimed for the purchase during calendar year 1995, 1996, 8726
1997, or 1998 of new manufacturing machinery and equipment; 8727

(b) Calendar years 1993, 1994, and 1995, with regard to a 8728
credit claimed for the purchase during calendar year 1999 of new 8729
manufacturing machinery and equipment; 8730

(c) Calendar years 1994, 1995, and 1996, with regard to a 8731
credit claimed for the purchase during calendar year 2000 of new 8732
manufacturing machinery and equipment. 8733

(B)(1) A nonrefundable credit is allowed against the tax 8734
imposed by section 5733.06 of the Revised Code for a taxpayer that 8735
purchases new manufacturing machinery and equipment during the 8736
qualifying period, provided that the new manufacturing machinery 8737
and equipment are installed in this state no later than December 8738
31, 2001. 8739

(2) The credit is also available to a taxpayer that is a 8740
partner in a partnership that purchases new manufacturing 8741
machinery and equipment during the qualifying period, provided 8742
that the partnership installs the new manufacturing machinery and 8743
equipment in this state no later than December 31, 2001. The 8744
taxpayer shall determine the credit amount as provided in division 8745
(H) of this section. 8746

(3)(a) Except as otherwise provided in division (B)(3)(b) of 8747
this section, a credit may be claimed under this section in excess 8748
of one million dollars only if the cost of all manufacturing 8749
machinery and equipment owned in this state by the taxpayer 8750

claiming the credit on the last day of the calendar year exceeds 8751
the cost of all manufacturing machinery and equipment owned in 8752
this state by the taxpayer on the first day of that calendar year. 8753

As used in division (B)(3)(a) of this section, "calendar 8754
year" means the calendar year in which the machinery and equipment 8755
for which the credit is claimed was purchased. 8756

(b) Division (B)(3)(a) of this section does not apply if the 8757
taxpayer claiming the credit applies for and is issued a waiver of 8758
the requirement of that division. A taxpayer may apply to the 8759
director of the department of development for such a waiver in the 8760
manner prescribed by the director, and the director may issue such 8761
a waiver if the director determines that granting the credit is 8762
necessary to increase or retain employees in this state, and that 8763
the credit has not caused relocation of manufacturing machinery 8764
and equipment among counties within this state for the primary 8765
purpose of qualifying for the credit. 8766

(C)(1) Except as otherwise provided in division (C)(2) of 8767
this section, the credit amount is equal to seven and one-half per 8768
cent of the excess of the cost of the new manufacturing machinery 8769
and equipment purchased during the calendar year for use in a 8770
county over the county average new manufacturing machinery and 8771
equipment investment for that county. 8772

(2) As used in division (C)(2) of this section, "county 8773
excess" means the taxpayer's excess cost for a county as computed 8774
under division (C)(1) of this section. 8775

For a taxpayer with a county excess, whose purchases included 8776
purchases for use in any eligible area in the county, the credit 8777
amount is equal to thirteen and one-half per cent of the cost of 8778
the new manufacturing machinery and equipment purchased during the 8779
calendar year for use in the eligible areas in the county, 8780
provided that the cost subject to the thirteen and one-half per 8781

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.

(b) A taxpayer that enters into an agreement under division
(C)(3) of section 5709.62 of the Revised Code and that acquires
manufacturing machinery or equipment as a result of purchasing a

large manufacturing facility, as defined in section 5709.61 of the
Revised Code, from another taxpayer with whom commenced the
original use in this state of the manufacturing machinery or
equipment, and that operates the large manufacturing facility so
purchased, is entitled to any remaining or carried-forward credit
amounts to which the other taxpayer who sold the facility would
have been entitled under this section had the other taxpayer not
sold the manufacturing facility or equipment.

(c) New manufacturing machinery and equipment is not
considered sold if a pass-through entity transfers to another
pass-through entity substantially all of its assets as part of a
plan of reorganization under which substantially all gain and loss
is not recognized by the pass-through entity that is transferring
the new manufacturing machinery and equipment to the transferee
and under which the transferee's basis in the new manufacturing
machinery and equipment is determined, in whole or in part, by
reference to the basis of the pass-through entity which
transferred the new manufacturing machinery and equipment to the
transferee.

(d) Division (C)(5) of this section shall apply only if the
acquiring taxpayer or transferee does not sell the new
manufacturing machinery and equipment or transfer the new
manufacturing machinery and equipment out of the county before the
end of the seven-year period to which division (C)(4) of this
section refers.

(e) Division (C)(5)(b) of this section applies only to the
extent that the taxpayer that sold the manufacturing machinery or
equipment, upon request, timely provides to the tax commissioner
any information that the tax commissioner considers to be
necessary to ascertain any remaining or carried-forward amounts to
which the taxpayer that sold the facility would have been entitled
under this section had the taxpayer not sold the manufacturing

machinery or equipment. Nothing in division (C)(5)(b) or (e) of 8845
this section shall be construed to allow a taxpayer to claim any 8846
credit amount with respect to the acquired manufacturing machinery 8847
or equipment that is greater than the amount that would have been 8848
available to the other taxpayer that sold the manufacturing 8849
machinery or equipment had the other taxpayer not sold the 8850
manufacturing machinery or equipment. 8851

(D) The taxpayer shall claim the credit in the order required 8852
under section 5733.98 of the Revised Code. Each year, any credit 8853
amount in excess of the tax due under section 5733.06 of the 8854
Revised Code after allowing for any other credits that precede the 8855
credit under this section in that order may be carried forward for 8856
three tax years. 8857

(E) A taxpayer purchasing new manufacturing machinery and 8858
equipment and intending to claim the credit shall file, with the 8859
department of development, a notice of intent to claim the credit 8860
on a form prescribed by the department of development. The 8861
department of development shall inform the tax commissioner of the 8862
notice of intent to claim the credit. 8863

(F) The director of development shall annually certify, by 8864
the first day of January of each year during the qualifying 8865
period, the eligible areas for the tax credit for the calendar 8866
year that includes that first day of January. The director shall 8867
send a copy of the certification to the tax commissioner. 8868

(G) New manufacturing machinery and equipment for which a 8869
taxpayer claims the credit under section 5733.31, 5733.311, 8870
5747.26, or 5747.261 of the Revised Code shall not be considered 8871
new manufacturing machinery and equipment for purposes of the 8872
credit under this section. 8873

(H)(1) With regard to a taxpayer that is a partner in a 8874
partnership, the county average new manufacturing machinery and 8875

equipment investment shall be determined based on the number of 8876
years, if any, the partnership was in existence during baseline 8877
years. In determining the county average new manufacturing 8878
machinery and equipment investment, the excess of the cost of new 8879
manufacturing machinery and equipment purchased during the 8880
calendar year, and all other amounts necessary to calculate the 8881
credit allowed by this section, the taxpayer shall include the 8882
taxpayer's distributive share of the cost of new manufacturing 8883
machinery and equipment purchased by a partnership in which the 8884
corporation had a direct or indirect investment during the 8885
calendar year prior to the first day of a tax year for which the 8886
taxpayer is claiming the credit. These determinations and 8887
calculations shall be made for the taxpayer's calendar year during 8888
which the partnership made the purchase. 8889

(2) Nothing in this section shall be construed to limit or 8890
disallow pass-through treatment of a pass-through entity's income, 8891
deductions, credits, or other amounts necessary to compute the tax 8892
imposed by section 5733.06 of the Revised Code and the credits 8893
allowed by this chapter. 8894

(I)(1) Notwithstanding sections 5733.11 and 5747.13 of the 8895
Revised Code, but subject to division (I)(2) of this section, the 8896
tax commissioner may issue an assessment against a person with 8897
respect to a credit claimed under this section for new 8898
manufacturing machinery and equipment described in division 8899
(A)(1)(b) or (2)(b) of this section, if the machinery or equipment 8900
subsequently does not qualify for the credit. 8901

(2) DIVISION (I)(1) of this section shall not apply after the 8902
twenty-fourth month following the last day of the period described 8903
in divisions (A)(1)(b) and (2)(b) of this section. 8904

Sec. 5733.39. (A) As used in this section: 8905

(1) "Compliance facility" means property that is designed, 8906
constructed, or installed, and used, at a coal-fired electric 8907
generating facility for the primary purpose of complying with 8908
Phase I acid rain control requirements under Title IV of the 8909
"Clean Air Act Amendments of 1990," 104 Stat. 2584, 42 U.S.C.A. 8910
7651, and that controls or limits emissions of sulfur or nitrogen 8911
compounds resulting from the combustion of coal through the 8912
removal or reduction of those compounds before, during, or after 8913
the combustion of the coal, but before the combustion products are 8914
emitted into the atmosphere. "Compliance facility" also includes 8915
any of the following: 8916

(a) A facility that removes sulfur compounds from coal before 8917
the combustion of the coal and that is located off the premises of 8918
the electric generating facility where the coal processed by the 8919
compliance facility is burned; 8920

(b) Modifications to the electric generating facility where 8921
the compliance facility is constructed or installed that are 8922
necessary to accommodate the construction or installation, and 8923
operation, of the compliance facility; 8924

(c) A byproduct disposal facility, as defined in section 8925
3734.051 of the Revised Code, that exclusively disposes of wastes 8926
produced by the compliance facility and other coal combustion 8927
byproducts produced by the generating unit in or to which the 8928
compliance facility is incorporated or connected regardless of 8929
whether the byproduct disposal facility is located on the same 8930
premises as the compliance facility or generating unit that 8931
produces the wastes disposed of at the facility; 8932

(d) Facilities or equipment that is acquired, constructed, or 8933
installed, and used, at a coal-fired electric generating facility 8934
exclusively for the purpose of handling the byproducts produced by 8935
the compliance facility or other coal combustion byproducts 8936

produced by the generating unit in or to which the compliance 8937
facility is incorporated or connected; 8938

(e) A flue gas desulfurization system that is connected to a 8939
coal-fired electric generating unit and that either was placed in 8940
service prior to July 10, 1991, or construction of which was 8941
commenced prior to that date; 8942

(f) Facilities or equipment acquired, constructed, or 8943
installed, and used, at a coal-fired electric generating unit 8944
primarily for the purpose of handling the byproducts produced by a 8945
compliance facility or other coal combustion byproducts produced 8946
by the generating unit in or to which the compliance facility is 8947
incorporated or connected. 8948

(2) "Ohio coal" has the same meaning as in section 4913.01 of 8949
the Revised Code. 8950

(3) "Sale and leaseback transaction" has the same meaning as 8951
in section 5727.01 of the Revised Code. 8952

(B) Beginning in tax year 2002, an electric company shall be 8953
allowed a nonrefundable credit against the tax imposed by section 8954
5733.06 of the Revised Code for Ohio coal used in any of its 8955
coal-fired electric generating units after April 30, 2001. Section 8956
5733.057 of the Revised Code shall apply when calculating the 8957
credit allowed by this section. The credit shall be claimed at the 8958
rate of one dollar per ton of Ohio coal burned in a coal-fired 8959
electric generating unit during the taxable year ending 8960
immediately preceding the tax year. The credit is allowed only if 8961
all of the following conditions are met during such taxable year: 8962

(1) The coal-fired electric generating unit is owned and used 8963
by the company claiming the credit or leased and used by that 8964
company under a sale and leaseback transaction. 8965

(2) A compliance facility is attached to, incorporated in, or 8966
used in conjunction with the coal-fired generating unit. 8967

(3) Either of the following applies: 8968

(a) In the case of a coal-fired electric generating unit that 8969
burns coal in combination with another fuel for the purpose of 8970
complying with Phase I acid rain control requirements under Title 8971
IV of the "Clean Air Act Amendments of 1990," 104 Stat. 2584, 42 8972
U.S.C.A. 7651, at least eighty per cent of the heat input during 8973
the taxable year is from Ohio coal. 8974

(b) In the case of any other coal-fired electric generating 8975
unit, at least ninety per cent of the heat input during the 8976
taxable year is from Ohio coal. 8977

(C) The credit shall be claimed in the order required under 8978
section 5733.98 of the Revised Code. If the credit exceeds the tax 8979
imposed by section 5733.06 of the Revised Code after all other 8980
nonrefundable credits for the tax year as set forth in section 8981
5733.98 of the Revised Code, the excess shall not be allowed as a 8982
credit either against the taxes due for any other year or against 8983
any other tax or fee. Nothing herein shall be construed to provide 8984
for carryover or carryback of any unused credit provided by any 8985
other section of the Revised Code or for the application of any 8986
unused credit provided by any other section of the Revised Code 8987
against any other tax or fee if such section does not expressly 8988
provide either for a carryover or carryback of any unused credit 8989
or for the application of an unused credit against any other tax 8990
or fee. 8991

(D) The sum of the credits allowed for all years under 8992
section 5727.391 of the Revised Code for coal burned in each 8993
coal-fired electric generating unit and the sum of the credits 8994
allowed for all tax years under this section shall not exceed 8995
twenty per cent of the cost of the compliance facility attached 8996
to, incorporated in, or used in conjunction with the unit. If a 8997
compliance facility is used in conjunction with more than one 8998

generating unit, the tax commissioner shall prorate its cost among 8999
the units. 9000

(E) The director of environmental protection, upon the 9001
request of the tax commissioner, shall certify whether a facility 9002
is a compliance facility. In the case of a compliance facility 9003
owned by an electric company, the public utilities commission 9004
shall certify to the tax commissioner the cost of the facility as 9005
of the date it was placed in service. In the case of a compliance 9006
facility owned by a person other than an electric company, the tax 9007
commissioner shall determine the cost of the facility as of the 9008
date it was placed in service. If the owner of such a facility 9009
fails to furnish the information necessary to make that 9010
determination, no credit shall be allowed. 9011

Sec. 5733.98. (A) To provide a uniform procedure for 9012
calculating the amount of tax imposed by section 5733.06 of the 9013
Revised Code that is due under this chapter, a taxpayer shall 9014
claim any credits to which it is entitled in the following order, 9015
except as otherwise provided in section 5733.058 of the Revised 9016
Code: 9017

(1) The credit for taxes paid by a qualifying pass-through 9018
entity allowed under section 5733.0611 of the Revised Code; 9019

(2) The credit for qualifying affiliated groups under section 9020
5733.068 of the Revised Code; 9021

(3) The subsidiary corporation credit under section 5733.067 9022
of the Revised Code; 9023

(4) The savings and loan assessment credit under section 9024
5733.063 of the Revised Code; 9025

(5) The credit for recycling and litter prevention donations 9026
under section 5733.064 of the Revised Code; 9027

(6) The credit for employers that enter into agreements with 9028

child day-care centers under section 5733.36 of the Revised Code;	9029
(7) The credit for employers that reimburse employee child	9030
day-care expenses under section 5733.38 of the Revised Code;	9031
(8) The credit for manufacturing investments under section	9032
5733.061 of the Revised Code;	9033
(9) The credit for purchases of new manufacturing machinery	9034
and equipment under section 5733.31 or section 5733.311 of the	9035
Revised Code;	9036
(10) The second credit for purchases of new manufacturing	9037
machinery and equipment under section 5733.33 of the Revised Code;	9038
(11) The enterprise zone credit under section 5709.66 of the	9039
Revised Code;	9040
(12) The credit for the eligible costs associated with a	9041
voluntary action under section 5733.34 of the Revised Code;	9042
(13) The credit for employers that establish on-site child	9043
day-care under section 5733.37 of the Revised Code;	9044
(14) The credit for purchases of qualifying grape production	9045
property under section 5733.32 of the Revised Code;	9046
(15) The export sales credit under section 5733.069 of the	9047
Revised Code;	9048
(16) The credit for research and development and technology	9049
transfer investors under section 5733.35 of the Revised Code;	9050
(17) The enterprise zone credits under section 5709.65 of the	9051
Revised Code;	9052
(18) <u>The credit for using Ohio coal under section 5733.39 of</u>	9053
<u>the Revised Code;</u>	9054
(19) The refundable jobs creation credit under section	9055
5733.0610 of the Revised Code.	9056

(B) For any credit except the refundable jobs creation 9057
credit, the amount of the credit for a tax year shall not exceed 9058
the tax due after allowing for any other credit that precedes it 9059
in the order required under this section. Any excess amount of a 9060
particular credit may be carried forward if authorized under the 9061
section creating that credit. 9062

Sec. 5739.011. (A) As used in this section: 9063

(1) "Manufacturer" means a person who is engaged in 9064
manufacturing, processing, assembling, or refining a product for 9065
sale. 9066

(2) "Manufacturing facility" means a single location where a 9067
manufacturing operation is conducted, including locations 9068
consisting of one or more buildings or structures in a contiguous 9069
area owned or controlled by the manufacturer. 9070

(3) "Materials handling" means the movement of the product 9071
being or to be manufactured, during which movement the product is 9072
not undergoing any substantial change or alteration in its state 9073
or form. 9074

(4) "Testing" means a process or procedure to identify the 9075
properties or assure the quality of a material or product. 9076

(5) "Completed product" means a manufactured item that is in 9077
the form and condition as it will be sold by the manufacturer. An 9078
item is completed when all processes that change or alter its 9079
state or form or enhance its value are finished, even though the 9080
item subsequently will be tested to ensure its quality or be 9081
packaged for storage or shipment. 9082

(6) "Continuous manufacturing operation" means the process in 9083
which raw materials or components are moved through the steps 9084
whereby manufacturing occurs. Materials handling of raw materials 9085
or parts from the point of receipt or ~~pre-production~~ preproduction 9086

storage or of a completed product, to or from storage, to or from 9087
packaging, or to the place from which the completed product will 9088
be shipped, is not a part of a continuous manufacturing operation. 9089

(B) For purposes of division (E)(9) of section 5739.01 of the 9090
Revised Code, the "thing transferred" includes, but is not limited 9091
to, any of the following: 9092

(1) Production machinery and equipment that act upon the 9093
product or machinery and equipment that treat the materials or 9094
parts in preparation for the manufacturing operation; 9095

(2) Materials handling equipment that moves the product 9096
through a continuous manufacturing operation; equipment that 9097
temporarily stores the product during the manufacturing operation; 9098
or, excluding motor vehicles licensed to operate on public 9099
highways, equipment used in intraplant or interplant transfers of 9100
work in process where the plant or plants between which such 9101
transfers occur are manufacturing facilities operated by the same 9102
person; 9103

(3) Catalysts, solvents, water, acids, oil, and similar 9104
consumables that interact with the product and that are an 9105
integral part of the manufacturing operation; 9106

(4) Machinery, equipment, and other tangible personal 9107
property used during the manufacturing operation that control, 9108
physically support, produce power for, lubricate, or are otherwise 9109
necessary for the functioning of production machinery and 9110
equipment and the continuation of the manufacturing operation; 9111

(5) Machinery, equipment, fuel, power, material, parts, and 9112
other tangible personal property used to manufacture machinery, 9113
equipment, or other tangible personal property used in 9114
manufacturing a product for sale; 9115

(6) Machinery, equipment, and other tangible personal 9116
property used by a manufacturer to test raw materials, the product 9117

being manufactured, or the completed product; 9118

(7) Machinery and equipment used to handle or temporarily 9119
store scrap that is intended to be reused in the manufacturing 9120
operation at the same manufacturing facility; 9121

(8) ~~Electricity, coke~~ Coke, gas, water, steam, and similar 9122
substances used in the manufacturing operation; machinery and 9123
equipment used for, and fuel consumed in, producing or extracting 9124
those substances; ~~and~~ machinery, equipment, and other tangible 9125
personal property used to treat, filter, pump, ~~alter voltage~~, or 9126
otherwise make the substance suitable for use in the manufacturing 9127
operation; and machinery and equipment used to produce electricity 9128
for use in the manufacturing operation; 9129

(9) Machinery, equipment, and other tangible personal 9130
property used to transport or transmit electricity, coke, gas, 9131
water, steam, or similar substances used in the manufacturing 9132
operation from the point of generation, if produced by the 9133
manufacturer, or from the point where the substance enters the 9134
manufacturing facility, if purchased by the manufacturer, to the 9135
manufacturing operation; 9136

(10) Machinery, equipment, and other tangible personal 9137
property that treats, filters, cools, refines, or otherwise 9138
renders water, steam, acid, oil, solvents, or similar substances 9139
used in the manufacturing operation reusable, provided that the 9140
substances are intended for reuse and not for disposal, sale, or 9141
transportation from the manufacturing facility; 9142

(11) Parts, components, and repair and installation services 9143
for items described in division (B) of this section. 9144

(C) For purposes of division (E)(9) of section 5739.01 of the 9145
Revised Code, the "thing transferred" does not include any of the 9146
following: 9147

- (1) Tangible personal property used in administrative, 9148
personnel, security, inventory control, record_keeping, ordering, 9149
billing, or similar functions; 9150
- (2) Tangible personal property used in storing raw materials 9151
or parts prior to the commencement of the manufacturing operation 9152
or used to handle or store a completed product, including storage 9153
that actively maintains a completed product in a marketable state 9154
or form; 9155
- (3) Tangible personal property used to handle or store scrap 9156
or waste intended for disposal, sale, or other disposition, other 9157
than reuse in the manufacturing operation at the same 9158
manufacturing facility; 9159
- (4) Tangible personal property that is or is to be 9160
incorporated into realty; 9161
- (5) Machinery, equipment, and other tangible personal 9162
property used for ventilation, dust, or gas collection, humidity 9163
or temperature regulation, or similar environmental control, 9164
except machinery, equipment, and other tangible personal property 9165
that totally regulates the environment in a special and limited 9166
area of the manufacturing facility where the regulation is 9167
essential for production to occur; 9168
- (6) Tangible personal property used for the protection and 9169
safety of workers, unless the property is attached to or 9170
incorporated into machinery and equipment used in a continuous 9171
manufacturing operation; 9172
- (7) Tangible personal property used to store fuel, water, 9173
solvents, acid, oil, or similar items consumed in the 9174
manufacturing operation; 9175
- (8) Machinery, equipment, and other tangible personal 9176
property used for research and development; 9177

(9) Machinery, equipment, and other tangible personal 9178
property used to clean, repair, or maintain real or personal 9179
property in the manufacturing facility; 9180

(10) Motor vehicles registered for operation on the public 9181
highways. 9182

(D) For purposes of division (E)(9) of section 5739.01 of the 9183
Revised Code, if the "thing transferred" is a machine used by a 9184
manufacturer in both a taxable and an exempt manner, it shall be 9185
totally taxable or totally exempt from taxation based upon its 9186
quantified primary use. If the "things transferred" are fungibles, 9187
they shall be taxed based upon the proportion of the fungibles 9188
used in a taxable manner. 9189

Sec. 5739.02. For the purpose of providing revenue with which 9190
to meet the needs of the state, for the use of the general revenue 9191
fund of the state, for the purpose of securing a thorough and 9192
efficient system of common schools throughout the state, for the 9193
purpose of affording revenues, in addition to those from general 9194
property taxes, permitted under constitutional limitations, and 9195
from other sources, for the support of local governmental 9196
functions, and for the purpose of reimbursing the state for the 9197
expense of administering this chapter, an excise tax is hereby 9198
levied on each retail sale made in this state. 9199

(A) The tax shall be collected pursuant to the schedules in 9200
section 5739.025 of the Revised Code. 9201

The tax applies and is collectible when the sale is made, 9202
regardless of the time when the price is paid or delivered. 9203

In the case of a sale, the price of which consists in whole 9204
or in part of rentals for the use of the thing transferred, the 9205
tax, as regards such rentals, shall be measured by the 9206
installments thereof. 9207

In the case of a sale of a service defined under division 9208
(MM) or (NN) of section 5739.01 of the Revised Code, the price of 9209
which consists in whole or in part of a membership for the receipt 9210
of the benefit of the service, the tax applicable to the sale 9211
shall be measured by the installments thereof. 9212

(B) The tax does not apply to the following: 9213

(1) Sales to the state or any of its political subdivisions, 9214
or to any other state or its political subdivisions if the laws of 9215
that state exempt from taxation sales made to this state and its 9216
political subdivisions; 9217

(2) Sales of food for human consumption off the premises 9218
where sold; 9219

(3) Sales of food sold to students only in a cafeteria, 9220
dormitory, fraternity, or sorority maintained in a private, 9221
public, or parochial school, college, or university; 9222

(4) Sales of newspapers, and of magazine subscriptions 9223
shipped by second class mail, and sales or transfers of magazines 9224
distributed as controlled circulation publications; 9225

(5) The furnishing, preparing, or serving of meals without 9226
charge by an employer to an employee provided the employer records 9227
the meals as part compensation for services performed or work 9228
done; 9229

(6) Sales of motor fuel upon receipt, use, distribution, or 9230
sale of which in this state a tax is imposed by the law of this 9231
state, but this exemption shall not apply to the sale of motor 9232
fuel on which a refund of the tax is allowable under section 9233
5735.14 of the Revised Code; and the tax commissioner may deduct 9234
the amount of tax levied by this section applicable to the price 9235
of motor fuel when granting a refund of motor fuel tax pursuant to 9236
section 5735.14 of the Revised Code and shall cause the amount 9237

deducted to be paid into the general revenue fund of this state; 9238

(7) Sales of natural gas by a natural gas company, of 9239
~~electricity by an electric company,~~ of water by a water-works 9240
company, or of steam by a heating company, if in each case the 9241
thing sold is delivered to consumers through ~~wires,~~ pipes, or 9242
conduits, and all sales of communications services by a telephone 9243
or telegraph company, all terms as defined in section 5727.01 of 9244
the Revised Code; 9245

(8) Casual sales by a person, or auctioneer employed directly 9246
by the person to conduct such sales, except as to such sales of 9247
motor vehicles, watercraft or outboard motors required to be 9248
titled under section 1548.06 of the Revised Code, watercraft 9249
documented with the United States coast guard, snowmobiles, and 9250
all-purpose vehicles as defined in section 4519.01 of the Revised 9251
Code; 9252

(9) Sales of services or tangible personal property, other 9253
than motor vehicles, mobile homes, and manufactured homes, by 9254
churches or by nonprofit organizations operated exclusively for 9255
charitable purposes as defined in division (B)(12) of this 9256
section, provided that the number of days on which such tangible 9257
personal property or services, other than items never subject to 9258
the tax, are sold does not exceed six in any calendar year. If the 9259
number of days on which such sales are made exceeds six in any 9260
calendar year, the church or organization shall be considered to 9261
be engaged in business and all subsequent sales by it shall be 9262
subject to the tax. In counting the number of days, all sales by 9263
groups within a church or within an organization shall be 9264
considered to be sales of that church or organization, except that 9265
sales made by separate student clubs and other groups of students 9266
of a primary or secondary school, and sales made by a 9267
parent-teacher association, booster group, or similar organization 9268
that raises money to support or fund curricular or extracurricular 9269

activities of a primary or secondary school, shall not be 9270
considered to be sales of such school, and sales by each such 9271
club, group, association, or organization shall be counted 9272
separately for purposes of the six-day limitation. This division 9273
does not apply to sales by a noncommercial educational radio or 9274
television broadcasting station. 9275

(10) Sales not within the taxing power of this state under 9276
the Constitution of the United States; 9277

(11) The transportation of persons or property, unless the 9278
transportation is by a private investigation and security service; 9279

(12) Sales of tangible personal property or services to 9280
churches, to organizations exempt from taxation under section 9281
501(c)(3) of the Internal Revenue Code of 1986, and to any other 9282
nonprofit organizations operated exclusively for charitable 9283
purposes in this state, no part of the net income of which inures 9284
to the benefit of any private shareholder or individual, and no 9285
substantial part of the activities of which consists of carrying 9286
on propaganda or otherwise attempting to influence legislation; 9287
sales to offices administering one or more homes for the aged or 9288
one or more hospital facilities exempt under section 140.08 of the 9289
Revised Code; and sales to organizations described in division (D) 9290
of section 5709.12 of the Revised Code. 9291

"Charitable purposes" means the relief of poverty; the 9292
improvement of health through the alleviation of illness, disease, 9293
or injury; the operation of an organization exclusively for the 9294
provision of professional, laundry, printing, and purchasing 9295
services to hospitals or charitable institutions; the operation of 9296
a home for the aged, as defined in section 5701.13 of the Revised 9297
Code; the operation of a radio or television broadcasting station 9298
that is licensed by the federal communications commission as a 9299
noncommercial educational radio or television station; the 9300

operation of a nonprofit animal adoption service or a county 9301
humane society; the promotion of education by an institution of 9302
learning that maintains a faculty of qualified instructors, 9303
teaches regular continuous courses of study, and confers a 9304
recognized diploma upon completion of a specific curriculum; the 9305
operation of a parent-teacher association, booster group, or 9306
similar organization primarily engaged in the promotion and 9307
support of the curricular or extracurricular activities of a 9308
primary or secondary school; the operation of a community or area 9309
center in which presentations in music, dramatics, the arts, and 9310
related fields are made in order to foster public interest and 9311
education therein; the production of performances in music, 9312
dramatics, and the arts; or the promotion of education by an 9313
organization engaged in carrying on research in, or the 9314
dissemination of, scientific and technological knowledge and 9315
information primarily for the public. 9316

Nothing in this division shall be deemed to exempt sales to 9317
any organization for use in the operation or carrying on of a 9318
trade or business, or sales to a home for the aged for use in the 9319
operation of independent living facilities as defined in division 9320
(A) of section 5709.12 of the Revised Code. 9321

(13) Building and construction materials and services sold to 9322
construction contractors for incorporation into a structure or 9323
improvement to real property under a construction contract with 9324
this state or a political subdivision thereof, or with the United 9325
States government or any of its agencies; building and 9326
construction materials and services sold to construction 9327
contractors for incorporation into a structure or improvement to 9328
real property that are accepted for ownership by this state or any 9329
of its political subdivisions, or by the United States government 9330
or any of its agencies at the time of completion of such 9331
structures or improvements; building and construction materials 9332

9333 sold to construction contractors for incorporation into a
9334 horticulture structure or livestock structure for a person engaged
9335 in the business of horticulture or producing livestock; building
9336 materials and services sold to a construction contractor for
9337 incorporation into a house of public worship or religious
9338 education, or a building used exclusively for charitable purposes
9339 under a construction contract with an organization whose purpose
9340 is as described in division (B)(12) of this section; building and
9341 construction materials sold for incorporation into the original
9342 construction of a sports facility under section 307.696 of the
9343 Revised Code; and building and construction materials and services
9344 sold to a construction contractor for incorporation into real
9345 property outside this state if such materials and services, when
9346 sold to a construction contractor in the state in which the real
9347 property is located for incorporation into real property in that
9348 state, would be exempt from a tax on sales levied by that state;

(14) Sales of ships or vessels or rail rolling stock used or 9349
to be used principally in interstate or foreign commerce, and 9350
repairs, alterations, fuel, and lubricants for such ships or 9351
vessels or rail rolling stock; 9352

(15) Sales to persons engaged in any of the activities 9353
mentioned in division (E)(2) or (9) of section 5739.01 of the 9354
Revised Code, to persons engaged in making retail sales, or to 9355
persons who purchase for sale from a manufacturer tangible 9356
personal property that was produced by the manufacturer in 9357
accordance with specific designs provided by the purchaser, of 9358
packages, including material and parts for packages, and of 9359
machinery, equipment, and material for use primarily in packaging 9360
tangible personal property produced for sale by or on the order of 9361
the person doing the packaging, or sold at retail. "Packages" 9362
includes bags, baskets, cartons, crates, boxes, cans, bottles, 9363
bindings, wrappings, and other similar devices and containers, and 9364

"packaging" means placing therein. 9365

(16) Sales of food to persons using food stamp coupons to 9366
purchase the food. As used in division (B)(16) of this section, 9367
"food" has the same meaning as in the "Food Stamp Act of 1977," 91 9368
Stat. 958, 7 U.S.C. 2012, as amended, and federal regulations 9369
adopted pursuant to that act. 9370

(17) Sales to persons engaged in farming, agriculture, 9371
horticulture, or floriculture, of tangible personal property for 9372
use or consumption directly in the production by farming, 9373
agriculture, horticulture, or floriculture of other tangible 9374
personal property for use or consumption directly in the 9375
production of tangible personal property for sale by farming, 9376
agriculture, horticulture, or floriculture; or material and parts 9377
for incorporation into any such tangible personal property for use 9378
or consumption in production; and of tangible personal property 9379
for such use or consumption in the conditioning or holding of 9380
products produced by and for such use, consumption, or sale by 9381
persons engaged in farming, agriculture, horticulture, or 9382
floriculture, except where such property is incorporated into real 9383
property; 9384

(18) Sales of drugs dispensed by a licensed pharmacist upon 9385
the order of a licensed health professional authorized to 9386
prescribe drugs to a human being, as the term "licensed health 9387
professional authorized to prescribe drugs" is defined in section 9388
4729.01 of the Revised Code; insulin as recognized in the official 9389
United States pharmacopoeia; urine and blood testing materials 9390
when used by diabetics or persons with hypoglycemia to test for 9391
glucose or acetone; hypodermic syringes and needles when used by 9392
diabetics for insulin injections; epoetin alfa when purchased for 9393
use in the treatment of persons with end-stage renal disease; 9394
hospital beds when purchased for use by persons with medical 9395
problems for medical purposes; and oxygen and oxygen-dispensing 9396

equipment when purchased for use by persons with medical problems 9397
for medical purposes; 9398

(19) Sales of artificial limbs or portion thereof, breast 9399
prostheses, and other prosthetic devices for humans; braces or 9400
other devices for supporting weakened or nonfunctioning parts of 9401
the human body; wheelchairs; devices used to lift wheelchairs into 9402
motor vehicles and parts and accessories to such devices; crutches 9403
or other devices to aid human perambulation; and items of tangible 9404
personal property used to supplement impaired functions of the 9405
human body such as respiration, hearing, or elimination. No 9406
exemption under this division shall be allowed for nonprescription 9407
drugs, medicines, or remedies; items or devices used to supplement 9408
vision; items or devices whose function is solely or primarily 9409
cosmetic; or physical fitness equipment. This division does not 9410
apply to sales to a physician or medical facility for use in the 9411
treatment of a patient. 9412

(20) Sales of emergency and fire protection vehicles and 9413
equipment to nonprofit organizations for use solely in providing 9414
fire protection and emergency services for political subdivisions 9415
of the state; 9416

(21) Sales of tangible personal property manufactured in this 9417
state, if sold by the manufacturer in this state to a retailer for 9418
use in the retail business of the retailer outside of this state 9419
and if possession is taken from the manufacturer by the purchaser 9420
within this state for the sole purpose of immediately removing the 9421
same from this state in a vehicle owned by the purchaser; 9422

9423

(22) Sales of services provided by the state or any of its 9424
political subdivisions, agencies, instrumentalities, institutions, 9425
or authorities, or by governmental entities of the state or any of 9426
its political subdivisions, agencies, instrumentalities, 9427

institutions, or authorities; 9428

(23) Sales of motor vehicles to nonresidents of this state 9429
upon the presentation of an affidavit executed in this state by 9430
the nonresident purchaser affirming that the purchaser is a 9431
nonresident of this state, that possession of the motor vehicle is 9432
taken in this state for the sole purpose of immediately removing 9433
it from this state, that the motor vehicle will be permanently 9434
titled and registered in another state, and that the motor vehicle 9435
will not be used in this state; 9436

(24) Sales to persons engaged in the preparation of eggs for 9437
sale of tangible personal property used or consumed directly in 9438
such preparation, including such tangible personal property used 9439
for cleaning, sanitizing, preserving, grading, sorting, and 9440
classifying by size; packages, including material and parts for 9441
packages, and machinery, equipment, and material for use in 9442
packaging eggs for sale; and handling and transportation equipment 9443
and parts therefor, except motor vehicles licensed to operate on 9444
public highways, used in intraplant or interplant transfers or 9445
shipment of eggs in the process of preparation for sale, when the 9446
plant or plants within or between which such transfers or 9447
shipments occur are operated by the same person. "Packages" 9448
includes containers, cases, baskets, flats, fillers, filler flats, 9449
cartons, closure materials, labels, and labeling materials, and 9450
"packaging" means placing therein. 9451

(25)(a) Sales of water to a consumer for residential use, 9452
except the sale of bottled water, distilled water, mineral water, 9453
carbonated water, or ice; 9454

(b) Sales of water by a nonprofit corporation engaged 9455
exclusively in the treatment, distribution, and sale of water to 9456
consumers, if such water is delivered to consumers through pipes 9457
or tubing. 9458

(26) Fees charged for inspection or reinspection of motor vehicles under section 3704.14 of the Revised Code;	9459 9460
(27) Sales of solar, wind, or hydrothermal energy systems that meet the guidelines established under division (B) of section 1551.20 of the Revised Code, components of such systems that are identified under division (B) or (D) of that section, or charges for the installation of such systems or components, made during the period from August 14, 1979, through December 31, 1985;	9461 9462 9463 9464 9465 9466
(28) Sales to persons licensed to conduct a food service operation pursuant to section 3732.03 of the Revised Code, of tangible personal property primarily used directly for the following:	9467 9468 9469 9470
(a) To prepare food for human consumption for sale;	9471
(b) To preserve food that has been or will be prepared for human consumption for sale by the food service operator, not including tangible personal property used to display food for selection by the consumer;	9472 9473 9474 9475
(c) To clean tangible personal property used to prepare or serve food for human consumption for sale.	9476 9477
(29) Sales of animals by nonprofit animal adoption services or county humane societies;	9478 9479
(30) Sales of services to a corporation described in division (A) of section 5709.72 of the Revised Code, and sales of tangible personal property that qualifies for exemption from taxation under section 5709.72 of the Revised Code;	9480 9481 9482 9483
(31) Sales and installation of agricultural land tile, as defined in division (B)(5)(a) of section 5739.01 of the Revised Code;	9484 9485 9486
(32) Sales and erection or installation of portable grain bins, as defined in division (B)(5)(b) of section 5739.01 of the	9487 9488

Revised Code; 9489

(33) The sale, lease, repair, and maintenance of ~~the~~ parts 9490
for ~~the~~ or items attached to or incorporated in ~~the~~ motor vehicles that 9491
are primarily used for transporting tangible personal property by 9492
a person engaged in highway transportation for hire; 9493

(34) Sales to the state headquarters of any veterans' 9494
organization in Ohio that is either incorporated and issued a 9495
charter by the congress of the United States or is recognized by 9496
the United States veterans administration, for use by the 9497
headquarters; 9498

(35) Sales to a telecommunications service vendor of tangible 9499
personal property and services used directly and primarily in 9500
transmitting, receiving, switching, or recording any interactive, 9501
two-way electromagnetic communications, including voice, image, 9502
data, and information, through the use of any medium, including, 9503
but not limited to, poles, wires, cables, switching equipment, 9504
computers, and record storage devices and media, and component 9505
parts for the tangible personal property. The exemption provided 9506
in division (B)(35) of this section shall be in lieu of all other 9507
exceptions under division (E)(2) of section 5739.01 of the Revised 9508
Code to which a telecommunications service vendor may otherwise be 9509
entitled based upon the use of the thing purchased in providing 9510
the telecommunications service. 9511

(36) Sales of investment metal bullion and investment coins. 9512
"Investment metal bullion" means any elementary precious metal 9513
that has been put through a process of smelting or refining, 9514
including, but not limited to, gold, silver, platinum, and 9515
palladium, and which is in such state or condition that its value 9516
depends upon its content and not upon its form. "Investment metal 9517
bullion" does not include fabricated precious metal that has been 9518
processed or manufactured for one or more specific and customary 9519

industrial, professional, or artistic uses. "Investment coins" 9520
means numismatic coins or other forms of money and legal tender 9521
manufactured of gold, silver, platinum, palladium, or other metal 9522
under the laws of the United States or any foreign nation with a 9523
fair market value greater than any statutory or nominal value of 9524
such coins. 9525

(37)(a) Sales where the purpose of the consumer is to use or 9526
consume the things transferred in making retail sales and 9527
consisting of newspaper inserts, catalogues, coupons, flyers, gift 9528
certificates, or other advertising material that prices and 9529
describes tangible personal property offered for retail sale. 9530

(b) Sales to direct marketing vendors of preliminary 9531
materials such as photographs, artwork, and typesetting that will 9532
be used in printing advertising material; of printed matter that 9533
offers free merchandise or chances to win sweepstake prizes and 9534
that is mailed to potential customers with advertising material 9535
described in division (B)(37)(a) of this section; and of equipment 9536
such as telephones, computers, facsimile machines, and similar 9537
tangible personal property primarily used to accept orders for 9538
direct marketing retail sales. 9539

(c) Sales of automatic food vending machines that preserve 9540
food with a shelf life of forty-five days or less by refrigeration 9541
and dispense it to the consumer. 9542

For purposes of division (B)(37) of this section, "direct 9543
marketing" means the method of selling where consumers order 9544
tangible personal property by United States mail, delivery 9545
service, or telecommunication and the vendor delivers or ships the 9546
tangible personal property sold to the consumer from a warehouse, 9547
catalogue distribution center, or similar fulfillment facility by 9548
means of the United States mail, delivery service, or common 9549
carrier. 9550

(38) Sales to a person engaged in the business of	9551
horticulture or producing livestock of materials to be	9552
incorporated into a horticulture structure or livestock structure;	9553
(39) The sale of a motor vehicle that is used exclusively for	9554
a vanpool ridesharing arrangement to persons participating in the	9555
vanpool ridesharing arrangement when the vendor is selling the	9556
vehicle pursuant to a contract between the vendor and the	9557
department of transportation;	9558
(40) Sales of personal computers, computer monitors, computer	9559
keyboards, modems, and other peripheral computer equipment to an	9560
individual who is licensed or certified to teach in an elementary	9561
or a secondary school in this state for use by that individual in	9562
preparation for teaching elementary or secondary school students;	9563
	9564
(41) Sales to a professional racing team of any of the	9565
following:	9566
(a) Motor racing vehicles;	9567
(b) Repair services for motor racing vehicles;	9568
(c) Items of property that are attached to or incorporated in	9569
motor racing vehicles, including engines, chassis, and all other	9570
components of the vehicles, and all spare, replacement, and	9571
rebuilt parts or components of the vehicles; except not including	9572
tires, consumable fluids, paint, and accessories consisting of	9573
instrumentation sensors and related items added to the vehicle to	9574
collect and transmit data by means of telemetry and other forms of	9575
communication.	9576
(42) Sales of used manufactured homes and used mobile homes,	9577
as defined in section 5739.0210 of the Revised Code, made on or	9578
after January 1, 2000;	9579
<u>(43) Sales of tangible personal property and services to a</u>	9580

provider of electricity used or consumed directly and primarily in 9581
generating, transmitting, or distributing electricity for use by 9582
others, including property that is or is to be incorporated into 9583
and will become a part of the consumer's production, transmission, 9584
or distribution system and that retains its classification as 9585
tangible personal property after incorporation; fuel or power used 9586
in the production, transmission, or distribution of electricity; 9587
and tangible personal property and services used in the repair and 9588
maintenance of the production, transmission, or distribution 9589
system, including only those motor vehicles as are specially 9590
designed and equipped for such use. The exemption provided in this 9591
division shall be in lieu of all other exceptions in division 9592
(E)(2) of section 5739.01 of the Revised Code to which a provider 9593
of electricity may otherwise be entitled based on the use of the 9594
tangible personal property or service purchased in generating, 9595
transmitting, or distributing electricity. 9596

For the purpose of the proper administration of this chapter, 9597
and to prevent the evasion of the tax, it is presumed that all 9598
sales made in this state are subject to the tax until the contrary 9599
is established. 9600

As used in this section, except in division (B)(16) of this 9601
section, "food" includes cereals and cereal products, milk and 9602
milk products including ice cream, meat and meat products, fish 9603
and fish products, eggs and egg products, vegetables and vegetable 9604
products, fruits, fruit products, and pure fruit juices, 9605
condiments, sugar and sugar products, coffee and coffee 9606
substitutes, tea, and cocoa and cocoa products. It does not 9607
include: spirituous or malt liquors; soft drinks; sodas and 9608
beverages that are ordinarily dispensed at bars and soda fountains 9609
or in connection therewith, other than coffee, tea, and cocoa; 9610
root beer and root beer extracts; malt and malt extracts; mineral 9611
oils, cod liver oils, and halibut liver oil; medicines, including 9612

tonics, vitamin preparations, and other products sold primarily 9613
for their medicinal properties; and water, including mineral, 9614
bottled, and carbonated waters, and ice. 9615

(C) The levy of an excise tax on transactions by which 9616
lodging by a hotel is or is to be furnished to transient guests 9617
pursuant to this section and division (B) of section 5739.01 of 9618
the Revised Code does not prevent any of the following: 9619

(1) A municipal corporation or township from levying an 9620
excise tax for any lawful purpose not to exceed three per cent on 9621
transactions by which lodging by a hotel is or is to be furnished 9622
to transient guests in addition to the tax levied by this section. 9623
If a municipal corporation or township repeals a tax imposed under 9624
division (C)(1) of this section and a county in which the 9625
municipal corporation or township has territory has a tax imposed 9626
under division (C) of section 5739.024 of the Revised Code in 9627
effect, the municipal corporation or township may not reimpose its 9628
tax as long as that county tax remains in effect. A municipal 9629
corporation or township in which a tax is levied under division 9630
(B)(2) of section 351.021 of the Revised Code may not increase the 9631
rate of its tax levied under division (C)(1) of this section to 9632
any rate that would cause the total taxes levied under both of 9633
those divisions to exceed three per cent on any lodging 9634
transaction within the municipal corporation or township. 9635

(2) A municipal corporation or a township from levying an 9636
additional excise tax not to exceed three per cent on such 9637
transactions pursuant to division (B) of section 5739.024 of the 9638
Revised Code. Such tax is in addition to any tax imposed under 9639
division (C)(1) of this section. 9640

(3) A county from levying an excise tax pursuant to division 9641
(A) of section 5739.024 of the Revised Code. 9642

(4) A county from levying an excise tax not to exceed three 9643

per cent of such transactions pursuant to division (C) of section 9644
5739.024 of the Revised Code. Such a tax is in addition to any tax 9645
imposed under division (C)(3) of this section. 9646

(5) A convention facilities authority, as defined in division 9647
(A) of section 351.01 of the Revised Code, from levying the excise 9648
taxes provided for in division (B) of section 351.021 of the 9649
Revised Code. 9650

(6) A county from levying an excise tax not to exceed one and 9651
one-half per cent of such transactions pursuant to division (D) of 9652
section 5739.024 of the Revised Code. Such tax is in addition to 9653
any tax imposed under division (C)(3) or (4) of this section. 9654

(7) A county from levying an excise tax not to exceed one and 9656
one-half per cent of such transactions pursuant to division (E) of 9657
section 5739.024 of the Revised Code. Such a tax is in addition to 9658
any tax imposed under division (C)(3), (4), or (6) of this 9659
section. 9660

(D) The levy of this tax on retail sales of recreation and 9661
sports club service shall not prevent a municipal corporation from 9662
levying any tax on recreation and sports club dues or on any 9663
income generated by recreation and sports club dues. 9664

Sec. 5747.31. (A) This section applies to an individual or 9665
estate that is a proprietor or a pass-through entity investor. 9666

(B)(1) A taxpayer described in division (A) of this section 9667
is allowed a credit that shall be computed and claimed in the same 9668
manner as the credit allowed to corporations in section 5733.33 of 9669
the Revised Code, with the following adjustments: 9670

(a) The taxpayer shall claim one-seventh of the credit amount 9671
for the calendar year in which the new manufacturing machinery and 9672
equipment is purchased for use in the county by the taxpayer or 9673

partnership. One-seventh of the taxpayer credit amount is allowed 9674
for each of the six ensuing taxable years. 9675

(b) Substitute "taxable year" for the phrase "calendar year 9676
prior to the first day of a tax year" wherever the phrase appears 9677
in division (H)(1) of section 5733.33 of the Revised Code. 9678

(2) The taxpayer shall claim the credit in the order required 9679
under section 5747.98 of the Revised Code. 9680

(3) The taxpayer shall file with the department of 9681
development a notice of intent to claim the credit in accordance 9682
with division (E) of section 5733.33 of the Revised Code. 9683

(C)(1) A taxpayer described in division (A) of this section 9684
is allowed a credit that shall be computed in the same manner as 9685
the credit allowed to a corporation in section 5733.39 of the 9686
Revised Code, with the following adjustments: 9687

(a) Substitute "taxable year" for "tax year" wherever "tax 9688
year" appears in section 5733.39 of the Revised Code; 9689

(b) Substitute "5747.02" for "5733.06" wherever "5733.06" 9690
appears in section 5733.39 of the Revised Code; 9691

(c) Substitute "5747.98" for "5733.98" wherever "5733.98" 9692
appears in section 5733.39 of the Revised Code; 9693

(d) The credit allowed under division (C) of this section 9694
shall be subject to the same disallowance for the carryover or 9695
carryback of any unused credit as provided in division (C) of 9696
section 5733.39 of the Revised Code. 9697

(2) Notwithstanding section 5747.131 of the Revised Code to 9698
the contrary, a taxpayer claiming a credit under this division has 9699
the burden of establishing by a preponderance of the evidence that 9700
the doctrines enumerated in SECTION 5747.131 of the Revised Code 9701
do not apply with respect to the credit provided by this division. 9702

(D) Nothing in this section shall be construed to limit or 9703

disallow pass-through treatment of a pass-through entity's income, 9704
deductions, credits, or other amounts necessary to compute the tax 9705
imposed by section 5747.02 of the Revised Code and the credits 9706
allowed by this chapter. 9707

~~(D) The taxpayer shall file with the department of 9708
development a notice of intent to claim the credit in accordance 9709
with division (E) of section 5733.33 of the Revised Code. 9710~~

Sec. 5747.98. (A) To provide a uniform procedure for 9711
calculating the amount of tax due under section 5747.02 of the 9712
Revised Code, a taxpayer shall claim any credits to which the 9713
taxpayer is entitled in the following order: 9714

(1) The retirement income credit under division (B) of 9715
section 5747.055 of the Revised Code; 9716

(2) The senior citizen credit under division (C) of section 9717
5747.05 of the Revised Code; 9718

(3) The lump sum distribution credit under division (D) of 9719
section 5747.05 of the Revised Code; 9720

(4) The dependent care credit under section 5747.054 of the 9721
Revised Code; 9722

(5) The lump sum retirement income credit under division (C) 9723
of section 5747.055 of the Revised Code; 9724

(6) The lump sum retirement income credit under division (D) 9725
of section 5747.055 of the Revised Code; 9726

(7) The lump sum retirement income credit under division (E) 9727
of section 5747.055 of the Revised Code; 9728

(8) The credit for displaced workers who pay for job training 9729
under section 5747.27 of the Revised Code; 9730

(9) The campaign contribution credit under section 5747.29 of 9731
the Revised Code; 9732

(10) The twenty-dollar personal exemption credit under section 5747.022 of the Revised Code;	9733 9734
(11) The joint filing credit under division (G) of section 5747.05 of the Revised Code;	9735 9736
(12) The nonresident credit under division (A) of section 5747.05 of the Revised Code;	9737 9738
(13) The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code;	9739 9740
(14) The credit for employers that enter into agreements with child day-care centers under section 5747.34 of the Revised Code;	9741 9742 9743
(15) The credit for employers that reimburse employee child day-care expenses under section 5747.36 of the Revised Code;	9744 9745
(16) The credit for adoption of a minor child under section 5747.37 of the Revised Code;	9746 9747
(17) The credit for manufacturing investments under section 5747.051 of the Revised Code;	9748 9749
(18) The credit for purchases of new manufacturing machinery and equipment under section 5747.26 or section 5747.261 of the Revised Code;	9750 9751 9752
(19) 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;	9753 9754 9755
(20) The enterprise zone credit under section 5709.66 of the Revised Code;	9756 9757
(21) The credit for the eligible costs associated with a voluntary action under section 5747.32 of the Revised Code;	9758 9759
(22) The credit for employers that establish on-site child day-care centers under section 5747.35 of the Revised Code;	9760 9761

(23) The credit for purchases of qualifying grape production property under section 5747.28 of the Revised Code;	9762 9763
(24) The export sales credit under section 5747.057 of the Revised Code;	9764 9765
(25) The credit for research and development and technology transfer investors under section 5747.33 of the Revised Code;	9766 9767
(26) The enterprise zone credits under section 5709.65 of the Revised Code;	9768 9769
(27) The refundable jobs creation credit under section 5747.058 of the Revised Code;	9770 9771
(28) The refundable credit for taxes paid by a qualifying entity granted under section 5747.059 of the Revised Code;	9772 9773
(29) The refundable credits for taxes paid by a qualifying pass-through entity granted under division (J) of section 5747.08 of the Revised Code.	9774 9775 9776
(B) For any credit except the refundable credits enumerated in divisions (A)(27), (28), and (29) 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.	9777 9778 9779 9780 9781 9782 9783 9784 9785 9786
Section 2. That existing sections 113.061, 133.04, 715.013, 718.01, 1551.33, 1551.35, 3317.028, 4905.01, 4905.03, 4905.10, 4905.14, 4905.33, 4905.34, 4905.40, 4905.402, 4905.42, 4905.46, 4905.70, 4906.10, 4909.01, 4909.05, 4909.15, 4909.161, 4911.18, 4933.14, 4933.15, 4933.33, 4933.81, 4935.03, 4935.04, 5117.01,	9787 9788 9789 9790 9791

5117.02, 5117.03, 5117.04, 5117.05, 5117.07, 5117.08, 5117.09, 9792
5117.10, 5117.12, 5701.03, 5703.052, 5703.053, 5703.14, 5705.34, 9793
5727.01, 5727.02, 5727.05, 5727.06, 5727.11, 5727.111, 5727.15, 9794
5727.30, 5727.31, 5727.311, 5727.32, 5727.33, 5727.38, 5727.42, 9795
5727.45, 5727.47, 5727.53, 5727.60, 5727.61, 5727.72, 5727.99, 9796
5733.04, 5733.05, 5733.051, 5733.057, 5733.06, 5733.09, 5733.33, 9797
5733.98, 5739.011, 5739.02, 5747.31, and 5747.98 and sections 9798
4905.301, 4905.66, 4905.67, 4905.68, 4905.69, 4909.157, 4909.158, 9799
4909.159, 4909.191, 4909.192, 4909.193, 4913.01, 4913.02, 4913.03, 9800
4913.04, 4913.05, 4913.06, 4913.07, 4933.27, 4933.34, 5727.231, 9801
and 5727.73 of the Revised Code are hereby repealed. 9802

Section 3. Sections 5727.111 and 5727.15 of the Revised Code, 9803
as amended by this act, shall first apply to tax year 2001. 9804

Section 4. Sections 4933.33, 5727.30, 5727.32, and 5727.33 of 9805
the Revised Code, as amended by this act, shall first apply to the 9806
excise tax assessed by the Tax Commissioner for tax year 2002. 9807

Section 5. Sections 1551.33, 1551.35, 4905.01, 4905.03, 9808
4905.10, 4905.14, 4905.33, 4905.34, 4905.40, 4905.402, 4905.42, 9809
4905.70, 4909.01, 4909.05, 4909.15, 4909.161, 4935.04, and 5703.14 9810
of the Revised Code, as amended by this act, shall take effect on 9811
January 1, 2001, but if the Public Utilities Commission issues an 9812
order under division (C) of section 4928.01 of the Revised Code, 9813
as enacted by this act, the amendments to such sections shall be 9814
applied accordingly. In addition, the amendment of division 9815
(A)(4)(b) of section 4909.15 of the Revised Code, as amended by 9816
this act, shall not be applied until January 1, 2002. 9817

Section 6. Section 5727.45 of the Revised Code, as amended by 9818
this act, shall take effect January 1, 2002. 9819

Section 7. Sections 5117.01, 5117.02, 5117.03, 5117.04, 9820
5117.05, 5117.07, 5117.08, 5117.09, 5117.10, 5117.12, and 5703.14 9821
of the Revised Code, as amended by this act, shall take effect on 9822
July 1, 2000. 9823

Section 8. Section 5727.391 of the Revised Code is hereby 9824
repealed effective January 1, 2002. 9825

Section 9. Sections 4905.301, 4905.66, 4905.67, 4905.68, 9826
4905.69, 4909.157, 4909.158, 4909.159, 4909.191, 4909.192, 9827
4909.193, 4913.01, 4913.02, 4913.03, 4913.04, 4913.05, 4913.06, 9828
4913.07, 4933.27, and 4933.34 of the Revised Code, as repealed by 9829
this act, shall take effect on January 1, 2001, but if the Public 9830
Utilities Commission issues an order under division (C) of section 9831
4928.01 of the Revised Code, as enacted by this act, the repeal of 9832
such sections shall be applied accordingly. 9833

Section 10. The Public Utilities Commission, Consumers' 9834
Counsel, and the Attorney General shall develop a memorandum of 9835
understanding not later than January 1, 2000, to establish a 9836
system to respond effectively and efficiently to residential 9837
consumer inquiries and complaints and shall provide a joint report 9838
to the General Assembly on the efforts of the three agencies not 9839
later than June 30, 2002. 9840

Section 11. (A) As used in this section: 9841

(1) "Electric company," "combined company," and "rural 9842
electric company" have the same meanings as in section 5727.01 of 9843
the Revised Code. 9844

(2) "Gross receipts" means gross receipts determined in 9845
accordance with section 5727.33 of the Revised Code and any 9846
receipts received by an electric company, combined company, or 9847

rural electric company after April 30, 2001, from the distribution 9848
of electricity that was not subject to the excise tax imposed by 9849
section 5727.81 of the Revised Code. 9850

(B) Each electric company, combined company, and rural 9851
electric company shall pay the public utility excise tax imposed 9852
by section 5727.30 of the Revised Code on the company's gross 9853
receipts received during the period of May 1, 2000, through April 9854
30, 2001. Receipts received after August 1, 2001, are not subject 9855
to the tax on gross receipts under this section if an electric 9856
company, combined company, or rural electric company takes 9857
reasonable collection measures to collect the gross receipts. 9858
Notwithstanding section 5727.31 of the Revised Code, each electric 9859
company, combined company, and rural electric company shall make 9860
tax payments toward that liability. The first payment must be made 9861
on or before October 15, 2000, and shall equal one-third of the 9862
estimated liability shown in the report filed on or before August 9863
1, 2000. The second payment must be made on or before March 1, 9864
2001, and shall equal one-third of the tax assessed by the Tax 9865
Commissioner on or before the first Monday in November, 2000. The 9866
last payment must be made on or before June 1, 2001, and shall 9867
equal one-fourth of the tax assessed by the commissioner. The 9868
final report for the period of May 1, 2000, through April 30, 9869
2001, shall be filed by an electric company, a combined company, 9870
or a rural electric company on or before August 1, 2001, in 9871
accordance with division (A) of section 5727.31 and section 9872
5727.32 of the Revised Code. 9873

On or before the first Monday of November 2001, the Tax 9874
Commissioner shall assess an excise tax equal to four and 9875
three-quarters per cent of the gross receipts received by electric 9876
companies, combined companies, and rural electric companies during 9877
the period of May 1, 2000, through April 30, 2001. Except as 9878
provided in section 5727.03 of the Revised Code, as enacted by 9879

this act, after payment of this assessment, electric companies, 9880
rural electric companies, and combined companies, to the extent of 9881
their activities as an electric company, are not subject to the 9882
excise tax imposed by section 5727.30 of the Revised Code. 9883

Section 12. Electric companies and combined companies, as 9884
defined in section 5727.01 of the Revised Code, shall first be 9885
subject to the corporation franchise tax under Chapter 5733. of 9886
the Revised Code for tax year 2002, as "tax year" is defined in 9887
section 5733.04 of the Revised Code. For tax year 2002, an 9888
electric company or a combined company shall pay two-thirds of its 9889
total corporation franchise tax liability under Chapter 5733. of 9890
the Revised Code. The amendments in this act to sections 4909.15, 9891
5733.04, 5733.05, 5733.051, 5733.057, 5733.06, 5733.09, 5733.33, 9892
5733.98, 5747.31, and 5747.98 of the Revised Code, and the 9893
enactment in this act of sections 5733.059, 5733.0510, and 5733.39 9894
of the Revised Code, first apply for tax year 2002. 9895

Section 13. An electric company or a combined company that is 9896
entitled to carry forward a credit against its public utility 9897
excise tax liability under section 5727.391 of the Revised Code 9898
before the repeal of that section under this act, is not entitled 9899
to carry forward any amount remaining after its last public 9900
utility excise tax payment and claim that amount as a credit 9901
against its corporation franchise tax liability under section 9902
5733.39 of the Revised Code, as enacted by this act. The credit 9903
granted under section 5727.391 of the Revised Code only applies 9904
through the last assessment issued by the Tax Commissioner under 9905
Section 11 of this act. 9906

Section 14. The tax levied under section 5727.81 of the 9907
Revised Code first applies on and after May 1, 2001. Before that 9908
date, any electric distribution company shall register with the 9909

Tax Commissioner in accordance with section 5727.93 of the Revised Code, as enacted by this act.

Section 15. The intent of division (C) of section 5727.81 of the Revised Code, as enacted by this act, is to craft a revenue neutral solution for all customer classes, with any margin of error being resolved in favor of residential customers.

Section 16. The Director of Development shall study and report to the General Assembly concerning the desirability of implementing a tax credit program for the creation of new jobs in Ohio to manufacture or assemble generating equipment and components for global use. The director shall determine and recommend how the tax credit should be structured to encourage investments in facilities, equipment, and services related to the manufacture, assembly, shipping preparation, and transportation of generation equipment or components for global use, and to create new jobs as a result of such investments.

On or before December 31, 2000, the Director of Development shall issue a report of its findings to the Senate and House of Representatives in accordance with division (B) of section 101.68 of the Revised Code.

Section 17. Section 5727.47 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 904 and Am. S.B. 358 of the 119th General Assembly, with the new language of neither of the acts shown in capital letters. This is in recognition of the principle stated in division (B) of section 1.52 of the Revised Code that such amendments are to be harmonized where not substantively irreconcilable and constitutes a legislative finding that such is the resulting version in effect prior to the effective date of this act.

Section 18. Section 4928.431 of the Revised Code, as enacted 9939
by this act, is hereby repealed effective December 31, 2005, at 9940
which time the Electric Employee Assistance Advisory Board created 9941
by that section shall cease to exist. 9942

Section 19. There is hereby created the Joint Legislative 9943
Committee on the Kilowatt-Hour Tax. The Committee shall consist of 9944
five members of the House of Representatives and five members of 9945
the Senate. Three members of the House of Representatives and 9946
three members of the Senate shall be members of the majority party 9947
appointed by the Speaker of the House of Representatives and 9948
President of the Senate, respectively, and two members of the 9949
House of Representatives and two members of the Senate shall be 9950
members of the minority party appointed by the Minority Leader of 9951
the House of Representatives and Minority Leader of the Senate, 9952
respectively. A member of the Joint Legislative Committee on the 9953
Kilowatt-Hour Tax designated by the Speaker and the Senate 9954
President shall serve as the chairperson of the Committee. Any 9955
vacancies that occur on the Committee shall be filled in the 9956
manner of the original appointment. 9957

The Committee shall study the effects, fairness, and 9958
structure of the kilowatt-hour tax imposed by section 5727.81 of 9959
the Revised Code, as enacted by this act, on purchasers of 9960
electricity. The Committee may conduct public hearings on these 9961
matters and request assistance from the Tax Commissioner. 9962

Not later than September 30, 2000, the Committee shall issue 9963
a report of its findings, including recommendations regarding 9964
changes to the kilowatt-hour tax and any alternatives to the tax, 9965
to the Senate and House of Representatives in accordance with 9966
division (B) of section 101.68 of the Revised Code. Thereafter, 9967
the Committee shall cease to exist. 9968

Section 20. If any provision of law that constitutes the 9969
whole or part of a codified or uncoded section of law contained 9970
in this act, or if any application of any provision of law that 9971
constitutes the whole or part of a codified or uncoded section 9972
of law contained in this act, is held invalid, the invalidity does 9973
not affect other provisions of law or applications of provisions 9974
of law that can be given effect without the invalid provision of 9975
law or application. To this end, the provisions of law of which 9976
the codified and uncoded sections contained in this act are 9977
composed, and their applications, are independent and severable. 9978

Section 21. It is the intent of the General Assembly to enact 9979
laws prescribing a uniform set of procedures for the taxation of 9980
electric company income by municipal corporations and to have such 9981
laws in effect prior to the time those companies become subject to 9982
municipal income taxes, as authorized by this act. 9983
9984

Section 22. Section 4905.402 of the Revised Code, as amended 9985
by this act, applies, with respect to a domestic electric utility 9986
or a holding company controlling a domestic electric utility, only 9987
to merger applications filed with the Federal Energy Regulatory 9988
Commission after the effective date of section 4905.402 of the 9989
Revised Code, as amended by this act. Nothing in Section 21 of 9990
this act affects the authority, if any, of the Public Utilities 9991
Commission to consider and address merger applications with 9992
respect to a domestic electric utility or a holding company 9993
controlling a domestic electric utility that are filed with the 9994
Federal Energy Regulatory Commission on or before the effective 9995
date of section 4905.402 of the Revised Code, as amended by this 9996
act, as such authority may exist prior to that effective date. 9997