

As Pending in the Senate Energy and Public Utilities Committee

127th General Assembly

Regular Session

2007-2008

Sub. S. B. No. 221

—

A BILL

To amend sections 122.41, 122.451, 3706.01, 3706.02, 1
3706.03, 3706.04, 3706.041, 3706.05, 3706.06, 2
3706.07, 3706.08, 3706.09, 3706.10, 3706.11, 3
3706.12, 3706.13, 3706.14, 3706.15, 3706.16, 4
3706.17, 3706.18, 4905.31, 4905.40, 4928.02, 5
4928.05, 4928.14, 4928.17, 4928.20, and 4928.21 6
and to enact sections 1551.41, 4928.111, 4928.141, 7
4928.142, 4928.64, 4928.68, and 4928.69 of the 8
Revised Code to revise state energy policy to 9
address electric service price regulation and to 10
provide for new bonding authority for advanced 11
energy projects, advanced (including sustainable 12
resource) energy portfolio standards, energy 13
efficiency standards, and greenhouse gas emission 14
reporting and carbon control planning 15
requirements. 16

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

Section 1. That sections 122.41, 122.451, 3706.01, 3706.02, 17
3706.03, 3706.04, 3706.041, 3706.05, 3706.06, 3706.07, 3706.08, 18
3706.09, 3706.10, 3706.11, 3706.12, 3706.13, 3706.14, 3706.15, 19
3706.16, 3706.17, 3706.18, 4905.31, 4905.40, 4928.02, 4928.05, 20
4928.14, 4928.17, 4928.20, and 4928.21 be amended and sections 21
1551.41, 4928.111, 4928.141, 4928.142, 4928.64, 4928.68, and 22
4928.69 of the Revised Code be enacted to read as follows: 23

Sec. 122.41. (A) The development financing advisory council 24
and the director of development are invested with the powers and 25
duties provided in Chapter 122. of the Revised Code, in order to 26
promote the welfare of the people of the state, to stabilize the 27
economy, to provide employment, to assist in the development 28
within the state of industrial, commercial, distribution, and 29
research activities required for the people of the state, and for 30
their gainful employment, or otherwise to create or preserve jobs 31
and employment opportunities, or improve the economic welfare of 32
the people of the state, and also to assist in the financing of 33
air, water, or thermal pollution control facilities, advanced 34
energy facilities, and solid waste disposal facilities by mortgage 35
insurance as provided in section 122.451 of the Revised Code. It 36
is hereby determined that the accomplishment of such purposes is 37
essential so that the people of the state may maintain their 38
present high standards in comparison with the people of other 39
states and so that opportunities for employment and for favorable 40
markets for the products of the state's natural resources, 41
agriculture, and manufacturing shall be improved and that it is 42
necessary for the state to establish the programs authorized 43
pursuant to Chapter 122. of the Revised Code, to establish the 44
development financing advisory council, and to invest it and the 45
director of development with the powers and duties provided in 46
Chapter 122. of the Revised Code. The powers granted to the 47
director of development by Chapter 165. of the Revised Code are 48
independent of and in addition and alternate to, and are not 49
limited or restricted by, Chapter 122. of the Revised Code. 50

(B) The development financing advisory council shall: 51

(1) Make recommendations to the director of development as to 52
applications for assistance pursuant to sections 122.39 to 122.62 53
or Chapter 166. of the Revised Code. The council may revise its 54
recommendations to reflect any changes in the proposed assistance 55

made by the director.	56
(2) Advise the director in the administration of sections 122.39 to 122.62 and Chapter 166. of the Revised Code;	57 58
(3) Adopt bylaws to govern the conduct of the council's business.	59 60
Sec. 122.451. Upon application of any person, partnership, or corporation, or upon application of any community improvement corporation organized as provided in section 1724.01 of the Revised Code, the director of development, with controlling board approval, may, pledging therefor moneys in the mortgage insurance fund created by section 122.561 of the Revised Code, insure or make advance commitments to insure not more than ninety per cent of any mortgage payments required. Before insuring any such mortgage payments the director shall determine that:	61 62 63 64 65 66 67 68 69
(A) The project, in accordance with Section 13 of Article VIII, Ohio Constitution, will create or preserve jobs and employment opportunities, or improve the economic welfare of the people of the state, or be an air quality facility, <u>advanced energy facility</u> , waste water facility, or solid waste facility, as defined in section 3706.01, 6121.01, or 6123.01 of the Revised Code.	70 71 72 73 74 75 76
(B) The principal obligation, including initial service charges and appraisal, inspection, and other fees approved by the director, does not exceed one hundred per cent of the cost of the project.	77 78 79 80
(C) The mortgage has a satisfactory maturity date in no case later than twenty-five years from the date of the insurance.	81 82
(D) The mortgagor is responsible and able to meet the payments under the mortgage.	83 84
(E) The mortgage contains complete amortization provisions	85

satisfactory to the director requiring periodic payments by the 86
mortgagor which may include principal and interest payments, cost 87
of local property taxes and assessments, land lease rentals, if 88
any, and hazard insurance on the property and such mortgage 89
insurance premiums as are required under section 122.561 of the 90
Revised Code, all as the director from time to time prescribes or 91
approves. 92

(F) The mortgage is in such form and contains such terms and 93
provisions with respect to property insurance, repairs, 94
alterations, payment of taxes and assessments, default reserves, 95
delinquency charges, default remedies, anticipation of maturity, 96
additional and secondary liens, and other matters as the director 97
may prescribe. 98

The director may take assignments of insured mortgages and 99
other forms of security and may take title by foreclosure or 100
conveyance to any project when an insured mortgage loan thereon is 101
clearly in default and when in the opinion of the director such 102
acquisition is necessary to safeguard the mortgage insurance fund, 103
and may sell, or on a temporary basis lease or rent, such project. 104

Sec. 1551.41. The department of natural resources, the 105
environmental protection agency, and the public utilities 106
commission jointly by rule shall develop an interim policy 107
framework for the supervision and regulation by those agencies of 108
pilot and demonstration carbon sequestration activities located in 109
or sequestration products produced in this state. 110

Sec. 3706.01. As used in this chapter: 111

(A) "Governmental agency" means a department, division, or 112
other unit of state government, a municipal corporation, county, 113
township, and other political subdivision, or any other public 114
corporation or agency having the power to acquire, construct, or 115

operate air quality facilities, the United States or any agency 116
thereof, and any agency, commission, or authority established 117
pursuant to an interstate compact or agreement. 118

(B) "Person" means any individual, firm, partnership, 119
association, or corporation, or any combination thereof. 120

(C) "Air contaminant" means particulate matter, dust, fumes, 121
gas, mist, smoke, noise, vapor, heat, radioactivity, radiation, or 122
odorous substance, or any combination thereof. 123

(D) "Air pollution" means the presence in the ambient air of 124
one or more air contaminants in sufficient quantity and of such 125
characteristics and duration as to injure human health or welfare, 126
plant or animal life, or property, or that unreasonably interferes 127
with the comfortable enjoyment of life or property. 128

(E) "Ambient air" means that portion of the atmosphere 129
outside of buildings and other enclosures, stacks, or ducts that 130
surrounds human, plant, or animal life, or property. 131

(F) "Emission" means the release into the outdoor atmosphere 132
of an air contaminant. 133

(G) "Air quality facility" means any of the following: 134

(1) Any method, or any modification or replacement of 135
property, process, device, structure, or equipment that removes, 136
reduces, prevents, contains, alters, conveys, stores, disperses, 137
or disposes of air contaminants or substances containing air 138
contaminants, or that renders less noxious or reduces the 139
concentration of air contaminants in the ambient air, including, 140
without limitation, facilities and expenditures that qualify as 141
air pollution control facilities under section 103 (C)(4)(F) of 142
the Internal Revenue Code of 1954, as amended, and regulations 143
adopted thereunder; 144

(2) Motor vehicle inspection stations operated in accordance 145

with, and any equipment used for motor vehicle inspections 146
conducted under, section 3704.14 of the Revised Code and rules 147
adopted under it; 148

(3) Ethanol or other biofuel facilities, including any 149
equipment used at the ethanol or other biofuel facility for the 150
production of ethanol or other biofuels; 151

(4) Any property or portion thereof used for the collection, 152
storage, treatment, utilization, processing, or final disposal of 153
a by-product or solid waste resulting from any method, process, 154
device, structure, or equipment that removes, reduces, prevents, 155
contains, alters, conveys, stores, disperses, or disposes of air 156
contaminants, or that renders less noxious or reduces the 157
concentration of air contaminants in the ambient air; 158

(5) Any property, device, or equipment that promotes the 159
reduction of emissions of air contaminants into the ambient air 160
through improvements in the efficiency of energy utilization or 161
energy conservation; 162

(6) Any coal research and development project conducted under 163
Chapter 1555. of the Revised Code; 164

(7) As determined by the director of the Ohio coal 165
development office, any property or portion thereof that is used 166
for the collection, storage, treatment, utilization, processing, 167
or final disposal of a by-product resulting from a coal research 168
and development project as defined in section 1555.01 of the 169
Revised Code or from the use of clean coal technology, excluding 170
any property or portion thereof that is used primarily for other 171
subsequent commercial purposes; 172

(8) Any property or portion thereof that is part of the 173
FutureGen project of the United States department of energy or 174
related to the siting of the FutureGen project; 175

(9) Any property, device, or equipment that reduces emissions 176

of air contaminants into the ambient air through the generation of 177
electricity using sustainable resources; 178

(10) Any property, device, or equipment necessary for the 179
manufacture and production of equipment that qualifies as an air 180
quality facility. 181

"Air quality facility" further includes any property or 182
system to be used in whole or in part for any of the purposes in 183
divisions (G)(1) to ~~(8)~~(10) of this section, whether another 184
purpose is also served, and any property or system incidental to 185
or that has to do with, or the end purpose of which is, any of the 186
foregoing. Air quality facilities that are defined in this 187
division for industry, commerce, distribution, or research, 188
including public utility companies, are hereby determined to be 189
those that qualify as facilities for the control of air pollution 190
and thermal pollution related to air under Section 13 of Article 191
VIII, Ohio Constitution. 192

(H) "Project," ~~or~~ "air quality project," or "advanced energy 193
project" means any air quality facility or advanced energy 194
facility, including undivided or other interests therein, acquired 195
or to be acquired or constructed or to be constructed by the Ohio 196
air quality development authority under this chapter, or acquired 197
or to be acquired or constructed or to be constructed by a 198
governmental agency or person with all or a part of the cost 199
thereof being paid from a loan or grant from the authority under 200
this chapter or otherwise paid from the proceeds of ~~air quality~~ 201
revenue bonds, including all buildings and facilities that the 202
authority determines necessary for the operation of the project, 203
together with all property, rights, easements, and interests that 204
may be required for the operation of the project. 205

(I) "Cost" as applied to an air quality project or advanced 206
energy project means the cost of acquisition and construction, the 207
cost of acquisition of all land, rights-of-way, property rights, 208

easements, franchise rights, and interests required for such 209
acquisition and construction, the cost of demolishing or removing 210
any buildings or structures on land so acquired, including the 211
cost of acquiring any lands to which such buildings or structures 212
may be moved, the cost of acquiring or constructing and equipping 213
a principal office and sub-offices of the authority, the cost of 214
diverting highways, interchange of highways, and access roads to 215
private property, including the cost of land or easements for such 216
access roads, the cost of public utility and common carrier 217
relocation or duplication, the cost of all machinery, furnishings, 218
and equipment, financing charges, interest prior to and during 219
construction and for no more than eighteen months after completion 220
of construction, engineering, expenses of research and development 221
with respect to air quality facilities, the cost of any commodity 222
contract, including fees and expenses related thereto, legal 223
expenses, plans, specifications, surveys, studies, estimates of 224
cost and revenues, working capital, other expenses necessary or 225
incident to determining the feasibility or practicability of 226
acquiring or constructing such project, administrative expense, 227
and such other expense as may be necessary or incident to the 228
acquisition or construction of the project, the financing of such 229
acquisition or construction, including the amount authorized in 230
the resolution of the authority providing for the issuance of ~~air~~ 231
~~quality~~ revenue bonds to be paid into any special funds from the 232
proceeds of such bonds, and the financing of the placing of such 233
project in operation. Any obligation, cost, or expense incurred by 234
any governmental agency or person for surveys, borings, 235
preparation of plans and specifications, and other engineering 236
services, or any other cost described above, in connection with 237
the acquisition or construction of a project may be regarded as a 238
part of the cost of that project and may be reimbursed out of the 239
proceeds of ~~air-quality~~ revenue bonds as authorized by this 240
chapter. 241

(J) "Owner" includes an individual, copartnership, 242
association, or corporation having any title or interest in any 243
property, rights, easements, or interests authorized to be 244
acquired by this chapter. 245

(K) "Revenues" means all rentals and other charges received 246
by the authority for the use or services of any air quality 247
project, any gift or grant received with respect to any air 248
quality project, any moneys received with respect to the lease, 249
sublease, sale, including installment sale or conditional sale, or 250
other disposition of an air quality project, moneys received in 251
repayment of and for interest on any loans made by the authority 252
to a person or governmental agency, whether from the United States 253
or any department, administration, or agency thereof, or 254
otherwise, proceeds of such bonds to the extent that use thereof 255
for payment of principal of, premium, if any, or interest on the 256
bonds is authorized by the authority, amounts received or 257
otherwise derived from a commodity contract or from the sale of 258
the related commodity under such a contract, proceeds from any 259
insurance, condemnation, or guaranty pertaining to a project or 260
property mortgaged to secure bonds or pertaining to the financing 261
of the project, and income and profit from the investment of the 262
proceeds of ~~air-quality~~ revenue bonds or of any revenues. 263

(L) "Public roads" includes all public highways, roads, and 264
streets in the state, whether maintained by the state, county, 265
city, township, or other political subdivision. 266

(M) "Public utility facilities" includes tracks, pipes, 267
mains, conduits, cables, wires, towers, poles, and other equipment 268
and appliances of any public utility. 269

(N) "Construction," unless the context indicates a different 270
meaning or intent, includes reconstruction, enlargement, 271
improvement, or providing furnishings or equipment. 272

(O) "~~Air quality revenue~~ Revenue bonds," unless the context 273
indicates a different meaning or intent, includes ~~air quality~~ 274
revenue notes, ~~air quality~~ revenue renewal notes, and ~~air quality~~ 275
revenue refunding bonds, except that notes issued in anticipation 276
of the issuance of bonds shall have a maximum maturity of five 277
years as provided in section 3706.05 of the Revised Code and notes 278
or renewal notes issued as the definitive obligation may be issued 279
maturing at such time or times with a maximum maturity of forty 280
years from the date of issuance of the original note. 281

(P) "Solid waste" means any garbage; refuse; sludge from a 282
waste water treatment plant, water supply treatment plant, or air 283
pollution control facility; and other discarded material, 284
including solid, liquid, semisolid, or contained gaseous material 285
resulting from industrial, commercial, mining, and agricultural 286
operations, and from community activities, but not including solid 287
or dissolved material in domestic sewage, or solid or dissolved 288
material in irrigation return flows or industrial discharges that 289
are point sources subject to permits under section 402 of the 290
"Federal Water Pollution Control Act Amendments of 1972," 86 Stat. 291
880, 33 U.S.C.A. 1342, as amended, or source, special nuclear, or 292
byproduct material as defined by the "Atomic Energy Act of 1954," 293
68 Stat. 921, 42 U.S.C.A. 2011, as amended. 294

(Q) "Sludge" means any solid, semisolid, or liquid waste, 295
other than a recyclable by-product, generated from a municipal, 296
commercial, or industrial waste water treatment plant, water 297
supply plant, or air pollution control facility or any other such 298
wastes having similar characteristics and effects. 299

(R) "Ethanol or other biofuel facility" means a plant at 300
which ethanol or other biofuel is produced. 301

(S) "Ethanol" means fermentation ethyl alcohol derived from 302
agricultural products, including potatoes, cereal, grains, cheese 303
whey, and sugar beets; forest products; or other renewable or 304

biomass resources, including residue and waste generated from the 305
production, processing, and marketing of agricultural products, 306
forest products, and other renewable or biomass resources, that 307
meets all of the specifications in the American society for 308
testing and materials (ASTM) specification D 4806-88 and is 309
denatured as specified in Parts 20 and 21 of Title 27 of the Code 310
of Federal Regulations. 311

(T) "Biofuel" means any fuel that is made from cellulosic 312
biomass resources, including renewable organic matter, crop waste 313
residue, wood, aquatic plants and other crops, animal waste, solid 314
waste, or sludge, and that is used for the production of energy 315
for transportation or other purposes. 316

(U) "FutureGen project" means the buildings, equipment, and 317
real property and functionally related buildings, equipment, and 318
real property, including related research projects that support 319
the development and operation of the buildings, equipment, and 320
real property, designated by the United States department of 321
energy and the FutureGen industrial alliance, inc., as the 322
coal-fueled, zero-emissions power plant designed to prove the 323
technical and economic feasibility of producing electricity and 324
hydrogen from coal and nearly eliminating carbon dioxide emissions 325
through capture and permanent storage. 326

(V) "Commodity contract" means a contract or series of 327
contracts entered into in connection with the acquisition or 328
construction of air quality facilities or advanced energy 329
facilities for the purchase or sale of a commodity that is 330
eligible for prepayment with the proceeds of federally taxable or 331
tax exempt bonds under sections 103, 141, and 148 of the Internal 332
Revenue Code of 1986, as amended, and regulations adopted under 333
it. 334

(W) "Sustainable resources" includes, but is not limited to, 335
solar, wind, tidal or wave, biomass, including, but not limited 336

to, biomass involving the utilization of trees or any part 337
thereof, biofuel, hydro, or geothermal resources that are used in 338
the generation of electricity and includes fuel cells powered by 339
sustainable resources. 340

(X) "Advanced energy facility" means any method or any 341
modification or replacement of any property, process, device, 342
structure, or equipment that meets any of the following: 343

(1) With regard to clean coal technology, technology that 344
includes the design capability to control or prevent the emission 345
of carbon dioxide, which design capability the commission shall 346
adopt by rule and shall be based on economically feasible best 347
available technology or, in the absence of a determined best 348
available technology, shall be of the highest level of 349
economically feasible design capability for which there exists 350
generally accepted scientific opinion; 351

(2) With regard to advanced nuclear energy production, 352
consists of generation III technology as defined by the nuclear 353
regulatory commission, other later technology, or significant 354
improvements to existing facilities; 355

(3) With regard to fuel cells used in the generation of 356
electricity, consists of, but is not limited to, a proton exchange 357
membrane fuel cell, phosphoric acid fuel cell, molten carbonate 358
fuel cell, or solid fuel cell; 359

(4) With regard to cogeneration technology, consists of a 360
technology using a heat engine or power station to generate 361
electricity and useful heat simultaneously. 362

"Advanced energy facility" further includes any property or 363
system to be used in whole or in part for any of the purposes of 364
divisions (X)(1) to (4) of this section, whether another purpose 365
also is served, and any property or system incidental to or that 366
has to do with, or the end purpose of which is, any of the 367

foregoing. 368

Sec. 3706.02. There is hereby created the Ohio air quality 369
development authority. Such authority is a body both corporate and 370
politic in this state, and the carrying out of its purposes and 371
the exercise by it of the powers conferred by Chapter 3706. of the 372
Revised Code shall be held to be, and are hereby determined to be, 373
essential governmental functions and public purposes of the state, 374
but the authority shall not be immune from liability by reason 375
thereof. 376

The authority shall consist of seven members as follows: five 377
members appointed by the governor, with the advice and consent of 378
the senate, no more than three of whom shall be members of the 379
same political party, and the director of environmental protection 380
and the director of health, who shall be members ex officio 381
without compensation. Each appointive member shall be a resident 382
of the state, and a qualified elector therein. The members of the 383
authority first appointed shall continue in office for terms 384
expiring on June 30, 1971, June 30, 1973, June 30, 1975, June 30, 385
1977, and June 30, 1978, respectively, the term of each member to 386
be designated by the governor. Appointed members' terms of office 387
shall be for eight years, commencing on the first day of July and 388
ending on the thirtieth day of June. Each appointed member shall 389
hold office from the date of ~~his~~ appointment until the end of the 390
term for which ~~he was~~ appointed. Any member appointed to fill a 391
vacancy occurring prior to the expiration of the term for which 392
~~his~~ the member's predecessor was appointed shall hold office for 393
the remainder of such term. Any appointed member shall continue in 394
office subsequent to the expiration date of ~~his~~ the member's term 395
until ~~his~~ the member's successor takes office, or until a period 396
of sixty days has elapsed, whichever occurs first. A member of the 397
authority is eligible for reappointment. Each appointed member of 398
the authority, before entering upon ~~his~~ official duties, shall 399

take an oath as provided by Section 7 of Article XV, Ohio 400
Constitution. The governor may at any time remove any member of 401
the authority for misfeasance, nonfeasance, or malfeasance in 402
office. The authority shall elect one of its appointed members as 403
~~chairman~~ chairperson and another as ~~vice-chairman~~ 404
vice-chairperson, and shall appoint a secretary-treasurer who need 405
not be a member of the authority. Four members of the authority 406
shall constitute a quorum, and the affirmative vote of four 407
members shall be necessary for any action taken by vote of the 408
authority. No vacancy in the membership of the authority shall 409
impair the rights of a quorum by such vote to exercise all the 410
rights and perform all the duties of the authority. 411

Before the issuance of any ~~air-quality~~ revenue bonds under 412
Chapter 3706. of the Revised Code, each appointed member of the 413
authority shall give a surety bond to the state in the penal sum 414
of twenty-five thousand dollars and the secretary-treasurer shall 415
give such a bond in the penal sum of fifty thousand dollars, each 416
such surety bond to be conditioned upon the faithful performance 417
of the duties of the office, to be executed by a surety company 418
authorized to transact business in this state, and to be approved 419
by the governor and filed in the office of the secretary of state. 420
Each appointed member of the authority shall receive an annual 421
salary of five thousand dollars, payable in monthly installments. 422
Each member shall be reimbursed for ~~his~~ the actual expenses 423
necessarily incurred in the performance of ~~his~~ official duties. 424
All expenses incurred in carrying out Chapter 3706. of the Revised 425
Code shall be payable solely from funds provided under Chapter 426
3706. of the Revised Code, appropriated for such purpose by the 427
general assembly, or provided by the controlling board. No 428
liability or obligation shall be incurred by the authority beyond 429
the extent to which moneys have been so provided or appropriated. 430

Sec. 3706.03. (A) It is hereby declared to be the public 431

policy of the state through the operations of the Ohio air quality 432
development authority under this chapter to contribute toward one 433
or more of the following: to provide for the conservation of air 434
as a natural resource of the state, and to prevent or abate the 435
pollution thereof, to provide for the comfort, health, safety, and 436
general welfare of all employees, as well as all other inhabitants 437
of the state, to assist in the financing of air quality facilities 438
and advanced energy facilities for industry, commerce, 439
distribution, and research, including public utility companies, to 440
create or preserve jobs and employment opportunities or improve 441
the economic welfare of the people, or assist and cooperate with 442
governmental agencies in achieving such purposes. ~~In~~ Additionally, 443
advanced energy facilities for industry, commerce, distribution, 444
or research, including public utility companies, are hereby deemed 445
to qualify as facilities for the control of air pollution and 446
thermal pollution related to air under Section 13, Article VIII, 447
Ohio Constitution. 448

(B) In furtherance of such public policy the Ohio air quality 450
development authority may initiate, acquire, construct, maintain, 451
repair, and operate air quality projects and advanced energy 452
projects or cause the same to be operated pursuant to a lease, 453
sublease, or agreement with any person or governmental agency; may 454
make loans and grants to governmental agencies for the acquisition 455
or construction of air quality facilities and advanced energy 456
facilities by such governmental agencies; may make loans to 457
persons for the acquisition or construction of air quality 458
facilities and advanced energy facilities by such persons; may 459
enter into commodity contracts with, or make loans for the purpose 460
of entering into commodity contracts to, any person, governmental 461
agency, or entity located within or without the state in 462
connection with the acquisition or construction of air quality 463
facilities and advanced energy facilities; and may issue ~~air~~ 464

~~quality~~ revenue bonds of this state payable solely from revenues, 465
to pay the cost of such projects, including any related commodity 466
contracts. Any air quality project or advanced energy project 467
shall be determined by the authority to be not inconsistent with 468
any applicable air quality standards duly established and then 469
required to be met pursuant to the "Clean Air Act," 84 Stat. 1679 470
(1970), 42 U.S.C.A. 1857, as amended. Any resolution of the 471
authority providing for acquiring or constructing such projects or 472
for making a loan or grant for such projects shall include a 473
finding by the authority that such determination has been made. 474
Determinations by resolution of the authority that a project is an 475
air quality facility or advanced energy facility under this 476
chapter and is consistent with the purposes of section 13 of 477
Article VIII, Ohio Constitution, and this chapter, shall be 478
conclusive as to the validity and enforceability of the ~~air~~ 479
~~quality~~ revenue bonds issued to finance such project and of the 480
resolutions, trust agreements or indentures, leases, subleases, 481
sale agreements, loan agreements, and other agreements made in 482
connection therewith, all in accordance with their terms. 483

(C) Nothing in this chapter authorizes the Ohio air quality 485
development authority to build, own, or operate an air quality 486
facility or advanced energy facility, except as may be required to 487
effect the financing of the facility. 488

Sec. 3706.04. The Ohio air quality development authority may: 489

(A) Adopt bylaws for the regulation of its affairs and the 491
conduct of its business; 492

(B) Adopt an official seal; 493

(C) Maintain a principal office and suboffices at such places 494
within the state as it designates; 495

(D) Sue and plead in its own name; be sued and impleaded in 496
its own name with respect to its contracts or torts of its 497
members, employees, or agents acting within the scope of their 498
employment, or to enforce its obligations and covenants made under 499
sections 3706.05, 3706.07, and 3706.12 of the Revised Code. Any 500
such actions against the authority shall be brought in the court 501
of common pleas of the county in which the principal office of the 502
authority is located, or in the court of common pleas of the 503
county in which the cause of action arose, provided such county is 504
located within this state, and all summonses, exceptions, and 505
notices of every kind shall be served on the authority by leaving 506
a copy thereof at the principal office with the person in charge 507
thereof or with the secretary-treasurer of the authority. 508

(E) Make loans and grants to governmental agencies for the 509
acquisition or construction of air quality projects or advanced 510
energy projects by any such governmental agency and adopt rules 511
and procedures for making such loans and grants; 512

(F) Acquire, construct, reconstruct, enlarge, improve, 513
furnish, equip, maintain, repair, operate, lease or rent to, or 514
contract for operation by, a person or governmental agency, air 515
quality projects or advanced energy projects, and establish rules 516
for the use of such projects; 517

(G) Make available the use or services of any air quality 518
project or advanced energy project to one or more persons, one or 519
more governmental agencies, or any combination thereof; 520

(H) Issue ~~air quality~~ revenue bonds and notes and ~~air quality~~ 521
revenue refunding bonds of the state, payable solely from revenues 522
as provided in section 3706.05 of the Revised Code, unless the 523
bonds be refunded by refunding bonds, for the purpose of paying 524
any part of the cost of one or more air quality projects or 525
advanced energy projects or parts thereof; 526

(I) Acquire by gift or purchase, hold, and dispose of real 527
and personal property in the exercise of the powers of the 528
authority and the performance of its duties under this chapter; 529

(J) Acquire, in the name of the state, by purchase or 530
otherwise, on such terms and in such manner as the authority finds 531
proper, or by the exercise of the right of condemnation in the 532
manner provided by section 3706.17 of the Revised Code, such 533
public or private lands, including public parks, playgrounds, or 534
reservations, or parts thereof or rights therein, rights-of-way, 535
property, rights, easements, and interests as it finds necessary 536
for carrying out this chapter, but excluding the acquisition by 537
the exercise of the right of condemnation of any air quality 538
facility or advanced energy facility owned by any person or 539
governmental agency; and compensation shall be paid for public or 540
private lands so taken; 541

(K) Make and enter into all contracts and agreements and 542
execute all instruments necessary or incidental to the performance 543
of its duties and the execution of its powers under this chapter. 544

(1) When the cost under any such contract or agreement, other 545
than compensation for personal services, involves an expenditure 546
of more than two thousand dollars, the authority shall make a 547
written contract with the lowest responsive and responsible 548
bidder, in accordance with section 9.312 of the Revised Code, 549
after advertisement for not less than two consecutive weeks in a 550
newspaper of general circulation in Franklin county, and in such 551
other publications as the authority determines, which notice shall 552
state the general character of the work and the general character 553
of the materials to be furnished, the place where plans and 554
specifications therefor may be examined, and the time and place of 555
receiving bids; provided, that a contract or lease for the 556
operation of an air quality project or advanced energy project 557
constructed and owned by the authority or an agreement for 558

cooperation in the acquisition or construction of an air quality 559
project or advanced energy project pursuant to section 3706.12 of 560
the Revised Code or any contract for the construction of an air 561
quality project or advanced energy project that is to be leased by 562
the authority to, and operated by, persons ~~who~~ that are not 563
governmental agencies and the cost of such project is to be 564
amortized exclusively from rentals or other charges paid to the 565
authority by persons ~~who~~ that are not governmental agencies is not 566
subject to the foregoing requirements and the authority may enter 567
into such contract, lease, or agreement pursuant to negotiation 568
and upon such terms and conditions and for such period as it finds 569
to be reasonable and proper in the circumstances and in the best 570
interests of proper operation or of efficient acquisition or 571
construction of such project. 572

(2) Each bid for a contract for the construction, demolition, 573
alteration, repair, or reconstruction of an improvement shall 574
contain the full name of every person interested in it and meet 575
the requirements of section 153.54 of the Revised Code. 576

(3) Each bid for a contract except as provided in division 577
(K)(2) of this section shall contain the full name of every person 578
interested in it and shall be accompanied by a sufficient bond or 579
certified check on a solvent bank that if the bid is accepted a 580
contract will be entered into and the performance thereof secured. 581

(4) The authority may reject any and all bids. 582

(5) A bond with good and sufficient surety, approved by the 583
authority, shall be required of every contractor awarded a 584
contract except as provided in division (K)(2) of this section, in 585
an amount equal to at least fifty per cent of the contract price, 586
conditioned upon the faithful performance of the contract. 587

(L) Employ managers, superintendents, and other employees and 588
retain or contract with consulting engineers, financial 589

consultants, accounting experts, architects, attorneys, and such 590
other consultants and independent contractors as are necessary in 591
its judgment to carry out this chapter, and fix the compensation 592
thereof. All expenses thereof shall be payable solely from the 593
proceeds of ~~air-quality~~ revenue bonds or notes issued under this 594
chapter, from revenues, or from funds appropriated for such 595
purpose by the general assembly. 596

(M) Receive and accept from any federal agency, subject to 597
the approval of the governor, grants for or in aid of the 598
construction of any air quality project or advanced energy project 599
or for research and development with respect to air quality 600
facilities and advanced energy facilities, and receive and accept 601
aid or contributions from any source of money, property, labor, or 602
other things of value, to be held, used, and applied only for the 603
purposes for which such grants and contributions are made; 604

(N) Engage in research and development with respect to air 605
quality facilities and advanced energy facilities; 606

(O) Purchase fire and extended coverage and liability 607
insurance for any air quality project and advanced energy project 608
and for the principal office and suboffices of the authority, 609
insurance protecting the authority and its officers and employees 610
against liability for damage to property or injury to or death of 611
persons arising from its operations, and any other insurance the 612
authority may agree to provide under any resolution authorizing 613
its ~~air-quality~~ revenue bonds or in any trust agreement securing 614
the same; 615

(P) Charge, alter, and collect rentals and other charges for 616
the use or services of any air quality project or advanced energy 617
project as provided in section 3706.13 of the Revised Code; 618

(Q) Provide coverage for its employees under Chapters 145., 619
4123., and 4141. of the Revised Code; 620

(R) Develop, encourage, promote, support, and implement programs to achieve best cost rates for state-owned buildings, facilities, and operations, state-supported colleges and universities, willing local governments, and willing school districts through pooled purchases of electricity and the financing of taxable or tax-exempt prepayment of commodities; 621
622
623
624
625
626

(S) Develop, encourage, promote, support, and implement programs to achieve optimal cost financing for electric generating facilities to be constructed on or after January 1, 2009; 627
628
629

(T) Develop, encourage, and provide incentives for investments in energy efficiency; 630
631
632

(U) Develop, encourage, promote, and support implementation in this state of sustainable resource energy installations; 633
634

(V) Lead, encourage, promote, and support siting, financing, construction, and operation for early implementations of next-generation base load generating systems, including clean coal generating facilities with carbon capture or sequestration or advanced nuclear power plants, and reduce the costs of associated risks; 635
636
637
638
639
640

(W) Engage in and coordinate state-supported energy research and development with respect to reliable, affordable, and sustainable energy in this state; 641
642
643

(X) Develop, encourage, promote, support, and implement programs to attract and retain key industrial and energy-intensive sectors of the economy of this state; 644
645
646

(Y) Do all acts necessary or proper to carry out the powers expressly granted in this chapter. 647
648

Any instrument by which real property is acquired pursuant to this section shall identify the agency of the state that has the 649
650

use and benefit of the real property as specified in section 651
5301.012 of the Revised Code. 652

Sec. 3706.041. (A) With respect to projects, and the 653
financing thereof, for industry, commerce, distribution, or 654
research, including public utility companies, under agreements 655
whereby the person to whom the project is to be leased, subleased, 656
or sold, or to whom a loan is to be made for the project, is to 657
make payments sufficient to pay all of the principal of, premium, 658
if any, and interest on the ~~air-quality~~ revenue bonds issued for 659
the project, or the counterparty under any related commodity 660
contract agrees to make payments sufficient in amount to pay all 661
of the principal of, premium, if any, and interest on the related 662
~~air-quality~~ revenue bonds, the Ohio air quality development 663
authority may, in addition to other powers under this chapter: 664

(1) Make loans for the acquisition or construction of the 665
project to such person upon such terms as the authority may 666
determine or authorize, including secured or unsecured loans, and, 667
in connection therewith, enter into loan agreements and other 668
agreements, including commodity contracts, accept notes and other 669
forms of obligation to evidence such indebtedness and mortgages, 670
liens, pledges, assignments, or other security interests to secure 671
such indebtedness, which may be prior or subordinate to or on a 672
parity with other indebtedness, obligations, mortgages, pledges, 673
assignments, other security interests, or liens or encumbrances, 674
and take such actions as may be considered by it appropriate to 675
protect such security and safeguard against losses, including, 676
without limitation thereto, foreclosure and the bidding upon and 677
purchase of property upon foreclosure or other sale. 678

(2) Sell such project under such terms as it may determine, 679
including, without limitation thereto, sale by conditional sale or 680
installment sale, under which title may pass prior to or after 681

completion of the project or payment or provisions for payment of 682
all principal of, premium, if any, and interest on such bonds, or 683
at any other time provided in such agreement pertaining to such 684
sale, and including sale under an option to purchase at a price 685
which may be a nominal amount or less than true value at the time 686
of purchase. 687

(3) Grant a mortgage, lien, or other encumbrance on, or 688
pledge or assignment of, or other security interest with respect 689
to, all or any part of the project, revenues, reserve funds, or 690
other funds established in connection with such bonds, or on, of, 691
or with respect to any lease, sublease, sale, conditional sale or 692
installment sale agreement, loan agreement, or other agreement 693
pertaining to the lease, sublease, sale, or other disposition of a 694
project or pertaining to a loan made for a project, or any 695
guaranty or insurance agreement made with respect thereto, or any 696
interest of the authority therein, or any other interest granted, 697
assigned, or released to secure payments of the principal of, 698
premium, if any, or interest on the bonds or to secure any other 699
payments to be made by the authority, which mortgage, lien, 700
encumbrance, pledge, assignment, or other security interest may be 701
prior or subordinate to or on a parity with any other mortgage, 702
assignment, other security interest, or lien or encumbrance. 703

(4) Provide that the interest on such bonds may be at a 704
variable rate or rates changing from time to time in accordance 705
with a base or formula as authorized by the authority. 706

(5) Contract for the acquisition or construction of such 707
project or any part thereof, including any related commodity 708
contracts, and for the leasing, subleasing, sale or other 709
disposition of such project in a manner determined by the 710
authority in its sole discretion, without necessity for 711
competitive bidding or performance bonds. 712

(B) Property comprising a project shall not be subject to 713

taxes or assessments and so long as the bonds or notes issued to 714
finance the costs of such project are outstanding, and the 715
transfer of title to or possession of such property to the person 716
to whom a loan or installment sale or conditional sale with 717
respect to such project is made shall not be subject to the taxes 718
levied pursuant to Chapters 5739. and 5741. of the Revised Code. 719

The authority shall certify the property comprising a project 720
which is exempt from taxes and assessments pursuant to this 721
section, and shall send, by certified mail, copies of such 722
certification to the owner of such exempt property, to the tax 723
commissioner, and to the county auditor of the county or counties 724
in which any such exempt property is located. 725

Each county auditor shall maintain a separate list of all 726
property exempt pursuant to this section and sections 6121.044 and 727
6123.041 of the Revised Code, in addition to the list of exempt 728
property required to be maintained pursuant to section 5713.07 of 729
the Revised Code. 730

(C) The authority, in the lease, sale or loan agreement with 731
respect to a project referred to in division (A) of this section, 732
shall make appropriate provision for adequate maintenance of the 733
project. 734

(D) With respect to the projects referred to in this section, 735
the authority granted by this section is cumulative and 736
supplementary to all other authority granted in this chapter. The 737
authority granted by this section does not alter or impair any 738
similar authority granted elsewhere in this chapter for or with 739
respect to other projects. 740

Sec. 3706.05. The Ohio air quality development authority may 741
at any time issue revenue bonds and notes of the state in such 742
principal amount as, in the opinion of the authority, are 743
necessary for the purpose of paying any part of the cost of one or 744

more air quality projects or advanced energy projects or parts 745
thereof, including one or more payments pursuant to a commodity 746
contract entered into in connection with the acquisition or 747
construction of air quality facilities or advanced energy 748
facilities. The authority may at any time issue renewal notes, 749
issue bonds to pay such notes and whenever it deems refunding 750
expedient, refund any bonds by the issuance of ~~air quality~~ revenue 751
refunding bonds of the state, whether the bonds to be refunded 752
have or have not matured, and issue bonds partly to refund bonds 753
then outstanding, and partly for any other authorized purpose. The 754
refunding bonds shall be sold and the proceeds applied to the 755
purchase, redemption, or payment of the bonds to be refunded. 756
Except as may otherwise be expressly provided by the authority, 757
every issue of its bonds or notes shall be general obligations of 758
the authority payable out of the revenues of the authority that 759
are pledged for such payment, without preference or priority of 760
the first bonds issued, subject only to any agreements with the 761
holders of particular bonds or notes pledging any particular 762
revenues. Such pledge shall be valid and binding from the time the 763
pledge is made and the revenues so pledged and thereafter received 764
by the authority shall immediately be subject to the lien of such 765
pledge without any physical delivery thereof or further act, and 766
the lien of any such pledge is valid and binding as against all 767
parties having claims of any kind in tort, contract, or otherwise 768
against the authority, irrespective of whether such parties have 769
notice thereof. Neither the resolution nor any trust agreement by 770
which a pledge is created need be filed or recorded except in the 771
records of the authority. 772

Whether or not the bonds or notes are of such form and 773
character as to be negotiable instruments, the bonds or notes 774
shall have all the qualities and incidents of negotiable 775
instruments, subject only to the provisions of the bonds or notes 776
for registration. 777

The bonds and notes shall be authorized by resolution of the 778
authority, shall bear such date or dates, and shall mature at such 779
time or times, in the case of any such note or any renewals 780
thereof not exceeding five years from the date of issue of such 781
original note and in the case of any such bond not exceeding forty 782
years from the date of issue, as such resolution or resolutions 783
may provide. The bonds and notes shall bear interest at such rate 784
or rates, be in such denominations, be in such form, either coupon 785
or registered, carry such registration privileges, be payable in 786
such medium of payment, at such place or places, and be subject to 787
such terms of redemption as the authority may authorize. The bonds 788
and notes of the authority may be sold by the authority, at public 789
or private sale, at or at not less than such price or prices as 790
the authority determines. The bonds and notes shall be executed by 791
the chairperson and vice-chairperson of the authority, either or 792
both of whom may use a facsimile signature, the official seal of 793
the authority or a facsimile thereof shall be affixed thereto or 794
printed thereon and attested, manually or by facsimile signature, 795
by the secretary-treasurer of the authority, and any coupons 796
attached thereto shall bear the signature or facsimile signature 797
of the chairperson of the authority. In case any officer whose 798
signature, or a facsimile of whose signature, appears on any 799
bonds, notes or coupons ceases to be such officer before delivery 800
of bonds or notes, such signature or facsimile shall nevertheless 801
be sufficient for all purposes the same as if the officer had 802
remained in office until such delivery, and in case the seal of 803
the authority has been changed after a facsimile has been 804
imprinted on such bonds or notes, such facsimile seal will 805
continue to be sufficient for all purposes. 806

Any resolution or resolutions authorizing any bonds or notes 807
or any issue thereof may contain provisions, subject to such 808
agreements with bondholders or noteholders as may then exist, 809
which provisions shall be a part of the contract with the holders 810

thereof, as to: the pledging of all or any part of the revenues of 811
the authority to secure the payment of the bonds or notes or of 812
any issue thereof; the use and disposition of revenues of the 813
authority; a covenant to fix, alter, and collect rentals and other 814
charges so that pledged revenues will be sufficient to pay costs 815
of operation, maintenance, and repairs, pay principal of and 816
interest on bonds or notes secured by the pledge of such revenues, 817
and provide such reserves as may be required by the applicable 818
resolution or trust agreement; the setting aside of reserve funds, 819
sinking funds, or replacement and improvement funds and the 820
regulation and disposition thereof; the crediting of the proceeds 821
of the sale of bonds or notes to and among the funds referred to 822
or provided for in the resolution authorizing the issuance of the 823
bonds or notes; the use, lease, sale, or other disposition of any 824
air quality project or any other assets of the authority; 825
limitations on the purpose to which the proceeds of sale of bonds 826
or notes may be applied and the pledging of such proceeds to 827
secure the payment of the bonds or notes or of any issue thereof; 828
as to notes issued in anticipation of the issuance of bonds, the 829
agreement of the authority to do all things necessary for the 830
authorization, issuance, and sale of such bonds in such amounts as 831
may be necessary for the timely retirement of such notes; 832
limitations on the issuance of additional bonds or notes; the 833
terms upon which additional bonds or notes may be issued and 834
secured; the refunding of outstanding bonds or notes; the 835
procedure, if any, by which the terms of any contract with 836
bondholders or noteholders may be amended or abrogated, the amount 837
of bonds or notes the holders of which must consent thereto, and 838
the manner in which such consent may be given; limitations on the 839
amount of moneys to be expended by the authority for operating, 840
administrative, or other expenses of the authority; securing any 841
bonds or notes by a trust agreement in accordance with section 842
3706.07 of the Revised Code; any other matters, of like or 843

different character, that in any way affect the security or 844
protection of the bonds or notes. 845

Neither the members of the authority nor any person executing 846
the bonds or notes shall be liable personally on the bonds or 847
notes or be subject to any personal liability or accountability by 848
reason of the issuance thereof. 849

Sec. 3706.06. The issuance of ~~air quality~~ revenue bonds and 850
notes or ~~air quality~~ revenue refunding bonds under Chapter 3706. 851
of the Revised Code need not comply with any other law applicable 852
to the issuance of bonds or notes. 853

Sec. 3706.07. In the discretion of the Ohio air quality 854
development authority, any ~~air quality~~ revenue bonds or notes or 855
~~air quality~~ revenue refunding bonds issued under Chapter 3706. of 856
the Revised Code, may be secured by a trust agreement between the 857
authority and a corporate trustee, which trustee may be any trust 858
company or bank having the powers of a trust company within or 859
without the state. 860

Any such trust agreement may pledge or assign revenues of the 861
authority to be received, but shall not convey or mortgage any air 862
quality project or any part thereof. Any such trust agreement or 863
any resolution providing for the issuance of such bonds or notes 864
may contain such provisions for protecting and enforcing the 865
rights and remedies of the bondholders or noteholders as are 866
reasonable and proper and not in violation of law, including 867
covenants setting forth the duties of the authority in relation to 868
the acquisition of property, the construction, improvement, 869
maintenance, repair, operation, and insurance of the air quality 870
project or projects in connection with which such bonds or notes 871
are authorized, the rentals or other charges to be imposed for the 872
use or services of any air quality project, the application of 873

revenues received or otherwise derived from a commodity contract 874
or from the sale of the related commodity under such contract, the 875
custody, safeguarding, and application of all moneys, and 876
provisions for the employment of consulting engineers in 877
connection with the construction or operation of such air quality 878
project or projects. Any bank or trust company incorporated under 879
the laws of this state that may act as depository of the proceeds 880
of bonds or notes or of revenues may furnish such indemnifying 881
bonds or may pledge such securities as are required by the 882
authority. Any such trust agreement may set forth the rights and 883
remedies of the bondholders and noteholders and of the trustee, 884
and may restrict the individual right of action by bondholders and 885
noteholders as is customary in trust agreements or trust 886
indentures securing similar bonds. Such trust agreement may 887
contain such other provisions as the authority determines 888
reasonable and proper for the security of the bondholders or 889
noteholders. All expenses incurred in carrying out the provisions 890
of any such trust agreement may be treated as a part of the cost 891
of the operation of the air quality project or projects. Any such 892
trust agreement or resolution authorizing the issuance of ~~air~~ 893
~~quality~~ revenue bonds may provide the method whereby the general 894
administrative overhead expenses of the authority shall be 895
allocated among the several projects acquired or constructed by it 896
as a factor of the operation expense of each such project. 897

Sec. 3706.08. Any holder of ~~air-quality~~ revenue bonds issued 898
under Chapter 3706. of the Revised Code, or any of the coupons 899
appertaining thereto, and the trustee under any trust agreement, 900
except to the extent the rights given by such chapter may be 901
restricted by the applicable resolution or such trust agreement, 902
may by suit, action, mandamus, or other proceedings, protect and 903
enforce any rights under the laws of the state or granted under 904
such chapter, trust agreement, or the resolution authorizing the 905

issuance of such bonds, and may enforce and compel the performance 906
of all duties required by such chapter, or by the trust agreement 907
or resolution, to be performed by the Ohio air quality development 908
authority or any officer thereof, including the fixing, charging, 909
and collecting of rentals or other charges. 910

Sec. 3706.09. ~~Air quality revenue~~ Revenue bonds and notes and 911
~~air quality~~ revenue refunding bonds issued under Chapter 3706. of 912
the Revised Code do not constitute a debt, or a pledge of the 913
faith and credit, of the state or any political subdivision 914
thereof, and the holders or owners thereof have no right to have 915
taxes levied by the general assembly or taxing authority of any 916
political subdivision of the state for the payment of the 917
principal thereof or interest thereon, but such bonds and notes 918
are payable solely from the revenues and funds pledged for their 919
payment as authorized by such chapter, unless the notes are issued 920
in anticipation of the issuance of bonds or the bonds are refunded 921
by refunding bonds issued under such chapter, which bonds or 922
refunding bonds shall be payable solely from revenues and funds 923
pledged for their payment as authorized by such sections. All such 924
bonds and notes shall contain on the face thereof a statement to 925
the effect that the bonds or notes, as to both principal and 926
interest, are not debts of the state or any political subdivision 927
thereof, but are payable solely from revenues and funds pledged 928
for their payment. 929

All expenses incurred in carrying out Chapter 3706. of the 930
Revised Code are payable solely from funds provided under such 931
chapter. Such chapter does not authorize the Ohio air quality 932
development authority to incur indebtedness or liability on behalf 933
of or payable by the state or any political subdivision thereof. 934

Sec. 3706.10. All moneys, funds, properties, and assets 935
acquired by the Ohio air quality development authority under 936

Chapter 3706. of the Revised Code, whether as proceeds from the 937
sale of ~~air-quality~~ revenue bonds or as revenues, or otherwise, 938
shall be held by it in trust for the purposes of carrying out its 939
powers and duties, shall be used and reused as provided in such 940
chapter, and shall at no time be part of other public funds. Such 941
funds, except as otherwise provided in any resolution authorizing 942
its ~~air-quality~~ revenue bonds or in any trust agreement securing 943
the same, or except when invested pursuant to section 3706.11 of 944
the Revised Code, shall be kept in depositories selected by the 945
authority in the manner provided in Chapter 135. of the Revised 946
Code, and the deposits shall be secured as provided in Chapter 947
135. of the Revised Code. The resolution authorizing the issuance 948
of such bonds of any issue or the trust agreement securing such 949
bonds shall provide that any officer to whom, or any bank or trust 950
company to which, such moneys are paid shall act as trustee of 951
such moneys and hold and apply them for the purposes hereof, 952
subject to such conditions as such chapter and such resolutions or 953
trust agreement provide. 954

Sec. 3706.11. Moneys in the funds of the Ohio air quality 955
development authority, except as otherwise provided in any 956
resolution authorizing the issuance of its ~~air-quality~~ revenue 957
bonds or in any trust agreement securing the same, in excess of 958
current needs, may be invested in notes, bonds, or other 959
obligations of the United States of America or any agency or 960
instrumentality thereof, or in obligations of this state or any 961
political subdivision thereof. Income from all such investments of 962
moneys in any fund shall be credited to such funds as the 963
authority determines, subject to the provisions of any such 964
resolution or trust agreement and such investments may be sold at 965
such times as the authority determines. 966

Sec. 3706.12. The Ohio air quality development authority may 967

charge, alter, and collect rentals or other charges for the use or 968
services of any air quality project or advanced energy project and 969
contract in the manner provided by this section with one or more 970
persons, one or more governmental agencies, or any combination 971
thereof, desiring the use or services of such project, and fix the 972
terms, conditions, rentals, or other charges for such use or 973
services. Such rentals or other charges shall not be subject to 974
supervision or regulation by any other authority, commission, 975
board, bureau, or agency of the state and such contract may 976
provide for acquisition by such person or governmental agency of 977
all or any part of such air quality project or advanced energy 978
project for such consideration payable over the period of the 979
contract or otherwise as the authority in its sole discretion 980
determines to be appropriate, but subject to the provisions of any 981
resolution authorizing the issuance of ~~air-quality~~ revenue bonds 982
or notes or ~~air-quality~~ revenue refunding bonds of the authority 983
or any trust agreement securing the same. Any governmental agency 984
that has power to construct, operate, and maintain air quality 985
facilities or advanced energy facilities may enter into a contract 986
or lease with the authority whereby the use or services of any air 987
quality project or advanced energy project of the authority will 988
be made available to such governmental agency and may pay for such 989
use or services such rentals or other charges as may be agreed to 990
by the authority and such governmental agency. 991

Any governmental agency or combination of governmental 992
agencies may cooperate with the authority in the acquisition or 993
construction of an air quality project or advanced energy project 994
and shall enter into such agreements with the authority as may be 995
necessary, with a view to effective cooperative action and 996
safeguarding of the respective interests of the parties thereto, 997
which agreements shall provide for such contributions by the 998
parties thereto in such proportion as may be agreed upon and such 999
other terms as may be mutually satisfactory to the parties 1000

including without limitation the authorization of the construction 1001
of the project by one of the parties acting as agent for all of 1002
the parties and the ownership and control of the project by the 1003
authority to the extent necessary or appropriate for purposes of 1004
the issuance of ~~air quality~~ revenue bonds by the authority. Any 1005
governmental agency may provide the funds for the payment of such 1006
contribution as is required under such agreements by the levy of 1007
taxes, assessments or rentals and other charges for the use of the 1008
utility system of which the air quality project or advanced energy 1009
project is a part or to which it is connected, if otherwise 1010
authorized by the laws governing such governmental agency in the 1011
construction of the type of air quality project or advanced energy 1012
project provided for in the agreements, and may pay the proceeds 1013
from the collection of such taxes, assessments, utility rentals, 1014
or other charges to the authority pursuant to such agreements; or 1015
the governmental agency may issue bonds or notes, if authorized by 1016
such laws, in anticipation of the collection of such taxes, 1017
assessments, utility rentals, or other charges and may pay the 1018
proceeds of such bonds or notes to the authority pursuant to such 1019
agreements. In addition any governmental agency may provide the 1020
funds for the payment of such contribution by the appropriation of 1021
money or, if otherwise authorized by law, by the issuance of bonds 1022
or notes and may pay such appropriated money or the proceeds of 1023
such bonds or notes to the authority pursuant to such agreements. 1024
The agreement by the governmental agency to provide such 1025
contribution, whether from appropriated money or from the proceeds 1026
of such taxes, assessments, utility rentals, or other charges, or 1027
such bonds or notes, or any combination thereof, shall not be 1028
subject to Chapter 133. of the Revised Code or any regulations or 1029
limitations contained therein. The proceeds from the collection of 1030
such taxes or assessments, and any interest earned thereon, shall 1031
be paid into a special fund immediately upon the collection 1032
thereof by the governmental agency for the purpose of providing 1033

such contribution at the times required under such agreements. 1034

When the contribution of any governmental agency is to be 1035
made over a period of time from the proceeds of the collection of 1036
special assessments, the interest accrued and to accrue before the 1037
first installment of such assessments shall be collected which is 1038
payable by such governmental agency on such contribution under the 1039
terms and provisions of such agreements shall be treated as part 1040
of the cost of the improvement for which such assessments are 1041
levied, and that portion of such assessments as are collected in 1042
installments shall bear interest at the same rate as such 1043
governmental agency is obligated to pay on such contribution under 1044
the terms and provisions of such agreements and for the same 1045
period of time as the contribution is to be made under such 1046
agreements. If the assessment or any installment thereof is not 1047
paid when due, it shall bear interest until the payment thereof at 1048
the same rate as such contribution and the county auditor shall 1049
annually place on the tax list and duplicate the interest 1050
applicable to such assessment and the penalty and additional 1051
interest thereon as otherwise authorized by law. 1052

Any governmental agency, pursuant to a favorable vote of the 1053
electors in an election held before or after June 1, 1970, for the 1054
purpose of issuing bonds to provide funds to acquire, construct, 1055
or equip, or provide real estate and interests in real estate for, 1056
an air quality facility or advanced energy facility, whether or 1057
not such governmental agency, at the time of such election, had 1058
the authority to pay the proceeds from such bonds or notes issued 1059
in anticipation thereof to the authority as provided in this 1060
section, may issue such bonds or notes in anticipation of the 1061
issuance thereof and pay the proceeds thereof to the authority in 1062
accordance with its agreement with the authority; provided, that 1063
the legislative authority of the governmental agency find and 1064
determine that the air quality project or advanced energy project 1065

to be acquired or constructed by the authority in cooperation with 1066
such governmental agency will serve the same public purpose and 1067
meet substantially the same public need as the facility otherwise 1068
proposed to be acquired or constructed by the governmental agency 1069
with the proceeds of such bonds or notes. 1070

Sec. 3706.13. Each air quality project or advanced energy 1071
project, when constructed and placed in operation, shall be 1072
maintained and kept in good condition and repair by the Ohio air 1073
quality development authority, or the authority shall cause the 1074
same to be maintained and kept in good condition and repair. Each 1075
such project shall be operated by such operating employees as the 1076
authority employs or pursuant to a contract or lease with a person 1077
or governmental agency. All public or private property damaged or 1078
destroyed in carrying out the powers granted by Chapter 3706. of 1079
the Revised Code, shall be restored or repaired and placed in its 1080
original condition, as nearly as practicable, or adequate 1081
compensation shall be paid therefor from funds provided under such 1082
chapter. 1083

On or before the twentieth day of April in each year, the 1084
authority shall make a report of its activities for the preceding 1085
calendar year to the governor and the general assembly. Each such 1086
report shall set forth a complete operating and financial 1087
statement covering the authority's operations during the year. The 1088
authority shall cause an audit of its books and accounts to be 1089
made at least once each year by certified public accountants and 1090
the cost thereof may be treated as a part of the cost of 1091
construction or of operations of its projects. 1092

Sec. 3706.14. All ~~air-quality~~ revenue bonds issued under this 1093
chapter are lawful investments of banks, societies for savings, 1094
savings and loan associations, deposit guarantee associations, 1095
trust companies, trustees, fiduciaries, insurance companies, 1096

including domestic for life and domestic not for life, trustees or 1097
other officers having charge of sinking and bond retirement or 1098
other special funds of political subdivisions and taxing districts 1099
of this state, the commissioners of the sinking fund of the state, 1100
the administrator of workers' compensation, the state teachers 1101
retirement system, the public employees retirement system, the 1102
school employees retirement system, and the Ohio police and fire 1103
pension fund, and are acceptable as security for the deposit of 1104
public moneys. 1105

Sec. 3706.15. The exercise of the powers granted by Chapter 1106
3706. of the Revised Code, will be for the benefit of the people 1107
of the state, for the improvement of their health, safety, 1108
convenience, and welfare, and for the enhancement of their 1109
residential, agricultural, recreational, economic, commercial, and 1110
industrial opportunities and is a public purpose. As the operation 1111
and maintenance of air quality projects or advanced energy 1112
projects will constitute the performance of essential governmental 1113
functions, the Ohio air quality development authority shall not be 1114
required to pay any taxes or assessments upon any air-quality such 1115
project, ~~or~~ upon any property acquired or used by the authority 1116
under Chapter 3706. of the Revised Code, or upon the income 1117
therefrom, nor shall the transfer to or from the Ohio air quality 1118
development authority of title or possession of any air quality 1119
project or advanced energy project, part thereof, or item included 1120
or to be included in any such project, be subject to the taxes 1121
levied pursuant to Chapters 5739. and 5741. of the Revised Code, 1122
and the bonds and notes issued under this chapter, their transfer, 1123
and the income therefrom, including any profit made on the sale 1124
thereof, shall at all times be free from taxation within the 1125
state. 1126

Sec. 3706.16. The Ohio air quality development authority may 1127

acquire by purchase, whenever it finds such purchase expedient, 1128
any land, property, rights, rights-of-way, franchises, easements, 1129
and other interests in lands as it finds to be necessary or 1130
convenient for the construction and operation of any air quality 1131
project or advanced energy project, upon such terms and at such 1132
price as it considers reasonable and are agreed upon between the 1133
authority and the owner thereof, and take title thereto in the 1134
name of the state. 1135

Any governmental agency, notwithstanding any contrary 1136
provision of law and without the necessity for an advertisement, 1137
auction, order of court, or other action or formality, other than 1138
the regular and formal action of such governmental agency 1139
concerned, may lease, lend, grant, or convey to the authority, at 1140
its request, upon such terms as the proper authorities of such 1141
governmental agency find reasonable and fair any real property or 1142
interests therein including improvements thereto or personal 1143
property which is necessary or convenient to effect the authorized 1144
purposes of the authority, including public roads and real or 1145
personal property already devoted to public use. 1146

Sec. 3706.17. The Ohio air quality development authority may 1147
acquire by appropriation pursuant to division (J) of section 1148
3706.04 of the Revised Code any land, rights, rights-of-way, 1149
franchises, easements, or other property necessary or proper for 1150
the construction or the efficient operation of any air quality 1151
project or advanced energy project. In any proceedings for 1152
appropriation under this section, the procedure to be followed 1153
shall be in accordance with Chapter 163. of the Revised Code. 1154

This section does not empower the authority to take or 1155
disturb property or facilities belonging to and required for the 1156
proper and convenient operation of any public utility or any 1157
common carrier engaged in interstate commerce, unless provision is 1158

made for the restoration, relocation, or duplication of such 1159
property or facilities elsewhere at the sole cost of the 1160
authority. 1161

Sec. 3706.18. When the Ohio air quality development authority 1162
finds it necessary to change the location of any portion of any 1163
public road, state highway, railroad, or public utility facility 1164
in connection with the construction of an air quality project or 1165
advanced energy project, it shall cause the same to be 1166
reconstructed at such location as the division of government 1167
having jurisdiction over such road, highway, railroad, or public 1168
utility facility finds most favorable. Such reconstruction shall 1169
be of substantially the same type and in as good condition as the 1170
original road, highway, railroad, or public utility facility. The 1171
cost of such reconstruction, relocation, or removal and any damage 1172
incurred in changing the location of any such road, highway, 1173
railroad, or public utility facility shall be paid by the 1174
authority as a part of the cost of ~~such air quality~~ the project. 1175

When the authority finds it necessary that any public highway 1176
or portion thereof be vacated by reason of the acquisition or 1177
construction of an air quality project or advanced energy project, 1178
the authority may request the director of transportation, in 1179
writing, to vacate such highway or portion thereof in accordance 1180
with section 5511.07 of the Revised Code if the highway or portion 1181
thereof to be vacated is on the state highway system, or, if the 1182
highway or portion thereof to be vacated is under the jurisdiction 1183
of the county commissioners, the authority shall request the 1184
director, in writing, to petition the board of county 1185
commissioners, in the manner provided in section 5553.041 of the 1186
Revised Code, to vacate such highway or portion thereof. The 1187
authority shall pay to the director or to the county, as a part of 1188
the cost of ~~such air quality~~ the project, any amounts required to 1189
be deposited with any court in connection with proceedings for the 1190

determination of compensation and damages and all amounts of 1191
compensation and damages finally determined to be payable as a 1192
result of such vacation. 1193

The authority may make reasonable regulations for the 1194
installation, construction, maintenance, repair, renewal, 1195
relocation, and removal of railroad or public utility facilities 1196
in, on, over, or under any air quality project or advanced energy 1197
project. Whenever the authority determines that it is necessary 1198
that any such facilities installed or constructed in, on, over, or 1199
under property of the authority pursuant to such regulations be 1200
relocated, the public utility owning or operating such facilities 1201
shall relocate or remove them in accordance with the order of the 1202
authority. The cost and expenses of such relocation or removal, 1203
including the cost of installing such facilities in a new 1204
location, and the cost of any lands, or any rights or interests in 1205
lands, and the cost of any other rights, acquired to accomplish 1206
such relocation or removal, may be paid by the authority as a part 1207
of the cost of ~~such air quality~~ the project. In case of any such 1208
relocation or removal of facilities, the railroad or public 1209
utility owning or operating them, its successors, or assigns may 1210
maintain and operate such facilities, with the necessary 1211
appurtenances, in the new location in, on, over, or under the 1212
property of the authority for as long a period and upon the same 1213
terms as it had the right to maintain and operate such facilities 1214
in their former location. 1215

Sec. 4905.31. Except as provided in section 4933.29 of the 1216
Revised Code, Chapters 4901., 4903., 4905., 4907., 4909., 4921., 1217
~~and 4923., and 4928.~~ of the Revised Code do not prohibit a public 1218
utility from filing a schedule or entering into any reasonable 1219
arrangement with another public utility or with its customers, 1220
consumers, or employees providing for: 1221

(A) The division or distribution of its surplus profits;	1222
(B) A sliding scale of charges, including variations in rates based upon either of the following:	1223 1224
(1) Stipulated variations in cost as provided in the schedule or arrangement;	1225 1226
(2) Any emissions fee levied upon an electric light company under Substitute Senate Bill No. 359 of the 119th general assembly as provided in the schedule. The public utilities commission shall permit an electric light company to recover the emissions fee pursuant to such a variable rate schedule.	1227 1228 1229 1230 1231
(3) Any emissions fee levied upon an electric light company under division (C) or (D) of section 3745.11 of the Revised Code as provided in the schedule. The public utilities commission shall permit an electric light company to recover any such emission fee pursuant to such a variable rate schedule.	1232 1233 1234 1235 1236
(4) Any schedule of variable rates filed under division (B) of this section shall provide for the recovery of any such emissions fee by applying a uniform percentage increase to the base rate charged each customer of the electric light company for service during the period that the variable rate is in effect.	1237 1238 1239 1240 1241
(C) A minimum charge for service to be rendered unless such minimum charge is made or prohibited by the terms of the franchise, grant, or ordinance under which such public utility is operated;	1242 1243 1244 1245
(D) A classification of service based upon the quantity used, the time when used, the purpose for which used, the duration of use, and any other reasonable consideration;	1246 1247 1248
(E) Any other financial device that may be practicable or advantageous to the parties interested. No such arrangement, sliding scale, minimum charge, classification, variable rate, or	1249 1250 1251

device is lawful unless it is filed with and approved by the 1252
commission. 1253

Every such public utility is required to conform its 1254
schedules of rates, tolls, and charges to such arrangement, 1255
sliding scale, classification, or other device, and where variable 1256
rates are provided for in any such schedule or arrangement, the 1257
cost data or factors upon which such rates are based and fixed 1258
shall be filed with the commission in such form and at such times 1259
as the commission directs. The commission shall review the cost 1260
data or factors upon which a variable rate schedule filed under 1261
division (B)(2) or (3) of this section is based and shall adjust 1262
the base rates of the electric light company or order the company 1263
to refund any charges that it has collected under the variable 1264
rate schedule that the commission finds to have resulted from 1265
errors or erroneous reporting. After recovery of all of the 1266
emissions fees upon which a variable rate authorized under 1267
division (B)(2) or (3) of this section is based, collection of the 1268
variable rate shall end and the variable rate schedule shall be 1269
terminated. 1270

Every such arrangement, sliding scale, minimum charge, 1271
classification, variable rate, or device shall be under the 1272
supervision and regulation of the commission, and is subject to 1273
change, alteration, or modification by the commission. 1274

Sec. 4905.40. (A) A public utility or a railroad may, when 1275
authorized by order of the public utilities commission, issue 1276
stocks, bonds, notes, and other evidences of indebtedness, payable 1277
at periods of more than twelve months after their date of 1278
issuance, when necessary: 1279

(1) For the acquisition of property, the construction, 1280
completion, extension, renewal, or improvement of its facilities, 1281
or the improvement of its service; or 1282

(2) For reorganization or readjustment of its indebtedness 1283
and capitalization, for the discharge or lawful refunding of its 1284
obligation, or for the reimbursement of moneys actually expended 1285
for such purposes from income or from any other moneys in the 1286
treasury of the public utility or railroad not secured or obtained 1287
from the issue of stocks, bonds, notes, or other evidences of 1288
indebtedness of such public utility or railroad. No reimbursement 1289
of moneys expended for such purposes from income or other moneys 1290
in the treasury shall be authorized unless the applicant has kept 1291
its accounts and vouchers of such expenditures in such manner as 1292
to enable the commission to ascertain the amount and purposes of 1293
such expenditures. 1294

(B) Any public utility, subject to the jurisdiction of the 1295
commission, may, when authorized by the commission, issue shares 1296
of common capital stock to acquire or pay for shares of common 1297
capital stock of a public utility of this or an adjoining state 1298
whose property is so located as to permit the operation of the 1299
properties of such utilities as an integrated system if the 1300
applicant owns, or by this issue will acquire, not less than 1301
sixty-five per cent of the issued and outstanding common capital 1302
shares of the company whose shares are to be acquired, and if the 1303
consideration to be capitalized by the acquiring company does not 1304
exceed the par or stated value at which the shares so acquired 1305
were issued. 1306

(C) Any bonds, notes, or other evidences of indebtedness 1307
payable at periods of more than twelve months after their date may 1308
be issued as provided in sections 4905.40 to 4905.43 of the 1309
Revised Code, regardless of the amount of the capital stock of the 1310
public utility or railroad, subject to the approval of the 1311
commission of the excess of such bonds, notes, or other evidences 1312
of indebtedness above the amount of the capital stock of such 1313
public utility or railroad. 1314

(D) The commission shall authorize on the best terms 1315
obtainable such issues of stocks, bonds, and other evidences of 1316
indebtedness as are necessary to enable any public utility to 1317
comply with any contract made between such public utility and any 1318
municipal corporation prior to June 30, 1911. 1319

(E) The commission may authorize a public utility that is an 1320
electric light company to issue equity securities, or debt 1321
securities having a term of more than twelve months from the date 1322
of issuance, for the purpose of yielding to the company the 1323
capacity to acquire a facility that produces fuel for the 1324
generation of electricity. 1325

(F) In any proceeding under division (A)(1) of this section 1326
initiated by a public utility, the commission shall determine and 1327
set forth in its order: 1328

(1) Whether the purpose to which the issue or any proceeds of 1329
it shall be applied was or is reasonably required by the utility 1330
to meet its present and prospective obligations to provide utility 1331
service; 1332

(2) Whether the amount of the issue and the probable cost of 1333
such stocks, bonds, notes, or other evidences of indebtedness is 1334
just and reasonable; 1335

(3) What effect, if any, the issuance of such stocks, bonds, 1336
notes, or other evidences of indebtedness and the cost thereof 1337
will have upon the present and prospective revenue requirements of 1338
the utility. 1339

(G) Sections 4905.40 to 4905.42 of the Revised Code do not 1340
apply to stocks, bonds, notes, or other evidence of indebtedness 1341
issued for the purpose of financing oil or natural gas drilling, 1342
producing, gathering, and associated activities and facilities by 1343
a producer which supplies to no more than twenty purchasers only 1344
such gas as is produced, gathered, or purchased by such producer 1345

within this state. 1346

(H) Each public utility seeking authorization from the 1347
commission for the issuance of securities to finance the 1348
installation, construction, extension, or improvement of an air 1349
quality facility or advanced energy facility, as defined in 1350
section 3706.01 of the Revised Code, shall consider the 1351
availability of financing therefor from the Ohio air quality 1352
development authority and shall demonstrate to the commission that 1353
the proposed financing will be obtained on the best terms 1354
obtainable. 1355

Sec. 4928.02. It is the policy of this state to do the 1356
following throughout this state ~~beginning on the starting date of~~ 1357
~~competitive retail electric service:~~ 1358

(A) Ensure the availability to consumers of adequate, 1359
reliable, safe, efficient, nondiscriminatory, and reasonably 1360
priced retail electric service; 1361

(B) Ensure the availability of unbundled and comparable 1362
retail electric service that provides consumers with the supplier, 1363
price, terms, conditions, and quality options they elect to meet 1364
their respective needs; 1365

(C) Ensure diversity of electricity supplies and suppliers, 1366
by giving consumers effective choices over the selection of those 1367
supplies and suppliers and by encouraging the development of 1368
distributed and small generation facilities; 1369

(D) Encourage innovation and market access for cost-effective 1370
~~supply and demand side~~ retail electric service including, but not 1371
limited to, demand-side management, time-differentiated pricing, 1372
and implementation of advanced metering infrastructure; 1373

(E) Encourage cost-effective and efficient access to 1374
information regarding the operation of the transmission and 1375

distribution systems of electric utilities in order to promote 1376
both effective customer choice of retail electric service and the 1377
development of performance standards and targets for service 1378
quality for all consumers, including annual achievement reports 1379
written in plain language; 1380

(F) Recognize the continuing emergence of competitive 1381
electricity markets through the development and implementation of 1382
flexible regulatory treatment; 1383

(G) Ensure effective competition in the provision of retail 1384
electric service by avoiding anticompetitive subsidies flowing 1385
from a noncompetitive retail electric service to a competitive 1386
retail electric service or to a product or service other than 1387
retail electric service, and vice versa; 1388

(H) Ensure retail electric service consumers just and 1389
reasonable rates and protection against unreasonable sales 1390
practices, market deficiencies, and market power; 1391

(I) Preclude imbalances in knowledge and expertise among 1392
parties in a proceeding under this chapter to eliminate any 1393
appearance of disproportionate influence by any of those parties; 1394

(J) Ensure that consumers and shareholders share the benefits 1395
of electric utility investment in facilities supplying retail 1396
electric generation service; 1397

(K) Provide coherent, transparent means of giving appropriate 1398
incentives to technologies that can adapt successfully to 1399
potential environmental mandates; 1400

(L) Protect at-risk populations when considering the 1401
implementation of any new advanced energy technology; 1402

(M) Encourage implementation of distributed generation across 1403
customer classes through regular review and updating of rules 1404
governing critical issues such as, but not limited to, 1405

interconnection standards, standby charges, and net metering; 1406

(N) Encourage the education of small business owners in this 1407
state regarding the use of, and encourage the use of, energy 1408
efficiency programs and advanced energy technologies in their 1409
businesses; 1410

(O) Facilitate the state's effectiveness in the global 1411
economy. 1412

Sec. 4928.05. (A)(1)(a) On and after the starting date of 1413
competitive retail electric service, a competitive retail electric 1414
service supplied by an electric utility or electric services 1415
company shall not be subject to supervision and regulation by a 1416
municipal corporation under Chapter 743. of the Revised Code or by 1417
the public utilities commission under Chapters 4901. to 4909., 1418
4933., 4935., and 4963. of the Revised Code, except ~~section~~ 1419
sections 4905.10 and 4905.31, division (B) of section 4905.33, and 1420
sections 4905.35 and 4933.81 to 4933.90; except sections 4905.06, 1421
4935.03, 4963.40, and 4963.41 of the Revised Code only to the 1422
extent related to service reliability and public safety; and 1423
except as otherwise provided in this chapter. The commission's 1424
authority to enforce those excepted provisions with respect to a 1425
competitive retail electric service shall be such authority as is 1426
provided for their enforcement under Chapters 4901. to 4909., 1427
4933., 4935., and 4963. of the Revised Code and this chapter. 1428

(b) Notwithstanding division (A)(1)(a) of this section, the 1429
commission may so supervise and regulate competitive retail 1430
electric service provided to consumers by an electric utility in 1431
this state if the commission determines the supervision and 1432
regulation is necessary to implement the state policy specified in 1433
section 4928.02 of the Revised Code. 1434

(c) On and after the starting date of competitive retail 1435
electric service, a competitive retail electric service supplied 1436

by an electric cooperative shall not be subject to supervision and 1437
regulation by the commission under Chapters 4901. to 4909., 4933., 1438
4935., and 4963. of the Revised Code, except as otherwise 1439
expressly provided in sections 4928.01 to 4928.10 and 4928.16 of 1440
the Revised Code. 1441

(2) On and after the starting date of competitive retail 1442
electric service, a noncompetitive retail electric service 1443
supplied by an electric utility shall be subject to supervision 1444
and regulation by the commission under Chapters 4901. to 4909., 1445
4933., 4935., and 4963. of the Revised Code and this chapter, to 1446
the extent that authority is not preempted by federal law. The 1447
commission's authority to enforce those provisions with respect to 1448
a noncompetitive retail electric service shall be the authority 1449
provided under those chapters and this chapter, to the extent the 1450
authority is not preempted by federal law. 1451

The commission shall exercise its jurisdiction with respect 1452
to the delivery of electricity by an electric utility in this 1453
state on or after the starting date of competitive retail electric 1454
service so as to ensure that no aspect of the delivery of 1455
electricity by the utility to consumers in this state that 1456
consists of a noncompetitive retail electric service is 1457
unregulated. 1458

On and after that starting date, a noncompetitive retail 1459
electric service supplied by an electric cooperative shall not be 1460
subject to supervision and regulation by the commission under 1461
Chapters 4901. to 4909., 4933., 4935., and 4963. of the Revised 1462
Code, except sections 4933.81 to 4933.90 and 4935.03 of the 1463
Revised Code. The commission's authority to enforce those excepted 1464
sections with respect to a noncompetitive retail electric service 1465
of an electric cooperative shall be such authority as is provided 1466
for their enforcement under Chapters 4933. and 4935. of the 1467
Revised Code. 1468

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

Sec. 4928.111. An electric distribution utility for which a standard service offer consisting of an electric security plan under section 4928.14 of the Revised Code has been approved by the public utilities commission shall file with the commission a long-term energy delivery infrastructure modernization plan or any plan providing for the utility's recovery of costs and a just and reasonable rate of return on such infrastructure modernization. A plan shall specify the initiatives the utility must take to improve electric service reliability by rebuilding, upgrading, or replacing the utility's distribution system. The plan shall be filed under an application under section 4909.18 of the Revised Code.

~~Sec. 4928.14. (A) After its market development period, an~~ An electric distribution utility in this state shall provide consumers, on a comparable and nondiscriminatory basis within its certified territory, a ~~market-based~~ standard service offer of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service. ~~Such offer shall be filed with the public utilities commission under section 4909.18 of the Revised Code.~~

~~(B) After that market development period, each electric distribution utility also shall offer customers within its certified territory an option to purchase competitive retail electric service the price of which is determined through a competitive bidding process. Prior to January 1, 2004, the~~

~~commission shall adopt rules concerning the conduct of the 1500
competitive bidding process, including the information 1501
requirements necessary for customers to choose this option and the 1502
requirements to evaluate qualified bidders. The commission may 1503
require that the competitive bidding process be reviewed by an 1504
independent third party. No generation supplier shall be 1505
prohibited from participating in the bidding process, provided 1506
that any winning bidder shall be considered a certified supplier 1507
for purposes of obligations to customers. At the election of the 1508
electric distribution utility, and approval of the commission, the 1509
competitive bidding option under this division may be used as the 1510
market based standard offer required by division (A) of this 1511
section. The commission may determine at any time that a 1512
competitive bidding process is not required, if other means to 1513
accomplish generally the same option for customers is readily 1514
available in the market and a reasonable means for customer 1515
participation is developed. 1516~~

~~(C) After the market development period, the (B) Except as 1517
otherwise provided in this section, the standard service offer of 1518
an electric utility in effect on the effective date of the 1519
amendment of this section by S.B. 221 of the 127th general 1520
assembly shall continue, as to each customer and customer class, 1521
as the utility's standard service offer for the purpose of 1522
compliance with division (A) of this section as the section is so 1523
amended. 1524~~

(C) Beginning on the effective date of the amendment of this 1525
section by S.B. 221 of the 127th general assembly and pursuant to 1526
filing requirements the commission shall prescribe by rule, a 1527
utility may file an application for commission approval of a 1528
modified standard service offer. Upon that filing, the commission 1529
shall set the date and time for hearing, send written notice of 1530
the hearing to the utility, and publish notice of the hearing one 1531

time in a newspaper of general circulation in each county in the 1532
service area affected by the application. 1533

(D)(1) A standard service offer proposed under division (C) 1534
of this section, and herein designated an electric security plan, 1535
shall adjust a utility's standard service offer relative to a 1536
change in one or more costs incurred on or after January 1, 2009, 1537
by the utility in rendering retail electric generation service 1538
under the offer, as each such cost shall be specified in the 1539
application. However, the amount of the adjustment shall be offset 1540
by any positive revenue associated with that cost. Costs may 1541
include, but not be limited to, any of the following: 1542

(a) Environmental compliance costs incurred by the utility 1543
for any specified generating facility, as determined by the 1544
commission; 1545

(b) The utility's cost of fuel for any specified generating 1546
facility or of purchased power, incurred to maintain reliable 1547
electricity supply for its generating service territory; 1548

(c) The cost of construction of a specified generating 1549
facility that is located in this state and that, superseding 1550
Chapter 4906. of the Revised Code, the commission determines and 1551
certificates the need for on the basis of resource planning 1552
projections developed in accordance with policies and procedures 1553
the commission shall prescribe by rule. A price adjustment under 1554
division (D)(1)(c) of this section shall be a blended price and 1555
shall be for the life of the facility. 1556

(d) A cost based upon a specified index, which cost shall be 1557
allocated to the appropriate customer class or classes. 1558

However, costs under this division shall exclude financial 1559
penalties, fines, court costs, and attorney's fees associated with 1560
noncompliance with state or federal environmental laws or with 1561
facilities' permits. 1562

A standard service offer that includes costs under division (D)(1)(a), (b), or (c) of this section may provide for automatic increases or decreases in the standard service offer price. A standard service offer that includes costs under division (D)(1)(d) of this section shall provide for automatic increases or decreases in the standard service offer price or prices.

In the case of an advanced energy technology or facility under section 4928.142 of the Revised Code, the costs of which are included in a standard service offer as authorized under this division, the portion of the standard service offer price attributable to those costs shall be bypassable by a consumer that has exercised choice of supplier under section 4928.03 of the Revised Code, but bypassable only to the extent the commission determines that the advanced energy technology or facilities implemented by that supplier are comparable to that implemented by the utility under section 4928.142 of the Revised Code as of the issuance of an order under division (D)(5) of this section for the purpose of the utility's compliance with division (A) of section 4928.142 of the Revised Code.

(2)(a) For the purpose of a utility's initial application under division (D)(1) of this section, the adjustment for a particular cost shall be determined using a baseline measure of cost and associated revenue as of January 1, 2008.

(b) If a utility continues to provide its standard service offer pursuant to an electric security plan, for any later such application by the utility, the baseline measure shall be the cost and associated revenue as determined under the utility's then existing approved plan.

(3) A standard service offer under division (D)(1) of this section may specify the standard, factors, or methodology that the commission shall use for the purpose of division (E)(2)(b) of this section if the utility, within such timeframe as the commission

shall specify in its order under division (D)(5) of this section, 1595
later files an application pursuant to division (E) of this 1596
section. 1597

(4) Regarding an application filed under division (D)(1) of 1598
this section by a utility that transferred all or part of its 1599
generating facilities to an affiliate of the utility and to the 1600
extent authorized by federal law, the commission may consider 1601
purchased power or other contracts or agreements between the 1602
utility and any of its affiliates or between the utility and the 1603
holding company owning or controlling the utility. 1604

(5) The burden of proof under division (D)(5) of this section 1605
shall be on the utility. The commission by order may approve or 1606
modify and approve a standard service offer under division (D)(1) 1607
of this section if it finds both of the following: 1608

(a) The offer and the prices it establishes are just, 1609
reasonable, and prudent as to each customer class and are in 1610
furtherance of the policy specified in section 4928.02 of the 1611
Revised Code. 1612

(b) Adjustments for construction costs under division 1613
(D)(1)(c) of this section are consistent with section 4909.15 of 1614
the Revised Code. 1615

(c) The utility is in compliance with section 4928.141 of the 1616
Revised Code. 1617

In its order, the commission shall prescribe any requirements 1618
for the utility as the commission considers necessary for the 1619
utility to implement the policy specified in section 4928.02 of 1620
the Revised Code. The order also shall provide a schedule and the 1621
procedural and substantive terms and conditions for periodic 1622
commission review of the approved offer. 1623

(E)(1) A standard service offer proposed under division (C) 1624
of this section, and herein designated a market rate option, shall 1625

require that the utility's standard service offer price be 1626
determined periodically through an open, competitive bidding 1627
process. Prior to the approval of such an offer under division 1628
(E)(2) of this section, the utility shall conduct such competitive 1629
bidding for the purpose of establishing the original price under 1630
the offer. 1631

(2) The burden of proof under division (E)(2) of this section 1632
shall be on the utility. The commission by order shall approve or 1633
modify and approve the standard service offer under division 1634
(E)(1) of this section if the commission determines all of the 1635
following are met: 1636

(a) The utility is in compliance with section 4928.141 of the 1637
Revised Code. 1638

(b) With respect to generation service, the relevant markets 1639
are subject to effective competition. For that purpose and except 1640
as otherwise provided under division (D)(3) of this section, the 1641
commission shall consider the factors prescribed in division (D) 1642
of section 4928.06 of the Revised Code and such other or 1643
additional factors as the commission may prescribe by rule. The 1644
commission shall prescribe by rule the methodology it will use to 1645
evaluate whether the effective competition standard under division 1646
(E)(2)(b) of this section is met. 1647

(c) The standard service offer price for a customer class as 1648
determined under competitive bidding under division (E)(1) of this 1649
section is more favorable than, or at least comparable to, its 1650
price-to-compare for that class. That price-to-compare shall be 1651
the price that the commission shall determine for the comparable 1652
time period and in the manner of an electric security plan under 1653
division (D) of this section: 1654

In its order, the commission shall prescribe any requirements 1655
for the utility as it considers necessary for the utility to 1656

implement the policy specified in section 4928.02 of the Revised Code. The order also shall provide the procedural and substantive terms and conditions for periodic commission review of the approved offer. That review shall provide for the reconciliation of the standard service offer price to ensure that the price is just, reasonable, and prudent and in furtherance of the policy specified in section 4928.02 of the Revised Code. 1657
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(F) A utility's standard service offer approved under this section shall take effect on the date the commission shall specify in the approval order and, on that date, the newly approved offer shall supersede the prior standard service offer of the utility. 1664
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(G)(1) Nothing in this section precludes a utility for which a standard service offer under division (D) of this section has been approved by the commission in accordance with this section from later filing an application under division (E) of this section, or vice versa. 1668
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(2) The commission has no authority to require a utility, for which it has ever approved a market rate option standard service offer under division (E) of this section, to file an application under division (D) of this section. 1673
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(H) The failure of a supplier to provide retail electric generation service to customers within the certified territory of the electric distribution utility shall result in the supplier's customers, after reasonable notice, defaulting to the utility's standard service offer filed under division (A) of this section until the customer chooses an alternative supplier. A supplier is deemed under this division to have failed to provide such service if the commission finds, after reasonable notice and opportunity for hearing, that any of the following conditions are met: 1677
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(1) The supplier has defaulted on its contracts with customers, is in receivership, or has filed for bankruptcy. 1686
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(2) The supplier is no longer capable of providing the service. 1688
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(3) The supplier is unable to provide delivery to transmission or distribution facilities for such period of time as may be reasonably specified by commission rule adopted under division (A) of section 4928.06 of the Revised Code. 1690
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(4) The supplier's certification has been suspended, conditionally rescinded, or rescinded under division (D) of section 4928.08 of the Revised Code. 1694
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(I) Nothing in this section limits an electric distribution utility providing competitive retail electric service to electric load centers within the certified territory of another such utility. 1697
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Sec. 4928.141. During a proceeding under section 4928.14 of the Revised Code and upon submission of an appropriate discovery request, an electric distribution utility shall make available to the requesting party every contract or agreement that is between the utility or any of its affiliates and a party to the proceeding, consumer, electric services company, or political subdivision and that is relevant to the proceeding, subject to such protection for proprietary or confidential information as is determined appropriate by the public utilities commission. 1701
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Sec. 4928.142. (A) Subject to division (B) of this section, an electric distribution utility by the end of 2025 shall provide a portion of the electricity supply required for its standard service offer under section 4928.14 of the Revised Code from advanced energy. That portion shall equal twenty-five per cent of the total number of kilowatt-hours of electricity supplied by the utility to any and all electric consumers whose electric load centers are located within the utility's certified territory. 1710
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However, subject to division (B) of this section, nothing in this 1718
section precludes a utility from providing a greater percentage. 1719
The advanced energy supply shall be consistent with the following 1720
requirements: 1721

(1) At least half of the advanced energy implemented by 2025 1722
shall be generated from sustainable resources as defined in 1723
section 3706.01 of the Revised Code and shall include solar power. 1724
The remainder shall be supplied from advanced energy facilities as 1725
defined in divisions (X)(1) to (4) of section 3706.01 of the 1726
Revised Code. 1727

(2) At least half of the advanced energy implemented by the 1728
end of 2025 shall be met through facilities located in this state. 1729

The utility shall comply with division (A) of this section in 1730
a manner that considers available technology, costs, job creation, 1731
and economic impacts. To be counted toward the utility's 1732
compliance with division (A) of this section, the on-site 1733
construction of an advanced energy technology or facility shall be 1734
initiated after the effective date of this section. Any such 1735
technology or facility that complies with that division shall be 1736
and remain counted toward the utility's compliance. 1737

(B)(1) If the commission determines, after notice and 1738
hearing, that the utility has failed to comply with division (A) 1739
of this section, the commission shall issue an order requiring the 1740
utility to comply fully within such time as shall be specified in 1741
the order and shall specify in the order the process and schedule 1742
for verifying to the commission the utility's compliance with the 1743
order. 1744

(2) Full compliance shall not be mandated under division 1745
(B)(1) of this section to the extent that the ratio between the 1746
blended advanced energy and nonadvanced energy price under this 1747
section in 2025 and the portion of that price attributable to 1748

nonadvanced energy exceeds one and three-hundredths. 1749

(3) Only division (B)(2) of section 4928.16 of the Revised Code applies if the commission determines in an order issued under division (B)(1) of this section that the utility has failed to comply with division (A) of this section, or if the commission by order determines in a later proceeding and after notice and hearing that the utility has failed to comply with an order issued under division (B)(1) of this section. 1750
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(C) The commission annually shall submit to the general assembly in accordance with section 101.68 of the Revised Code a report describing the compliance of electric distribution utilities with divisions (A) and (B) of this section and any interim goals or strategy for utility compliance with those divisions or for encouraging the use of advanced energy in supplying this state's electricity needs in a manner that considers available technology, costs, job creation, and economic impacts. The commission shall allow and consider public comments on the report prior to its submission to the general assembly. Nothing in the report shall be binding on any person, including any utility for the purpose of its compliance with division (A) of this section, or the enforcement of that provision under division (B) of this section. 1757
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Sec. 4928.17. (A) Except as otherwise provided in sections 4928.14 and 4928.31 to 4928.40 of the Revised Code and beginning on the starting date of competitive retail electric service, no electric utility shall engage in this state, either directly or through an affiliate, in the businesses of supplying a noncompetitive retail electric service and supplying a competitive retail electric service, or in the businesses of supplying a noncompetitive retail electric service and supplying a product or service other than retail electric service, unless the utility 1771
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implements and operates under a corporate separation plan that is 1780
approved by the public utilities commission under this section, is 1781
consistent with the policy specified in section 4928.02 of the 1782
Revised Code, and achieves all of the following: 1783

(1) The plan provides, at minimum, for the provision of the 1784
competitive retail electric service or the nonelectric product or 1785
service through a fully separated affiliate of the utility, and 1786
the plan includes separate accounting requirements, the code of 1787
conduct as ordered by the commission pursuant to a rule it shall 1788
adopt under division (A) of section 4928.06 of the Revised Code, 1789
and such other measures as are necessary to effectuate the policy 1790
specified in section 4928.02 of the Revised Code. 1791

(2) The plan satisfies the public interest in preventing 1792
unfair competitive advantage and preventing the abuse of market 1793
power. 1794

(3) The plan is sufficient to ensure that the utility will 1795
not extend any undue preference or advantage to any affiliate, 1796
division, or part of its own business engaged in the business of 1797
supplying the competitive retail electric service or nonelectric 1798
product or service, including, but not limited to, utility 1799
resources such as trucks, tools, office equipment, office space, 1800
supplies, customer and marketing information, advertising, billing 1801
and mailing systems, personnel, and training, without compensation 1802
based upon fully loaded embedded costs charged to the affiliate; 1803
and to ensure that any such affiliate, division, or part will not 1804
receive undue preference or advantage from any affiliate, 1805
division, or part of the business engaged in business of supplying 1806
the noncompetitive retail electric service. No such utility, 1807
affiliate, division, or part shall extend such undue preference. 1808
Notwithstanding any other division of this section, a utility's 1809
obligation under division (A)(3) of this section shall be 1810
effective January 1, 2000. 1811

(B) The commission may approve, modify and approve, or 1812
disapprove a corporate separation plan filed with the commission 1813
under division (A) of this section. As part of the code of conduct 1814
required under division (A)(1) of this section, the commission 1815
shall adopt rules pursuant to division (A) of section 4928.06 of 1816
the Revised Code regarding corporate separation and procedures for 1817
plan filing and approval. The rules shall include limitations on 1818
affiliate practices solely for the purpose of maintaining a 1819
separation of the affiliate's business from the business of the 1820
utility to prevent unfair competitive advantage by virtue of that 1821
relationship. The rules also shall include an opportunity for any 1822
person having a real and substantial interest in the corporate 1823
separation plan to file specific objections to the plan and 1824
propose specific responses to issues raised in the objections, 1825
which objections and responses the commission shall address in its 1826
final order. Prior to commission approval of the plan, the 1827
commission shall afford a hearing upon those aspects of the plan 1828
that the commission determines reasonably require a hearing. The 1829
commission may reject and require refileing of a substantially 1830
inadequate plan under this section. 1831

(C) The commission shall issue an order approving or 1832
modifying and approving a corporate separation plan under this 1833
section, to be effective on the date specified in the order, only 1834
upon findings that the plan reasonably complies with the 1835
requirements of division (A) of this section and will provide for 1836
ongoing compliance with the policy specified in section 4928.02 of 1837
the Revised Code. However, for good cause shown, the commission 1838
may issue an order approving or modifying and approving a 1839
corporate separation plan under this section that does not comply 1840
with division (A)(1) of this section but complies with such 1841
functional separation requirements as the commission authorizes to 1842
apply for an interim period prescribed in the order, upon a 1843
finding that such alternative plan will provide for ongoing 1844

compliance with the policy specified in section 4928.02 of the Revised Code.

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

~~(E) Notwithstanding section 4905.20, 4905.21, 4905.46, or 4905.48 of the Revised Code, an No electric utility ~~may divest itself of~~ shall sell or transfer any generating asset ~~at any time~~ facility it owns in whole or in part to any person without prior commission approval, ~~subject to the provisions of Title XLIX of the Revised Code relating to the transfer of transmission, distribution, or ancillary service provided by such generating asset.~~~~

Sec. 4928.20. (A) The legislative authority of a municipal corporation may adopt an ordinance, or the board of township trustees of a township or the board of county commissioners of a county may adopt a resolution, under which, on or after the starting date of competitive retail electric service, it may aggregate in accordance with this section the retail electrical loads located, respectively, within the municipal corporation, township, or unincorporated area of the county and, for that purpose, may enter into service agreements to facilitate for those loads the sale and purchase of electricity. The legislative authority or board also may exercise such authority jointly with any other such legislative authority or board. For customers that are not mercantile commercial customers, an ordinance or resolution under this division shall specify whether the aggregation will occur only with the prior, affirmative consent of each person owning, occupying, controlling, or using an electric

load center proposed to be aggregated or will occur automatically 1876
for all such persons pursuant to the opt-out requirements of 1877
division (D) of this section. The aggregation of mercantile 1878
commercial customers shall occur only with the prior, affirmative 1879
consent of each such person owning, occupying, controlling, or 1880
using an electric load center proposed to be aggregated. Nothing 1881
in this division, however, authorizes the aggregation of the 1882
retail electric loads of an electric load center, as defined in 1883
section 4933.81 of the Revised Code, that is located in the 1884
certified territory of a nonprofit electric supplier under 1885
sections 4933.81 to 4933.90 of the Revised Code or an electric 1886
load center served by transmission or distribution facilities of a 1887
municipal electric utility. 1888

(B) If an ordinance or resolution adopted under division (A) 1889
of this section specifies that aggregation of customers that are 1890
not mercantile commercial customers will occur automatically as 1891
described in that division, the ordinance or resolution shall 1892
direct the board of elections to submit the question of the 1893
authority to aggregate to the electors of the respective municipal 1894
corporation, township, or unincorporated area of a county at a 1895
special election on the day of the next primary or general 1896
election in the municipal corporation, township, or county. The 1897
legislative authority or board shall certify a copy of the 1898
ordinance or resolution to the board of elections not less than 1899
seventy-five days before the day of the special election. No 1900
ordinance or resolution adopted under division (A) of this section 1901
that provides for an election under this division shall take 1902
effect unless approved by a majority of the electors voting upon 1903
the ordinance or resolution at the election held pursuant to this 1904
division. 1905

(C) Upon the applicable requisite authority under divisions 1906
(A) and (B) of this section, the legislative authority or board 1907

shall develop a plan of operation and governance for the 1908
aggregation program so authorized. Before adopting a plan under 1909
this division, the legislative authority or board shall hold at 1910
least two public hearings on the plan. Before the first hearing, 1911
the legislative authority or board shall publish notice of the 1912
hearings once a week for two consecutive weeks in a newspaper of 1913
general circulation in the jurisdiction. The notice shall 1914
summarize the plan and state the date, time, and location of each 1915
hearing. 1916

(D) No legislative authority or board, pursuant to an 1917
ordinance or resolution under divisions (A) and (B) of this 1918
section that provides for automatic aggregation of customers that 1919
are not mercantile commercial customers as described in division 1920
(A) of this section, shall aggregate the electrical load of any 1921
electric load center located within its jurisdiction unless it in 1922
advance clearly discloses to the person owning, occupying, 1923
controlling, or using the load center that the person will be 1924
enrolled automatically in the aggregation program and will remain 1925
so enrolled unless the person affirmatively elects by a stated 1926
procedure not to be so enrolled. The disclosure shall state 1927
prominently the rates, charges, and other terms and conditions of 1928
enrollment. The stated procedure shall allow any person enrolled 1929
in the aggregation program the opportunity to opt out of the 1930
program up to every ~~two~~ four years, without paying a switching 1931
fee. Any such person that opts out of the aggregation program 1932
pursuant to the stated procedure shall default to the standard 1933
service offer provided under division (A) of section 4928.14 or 1934
division (D) of section 4928.35 of the Revised Code until the 1935
person chooses an alternative supplier. 1936

(E)(1) With respect to a governmental aggregation for a 1937
municipal corporation that is authorized pursuant to divisions (A) 1938
to (D) of this section, resolutions may be proposed by initiative 1939

or referendum petitions in accordance with sections 731.28 to 1940
731.41 of the Revised Code. 1941

(2) With respect to a governmental aggregation for a township 1942
or the unincorporated area of a county, which aggregation is 1943
authorized pursuant to divisions (A) to (D) of this section, 1944
resolutions may be proposed by initiative or referendum petitions 1945
in accordance with sections 731.28 to 731.40 of the Revised Code, 1946
except that: 1947

(a) The petitions shall be filed, respectively, with the 1948
township fiscal officer or the board of county commissioners, who 1949
shall perform those duties imposed under those sections upon the 1950
city auditor or village clerk. 1951

(b) The petitions shall contain the signatures of not less 1952
than ten per cent of the total number of electors in, 1953
respectively, the township or the unincorporated area of the 1954
county who voted for the office of governor at the preceding 1955
general election for that office in that area. 1956

(F) A governmental aggregator under division (A) of this 1957
section is not a public utility engaging in the wholesale purchase 1958
and resale of electricity, and provision of the aggregated service 1959
is not a wholesale utility transaction. A governmental aggregator 1960
shall be subject to supervision and regulation by the public 1961
utilities commission only to the extent of any competitive retail 1962
electric service it provides and commission authority under this 1963
chapter. 1964

(G) This section does not apply in the case of a municipal 1965
corporation that supplies such aggregated service to electric load 1966
centers to which its municipal electric utility also supplies a 1967
noncompetitive retail electric service through transmission or 1968
distribution facilities the utility singly or jointly owns or 1969
operates. 1970

(H) A governmental aggregator shall not include in its aggregation the accounts of any of the following:

(1) A customer that has opted out of the aggregation;

(2) A customer in contract with a certified competitive retail electric services provider;

(3) A customer that has a special contract with an electric distribution utility;

(4) A customer that is not located within the governmental aggregator's governmental boundaries;

(5) Subject to division (C) of section 4928.21 of the Revised Code, a customer who appears on the "do not aggregate" list maintained under that section.

Sec. 4928.21. (A) A customer that desires to remove itself from the pool of customers eligible to participate in governmental aggregation under section 4928.20 of the Revised Code may register with the public utilities commission to appear on the "do not aggregate" list.

(B) The commission, by rule, shall establish a "do not aggregate" list. The commission shall maintain the "do not aggregate" list and make it publicly available on the commission's web site.

(C) If a customer is enrolled in a governmental aggregation program at the time the customer first appears on the "do not aggregate" list, the governmental aggregator shall remove the customer from the program at the next ~~two-year~~ opt out opportunity that is available to the customer under division (D) of section 4928.20 of the Revised Code.

Sec. 4928.64. The public utilities commission shall adopt rules to establish energy efficiency standards applicable to

electric distribution utilities such that, by 2025, any such 2000
utility shall implement energy efficiency measures that will 2001
result in not less than twenty-five per cent of actual growth in 2002
electric load and not less than ten per cent of total peak demand 2003
being achieved through those measures. The rules shall include a 2004
requirement that an electric distribution utility provide a 2005
customer upon request with three years' consumption data in an 2006
accessible form. Additionally, the rules may provide for 2007
decoupling. 2008

Sec. 4928.68. The public utilities commission shall employ a 2009
federal energy advocate to monitor the activities of the federal 2010
energy regulatory commission and other federal agencies and 2011
advocate on behalf of the interests of retail electric service 2012
consumers in this state. The attorney general shall represent the 2013
advocate before the federal energy regulatory commission and other 2014
federal agencies. Among other duties assigned to the advocate by 2015
the commission, the advocate shall examine the value of the 2016
participation of this state's electric utilities in regional 2017
transmission organizations and submit a report to the public 2018
utilities commission on whether continued participation of those 2019
utilities is in the interest of those consumers. 2020

Sec. 4928.69. The public utilities commission shall adopt 2021
rules establishing greenhouse gas emission reporting requirements, 2022
including participation in the climate registry, and carbon 2023
control planning requirements for each electric generating 2024
facility located in this state that emits greenhouse gases, 2025
including facilities in operation on the effective date of this 2026
section. 2027

Section 2. That existing sections 122.41, 122.451, 3706.01, 2028
3706.02, 3706.03, 3706.04, 3706.041, 3706.05, 3706.06, 3706.07, 2029

3706.08, 3706.09, 3706.10, 3706.11, 3706.12, 3706.13, 3706.14,	2030
3706.15, 3706.16, 3706.17, 3706.18, 4905.31, 4905.40, 4928.02,	2031
4928.05, 4928.14, 4928.17, 4928.20, and 4928.21 of the Revised	2032
Code are hereby repealed.	2033