

\_\_\_\_\_ moved to amend as follows: 1

Engross the bill as directed by the commands in the 2  
amendments attached hereto, ignoring matter extraneous to those 3  
commands 4

INDEX 5

The following amendments are attached hereto: 6

Amendment No.	Subject
am_135_3085	Battery-charged fences
am_135_3088	Governmental entity public way fees
am_135_3089	Purchase agreements and workers' compensation experience transfers
am_135_3090	Pay Stub Protection Act
am_135_3092	Waste energy recovery system
am_135_3096-1	Broadband Pole Replacement and Undergrounding Program



Amendment No.	Subject
am_135_3098	Manipulative practices; greenmail under Ohio Securities Law
am_135_3208	Agricultural use exemption for sales and use tax

7

The motion was \_\_\_\_\_ agreed to.

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S. B. No. 41  
As Passed by the Senate

\_\_\_\_\_ moved to amend as follows:

In line 1 of the title, after "sections" insert "3781.1011,"; after "3781.19" insert "," 9  
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In line 4 of the title, after "inspections" insert "and battery-charged fences" 11  
12

In line 5, after "sections" insert "3781.1011,"; after "3781.19" insert "," 13  
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After line 7, insert: 15

**"Sec. 3781.1011.** (A) As used in this section: 16

(1) "Alarm system" means a device or system that transmits 17  
a signal intended to summon law enforcement to a county, 18  
township, or municipal corporation in response to an alleged 19  
violation of an offense under Chapter 2911. of the Revised Code 20  
occurring in a nonresidential zone of the applicable county, 21  
township, or municipal corporation. The term includes an alarm 22  
that emits an audible signal on the exterior of a structure. The 23  
term does not include an alarm installed on a vehicle or an 24  
alarm designed to alert only the inhabitants within the 25  
premises. The term includes an alarm system for which a permit 26

may be issued under any applicable section of the Revised Code 27  
or Ohio Constitution. 28

(2) "Battery-charged fence" means a ~~fence connected to~~ 29  
system, including integrated components or equipment, that 30  
satisfies all of the following: 31

(a) Functions with a battery-operated energizer that is 32  
intended to periodically ~~to~~ deliver voltage impulses to the- 33  
~~fence,~~ system with an impulse repetition rate that does not 34  
exceed one hertz and an impulse duration that does not exceed 35  
ten milliseconds; 36

(b) Exclusively uses a battery charging device ~~used-~~ 37  
~~exclusively to charge the battery, and any other ancillary-~~ 38  
~~components or equipment attached to such a system;~~ 39

(c) Interfaces with a monitored alarm system; 40

(d) Has a battery-operated energizer that is powered by a 41  
commercial storage battery that is not more than twelve volts of 42  
direct current; 43

(e) Is four to twelve inches behind a non-battery-charged 44  
perimeter fence, wall, or structure that is not less than five 45  
feet in height; 46

(f) Is ten feet in height, or two feet higher than the 47  
height of the non-battery-charged perimeter fence, wall, or 48  
structure, whichever is higher; 49

(g) Is marked with conspicuous warning signs that are 50  
located on the battery-charged fence at not more than thirty- 51  
foot intervals and that read: "WARNING-SHOCK HAZARD" or a 52  
similar warning message. 53

(3) "Permit" means a certificate, license, permit, or 54  
other form of permission that authorizes a person to engage in 55

an action. 56

(B) ~~A~~ Subject to division (D) of this section, a person 57  
may install, operate, and use a battery-charged fence installed 58  
on private, nonresidential property within a county, township, 59  
or municipal corporation shall satisfy all of the following: 60

~~(1) Interface with a monitored alarm system;~~ 61

~~(2) Have a battery-operated energizer that is powered by a~~ 62  
~~commercial storage battery that is not more than twelve volts of~~ 63  
~~direct current, and that meets the standards set forth by the~~ 64  
~~international electrotechnical commission 60335-02-76 current~~ 65  
~~edition;~~ 66

~~(3) Be completely surrounded by a nonelectric perimeter~~ 67  
~~fence or wall that is not less than five feet in height;~~ 68

~~(4) Be not more than the higher of ten feet in height, or~~ 69  
~~two feet higher than the height of the nonelectric perimeter~~ 70  
~~fence or wall; and~~ 71

~~(5) Be marked with conspicuous warning signs that are~~ 72  
~~located on the battery-charged fence at not more than forty foot~~ 73  
~~intervals and that read: "WARNING - ELECTRIC FENCE."~~ 74

(C) Division (B) of this section does not apply to any of 75  
the following fences, regardless of whether such fences are 76  
battery-charged fences under division (A)(2) of this section: 77

(1) Fences that are required to be constructed by persons 78  
or corporations owning, controlling, or managing a railroad 79  
pursuant to Chapter 4959. of the Revised Code; 80

(2) Partition fences constructed in accordance with 81  
Chapter 971. of the Revised Code; 82

(3) Fences constructed or installed by the state or a 83

political subdivision, or by the federal government;	84
(4) Fences installed at a facility that is an accredited member of the association of zoos and aquariums or the zoological association of America and that is licensed by the United States department of agriculture under the federal animal welfare act;	85 86 87 88 89
(5) Fences installed at a wildlife sanctuary;	90
(6) Fences constructed and used for agricultural purposes, as agriculture is defined in either section 303.01 or 519.01 of the Revised Code.	91 92 93
(D) <del>Notwithstanding any other section of the Revised Code,</del> a county, township, or municipal corporation may adopt and enforce an ordinance, order, resolution, or regulation that does any of the following:	94 95 96 97
(1) Imposes installation <del>or</del> , <u>operational, or use</u> requirements for battery-charged fences in nonresidential properties that <del>are do not in conflict with the requirements and standards set forth in expressly, implicitly, or functionally prohibit the installation, operation, or use of such fences, as authorized under</del> <u>division (B) of this section;</u>	98 99 100 101 102 103
(2) Requires a permit or fee for the installation, <u>operation,</u> or use of a battery-charged fence to which this section applies in accordance with a permit or fee for an alarm system issued or charged by the county, township, or municipal corporation;	104 105 106 107 108
(3) <del>Prohibits</del> <u>Completely prohibits or imposes generally applicable requirements on the installation, operation,</u> or use of a <del>battery-charged fence</del> <u>non-battery-charged perimeter fence, wall, or structure or any system that does not constitute a battery-charged fence under division (A) (2) of this section</u> in a	109 110 111 112 113

~~nonresidential zone that does not meet the requirements and standards set forth in division (B) of this section."~~ 114  
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In line 255, after "sections" insert "3781.1011,"; after "3781.19" 116  
insert ",," 117

The motion was \_\_\_\_\_ agreed to.

SYNOPSIS 118

**Battery-charged fences** 119

**R.C. 3781.1011** 120

Eliminates state regulation of battery-charged fences 121  
installed on private, nonresidential property, and instead 122  
expressly authorizes the installation, operation, and use of 123  
such fences. 124

Prohibits a county, township, or municipal corporation 125  
from adopting or enforcing an ordinance, order, resolution, or 126  
regulation that expressly, implicitly, or functionally prohibits 127  
the installation of a battery-charged fence that meets all of 128  
the following standards: 129

- The fence interfaces with a monitored alarm system; 130

- The fence functions with a battery-operated energizer 131  
that is intended to periodically deliver voltage impulses at a 132  
rate that does not exceed 1 hertz and an impulse duration that 133  
does not exceed 10 milliseconds; 134

- The fence is four to twelve inches behind a non-battery- 135  
charged perimeter fence, wall, or structure that is at least 5 136  
feet in height; 137

- The fence is 10 feet in height, or 2 feet higher than 138  
the height of the nonelectric perimeter fence or wall, whichever 139  
is greater; 140

- The fence is marked with conspicuous warning signs at 141  
not more than 30-foot intervals that read: "WARNING - SHOCK 142  
HAZARD" or some similar message. 143

Retains the authority of a county, township, or municipal 144  
corporation to require a permit or fee for the installation or 145  
use of a battery-charged fence or to prohibit or impose 146  
requirements on the installation, operation, or use of a fence 147  
that does not meet the standards described above. 148



S. B. No. 41

As Passed by the Senate

\_\_\_\_\_ moved to amend as follows:

In line 1 of the title, delete the first "and" and insert ","; after 149  
"3781.20" insert ", and 4939.07" 150

In line 2 of the title, delete "section" and insert "sections"; 151  
after "3781.21" insert "and 4905.301" 152

In line 4 of the title, after "inspections" insert "and to authorize 153  
recovery, as a regulatory asset, of certain costs incurred by a public 154  
utility for use of a right of way or public way" 155

In line 5, delete "and" and insert ","; after "3781.20" insert ", 156  
and 4939.07" 157

In line 6, delete "section" and insert "sections"; after "3781.21" 158  
insert "and 4905.301" 159

After line 254, insert: 160

"Sec. 4905.301. (A) As used in this section: 161

(1) "Governmental entity" has the same meaning as in 162  
section 9.23 of the Revised Code, except that "governmental 163  
entity" excludes a municipal corporation. 164

(2) "Right of way" means the surface of, and the space 165

within, through, on, across, above, or below any land designated 166  
for public use that is owned or controlled by a governmental 167  
entity, except that "right of way" includes a public way as 168  
defined in section 4939.01 of the Revised Code, and is not a 169  
private easement. 170

(B) A public utility subject to the rate-making 171  
jurisdiction of the public utilities commission may file an 172  
application with the commission for the accounting authority to 173  
classify a cost that meets the requirements of division (C) of 174  
this section as a regulatory asset for the purpose of recovering 175  
the cost. The commission, by order, shall authorize such 176  
accounting authority as may be reasonably necessary to classify 177  
the cost as a regulatory asset. 178

(C) A cost eligible for recovery as a regulatory asset 179  
under this section shall meet both of the following 180  
requirements: 181

(1) The cost is directly incurred by the public utility as 182  
a result of a governmental entity's regulation of the public 183  
utility's occupancy or use of a right of way. 184

(2) The cost is incurred by the public utility after the 185  
test year of the public utility's most recent rate proceeding or 186  
the initial effective date of rates in effect but not 187  
established through a proceeding for an increase in rates. 188

(D) If the commission determines, upon an application 189  
under division (B) of this section or its own initiative, that 190  
classification of a cost described in division (C) of this 191  
section as a regulatory asset is not practical or that deferred 192  
recovery of that cost would impose a hardship on the public 193  
utility or its customers, the commission shall establish a 194  
charge and collection mechanism to permit the public utility 195  
full recovery of that cost. 196

(E) Cost recovery authorized as a regulatory asset under this section is not subject to any other provision of law or any agreement establishing price caps, rate freezes, or rate increase moratoria. 197  
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(F) The commission shall process applications submitted under this section in the same manner as set forth in divisions (E) and (F) of section 4939.07 of the Revised Code and according to rules adopted under division (G) of that section. A final order regarding a recovery mechanism authorized pursuant to division (D) of this section shall provide for such retroactive adjustment as the commission determines appropriate. 201  
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**Sec. 4939.07.** (A) As used in this section, "most recent," with respect to any rate proceeding, means the rate proceeding most immediately preceding the date of any final order issued by the public utilities commission under this section. 208  
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(B) (1) Notwithstanding any other provision of law or any agreement establishing price caps, rate freezes, or rate increase moratoria, a public utility subject to the rate-making jurisdiction of the commission may file an application with the commission for, and the commission shall then authorize by order, timely and full recovery of a public way fee levied upon and payable by the public utility both after January 1, 2002, and after the test year of the public utility's most recent rate proceeding or the initial effective date of rates in effect but not established through a proceeding for an increase in rates. 212  
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(2) Any order issued by the commission pursuant to its consideration of an application under division (B) (1) of this section shall establish a cost recovery mechanism including, but not limited to, an adder, tracker, rider, or percentage surcharge, for recovering the amount to be recovered; specify that amount; limit the amount to not more and not less than the 222  
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amount of the total public way fee incurred; and require 228  
periodic adjustment of the mechanism based on revenues 229  
recovered. 230

(a) In the case of a cost recovery mechanism for a public 231  
way fee levied on and payable by a public utility but determined 232  
unreasonable, unjust, unjustly discriminatory, or unlawful by 233  
the commission pursuant to division (C) of section 4939.06 of 234  
the Revised Code, the mechanism shall provide for recovery, only 235  
from those customers of the public utility that receive its 236  
service within the municipal corporation, of the difference 237  
between that public way fee and the just and reasonable public 238  
way fee determined by the commission under division (C) of 239  
section 4939.06 of the Revised Code. 240

(b) In all other cases, recovery shall be from all 241  
customers of the public utility generally. 242

(c) In the case of recovery under division (B) (2) (a) or 243  
(b) of this section, the recovery mechanism payable by sale-for- 244  
resale or wholesale telecommunications customers shall provide 245  
for recovery limited to any public way fee not included in 246  
established rates and prices for those customers and to the pro 247  
rata share of the public way fee applicable to the portion of 248  
the facilities that are sold, leased, or rented to the customers 249  
and are located in the public way. The recovery shall be in a 250  
nondiscriminatory and competitively neutral manner and prorated 251  
on a per-line or per-line equivalent basis among all retail, 252  
sale-for-resale, and wholesale telecommunications customers 253  
subject to the recovery. 254

(D) (1) Notwithstanding any other provision of law or any 255  
agreement establishing price caps, rate freezes, or rate 256  
increase moratoria, a public utility subject to the rate-making 257  
jurisdiction of the commission may file an application with the 258

commission for, and the commission by order shall authorize, 259  
such accounting authority as may be reasonably necessary to 260  
classify any cost described in division (D) (2) of this section 261  
as a regulatory asset for the purpose of recovering that cost. 262

(2) A cost eligible for recovery under ~~this division~~ (D) 263  
of this section shall be only such cost as meets both of the 264  
following: 265

(a) The cost is directly incurred by the public utility as 266  
a result of ~~local municipal corporation~~ regulation of its 267  
occupancy or use of a public way or an appropriate allocation 268  
and assignment of costs related to implementation of this 269  
section, excluding any cost arising from a public way fee levied 270  
upon and payable by the public utility. 271

(b) The cost is incurred by the public utility both after 272  
January 1, 2002, and after the test year of the public utility's 273  
most recent rate proceeding or the initial effective date of 274  
rates in effect but not established through a proceeding for an 275  
increase in rates. 276

(3) If the commission determines, upon an application 277  
under division (D) (1) of this section or its own initiative, 278  
that classification of a cost described in division (D) (2) of 279  
this section as a regulatory asset is not practical or that 280  
deferred recovery of that cost would impose a hardship on the 281  
public utility or its customers, the commission shall establish 282  
a charge and collection mechanism to permit the public utility 283  
full recovery of that cost. A hardship shall be presumed for any 284  
public utility with less than fifteen thousand bundled sales 285  
service customers in this state and for any public utility for 286  
which the annualized aggregate amount of additional cost that 287  
otherwise may be eligible for such classification exceeds the 288  
greater of five hundred thousand dollars or fifteen per cent of 289

the total costs that are described in division (D) (2) (a) of this section and were considered by the commission for the purpose of establishing rates in the public utility's most recent rate increase proceeding or the rate increase proceeding of the public utility's predecessor, whichever is later.

(E) Any application submitted to the commission under divisions (B) to (D) of this section shall be processed by the commission as an application not for an increase in rates under section 4909.18 of the Revised Code. The application shall include such information as the commission reasonably requires. The commission shall conclude its consideration of the application and issue a final order not later than one hundred twenty days after the date that the application was submitted to the commission. A final order regarding a recovery mechanism authorized pursuant to this section shall provide for such retroactive adjustment as the commission determines appropriate.

(F) A public utility shall not be required to waive any rights under this section as a condition of occupancy or use of a public way.

(G) The commission may issue such rules as it considers necessary to carry out this section."

In line 255, delete "and" and insert ","; after "3781.20" insert ", and 4939.07"

The motion was \_\_\_\_\_ agreed to.

SYNOPSIS 313

**Governmental entity public way fees** 314

**R.C. 4905.301**

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Permits a public utility subject to Public Utilities  
Commission (PUCO) jurisdiction to file an application with PUCO  
for the accounting authority to classify costs that meet both of  
the following as regulatory assets subject to recovery:

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- The cost is directly incurred by the utility due to  
governmental entity (defined in the bill as a state agency or  
political subdivision that is *not* a municipal corporation)  
regulation of the utility's occupancy or use of a right of way  
(defined as land designated for public use that is owned or  
controlled by a governmental entity and is not a private  
easement, and includes a municipal corporation public way).

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- The cost is incurred by the utility after the test year  
of the utility's most recent rate case proceeding or the initial  
effective date of rates in effect but not established through a  
proceeding for an increase in rates.

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Requires PUCO to authorize such accounting authority as  
may be reasonably necessary to classify the cost as a regulatory  
asset.

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Requires PUCO to establish a charge and collection  
mechanism permitting the utility's full recovery of a regulatory  
asset described above if the cost is determined to be not  
practical or if deferred recovery would impose a hardship on the  
utility or its customers.

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Exempts cost recovery authorized as a regulatory asset as  
described above from any provision of law or agreement  
establishing price caps, rate freezes, or rate increase  
moratoria.

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Requires PUCO to process applications for classifying the  
above costs as regulatory assets in the same manner as

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applications for the recovery of certain municipal public way fees and for authorization of accounting authority to classify certain municipal public way fees as regulatory assets and specifies that a final order regarding a recovery mechanism authorized under the amendment must provide for retroactive adjustment as PUCO determines appropriate.

**Clarifying municipal corporation public way regulation costs as regulatory assets**

**R.C. 4939.07**

Clarifies, for purposes of authorizing regulatory assets related to the use or occupancy of a municipal public way, costs incurred by a public utility as a result of *municipal corporation* regulation (instead of *local* regulation as in current law) of its use or occupancy.



S. B. No. 41

As Passed by the Senate

\_\_\_\_\_ moved to amend as follows:

In line 2 of the title, delete "section" and insert "sections"; 359  
after "3781.21" insert "and 4123.325" 360

In line 4 of the title, after "inspections" insert "and to specify 361  
when a purchase agreement is not required for an employer to transfer 362  
workers' compensation experience" 363

In line 6, delete "section" and insert "sections"; after "3781.21" 364  
insert "and 4123.325" 365

After line 254, insert: 366

"Sec. 4123.325. No employer shall be required to provide a 367  
copy of a purchase agreement to the administrator of workers' 368  
compensation in order for the administrator to complete a 369  
transfer of experience if both of the following conditions are 370  
met: 371

(A) A predecessor employer is transferring a business in 372  
whole or in part to another employer, who is the successor in 373  
interest under division (B) of section 4123.32 of the Revised 374  
Code; 375

(B) There is a family relationship or other similar 376

connection between the predecessor and the successor."

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The motion was \_\_\_\_\_ agreed to.

SYNOPSIS

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**Purchase agreements and workers' compensation experience  
transfers**

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**R.C. 4123.325**

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States that an employer is not required to provide the  
Administrator of Workers' Compensation with a copy of a purchase  
agreement for the Administrator to complete a transfer of  
experience when an employer transfers a business to another  
employer if there is a family relationship or other similar  
connection between the predecessor and the successor.

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S. B. No. 41

As Passed by the Senate

\_\_\_\_\_ moved to amend as follows:

In line 2 of the title, delete "section" and insert "sections"; 388  
after "3781.21" insert "and 4113.14" 389

In line 4 of the title, after "inspections" insert "and to require 390  
employers to provide earnings and deductions statements to each of the 391  
employer's employees" 392

In line 6, delete "section" and insert "sections"; after "3781.21" 393  
insert "and 4113.14" 394

After line 254, insert: 395

"Sec. 4113.14. (A) As used in this section: 396

(1) "Employee" and "employer" have the same meanings as in 397  
section 4113.51 of the Revised Code. 398

(2) "Workweek" means a fixed, regularly recurring period 399  
of one hundred sixty-eight hours that an employer expressly 400  
adopts for purposes of complying with section 7 of the "Fair 401  
Labor Standards Act of 1938," 29 U.S.C. 207. 402

(B) Every employer shall provide each of the employer's 403  
employees with a written or electronic statement or access to a 404

statement of the employee's earnings and deductions for each pay 405  
period on the employer's regular paydays. An employer shall 406  
include all of the following information in the statement: 407

(1) The employee's name; 408

(2) The employee's address; 409

(3) The employer's name; 410

(4) The total gross wages earned by the employee during 411  
the pay period; 412

(5) The total net wages paid to the employee for the pay 413  
period; 414

(6) A listing of the amount and purpose of each addition 415  
to or deduction from the wages paid to the employee during the 416  
pay period; 417

(7) The date the employee was paid and the pay period 418  
covered by that payment; 419

(8) For an employee who is paid on an hourly basis, all of 420  
the following information: 421

(a) The total number of hours the employee worked in that 422  
pay period; 423

(b) The hourly wage rate at which the employee was paid; 424

(c) The employee's hours worked in excess of forty hours 425  
in one workweek. 426

(C) An employee who does not receive a statement as 427  
required by division (B) of this section shall make a written 428  
request to the employee's employer to receive the statement. The 429  
employer shall provide the employee with the statement not later 430  
than ten days after receiving the request. If the employee does 431  
not receive the requested statement within the ten-day period, 432

the employee may submit a report of the violation to the 433  
director of commerce. If, on receipt of a report, the director 434  
determines that there are reasonable grounds to believe that a 435  
violation exists, the director shall issue a written notice to 436  
the employee's employer. On receipt of a notice, the employer 437  
shall immediately post the notice, or a copy of the notice, in a 438  
conspicuous place on the employer's premises. The employer shall 439  
keep the notice posted for ten days." 440

After line 256, insert: 441

"**Section 3.** The enactment of section 4113.14 of the 442  
Revised Code in this act shall be known as the Pay Stub 443  
Protection Act." 444

The motion was \_\_\_\_\_ agreed to.

SYNOPSIS 445

**Pay Stub Protection Act** 446

**R.C. 4113.14** 447

Requires an employer, on the employer's regular paydays, 448  
to provide each of the employer's employees with a statement or 449  
access to a statement of the employee's earnings and deductions 450  
for the pay period. 451

Requires an employer who does not provide the statement or 452  
access to the statement at the time required under the bill to 453  
provide the statement not later than ten days after receiving an 454  
employee's request for the statement. 455

Permits an employee who does not receive the requested 456  
statement within ten days of requesting it to report the 457

violation to the Director of Commerce, who must notify the 458  
employer in writing of the violation. 459

Requires, if an employer receives a notice from the 460  
Director, the employer to post the notice or a copy of the 461  
notice in a conspicuous place on the employer's premises for ten 462  
days. 463

S. B. No. 41

As Passed by the Senate

\_\_\_\_\_ moved to amend as follows:

In line 1 of the title, delete the first "and" and insert ","; after 464  
"3781.20" insert ", and 4928.01" 465

In line 4 of the title, after "inspections" insert "and to make 466  
certain steam-producing facilities waste energy recovery systems for 467  
purposes of the state's energy efficiency laws" 468

In line 5, delete "and" and insert ","; after "3781.20" insert ", 469  
and 4928.01" 470

After line 254, insert: 471

**"Sec. 4928.01.** (A) As used in this chapter: 472

(1) "Ancillary service" means any function necessary to 473  
the provision of electric transmission or distribution service 474  
to a retail customer and includes, but is not limited to, 475  
scheduling, system control, and dispatch services; reactive 476  
supply from generation resources and voltage control service; 477  
reactive supply from transmission resources service; regulation 478  
service; frequency response service; energy imbalance service; 479  
operating reserve-spinning reserve service; operating reserve- 480  
supplemental reserve service; load following; back-up supply 481

service; real-power loss replacement service; dynamic 482  
scheduling; system black start capability; and network stability 483  
service. 484

(2) "Billing and collection agent" means a fully 485  
independent agent, not affiliated with or otherwise controlled 486  
by an electric utility, electric services company, electric 487  
cooperative, or governmental aggregator subject to certification 488  
under section 4928.08 of the Revised Code, to the extent that 489  
the agent is under contract with such utility, company, 490  
cooperative, or aggregator solely to provide billing and 491  
collection for retail electric service on behalf of the utility 492  
company, cooperative, or aggregator. 493

(3) "Certified territory" means the certified territory 494  
established for an electric supplier under sections 4933.81 to 495  
4933.90 of the Revised Code. 496

(4) "Competitive retail electric service" means a 497  
component of retail electric service that is competitive as 498  
provided under division (B) of this section. 499

(5) "Electric cooperative" means a not-for-profit electric 500  
light company that both is or has been financed in whole or in 501  
part under the "Rural Electrification Act of 1936," 49 Stat. 502  
1363, 7 U.S.C. 901, and owns or operates facilities in this 503  
state to generate, transmit, or distribute electricity, or a 504  
not-for-profit successor of such company. 505

(6) "Electric distribution utility" means an electric 506  
utility that supplies at least retail electric distribution 507  
service. 508

(7) "Electric light company" has the same meaning as in 509  
section 4905.03 of the Revised Code and includes an electric 510  
services company, but excludes any self-generator to the extent 511



that it consumes electricity it so produces, sells that 512  
electricity for resale, or obtains electricity from a generating 513  
facility it hosts on its premises. 514

(8) "Electric load center" has the same meaning as in 515  
section 4933.81 of the Revised Code. 516

(9) "Electric services company" means an electric light 517  
company that is engaged on a for-profit or not-for-profit basis 518  
in the business of supplying or arranging for the supply of only 519  
a competitive retail electric service in this state. "Electric 520  
services company" includes a power marketer, power broker, 521  
aggregator, or independent power producer but excludes an 522  
electric cooperative, municipal electric utility, governmental 523  
aggregator, or billing and collection agent. 524

(10) "Electric supplier" has the same meaning as in 525  
section 4933.81 of the Revised Code. 526

(11) "Electric utility" means an electric light company 527  
that has a certified territory and is engaged on a for-profit 528  
basis either in the business of supplying a noncompetitive 529  
retail electric service in this state or in the businesses of 530  
supplying both a noncompetitive and a competitive retail 531  
electric service in this state. "Electric utility" excludes a 532  
municipal electric utility or a billing and collection agent. 533

(12) "Firm electric service" means electric service other 534  
than nonfirm electric service. 535

(13) "Governmental aggregator" means a legislative 536  
authority of a municipal corporation, a board of township 537  
trustees, or a board of county commissioners acting as an 538  
aggregator for the provision of a competitive retail electric 539  
service under authority conferred under section 4928.20 of the 540  
Revised Code. 541

(14) A person acts "knowingly," regardless of the person's purpose, when the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist.

(15) "Level of funding for low-income customer energy efficiency programs provided through electric utility rates" means the level of funds specifically included in an electric utility's rates on October 5, 1999, pursuant to an order of the public utilities commission issued under Chapter 4905. or 4909. of the Revised Code and in effect on October 4, 1999, for the purpose of improving the energy efficiency of housing for the utility's low-income customers. The term excludes the level of any such funds committed to a specific nonprofit organization or organizations pursuant to a stipulation or contract.

(16) "Low-income customer assistance programs" means the percentage of income payment plan program, the home energy assistance program, the home weatherization assistance program, and the targeted energy efficiency and weatherization program.

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

(18) "Market power" means the ability to impose on customers a sustained price for a product or service above the price that would prevail in a competitive market.

(19) "Mercantile customer" means a commercial or industrial customer if the electricity consumed is for nonresidential use and the customer consumes more than seven

hundred thousand kilowatt hours per year or is part of a 573  
national account involving multiple facilities in one or more 574  
states. 575

(20) "Municipal electric utility" means a municipal 576  
corporation that owns or operates facilities to generate, 577  
transmit, or distribute electricity. 578

(21) "Noncompetitive retail electric service" means a 579  
component of retail electric service that is noncompetitive as 580  
provided under division (B) of this section. 581

(22) "Nonfirm electric service" means electric service 582  
provided pursuant to a schedule filed under section 4905.30 of 583  
the Revised Code or pursuant to an arrangement under section 584  
4905.31 of the Revised Code, which schedule or arrangement 585  
includes conditions that may require the customer to curtail or 586  
interrupt electric usage during nonemergency circumstances upon 587  
notification by an electric utility. 588

(23) "Percentage of income payment plan arrears" means 589  
funds eligible for collection through the percentage of income 590  
payment plan rider, but uncollected as of July 1, 2000. 591

(24) "Person" has the same meaning as in section 1.59 of 592  
the Revised Code. 593

(25) "Advanced energy project" means any technologies, 594  
products, activities, or management practices or strategies that 595  
facilitate the generation or use of electricity or energy and 596  
that reduce or support the reduction of energy consumption or 597  
support the production of clean, renewable energy for 598  
industrial, distribution, commercial, institutional, 599  
governmental, research, not-for-profit, or residential energy 600  
users, including, but not limited to, advanced energy resources 601  
and renewable energy resources. "Advanced energy project" also 602

includes any project described in division (A), (B), or (C) of 603  
section 4928.621 of the Revised Code. 604

(26) "Regulatory assets" means the unamortized net 605  
regulatory assets that are capitalized or deferred on the 606  
regulatory books of the electric utility, pursuant to an order 607  
or practice of the public utilities commission or pursuant to 608  
generally accepted accounting principles as a result of a prior 609  
commission rate-making decision, and that would otherwise have 610  
been charged to expense as incurred or would not have been 611  
capitalized or otherwise deferred for future regulatory 612  
consideration absent commission action. "Regulatory assets" 613  
includes, but is not limited to, all deferred demand-side 614  
management costs; all deferred percentage of income payment plan 615  
arrears; post-in-service capitalized charges and assets 616  
recognized in connection with statement of financial accounting 617  
standards no. 109 (receivables from customers for income taxes); 618  
future nuclear decommissioning costs and fuel disposal costs as 619  
those costs have been determined by the commission in the 620  
electric utility's most recent rate or accounting application 621  
proceeding addressing such costs; the undepreciated costs of 622  
safety and radiation control equipment on nuclear generating 623  
plants owned or leased by an electric utility; and fuel costs 624  
currently deferred pursuant to the terms of one or more 625  
settlement agreements approved by the commission. 626

(27) "Retail electric service" means any service involved 627  
in supplying or arranging for the supply of electricity to 628  
ultimate consumers in this state, from the point of generation 629  
to the point of consumption. For the purposes of this chapter, 630  
retail electric service includes one or more of the following 631  
"service components": generation service, aggregation service, 632  
power marketing service, power brokerage service, transmission 633  
service, distribution service, ancillary service, metering 634

service, and billing and collection service. 635

(28) "Starting date of competitive retail electric 636  
service" means January 1, 2001. 637

(29) "Customer-generator" means a user of a net metering 638  
system. 639

(30) "Net metering" means measuring the difference in an 640  
applicable billing period between the electricity supplied by an 641  
electric service provider and the electricity generated by a 642  
customer-generator that is fed back to the electric service 643  
provider. 644

(31) "Net metering system" means a facility for the 645  
production of electrical energy that does all of the following: 646

(a) Uses as its fuel either solar, wind, biomass, landfill 647  
gas, or hydropower, or uses a microturbine or a fuel cell; 648

(b) Is located on a customer-generator's premises; 649

(c) Operates in parallel with the electric utility's 650  
transmission and distribution facilities; 651

(d) Is intended primarily to offset part or all of the 652  
customer-generator's requirements for electricity. For an 653  
industrial customer-generator with a net metering system that 654  
has a capacity of less than twenty megawatts and uses wind as 655  
energy, this means the net metering system was sized so as to 656  
not exceed one hundred per cent of the customer-generator's 657  
annual requirements for electric energy at the time of 658  
interconnection. 659

(32) "Self-generator" means an entity in this state that 660  
owns or hosts on its premises an electric generation facility 661  
that produces electricity primarily for the owner's consumption 662  
and that may provide any such excess electricity to another 663

entity, whether the facility is installed or operated by the 664  
owner or by an agent under a contract. 665

(33) "Rate plan" means the standard service offer in 666  
effect on the effective date of the amendment of this section by 667  
S.B. 221 of the 127th general assembly, July 31, 2008. 668

(34) "Advanced energy resource" means any of the 669  
following: 670

(a) Any method or any modification or replacement of any 671  
property, process, device, structure, or equipment that 672  
increases the generation output of an electric generating 673  
facility to the extent such efficiency is achieved without 674  
additional carbon dioxide emissions by that facility; 675

(b) Any distributed generation system consisting of 676  
customer cogeneration technology; 677

(c) Clean coal technology that includes a carbon-based 678  
product that is chemically altered before combustion to 679  
demonstrate a reduction, as expressed as ash, in emissions of 680  
nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or 681  
sulfur trioxide in accordance with the American society of 682  
testing and materials standard D1757A or a reduction of metal 683  
oxide emissions in accordance with standard D5142 of that 684  
society, or clean coal technology that includes the design 685  
capability to control or prevent the emission of carbon dioxide, 686  
which design capability the commission shall adopt by rule and 687  
shall be based on economically feasible best available 688  
technology or, in the absence of a determined best available 689  
technology, shall be of the highest level of economically 690  
feasible design capability for which there exists generally 691  
accepted scientific opinion; 692

(d) Advanced nuclear energy technology consisting of 693

generation III technology as defined by the nuclear regulatory 694  
commission; other, later technology; or significant improvements 695  
to existing facilities; 696

(e) Any fuel cell used in the generation of electricity, 697  
including, but not limited to, a proton exchange membrane fuel 698  
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or 699  
solid oxide fuel cell; 700

(f) Advanced solid waste or construction and demolition 701  
debris conversion technology, including, but not limited to, 702  
advanced stoker technology, and advanced fluidized bed 703  
gasification technology, that results in measurable greenhouse 704  
gas emissions reductions as calculated pursuant to the United 705  
States environmental protection agency's waste reduction model 706  
(WARM); 707

(g) Demand-side management and any energy efficiency 708  
improvement; 709

(h) Any new, retrofitted, refueled, or repowered 710  
generating facility located in Ohio, including a simple or 711  
combined-cycle natural gas generating facility or a generating 712  
facility that uses biomass, coal, modular nuclear, or any other 713  
fuel as its input; 714

(i) Any uprated capacity of an existing electric 715  
generating facility if the uprated capacity results from the 716  
deployment of advanced technology. 717

"Advanced energy resource" does not include a waste energy 718  
recovery system that is, or has been, included in an energy 719  
efficiency program of an electric distribution utility pursuant 720  
to requirements under section 4928.66 of the Revised Code. 721

(35) "Air contaminant source" has the same meaning as in 722  
section 3704.01 of the Revised Code. 723

(36) "Cogeneration technology" means technology that produces electricity and useful thermal output simultaneously.	724 725
(37) (a) "Renewable energy resource" means any of the following:	726 727
(i) Solar photovoltaic or solar thermal energy;	728
(ii) Wind energy;	729
(iii) Power produced by a hydroelectric facility;	730
(iv) Power produced by a small hydroelectric facility, which is a facility that operates, or is rated to operate, at an aggregate capacity of less than six megawatts;	731 732 733
(v) Power produced by a run-of-the-river hydroelectric facility placed in service on or after January 1, 1980, that is located within this state, relies upon the Ohio river, and operates, or is rated to operate, at an aggregate capacity of forty or more megawatts;	734 735 736 737 738
(vi) Geothermal energy;	739
(vii) Fuel derived from solid wastes, as defined in section 3734.01 of the Revised Code, through fractionation, biological decomposition, or other process that does not principally involve combustion;	740 741 742 743
(viii) Biomass energy;	744
(ix) Energy produced by cogeneration technology that is placed into service on or before December 31, 2015, and for which more than ninety per cent of the total annual energy input is from combustion of a waste or byproduct gas from an air contaminant source in this state, which source has been in operation since on or before January 1, 1985, provided that the cogeneration technology is a part of a facility located in a	745 746 747 748 749 750 751



county having a population of more than three hundred sixty-five 752  
thousand but less than three hundred seventy thousand according 753  
to the most recent federal decennial census; 754

(x) Biologically derived methane gas; 755

(xi) Heat captured from a generator of electricity, 756  
boiler, or heat exchanger fueled by biologically derived methane 757  
gas; 758

(xii) Energy derived from nontreated by-products of the 759  
pulping process or wood manufacturing process, including bark, 760  
wood chips, sawdust, and lignin in spent pulping liquors. 761

"Renewable energy resource" includes, but is not limited 762  
to, any fuel cell used in the generation of electricity, 763  
including, but not limited to, a proton exchange membrane fuel 764  
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or 765  
solid oxide fuel cell; wind turbine located in the state's 766  
territorial waters of Lake Erie; methane gas emitted from an 767  
abandoned coal mine; waste energy recovery system placed into 768  
service or retrofitted on or after the effective date of the 769  
amendment of this section by S.B. 315 of the 129th general 770  
assembly, September 10, 2012, except that a waste energy 771  
recovery system described in division (A)(38)(b) of this section 772  
may be included only if it was placed into service between 773  
January 1, 2002, and December 31, 2004; storage facility that 774  
will promote the better utilization of a renewable energy 775  
resource; or distributed generation system used by a customer to 776  
generate electricity from any such energy. 777

"Renewable energy resource" does not include a waste 778  
energy recovery system that is, or was, on or after January 1, 779  
2012, included in an energy efficiency program of an electric 780  
distribution utility pursuant to requirements under section 781  
4928.66 of the Revised Code. 782

(b) As used in division (A) (37) of this section, 783  
"hydroelectric facility" means a hydroelectric generating 784  
facility that is located at a dam on a river, or on any water 785  
discharged to a river, that is within or bordering this state or 786  
within or bordering an adjoining state and meets all of the 787  
following standards: 788

(i) The facility provides for river flows that are not 789  
detrimental for fish, wildlife, and water quality, including 790  
seasonal flow fluctuations as defined by the applicable 791  
licensing agency for the facility. 792

(ii) The facility demonstrates that it complies with the 793  
water quality standards of this state, which compliance may 794  
consist of certification under Section 401 of the "Clean Water 795  
Act of 1977," 91 Stat. 1598, 1599, 33 U.S.C. 1341, and 796  
demonstrates that it has not contributed to a finding by this 797  
state that the river has impaired water quality under Section 798  
303(d) of the "Clean Water Act of 1977," 114 Stat. 870, 33 799  
U.S.C. 1313. 800

(iii) The facility complies with mandatory prescriptions 801  
regarding fish passage as required by the federal energy 802  
regulatory commission license issued for the project, regarding 803  
fish protection for riverine, anadromous, and catadromous fish. 804

(iv) The facility complies with the recommendations of the 805  
Ohio environmental protection agency and with the terms of its 806  
federal energy regulatory commission license regarding watershed 807  
protection, mitigation, or enhancement, to the extent of each 808  
agency's respective jurisdiction over the facility. 809

(v) The facility complies with provisions of the 810  
"Endangered Species Act of 1973," 87 Stat. 884, 16 U.S.C. 1531 811  
to 1544, as amended. 812

(vi) The facility does not harm cultural resources of the area. This can be shown through compliance with the terms of its federal energy regulatory commission license or, if the facility is not regulated by that commission, through development of a plan approved by the Ohio historic preservation office, to the extent it has jurisdiction over the facility.

(vii) The facility complies with the terms of its federal energy regulatory commission license or exemption that are related to recreational access, accommodation, and facilities or, if the facility is not regulated by that commission, the facility complies with similar requirements as are recommended by resource agencies, to the extent they have jurisdiction over the facility; and the facility provides access to water to the public without fee or charge.

(viii) The facility is not recommended for removal by any federal agency or agency of any state, to the extent the particular agency has jurisdiction over the facility.

(c) The standards in divisions (A) (37) (b) (i) to (viii) of this section do not apply to a small hydroelectric facility under division (A) (37) (a) (iv) of this section.

(38) "Waste energy recovery system" means ~~either~~ any of the following:

(a) A facility that generates electricity through the conversion of energy from either of the following:

(i) Exhaust heat from engines or manufacturing, industrial, commercial, or institutional sites, except for exhaust heat from a facility whose primary purpose is the generation of electricity;

(ii) Reduction of pressure in gas pipelines before gas is distributed through the pipeline, provided that the conversion

of energy to electricity is achieved without using additional 843  
fossil fuels. 844

(b) A facility at a state institution of higher education 845  
as defined in section 3345.011 of the Revised Code that recovers 846  
waste heat from electricity-producing engines or combustion 847  
turbines and that simultaneously uses the recovered heat to 848  
produce steam, provided that the facility was placed into 849  
service between January 1, 2002, and December 31, 2004; 850

(c) A facility that produces steam from recovered waste 851  
heat from a manufacturing process and uses that steam, or 852  
transfers that steam to another facility, to provide heat to 853  
another manufacturing process or to generate electricity. 854

(39) "Smart grid" means capital improvements to an 855  
electric distribution utility's distribution infrastructure that 856  
improve reliability, efficiency, resiliency, or reduce energy 857  
demand or use, including, but not limited to, advanced metering 858  
and automation of system functions. 859

(40) "Combined heat and power system" means the 860  
coproduction of electricity and useful thermal energy from the 861  
same fuel source designed to achieve thermal-efficiency levels 862  
of at least sixty per cent, with at least twenty per cent of the 863  
system's total useful energy in the form of thermal energy. 864

(41) "Legacy generation resource" means all generating 865  
facilities owned directly or indirectly by a corporation that 866  
was formed prior to 1960 by investor-owned utilities for the 867  
original purpose of providing power to the federal government 868  
for use in the nation's defense or in furtherance of national 869  
interests, including the Ohio valley electric corporation. 870

(42) "Prudently incurred costs related to a legacy 871  
generation resource" means costs, including deferred costs, 872

allocated pursuant to a power agreement approved by the federal 873  
energy regulatory commission that relates to a legacy generation 874  
resource, less any revenues realized from offering the 875  
contractual commitment for the power agreement into the 876  
wholesale markets, provided that where the net revenues exceed 877  
net costs, those excess revenues shall be credited to customers. 878  
Such costs shall exclude any return on investment in common 879  
equity and, in the event of a premature retirement of a legacy 880  
generation resource, shall exclude any recovery of remaining 881  
debt. Such costs shall include any incremental costs resulting 882  
from the bankruptcy of a current or former sponsor under such 883  
power agreement or co-owner of the legacy generation resource if 884  
not otherwise recovered through a utility rate cost recovery 885  
mechanism. 886

(43) "Green energy" means any energy generated by using an 887  
energy resource that does one or more of the following: 888

(a) Releases reduced air pollutants, thereby reducing 889  
cumulative air emissions; 890

(b) Is more sustainable and reliable relative to some 891  
fossil fuels. 892

"Green energy" includes energy generated by using natural 893  
gas as a resource. 894

(B) For the purposes of this chapter, a retail electric 895  
service component shall be deemed a competitive retail electric 896  
service if the service component is competitive pursuant to a 897  
declaration by a provision of the Revised Code or pursuant to an 898  
order of the public utilities commission authorized under 899  
division (A) of section 4928.04 of the Revised Code. Otherwise, 900  
the service component shall be deemed a noncompetitive retail 901  
electric service. " 902

In line 255, delete "and" and insert ", "; after "3781.20" insert ",  
and 4928.01" 903  
904

The motion was \_\_\_\_\_ agreed to.

SYNOPSIS 905

**Waste energy recovery system** 906

**R.C. 4928.01** 907

Includes a facility that produces and uses steam, or 908  
transfers it, from recovered waste heat from a manufacturing 909  
process to another manufacturing process or to generate 910  
electricity as a "waste energy recovery system," which would 911  
include such facilities under Ohio's energy efficiency laws. 912

S. B. No. 41

As Passed by the Senate

\_\_\_\_\_ moved to amend as follows:

In line 1 of the title, after "sections" insert "191.17, 191.21,"; 913  
after "3781.19" insert "," 914

In line 4 of the title, after "inspections" insert "and to make 915  
changes to the Ohio Broadband Pole Replacement and Undergrounding Program" 916

In line 5, after "sections" insert "191.17, 191.21,"; after 917  
"3781.19" insert "," 918

After line 7, insert: 919

**"Sec. 191.17.** (A) Not later than sixty days after 920  
receiving an application forwarded by the department of 921  
development, the broadband expansion program authority shall 922  
award program reimbursements to the applicant for costs 923  
described in divisions (A) and (B) of section 191.21 of the 924  
Revised Code after reviewing the application, and establishing 925  
the applicant's eligibility for reimbursement under the Ohio 926  
broadband pole replacement and undergrounding program. ~~Except as~~ 927  
~~provided in division (B) of this section, program~~ 928

(B) For pole replacement or mid-span pole installation 929  
costs described under division (A) of section 191.21 of the 930

Revised Code, reimbursements shall be in an amount equal to the 931  
lesser of ~~seven~~ either of the following: 932

(1) Seven thousand five hundred dollars ~~or seventy-five~~ 933  
multiplied by the number of pole replacements and mid-span pole 934  
installations in an application; 935

(2) Seventy-five per cent of the total ~~amount paid by the~~ 936  
applicant for each pole replacement or mid-span pole 937  
installation eligible costs therein. 938

~~(B)~~ (C) For undergrounding costs described under division 939  
(B) of section 191.21 of the Revised Code, ~~the authority shall~~ 940  
~~approve program reimbursements as provided in division (A) of~~ 941  
~~this section shall be in an amount not to exceed seventy-five per~~ 942  
cent of the total eligible costs therein, except that the 943  
reimbursements may not exceed the reimbursement amount that 944  
would be available under division ~~(A)~~ (B) of this section, if the 945  
applicant ~~had attached broadband infrastructure to utility poles~~ 946  
did a pole replacement or mid-span pole installation instead of 947  
undergrounding that infrastructure. 948

**Sec. 191.21.** If the broadband expansion program authority 949  
approves an application under the Ohio broadband pole 950  
replacement and undergrounding program, the following costs are 951  
eligible for reimbursement under the program: 952

(A) Actual and reasonable costs to perform a pole 953  
replacement or mid-span pole installation, including the amount 954  
of any expenditures to remove and dispose of an existing utility 955  
pole, purchase and install a replacement utility pole, and 956  
transfer any existing facilities to the new pole; 957

(B) Actual and reasonable undergrounding costs, including 958  
the costs to dig a trench, perform directional boring, install 959  
conduit, and seal the trench, if the undergrounding is ~~either~~ 960



<u>one</u> of the following:	961
(1) Required by law, regulation, or local ordinance;	962
(2) More economical than the cost of performing a pole replacement;	963 964
<u>(3) Needed because the process for obtaining access to poles is causing, or is reasonably anticipated to cause, a delay that will impact the ability of the applicant to meet deadlines required by an agreement or terms of support to provide qualifying broadband service to an address within an unserved area.</u>	965 966 967 968 969 970
(C) (1) Costs of deploying qualifying broadband service for which the applicant is entitled to obtain full reimbursement from another governmental entity are not eligible for reimbursement under the program, except as provided in division (C) (2) of this section.	971 972 973 974 975
(2) If an applicant's costs for deploying such service are reimbursed in part by a governmental entity, the applicant may apply for and obtain reimbursement under the program for the portion of the eligible costs for which the applicant was not reimbursed.	976 977 978 979 980
(D) For applicants that obtain broadband grant funding from sources other than reimbursements under the program, the authority may require the applicants to maintain accounting records sufficient to demonstrate that the other grant funds do not fully reimburse the same costs as those reimbursed under the program."	981 982 983 984 985 986
In line 255, after "sections" insert "191.17, 191.21,"; after "3781.19" insert ",,"	987 988

The motion was \_\_\_\_\_ agreed to.

SYNOPSIS 989

**Broadband Pole Replacement and Undergrounding Program** 990

**R.C. 191.17 and 191.21** 991

Modifies the reimbursement formula under the Broadband Pole Replacement and Undergrounding Program as follows: 992  
993

--For actual and reasonable costs to perform a pole replacement or mid-span pole installation, reimbursements are equal to the lesser of \$7,500 multiplied by the number of pole replacements and mid-pole installations in an application, or 75% of the total eligible costs therein. 994  
995  
996  
997  
998

--For actual and reasonable undergrounding costs, reimbursements must not exceed 75% of the total eligible costs therein, but are limited to the reimbursement amount that would be available if the applicant did a pole replacement or mid-span pole installation instead of undergrounding that infrastructure. 999  
1000  
1001  
1002  
1003

Currently, the pole replacement or mid-span pole installation reimbursement is the lesser of \$7,500 or 75% of the total amount paid for each replacement or installation. The total reimbursement for undergrounding costs must not exceed what otherwise would be available if pole replacement or mid-span pole installation were done instead. 1004  
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To the list of undergrounding costs that are eligible for reimbursement, adds costs incurred if the undergrounding is needed because the process for obtaining access to poles is causing, or reasonably anticipated to cause, a delay that will impact the ability of the provider to meet deadlines required by an agreement or terms of support to provide qualifying broadband 1010  
1011  
1012  
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1015

service to an address within an unserved area.

1016

S. B. No. 41

As Passed by the Senate

\_\_\_\_\_ moved to amend as follows:

In line 1 of the title, after "sections" insert "1707.043,"; after 1017  
"3781.19" insert ",," 1018

In line 4 of the title, after "inspections" insert "and manipulative 1019  
practices in the securities market" 1020

In line 5, after "sections" insert "1707.043,"; after "3781.19" 1021  
insert ",," 1022

After line 7, insert: 1023

**"Sec. 1707.043.** (A) For the purpose of preventing 1024  
manipulative practices by a person who makes a proposal, or 1025  
publicly discloses the intention or possibility of making a 1026  
proposal, to acquire control of a corporation formed under the 1027  
laws of this state, any profit realized, directly or indirectly, 1028  
from the disposition of any equity securities of a corporation 1029  
by a person who, within eighteen months before disposition 1030  
directly or indirectly, alone or in concert with others, made a 1031  
proposal, or publicly disclosed the intention or possibility of 1032  
making a proposal, to acquire control of the corporation and 1033  
engages in a manipulative practice with respect to such 1034  
proposal, inures to and is recoverable by the corporation. 1035

(B) No profit from the disposition of equity securities 1036  
shall inure to or be recoverable by a corporation under this 1037  
section if any of the following apply: 1038

(1) The equity securities were acquired by the person 1039  
disposing of them at any of the following times: 1040

(a) More than eighteen months before the date on which the 1041  
proposal or public disclosure was made; 1042

(b) Before the effective date of this section; 1043

(c) Pursuant to a contract executed prior to the effective 1044  
date of this section. 1045

(2) The person who disposed of the equity securities 1046  
proves in a court of competent jurisdiction either of the 1047  
following: 1048

(a) At the time the proposals or public disclosures were 1049  
made, the person's sole purpose in making the proposals or 1050  
public disclosures was to succeed in acquiring control of the 1051  
corporation and under the circumstances, including, without 1052  
limitation, the person's proposed price, financing and other 1053  
acquisition plans, the person's financial resources and 1054  
capabilities, and all other alternatives reasonably anticipated 1055  
to become available to the corporation's shareholders, there 1056  
were reasonable grounds to believe that the person would acquire 1057  
control of the corporation; 1058

(b) The person's public disclosure concerning the 1059  
intention or possibility of making a proposal to acquire control 1060  
of the corporation and all other potentially manipulative 1061  
conduct and practices by or on ~~his~~the person's behalf were not 1062  
effected with a purpose of affecting market trading and thereby 1063  
increasing any profit or decreasing any loss which the person 1064  
might realize, directly or indirectly, from the disposition of 1065

the equity securities and did not have a material effect upon 1066  
the price or volume of market trading in the equity securities. 1067  
Evidence with respect to the past practices of such person is 1068  
admissible and relevant in respect to the person's intent or 1069  
purpose under divisions (B) (2) (a) and (b) of this section. 1070

(3) The aggregate amount of all profit the person 1071  
realized, directly or indirectly, does not exceed two hundred 1072  
fifty thousand dollars. 1073

(C) Equity securities acquired by a person as a result of 1074  
a share split, share dividend, or other similar distribution by 1075  
a corporation of equity securities issued by it not involving a 1076  
sale of the equity securities, is deemed to have been acquired 1077  
by such person on the date on which the person acquired the 1078  
equity security with respect to which the equity securities were 1079  
subsequently distributed by the corporation. 1080

(D) No profit or any portion thereof recoverable by a 1081  
corporation in an action brought under section 16(b) of the 1082  
federal "securities exchange act of 1934," is recoverable by the 1083  
corporation under this section. 1084

(E) (1) A corporation may commence an action to recover any 1085  
profit recoverable under this section in any court of competent 1086  
jurisdiction. If the corporation fails or refuses to bring the 1087  
action within sixty days after written request by any holder of 1088  
any equity security in the corporation or fails to diligently 1089  
prosecute the action, the holder may bring the action on behalf 1090  
of the corporation. If a court of competent jurisdiction enters 1091  
a judgment requiring the payment of any such profits, the party 1092  
who brought the action is entitled to all costs, including 1093  
reasonable attorney fees, incurred in connection with the 1094  
enforcement of this section. 1095

(2) No action shall be brought by or on behalf of a 1096

corporation upon a cause of action arising under this section at 1097  
any time after two years from the date on which the disposition 1098  
of equity securities occurred. 1099

(F) This section does not apply to any corporation which 1100  
does not have issued and outstanding shares that are listed on a 1101  
national securities exchange or are regularly quoted in an over- 1102  
the-counter market by one or more members of a national or 1103  
affiliated securities association or to any corporation whose 1104  
articles or regulations provide by specific reference to this 1105  
section that this section does not apply to the corporation and 1106  
its equity securities. 1107

(G) The division of securities, pursuant to Chapter 119. 1108  
of the Revised Code, may adopt reasonable rules to define terms 1109  
used in this section and types of conduct or practices which the 1110  
division determines are either of the following: 1111

(1) Comprehended as within the purpose of this section as 1112  
set forth in division (A) of this section and therefore subject 1113  
to this section; 1114

(2) Not comprehended as within the purpose of division (A) 1115  
of this section and therefore exempt from this section. 1116

(H) As used in this section: 1117

(1) "Corporation" and "person" have the same meanings as 1118  
in section 1701.01 of the Revised Code. 1119

(2) "Profit from the disposition of equity securities of a 1120  
corporation" means both of the following: 1121

(a) The excess of the fair market value of the 1122  
consideration directly or indirectly received or to be received 1123  
from the disposition, less the usual and customary broker's 1124  
commissions actually paid in connection with the disposition, 1125

over the fair market value of the consideration directly or 1126  
indirectly paid for the acquisition of the equity securities, 1127  
plus the usual and customary broker's commissions actually paid 1128  
in connection with the acquisition; 1129

(b) The value of any tax benefit to which a person is 1130  
directly or indirectly entitled resulting from disposition of 1131  
equity securities of the corporation for consideration with a 1132  
value that is less than the fair market value of the equity 1133  
securities at the time of disposition. 1134

(3) "Disposition of equity securities of a corporation" 1135  
means any sale, exchange, transfer, or other disposition of any 1136  
kind of the equity securities to the corporation or any contract 1137  
to sell, exchange, transfer, or otherwise dispose of the equity 1138  
securities, ~~to any other person, including the corporation,~~ for 1139  
valuable consideration. 1140

(4) "Equity securities" means any of the following: 1141

(a) Shares of any class or series of a corporation; 1142

(b) Any securities convertible into or exercisable for 1143  
shares of any class or series of a corporation, with or without 1144  
additional consideration; 1145

(c) Any warrant, right, or option to subscribe for or to 1146  
purchase shares of any class or series of the corporation, or 1147  
any securities convertible into shares of any class or series; 1148

(d) Any interest, direct or indirect, in any equity 1149  
securities. 1150

(5) For purposes of this section only, "manipulative 1151  
practices" means either or both of the following: 1152

(a) The act, sometimes referred to as greenmail, of 1153  
staging a hostile takeover bid in order to manipulate a 1154



corporation into repurchasing the corporation's own common stock 1155  
at a premium above the current market price; 1156

(b) Any other act that the division of securities defines 1157  
as a "manipulative practice" pursuant to division (G) of this 1158  
section. 1159

(6) "Publicly disclosed," "publicly discloses," and 1160  
"public disclosure" includes, but is not limited to, any 1161  
disclosure, whether or not required by law, that becomes public 1162  
and was made or caused to be made by a person: 1163

(a) With the intent or expectation that the disclosure 1164  
become public; or 1165

(b) To another person where the person making or causing 1166  
to be made the disclosure, knows or reasonably should know, that 1167  
the person who receives the disclosure is not under an 1168  
obligation to refrain from making the disclosure, directly or 1169  
indirectly, to the public and such person does make the 1170  
disclosure, directly or indirectly, to the public. 1171

~~(6)~~ (7) "To acquire control of the corporation" means the 1172  
acquisition by any person, directly or indirectly, either alone 1173  
or in concert with another person, of the power, whether or not 1174  
exercised, to direct or cause the direction of the management 1175  
and policies of the corporation, whether through the ownership 1176  
of voting shares, or by contract ~~or otherwise~~, unless any 1177  
proposal, or public disclosure of the intention or possibility 1178  
of making a proposal, to acquire control of the corporation made 1179  
by such person affirmatively states that the person does not 1180  
intend, either alone or in concert with another person, to 1181  
exercise control of the corporation and such person does not, 1182  
directly or indirectly, exercise control of the corporation 1183  
prior to ~~his~~ the person's disposition of any equity securities 1184  
of the corporation. For purposes of this section only, "to 1185

acquire control of the corporation" does not include attempts by 1186  
shareholders to influence a corporation's policies or actions, 1187  
including attempts to nominate candidates for director of the 1188  
corporation. 1189

(I) The general assembly, in amending this section 1190  
pursuant to this act, hereby declares its intent to clarify, and 1191  
not alter, the scope of conduct or practices under this 1192  
section." 1193

In line 255, after "sections" insert "1707.043, "; after "3781.19" 1194  
insert ", " 1195

The motion was \_\_\_\_\_ agreed to.

SYNOPSIS 1196

**Manipulative practices; greenmail under Ohio Securities** 1197  
**Law** 1198

**R.C. 1707.043** 1199

Defines "manipulative practices" as (1) greenmail, which 1200  
is the act of staging a hostile takeover bid in order to 1201  
manipulate a corporation into repurchasing its own common stock 1202  
at a premium above the current market price, and (2) any other 1203  
act that the Division of Securities defines as a "manipulative 1204  
practice" pursuant to existing law authority. 1205

Specifies that "to acquire control of the corporation" 1206  
does not include attempts by shareholders to influence a 1207  
corporation's policies or actions, including the nomination of 1208  
candidates for director of the corporation. 1209

Specifies that a corporation can recover the profits from 1210

the disposition of equity securities if the person proposing to 1211  
acquire control of the corporation engages in manipulative 1212  
practices. 1213

Revises the definition of "disposition of equity 1214  
securities of a corporation." 1215

Specifies that the General Assembly's intent in amending 1216  
the statute is to clarify, and not alter, the scope of conduct 1217  
or practices under the statute. 1218

S. B. No. 41

As Passed by the Senate

\_\_\_\_\_ moved to amend as follows:

In line 1 of the title, delete the first "and" and insert ","; after 1219  
"3781.20" insert ", and 5739.03" 1220

In line 4 of the title, after "inspections" insert "and to allow an 1221  
alternative method for certain farmers to verify that certain trailers and 1222  
vehicles are purchased for agricultural purposes and thus exempt from 1223  
sales and use tax" 1224

In line 5, delete "and" and insert ","; after "3781.20" insert ", 1225  
and 5739.03" 1226

After line 254, insert: 1227

**"Sec. 5739.03.** (A) Except as provided in section 5739.05 1228  
or section 5739.051 of the Revised Code, the tax imposed by or 1229  
pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of 1230  
the Revised Code shall be paid by the consumer to the vendor, 1231  
and each vendor shall collect from the consumer, as a trustee 1232  
for the state of Ohio, the full and exact amount of the tax 1233  
payable on each taxable sale, in the manner and at the times 1234  
provided as follows: 1235

(1) If the price is, at or prior to the provision of the 1236

service or the delivery of possession of the thing sold to the consumer, paid in currency passed from hand to hand by the consumer or the consumer's agent to the vendor or the vendor's agent, the vendor or the vendor's agent shall collect the tax with and at the same time as the price;

(2) If the price is otherwise paid or to be paid, the vendor or the vendor's agent shall, at or prior to the provision of the service or the delivery of possession of the thing sold to the consumer, charge the tax imposed by or pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised Code to the account of the consumer, which amount shall be collected by the vendor from the consumer in addition to the price. Such sale shall be reported on and the amount of the tax applicable thereto shall be remitted with the return for the period in which the sale is made, and the amount of the tax shall become a legal charge in favor of the vendor and against the consumer.

(B) (1) (a) If any sale is claimed to be exempt under division (E) of section 5739.01 of the Revised Code or under section 5739.02 of the Revised Code, with the exception of divisions (B) (1) to (11), (28), (48), (55), (59), or (66) of section 5739.02 of the Revised Code, the consumer must provide to the vendor, and the vendor must obtain from the consumer, a certificate specifying the reason that the sale is not legally subject to the tax. The certificate shall be in such form, and shall be provided either in a hard copy form or electronic form, as the tax commissioner prescribes.

(b) A vendor that obtains a fully completed exemption certificate from a consumer is relieved of liability for collecting and remitting tax on any sale covered by that certificate. If it is determined the exemption was improperly

claimed, the consumer shall be liable for any tax due on that	1268
sale under section 5739.02, 5739.021, 5739.023, or 5739.026 or	1269
Chapter 5741. of the Revised Code. Relief under this division	1270
from liability does not apply to any of the following:	1271
(i) A vendor that fraudulently fails to collect tax;	1272
(ii) A vendor that solicits consumers to participate in	1273
the unlawful claim of an exemption;	1274
(iii) A vendor that accepts an exemption certificate from	1275
a consumer that claims an exemption based on who purchases or	1276
who sells property or a service, when the subject of the	1277
transaction sought to be covered by the exemption certificate is	1278
actually received by the consumer at a location operated by the	1279
vendor in this state, and this state has posted to its web site	1280
an exemption certificate form that clearly and affirmatively	1281
indicates that the claimed exemption is not available in this	1282
state;	1283
(iv) A vendor that accepts an exemption certificate from a	1284
consumer who claims a multiple points of use exemption under	1285
division (D) of section 5739.033 of the Revised Code, if the	1286
item purchased is tangible personal property, other than	1287
prewritten computer software.	1288
(2) The vendor shall maintain records, including exemption	1289
certificates, of all sales on which a consumer has claimed an	1290
exemption, and provide them to the tax commissioner on request.	1291
(3) The tax commissioner may establish an identification	1292
system whereby the commissioner issues an identification number	1293
to a consumer that is exempt from payment of the tax. The	1294
consumer must present the number to the vendor, if any sale is	1295
claimed to be exempt as provided in this section.	1296
(4) If no certificate is provided or obtained within	1297

ninety days after the date on which such sale is consummated, it shall be presumed that the tax applies. Failure to have so provided or obtained a certificate shall not preclude a vendor, within one hundred twenty days after the tax commissioner gives written notice of intent to levy an assessment, from either establishing that the sale is not subject to the tax, or obtaining, in good faith, a fully completed exemption certificate.

(5) Certificates need not be obtained nor provided where the identity of the consumer is such that the transaction is never subject to the tax imposed or where the item of tangible personal property sold or the service provided is never subject to the tax imposed, regardless of use, or when the sale is in interstate commerce.

(6) If a transaction is claimed to be exempt under division (B) (13) of section 5739.02 of the Revised Code, the contractor shall obtain certification of the claimed exemption from the contractee. This certification shall be in addition to an exemption certificate provided by the contractor to the vendor. A contractee that provides a certification under this division shall be deemed to be the consumer of all items purchased by the contractor under the claim of exemption, if it is subsequently determined that the exemption is not properly claimed. The certification shall be in such form as the tax commissioner prescribes.

(7) (a) Division (B) (7) of this section applies to a sale that is claimed to be exempt under division (B) (42) (n) of section 5739.02 of the Revised Code on the purchase of the following items with the purpose to use or consume those items primarily in producing tangible personal property for sale by farming, agriculture, horticulture, or floriculture:

(i) Trailers, as defined in section 4501.01 of the Revised Code, but excluding vehicles designed to transport watercraft; 1329  
1330

(ii) Utility vehicles, as defined in section 4501.01 of the Revised Code; 1331  
1332

(iii) All-purpose vehicles, as defined in section 4519.01 of the Revised Code; 1333  
1334

(iv) Compact tractors, as defined in section 1353.01 of the Revised Code. 1335  
1336

(b) A consumer may verify eligibility for the exemption by: 1337  
1338

(i) Providing the vendor with a certificate, prescribed and issued by the tax commissioner, verifying that the consumer has filed with the commissioner copies of a schedule F, as that term is defined in section 718.01 of the Revised Code, filed by the consumer for the three most recent preceding federal taxable years for which federal income tax returns were due pursuant to sections 6072 and 6081 of the Internal Revenue Code; 1339  
1340  
1341  
1342  
1343  
1344  
1345

(ii) Providing the commissioner with such a schedule F for each of those taxable years. 1346  
1347

(c) If a consumer provides the documents described in division (B)(7)(b) of this section, no other documentation or explanation shall be required by the vendor or commissioner to verify the consumer's exemption eligibility. 1348  
1349  
1350  
1351

(C) As used in this division, "contractee" means a person who seeks to enter or enters into a contract or agreement with a contractor or vendor for the construction of real property or for the sale and installation onto real property of tangible personal property. 1352  
1353  
1354  
1355  
1356

Any contractor or vendor may request from any contractee a 1357



certification of what portion of the property to be transferred 1358  
under such contract or agreement is to be incorporated into the 1359  
realty and what portion will retain its status as tangible 1360  
personal property after installation is completed. The 1361  
contractor or vendor shall request the certification by 1362  
certified mail delivered to the contractee, return receipt 1363  
requested. Upon receipt of such request and prior to entering 1364  
into the contract or agreement, the contractee shall provide to 1365  
the contractor or vendor a certification sufficiently detailed 1366  
to enable the contractor or vendor to ascertain the resulting 1367  
classification of all materials purchased or fabricated by the 1368  
contractor or vendor and transferred to the contractee. This 1369  
requirement applies to a contractee regardless of whether the 1370  
contractee holds a direct payment permit under section 5739.031 1371  
of the Revised Code or provides to the contractor or vendor an 1372  
exemption certificate as provided under this section. 1373

For the purposes of the taxes levied by this chapter and 1374  
Chapter 5741. of the Revised Code, the contractor or vendor may 1375  
in good faith rely on the contractee's certification. 1376  
Notwithstanding division (B) of section 5739.01 of the Revised 1377  
Code, if the tax commissioner determines that certain property 1378  
certified by the contractee as tangible personal property 1379  
pursuant to this division is, in fact, real property, the 1380  
contractee shall be considered to be the consumer of all 1381  
materials so incorporated into that real property and shall be 1382  
liable for the applicable tax, and the contractor or vendor 1383  
shall be excused from any liability on those materials. 1384

If a contractee fails to provide such certification upon 1385  
the request of the contractor or vendor, the contractor or 1386  
vendor shall comply with the provisions of this chapter and 1387  
Chapter 5741. of the Revised Code without the certification. If 1388  
the tax commissioner determines that such compliance has been 1389

performed in good faith and that certain property treated as 1390  
tangible personal property by the contractor or vendor is, in 1391  
fact, real property, the contractee shall be considered to be 1392  
the consumer of all materials so incorporated into that real 1393  
property and shall be liable for the applicable tax, and the 1394  
construction contractor or vendor shall be excused from any 1395  
liability on those materials. 1396

This division does not apply to any contract or agreement 1397  
where the tax commissioner determines as a fact that a 1398  
certification under this division was made solely on the 1399  
decision or advice of the contractor or vendor. 1400

(D) Notwithstanding division (B) of section 5739.01 of the 1401  
Revised Code, whenever the total rate of tax imposed under this 1402  
chapter is increased after the date after a construction 1403  
contract is entered into, the contractee shall reimburse the 1404  
construction contractor for any additional tax paid on tangible 1405  
property consumed or services received pursuant to the contract. 1406

(E) A vendor who files a petition for reassessment 1407  
contesting the assessment of tax on sales for which the vendor 1408  
obtained no valid exemption certificates and for which the 1409  
vendor failed to establish that the sales were properly not 1410  
subject to the tax during the one-hundred-twenty-day period 1411  
allowed under division (B) of this section, may present to the 1412  
tax commissioner additional evidence to prove that the sales 1413  
were properly subject to a claim of exception or exemption. The 1414  
vendor shall file such evidence within ninety days of the 1415  
receipt by the vendor of the notice of assessment, except that, 1416  
upon application and for reasonable cause, the period for 1417  
submitting such evidence shall be extended thirty days. 1418

The commissioner shall consider such additional evidence 1419  
in reaching the final determination on the assessment and 1420

petition for reassessment. 1421

(F) Whenever a vendor refunds the price, minus any 1422  
separately stated delivery charge, of an item of tangible 1423  
personal property on which the tax imposed under this chapter 1424  
has been paid, the vendor shall also refund the amount of tax 1425  
paid, minus the amount of tax attributable to the delivery 1426  
charge. " 1427

In line 255, delete "and" and insert ","; after "3781.20" insert ",  
and 5739.03" 1428  
1429

After line 256, insert: 1430

"**Section 3.** The amendment of section 5739.03 of the 1431  
Revised Code by this act applies on and after the first day of 1432  
the first month that begins after the effective date of this 1433  
section." 1434

The motion was \_\_\_\_\_ agreed to.

SYNOPSIS 1435

**Agricultural use exemption for sales and use tax** 1436

**R.C. 5739.03 and Section 3** 1437

Allows a purchaser to provide three years of filed federal 1438  
farm profit and loss forms to the Tax Commissioner to verify 1439  
that certain vehicles and trailers are primarily used in 1440  
agriculture, and thus exempt from sales and use tax. 1441

Allows the Tax Commissioner to issue certificates, which 1442  
may be provided to a vendor, verifying that a consumer has filed 1443  
three years of those forms with the Commissioner. 1444