



## Office of the Ohio Consumers' Counsel

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**Before  
The Ohio Senate  
General Government Committee**

**Testimony on House Bill 33 – Budget for Office of the Ohio Consumers' Counsel**

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Hello Chair Rulli, Vice Chair Schuring, Ranking Member DeMora, and Members of the Committee. I hope you and your colleagues are well. Thank you for this opportunity to testify about the budget for the Office of the Ohio Consumers' Counsel's services to millions of Ohioans.

The Consumers' Counsel's services are related to Ohioans' services from their electric, natural gas, telephone, and water utilities that are regulated by the PUCO. Under the law, OCC's services primarily include legal representation of residential utility consumers. The utilities are what can be described as "lawyered up." Thus, legal advocacy for utility consumers requires attorneys. It also requires technical experts, such as accountants, economists and engineers, to provide analysis and expert testimony in PUCO cases.

The Consumers' Counsel is funded by assessments to utilities for the amount of the agency's budget appropriation. The agency is *not* funded by taxes.

Our role for the public is described in this mission: "The Ohio Consumers' Counsel advocates and educates to secure for Ohioans affordable, reliable and equitable residential utility services that are essential to their well-being."

Note that the Consumers' Counsel is pro-market in our advocacy. Competitive markets can best serve Ohioans with lower rates and greater innovation, where competition can be effective for consumers. We disfavor subsidies to industry at consumer expense.

Our vision is "To be an independent voice of Ohio residential consumers, including at-risk communities, for achieving justice, equity and regulatory reform regarding their utility services." Note that OCC is a consumer advocate, not a government regulator.

Our core values are Justice, Excellence, Respect, Communications, and Integrity.

Accordingly, the Consumers' Counsel's goals for Ohioans include:

- Affordable Rates
- Reliable Service
- Equity and Protection of "At-Risk" Ohioans

- Consumer Education
- Reforms to Serve Justice (e.g., the PUCO Nominating Council and Ratemaking)

I am grateful to the Governor and to the House of Representatives for supporting Ohio consumers by recommending a \$500,000 increase to the Consumers' Counsel's budget for Fiscal Years 2024 and 2025. (HB33, lines 155889 to 155893.) The OCC Governing Board voted to seek a \$700,000 budget increase for the agency's consumer advocacy. That would increase OCC's annual budget from the current \$5.8 million to \$6.5 million.

OCC thus asks the Senate to amend House Bill 33 for a \$700,000 increase, which means adding \$200,000 to the House-passed bill. The full increase would enable filling more of OCC's vacant positions for mission-critical services to the public. We need qualified staff to compete with utilities in cases affecting rates and reliability for millions of Ohioans.

Human resources (employees and contractors including special counsel) account for most of OCC's budget. We are a small agency with approximately 30 employees. These people provide our services to the public. They comprise about 90% of the budget.

For historical context, the agency's budget was much higher (about \$8.5 million) in 2011. For some earlier years the budget was above \$9 million. But later in 2011 the agency's consumer advocacy was subjected to a multi-million-dollar budget cut. Utility influence seemed involved. That budget cut has largely persisted to this day. And that is not even factoring in what is effectively a decrease from the time value of money.

Our services also include education and information for consumers about their utility services. This is done through outreach by OCC staff and by electronic means. OCC's website is at [www.occ.ohio.gov](http://www.occ.ohio.gov). OCC's Consumer Fact Sheets are listed and available at [occ.ohio.gov/factsheets](http://occ.ohio.gov/factsheets).

As an example, OCC has a Consumer Fact Sheet on making wise choices for electricity and natural gas: <https://www.occ.ohio.gov/factsheet/wise-energy-choices>. That is especially relevant now after recent soaring energy prices and inflation. OCC's 2022 Annual Report is at <https://www.occ.ohio.gov/OCC-Annual-Report-2022>.

The Consumers' Counsel is available to assist legislators with constituent issues and legislation involving residential utility services. We welcome opportunities to be helpful. Our legislative liaison, Nick Stallard, is happy to receive your inquiries, as am I.

OCC Operations staff works to fill the agency's continuing need for employees and consultants with technical expertise. The market competition for qualified personnel can be challenging.

The nine-member OCC Governing Board is comprised of representatives from the areas of family farmers, labor and residential consumers (with three members from each area). The members are essentially volunteers. The Board and agency were created to be independent of state administrations. I appreciate the Board's guidance for OCC to "do the right thing" for Ohio consumers.

The Governing Board Chair is Mike Watkins from labor (being the Fraternal Order of Police). The Vice Chair is Cheryl Grossman, as a consumer member. The Board appoints the Consumers' Counsel (or agency director), which is the position I hold. Attached to my testimony is a basic agency organization chart.

The Board Chair is also a standing member of the PUCO Nominating Council. The Consumers' Counsel is a standing member of the Ohio Public Benefits Advisory Board. And the Consumers' Counsel has the role to nominate candidates to the Governor for appointment of the public member to the Ohio Power Siting Board.

Most of OCC's advocacy services to Ohio residential consumers are at the Public Utilities Commission of Ohio, the Federal Energy Regulatory Commission, and the Supreme Court of Ohio, among other forums. We use the budget funding for legal representation of the public. We present the case for lower rates and greater service reliability for the utility's consumers. As stated, our consumer advocacy is pro-market (where competition can be effective) and anti-subsidy.

Regulatory cases tend to have dual tracks (and thus two uses of budget funds). One is litigation and the other is settlement negotiations. Settlement negotiations can sometimes rival the need for resources to litigate. Indeed, settlement negotiations and litigation preparation often need to be conducted simultaneously.

During our 46 years of service, the Consumers' Counsel has helped Ohioans save a lot of money on their utility bills. And those savings far surpass the cost of our budget.

For example, in 2021, OCC and NOPEC settled with FirstEnergy and others a massive \$306 million consumer rate reduction. The settlement benefited two million FirstEnergy consumers. The settlement was about FirstEnergy's charges for its too-high profits. Furthermore, that good result was enabled by a prior appeal that OCC alone successfully brought against the PUCO and FirstEnergy regarding the calculation of profits. In the appeal, the Ohio Supreme Court ruled that the PUCO was violating Ohio law against consumers.

OCC has settled (or not opposed) most of the last 19 completed rate cases that utilities have filed at the PUCO. For settlement examples, in 2021 OCC settled (with others) AEP's rate case for a residential rate decrease. In 2021, OCC settled several consolidated cases with Duke and others. Last year OCC and others settled a complex Columbia Gas rate case involving about 1.5 million consumers. Also, OCC successfully pressed an issue, joined by others, to make DP&L abide by its earlier settlement agreement with OCC. That issue involved about \$70 million annually that DP&L agreed to not yet charge to consumers. The PUCO then ruled in favor of consumers.

To leverage budget funds and protect the public, OCC has consumer advocacy partners. These partners include Legal Aid organizations, the Ohio Manufacturers' Association, and the Northeast Ohio Public Energy Council, among others. Sometimes, costs can be shared for litigation or settlement.

We have achieved cost savings. Those include: utilizing temporary staff or part-time staffing; being very deliberate about the hiring of staff for the level of productivity we need; having limited travel expense; using more virtual educational outreach to consumers compared to in-person meetings; and using some virtual training for OCC staff. And we manage continuing cost reductions from the drastic budget cut of 2011, referenced earlier.

The Consumers' Counsel also proposes amendments to the budget bill. Amendment language is attached to this testimony. Those amendments include: having OCC nominate candidates (to the governor) for appointing one member of the PUCO (see HB690, 134th G.A.) – similar to the current law for OCC to nominate the public member for the Power Siting Board; clarifying that OCC can accept grants; giving OCC authority to issue investigatory subpoenas; repealing the first sentence of ORC 4911.021 to restore OCC's ability to operate a call center for consumer complaints; and specifying that OCC can directly hire outside counsel (as utilities do and as OCC can do regarding other consultants) without a request to another agency (the Attorney General). As an independent agency with its own legal staff, OCC's Director should be able to exercise judgment about using its budget to retain outside counsel to serve consumers. Some of OCC's requests for outside counsel have been declined recently by the Attorney General's Office.

Further, OCC generally supports a proposal in HB33 for protecting low-income electric consumers. (Lines 76497 to 76542.) We and others have been advocating at the PUCO that an energy law was not intended to allow recent higher billings (than utilities' standard offers) to low-income consumers who receive bill-payment assistance. OCC generally supports the legislative change, if that is what's needed to fix the problem now for at-risk consumers.

In this regard, our message has been that *Ohio should lead with its heart* for protecting at-risk Ohio utility consumers. We and our low-income partners have sought regulatory remedies to protect these consumers.

OCC does oppose two subsidy provisions added by the House, at consumer expense. We recommend that the Senate remove the following provisions from the bill.

*Utility Consumer Cost to Support Electric Vehicle Charging:* Lines 76687 to 76695 of the House-passed bill allow electric utilities to charge their consumers for distribution costs related to electric vehicle (EV) charging stations that are owned by businesses in the market. LSC noted (on page 479 of its Comparison Document) that this arrangement for charging consumers is connected to "subsidies" for electric vehicle charging providers. The reference to "subsidies" appears on line 76694 of the House-passed bill. To protect a competitive marketplace for electric vehicle charging, the allowance of subsidies and other impediments to benefiting Ohioans through competition should be removed from the bill. Also, note that the federal government is already making substantial funds available to local governments for electric vehicle charging stations.

*Utility Consumer Cost for Infrastructure and Claimed Economic Development:* Lines 76543 through 76615 of the House-passed bill enable utilities to levy add-on charges to utility

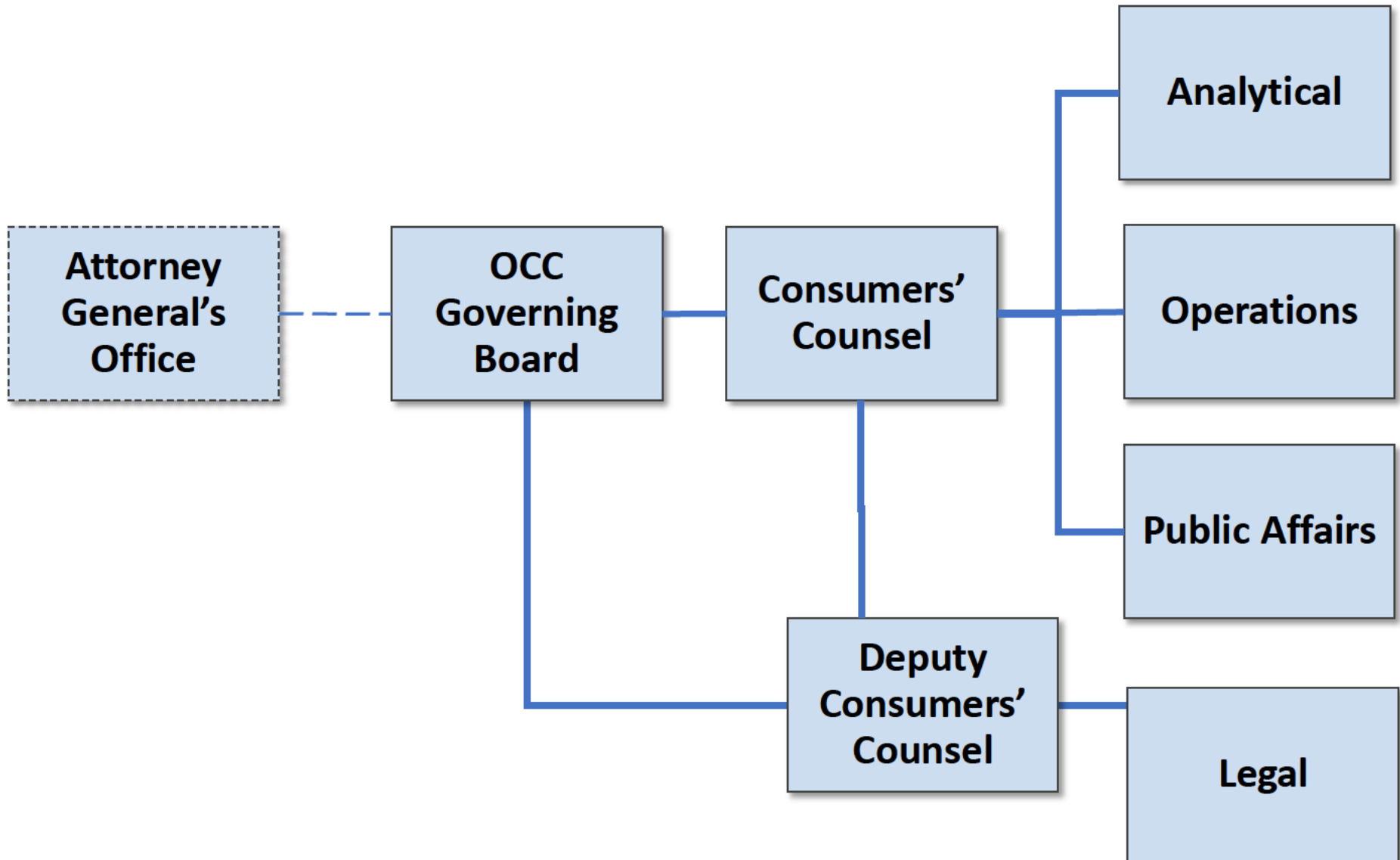
consumers for subsidizing infrastructure and claimed economic development. For example, line 76600 allows for utility “collection of net infrastructure development costs....” Well-designed economic development can be a good thing for the public. But the House-passed bill language is lacking adequate consumer protections. The bill should include consumer protections such as: requiring the use of ratemaking standards in R.C. 4909.15; a strict, low annual limit on charges to consumers for the program; more time for stakeholders to review funding applications; and principles to guide the PUCO’s discretion in selecting corporate recipients of consumer funds. But our primary recommendation is to remove from the bill this infrastructure subsidy language for charging utility consumers. The Ohio Manufacturers’ Association also has recommended removal of this language. In this regard, the budget bill already has an economic development program, the All Ohio Future Fund. And economic development programs are already available at the PUCO.

There has been a lot of news about \$60 million that FirstEnergy reportedly spent regarding House Bill 6. That incredible amount of money alone is about ten times OCC’s annual budget for all of our activities. It epitomizes our challenge for consumers in a field where influential utilities have so much money to spend for their initiatives.

I am grateful to the OCC Governing Board members and staff for their dedicated services to the public.

In conclusion, thank you for your consideration. *At OCC we put consumers first.*

# OFFICE OF THE OHIO CONSUMERS' COUNSEL BASIC ORGANIZATIONAL CHART



**In its budget request, the Consumers' Counsel sought the following five statutory changes for consumer protection. The language for the statutory changes is attached to this list.**

- 1. Removal of the prohibition for OCC to have a call center (4911.021)**
- 2. Authority for the OCC to accept grants (4911.181) from non-utility, non-regulated sources**
- 3. Authority for the OCC to issue Subpoenas (4911.21)**
- 4. The authority for the Consumers' Counsel to directly hire outside counsel**
- 5. The authority for the OCC to provide the Governor with nominations for one PUCO position; and the requirement that one commissioner be chosen from that list (4901.02)**

**ORC 4911.021 [OCC Can Operate Consumer Call Center]**

~~The consumers' counsel shall not operate a telephone call center for consumer complaints.~~

~~However, for~~ For any calls received by the consumers' counsel concerning consumer complaints, the consumers' counsel may assist consumers with their complaints or forward the calls to the public utilities commission's call center.



## **ORC 4911.181 [OCC Can Accept Grants]**

The consumers' counsel shall be able to accept grants in any form, which may be used to pay or reimburse the counsel for expenses incurred in the performance of the counsel's official duties, from public or private sources, including individuals, corporations, agencies and instrumentalities of the United States, or the state or any agency or political subdivision of the state, and excluding entities regulated by the public utilities commission or the federal energy regulatory commission or the affiliates of such regulated entities. The sum of any grant provided to the consumers' counsel shall not be subtracted from the total amount of funds appropriated to the consumers' counsel under 4911.18.

**ORC 4911.21 [OCC Can Issue Subpoenas]**

(A) The consumers' counsel may administer oaths, subpoena witnesses, adduce evidence, and require the production of any relevant matter. A motion to quash such a subpoena may only be filed in the court of common pleas in Franklin County. If a person fails to obey a subpoena or to produce any relevant matter under this section, the consumers' counsel may apply to the court of common pleas in Franklin County for an order compelling compliance and for sanctions for noncompliance.

## **ORC 4911.12 [OCC Can Retain Outside Counsel]**

(A) Notwithstanding Chapter 4117. of the Revised Code, the consumers' counsel may employ and fix the compensation of such officers, experts, lawyers, engineers, economists, statisticians, accountants, investigators, and employees in fiduciary, supervisory, or policy-making positions as are necessary to carry out Chapters 4909. and 4911. of the Revised Code or to perform the powers and duties conferred or imposed upon ~~him~~ the counsel by law. These employees shall be in the unclassified civil service, shall not be considered public employees for purposes of Chapter 4117. of the Revised Code, and shall serve at the pleasure of the counsel. The counsel may also employ such clerical employees, including clerks and stenographers, as are necessary to carry out Chapters 4909. And 4911. of the Revised Code or to perform ~~his~~ the duties and exercise the powers conferred by law upon ~~him~~ the counsel. These clerical employees shall be in the classified civil service. All officers, lawyers, engineers, economists, statisticians, accountants, investigators, stenographers, clerks, and other employees of the counsel and the expenses of the office of the counsel, the expenses of the counsel, and the expenses of the employees of such office shall be paid from funds appropriated for the use of the consumers' counsel after being approved by the consumers' counsel.

(B) The consumers' counsel may contract for the services of technically qualified persons in the area of public utility matters to assist the consumers' counsel ~~him~~ in carrying out the duties of ~~his~~ the consumers' counsel's office. The consumers' counsel may contract for the services of private outside counsel separate from the consumers' counsel's ability to obtain special counsel from the attorney general to assist the consumers' counsel in carrying out the duties of the consumers' counsel's office. Such persons shall be paid from funds appropriated for the use of the consumers' counsel after being approved by the consumers' counsel.

## **ORC 4901.02 [OCC Nominates PUCO Commissioner]**

(A) There is hereby created the public utilities commission of Ohio, by which name the commission may sue and be sued. The commission shall consist of five public utilities commissioners appointed by the governor with the advice and consent of the senate. The governor shall designate one of such commissioners to be the chairperson of the commission. The chairperson of the commission shall serve as chairperson at the governor's pleasure. The Four commissioners shall be selected from the lists of qualified persons submitted to the governor by the public utilities commission nominating council pursuant to section 4901.021 of the Revised Code. One commissioner shall be selected from the list of qualified persons submitted to the governor by the office of the consumers' counsel pursuant to section 4901.022 of the Revised Code. Not more than three of ~~said~~ the five commissioners shall belong to or be affiliated with the same political party. The commission shall possess the powers and duties specified in, as well as all powers necessary and proper to carry out the purposes of Chapters 4901., 4903., 4905., 4907., 4909., 4921., 4923., and 4927. of the Revised Code.

(B) A majority of the public utilities commissioners constitutes a quorum.

(C) The terms of office of public utilities commissioners shall be for five years, commencing on the eleventh day of April and ending on the tenth day of April, except that terms of the first commissioners shall be for one, two, three, four, and five years, respectively, as designated by the governor at the time of appointment. Each commissioner shall hold office from the date of appointment until the end of the term for which the commissioner was appointed. Any commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which the commissioner was appointed shall hold office for the remainder of such term. Any commissioner shall continue in office subsequent to the expiration date of the term for which the commissioner was appointed until the commissioner's successor takes office, or until a period of sixty days has elapsed, whichever occurs first. Each vacancy shall be filled by appointment within sixty days after the vacancy occurs.

(D) Public utilities commissioners nominated by the public utilities commission nominating council shall have at least three years of experience in one or more of the following fields: economics, law, finance, accounting, engineering, physical or natural sciences, natural resources, or environmental studies. At least one commissioner nominated by the council shall be an attorney admitted to the practice of law in any state or the District of Columbia.

(E) The chairperson of the commission shall be the head of the commission and its chief executive officer. The appointment or removal of employees of the commission or any division thereof, and all contracts for special service, are subject to the approval of the chairperson. The chairperson shall designate one of the commissioners to act as deputy chairperson, who shall possess during the absence or disability of the chairperson, all of the powers of the chairperson.

## **4901.021**

(A) There is hereby created a public utilities commission nominating council consisting of the following:

- (1) The chairperson of the consumers' counsel governing board;
- (2) The president of the accountancy board;
- (3) The chairperson of the state board of registration for professional engineers and surveyors;
- (4) The president of the Ohio state bar association;
- (5) The president of the Ohio municipal league;
- (6) The director of development or the director's department-employed designee;
- (7) A member of the public appointed by the speaker of the house of representatives, to serve at the pleasure of the speaker;

(8) A member of the public appointed by the president of the senate, to serve at the pleasure of the president;

(9) A representative of the regulated public utilities of the state appointed by the governor, to serve at the pleasure of the governor;

(10) A representative of the business community appointed by the governor, to serve at the pleasure of the governor;

(11) A representative of organized labor appointed by the governor, to serve at the pleasure of the governor;

(12) A senior citizen sixty-five years of age or older appointed by the director of aging, to serve at the pleasure of the director.

(B) At its first meeting each calendar year, the council shall select from among its members a chairperson and secretary. The council may adopt bylaws governing its proceedings.

(C) The council shall keep a record of its proceedings. Special meetings may be called by the chairperson, and shall be called by the chairperson upon receipt of a written request for a meeting signed by two or more members of the council. Written notice of the time and place of each meeting shall be sent to each member of the council. With the approval of the association's or league's governing body, the president of the Ohio state bar association or the president of the Ohio municipal league, respectively, may designate an alternate to represent the president at meetings of the council. With the approval of the board, the president of the accountancy board or the chairperson of the state board of registration for professional engineers and surveyors may designate such an alternate. Six members, or their alternates, constitute a quorum.

(D) The council shall do the following regarding public utilities commissioners it is required to nominate under section 4901.02 of the Revised Code:

(1) Review and evaluate possible appointees for the office of commissioner of the public utilities commission;

(2) Consistent with division (D) of section 4901.02 of the Revised Code, not more than eighty-five nor less than sixty days prior to the expiration of the term of a public utilities commissioner or not more than thirty days after the death of, resignation of, or termination of service by, a public utilities commissioner, provide the governor with a list of four individuals who are, in the judgment of the council, the most fully qualified to accede to the office of commissioner. The council shall not include the name of an individual upon the list, if the appointment of that individual by the governor would result in more than three members of the commission belonging to or being affiliated with the same political party. The council shall include on the list only the names of attorneys admitted to the practice of law in any state or the District of Columbia if an attorney must be appointed to fulfill the requirement of division (D) of section 4901.02 of the Revised Code. To the extent possible, in its performance of this duty, the council shall continually attempt to ensure that the primary focus of the background of two commissioners is in energy and that the primary focus of the background of two commissioners is in transportation or communications technology.

(E) In reviewing and evaluating possible appointees for the office of public utilities commissioner, the council may accept comments from, cooperate with, and request information from any person. The council may make recommendations to the general assembly concerning changes in legislation to assist the council in the performance of its duties.

(F) Within thirty days of receipt of the council's recommendations under division (D) of this section, the governor shall fill a vacancy occurring in the office of commissioner by appointment of one of the persons recommended by the council. Nothing in this section shall prevent the governor in the governor's discretion from rejecting all of the nominees of the council and reconvening the council in order to select four additional nominees. However, when the governor has reconvened the council and the council has provided the governor with a second list of four names, the governor shall make the appointment from

one of the names on the first list or the second list. Each appointment by the governor shall be subject to the advice and consent of the senate.

(G) Members of the council shall be compensated on a per diem basis pursuant to the procedures set forth in section 124.14 of the Revised Code plus reasonable travel expenses. All the expenses of the nominating council shall be paid from moneys appropriated to the public utilities commission for that purpose.

## **Sec. 4901.022**

(A) Beginning with the earliest scheduled appointment of a public utilities commissioner after the effective date of this section, the governor shall appoint one commissioner as a representative of the public from a list of three nominees submitted to the governor by the office of the consumers' counsel to serve for a period of five years.

(B) The appointment of a commissioner under this section is subject to the advice and consent of the senate.

(C) Not more than eighty-five nor less than sixty days prior to the expiration of the term of a public utilities commissioner appointed under this section or not more than thirty days after the death of, resignation of, or termination of service by a commissioner appointed under this section, the office of the consumers' counsel shall provide the governor with a list of three individuals who are, in the judgment of the counsel, qualified to accede to the office of commissioner.

(D) The counsel shall not include the name of an individual upon the nomination list if the appointment of that individual by the governor would result in more than three public utilities commissioners belonging to or being affiliated with the same political party.

(E) The nominations submitted by the counsel to the governor under this section are not subject to division (D) of section 4901.02 of the Revised Code. (F) Within thirty days of receipt of the counsel's nominations, the governor shall fill a vacancy in the office of commissioner by appointment of one of the



persons recommended by the counsel. The governor cannot reject all of the nominees provided by the counsel.