

As Reported by the Senate Energy and Public Utilities Committee

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Sub. H. B. No. 308

Representatives Stein, Brennan

Cosponsors: Representatives Gross, Lipps, King, Demetriou, Bird, Holmes, Denson, Seitz, Hoops, Klopfenstein, Abdullahi, Ray, Claggett, Hillyer, Dean, Robb Blasdel, Troy, Fowler Arthur, Dobos, Forhan, Weinstein, Brewer, McClain, Thomas, J., Johnson, Williams, Richardson, Carruthers, Click, Isaacsohn, Swearingen, Abrams, Barhorst, Callender, Creech, Cross, Daniels, Edwards, Hall, John, Jones, Kick, Lear, Lorenz, Loychik, Mathews, Merrin, Miller, M., Mohamed, Patton, Pavliga, Peterson, Pizzulli, Plummer, Roemer, Santucci, Schmidt, Somani, Willis, Young, T.

Senator Brenner

A BILL

To amend sections 155.34, 191.17, 191.21, 3714.07, 1
and 4928.01 of the Revised Code to increase the 2
term of the standard oil and gas lease for state 3
land, to make changes to the Ohio Broadband Pole 4
Replacement and Undergrounding Program, to 5
expand the purposes for which money derived from 6
certain disposal fees on construction and 7
demolition debris may be used by a board of 8
health, and to include energy generated by 9
nuclear reaction as green energy. 10

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

Section 1. That sections 155.34, 191.17, 191.21, 3714.07, 11
and 4928.01 of the Revised Code be amended to read as follows: 12

Sec. 155.34. (A) Not later than one hundred twenty days 13
after ~~the effective date of this amendment~~ September 30, 2021, 14
the oil and gas land management commission shall adopt rules in 15
accordance with Chapter 119. of the Revised Code establishing 16
both of the following: 17

(1) A standard lease form that shall be used by a state 18
agency for leases entered into under this chapter ~~that~~, is 19
consistent with the practices of the oil and natural gas 20
industries, and that contains all of the following: 21

(a) A prohibition against the use of the surface of the 22
parcel of land for oil and gas development unless the state 23
agency, in its sole discretion, chooses to negotiate and execute 24
a written surface use agreement established under this section; 25

(b) A one-eighth gross landowner royalty; 26

(c) A primary term of ~~three~~ five years; 27

(d) An option for the lessee to extend the primary term of 28
the lease for an additional three years by tendering to the 29
state agency the same bonus paid when first entering into the 30
lease. 31

(2) Any other procedures necessary to implement sections 32
155.30 to 155.36 of the Revised Code. 33

(B) Not later than one hundred ~~and~~ twenty days after ~~the~~ 34
~~effective date of this amendment~~ September 30, 2021, the 35
commission shall establish a standard surface use agreement that 36
a state agency shall use to authorize the use of the surface of 37
a leased parcel of land. 38

(C) Section 121.95 of the Revised Code does not apply to 39
rules adopted under this section and the commission is not 40

subject to any requirements of that section. 41

Sec. 191.17. (A) Not later than sixty days after receiving 42
an application forwarded by the department of development, the 43
broadband expansion program authority shall award program 44
reimbursements to the applicant for costs described in divisions 45
(A) and (B) of section 191.21 of the Revised Code after 46
reviewing the application, and establishing the applicant's 47
eligibility for reimbursement under the Ohio broadband pole 48
replacement and undergrounding program. ~~Except as provided in~~ 49
~~division (B) of this section, program~~ 50

(B) For pole replacement or mid-span pole installation 51
costs described under division (A) of section 191.21 of the 52
Revised Code, reimbursements shall be in an amount equal to the 53
lesser of ~~seven~~ either of the following: 54

(1) Seven thousand five hundred dollars or seventy-five 55
multiplied by the number of pole replacements and mid-span pole 56
installations in an application; 57

(2) Seventy-five per cent of the total amount paid by the 58
applicant for each pole replacement or mid-span pole 59
installation eligible costs therein. 60

~~(B)~~ (C) For undergrounding costs described under division 61
(B) of section 191.21 of the Revised Code, ~~the authority shall~~ 62
~~approve program~~ reimbursements ~~as provided in division (A) of~~ 63
~~this section~~ shall be in an amount not to exceed seventy-five per 64
cent of the total eligible costs therein, except that the 65
reimbursements may not exceed the reimbursement amount that 66
would be available under division ~~(A)~~ (B) of this section, if the 67
applicant ~~had attached broadband infrastructure to utility poles~~ 68
did a pole replacement or mid-span pole installation instead of 69

undergrounding that infrastructure. 70

Sec. 191.21. If the broadband expansion program authority 71
approves an application under the Ohio broadband pole 72
replacement and undergrounding program, the following costs are 73
eligible for reimbursement under the program: 74

(A) Actual and reasonable costs to perform a pole 75
replacement or mid-span pole installation, including the amount 76
of any expenditures to remove and dispose of an existing utility 77
pole, purchase and install a replacement utility pole, and 78
transfer any existing facilities to the new pole; 79

(B) Actual and reasonable undergrounding costs, including 80
the costs to dig a trench, perform directional boring, install 81
conduit, and seal the trench, if the undergrounding is ~~either~~ 82
one of the following: 83

(1) Required by law, regulation, or local ordinance; 84

(2) More economical than the cost of performing a pole 85
replacement; 86

(3) Needed because the process for obtaining access to 87
poles is causing, or is reasonably anticipated to cause, a delay 88
that will impact the ability of the applicant to meet deadlines 89
required by an agreement or terms of support to provide 90
qualifying broadband service to an address within an unserved 91
area. 92

(C) (1) Costs of deploying qualifying broadband service for 93
which the applicant is entitled to obtain full reimbursement 94
from another governmental entity are not eligible for 95
reimbursement under the program, except as provided in division 96
(C) (2) of this section. 97

(2) If an applicant's costs for deploying such service are 98
reimbursed in part by a governmental entity, the applicant may 99
apply for and obtain reimbursement under the program for the 100
portion of the eligible costs for which the applicant was not 101
reimbursed. 102

(D) For applicants that obtain broadband grant funding 103
from sources other than reimbursements under the program, the 104
authority may require the applicants to maintain accounting 105
records sufficient to demonstrate that the other grant funds do 106
not fully reimburse the same costs as those reimbursed under the 107
program. 108

Sec. 3714.07. (A) (1) For the purpose of assisting boards 109
of health and the environmental protection agency in 110
administering and enforcing this chapter and rules adopted under 111
it, there is hereby levied a fee of thirty cents per cubic yard 112
or sixty cents per ton, as applicable, on both of the following: 113

(a) The disposal of construction and demolition debris at 114
a construction and demolition debris facility that is licensed 115
under this chapter or at a solid waste facility that is licensed 116
under Chapter 3734. of the Revised Code; 117

(b) The disposal of asbestos or asbestos-containing 118
materials or products at a construction and demolition debris 119
facility that is licensed under this chapter or at a solid waste 120
facility that is licensed under Chapter 3734. of the Revised 121
Code. 122

(2) The owner or operator of a construction and demolition 123
debris facility or a solid waste facility shall determine if 124
cubic yards or tons will be used as the unit of measurement. If 125
basing the fee on cubic yards, the owner or operator shall 126

utilize either the maximum cubic yard capacity of the container, 127
or the hauling volume of the vehicle, that transports the 128
construction and demolition debris to the facility or the cubic 129
yards actually logged for disposal by the owner or operator in 130
accordance with rules adopted under section 3714.02 of the 131
Revised Code. If basing the fee on tonnage, the owner or 132
operator shall use certified scales to determine the tonnage of 133
construction and demolition debris that is disposed of. 134

(3) The owner or operator of a construction and demolition 135
debris facility or a solid waste facility shall calculate the 136
amount of money generated from the fee levied under division (A) 137
(1) of this section and shall hold that amount as a trustee for 138
the health district having jurisdiction over the facility, if 139
that district is on the approved list under section 3714.09 of 140
the Revised Code, or for the state. The owner or operator shall 141
prepare and file with the appropriate board of health or the 142
director of environmental protection monthly returns indicating 143
the total volume or weight, as applicable, of construction and 144
demolition debris and asbestos or asbestos-containing materials 145
or products disposed of at the facility and the total amount of 146
money generated during that month from the fee levied under 147
division (A)(1) of this section on the disposal of construction 148
and demolition debris and asbestos or asbestos-containing 149
materials or products. Not later than thirty days after the last 150
day of the month to which the return applies, the owner or 151
operator shall mail to the board of health or the director the 152
return for that month together with the amount of money 153
calculated under division (A)(3) of this section on the disposal 154
of construction and demolition debris and asbestos or asbestos- 155
containing materials or products during that month or may submit 156
the return and money electronically in a manner approved by the 157

director. The owner or operator may request, in writing, an 158
extension of not more than thirty days after the last day of the 159
month to which the return applies. A request for extension may 160
be denied. If the owner or operator submits the money late, the 161
owner or operator shall pay a penalty of ten per cent of the 162
amount of the money due for each month that it is late. 163

(4) Of the money that is submitted by a construction and 164
demolition debris facility or a solid waste facility on a per 165
cubic yard or per ton basis under this section, a board of 166
health shall transmit three cents per cubic yard or six cents 167
per ton, as applicable, to the director not later than forty- 168
five days after the receipt of the money. The money retained by 169
a board of health under this section shall be paid into a 170
special fund, which is hereby created in each health district, 171
and used solely for the following purposes: 172

(a) To administer and enforce this chapter and Chapter 173
3734. of the Revised Code and rules adopted under ~~it~~them; 174

(b) To abate abandoned accumulations of construction and 175
demolition debris as provided in section 3714.074 of the Revised 176
Code; 177

(c) To mitigate any impacts to public health, safety, and 178
welfare of any construction and demolition debris facility and 179
solid waste disposal or transfer facility within the health 180
district, including ensuring appropriate inspection of any such 181
facility to prevent any negative public health, safety, and 182
welfare impact. 183

The director shall transmit all money received under this 184
section to the treasurer of state to be deposited in the state 185
treasury to the credit of the waste management fund created in 186

section 3734.061 of the Revised Code. 187

(B) The board of health of a health district or the 188
director may enter into an agreement with the owner or operator 189
of a construction and demolition debris facility or a solid 190
waste facility for the quarterly payment of money generated from 191
the disposal fee as calculated in division (A) (3) of this 192
section. The board of health shall notify the director of any 193
such agreement. Not later than forty-five days after receipt of 194
the quarterly payment, the board of health shall transmit the 195
amount established in division (A) (4) of this section to the 196
director. The money retained by the board of health shall be 197
deposited in the special fund of the district as required under 198
that division. Upon receipt of the money from a board of health, 199
the director shall transmit the money to the treasurer of state 200
to be credited to the waste management fund. 201

(C) If a construction and demolition debris facility or a 202
solid waste facility is located within the territorial 203
boundaries of a municipal corporation or the unincorporated area 204
of a township, the municipal corporation or township may 205
appropriate up to four cents per cubic yard or up to eight cents 206
per ton of the disposal fee required to be paid by the facility 207
under division (A) (1) of this section for the same purposes that 208
a municipal corporation or township may levy a fee under 209
division (C) of section 3734.57 of the Revised Code. 210

The legislative authority of the municipal corporation or 211
township may appropriate the money from the fee by enacting an 212
ordinance or adopting a resolution establishing the amount of 213
the fee to be appropriated. Upon doing so, the legislative 214
authority shall mail a certified copy of the ordinance or 215
resolution to the board of health of the health district in 216

which the construction and demolition debris facility or the 217
solid waste facility is located or, if the facility is located 218
in a health district that is not on the approved list under 219
section 3714.09 of the Revised Code, to the director. Upon 220
receipt of the copy of the ordinance or resolution and not later 221
than forty-five days after receipt of money generated from the 222
fee, the board or the director, as applicable, shall transmit to 223
the treasurer or other appropriate officer of the municipal 224
corporation or clerk of the township that portion of the money 225
generated from the disposal fee by the owner or operator of the 226
facility that is required by the ordinance or resolution to be 227
paid to that municipal corporation or township. 228

Money received by the treasurer or other appropriate 229
officer of a municipal corporation under this division shall be 230
paid into the general fund of the municipal corporation. Money 231
received by the clerk of a township under this division shall be 232
paid into the general fund of the township. The treasurer or 233
other officer of the municipal corporation or the clerk of the 234
township, as appropriate, shall maintain separate records of the 235
money received under this division. 236

The legislative authority of a municipal corporation or 237
township may cease appropriating money under this division by 238
repealing the ordinance or resolution that was enacted or 239
adopted under this division. 240

The director shall adopt rules in accordance with Chapter 241
119. of the Revised Code establishing requirements for prorating 242
the amount of the fee that may be appropriated under this 243
division by a municipal corporation or township in which only a 244
portion of a construction and demolition debris facility is 245
located within the territorial boundaries of the municipal 246

corporation or township. 247

(D) The board of county commissioners of a county in which 248
a construction and demolition debris facility or a solid waste 249
facility is located may appropriate up to three cents per cubic 250
yard or up to six cents per ton of the disposal fee required to 251
be paid by the facility under division (A) (1) of this section 252
for the same purposes that a solid waste management district may 253
levy a fee under division (B) of section 3734.57 of the Revised 254
Code. 255

The board of county commissioners may appropriate the 256
money from the fee by adopting a resolution establishing the 257
amount of the fee to be appropriated. Upon doing so, the board 258
of county commissioners shall mail a certified copy of the 259
resolution to the board of health of the health district in 260
which the construction and demolition debris facility or the 261
solid waste facility is located or, if the facility is located 262
in a health district that is not on the approved list under 263
section 3714.09 of the Revised Code, to the director. Upon 264
receipt of the copy of the resolution and not later than forty- 265
five days after receipt of money generated from the fee, the 266
board of health or the director, as applicable, shall transmit 267
to the treasurer of the county that portion of the money 268
generated from the disposal fee by the owner or operator of the 269
facility that is required by the resolution to be paid to that 270
county. 271

Money received by a county treasurer under this division 272
shall be paid into the general fund of the county. The county 273
treasurer shall maintain separate records of the money received 274
under this division. 275

A board of county commissioners may cease appropriating 276

money under this division by repealing the resolution that was 277
adopted under this division. 278

(E) (1) This section does not apply to the disposal of 279
construction and demolition debris at a solid waste facility 280
that is licensed under Chapter 3734. of the Revised Code if 281
there is no construction and demolition debris facility licensed 282
under this chapter within thirty-five miles of the solid waste 283
facility as determined by a facility's property boundaries. 284

(2) This section does not apply to the disposal of 285
construction and demolition debris at a solid waste facility 286
that is licensed under Chapter 3734. of the Revised Code if the 287
owner or operator of the facility chooses to collect fees on the 288
disposal of the construction and demolition debris and asbestos 289
or asbestos-containing materials or products that are identical 290
to the fees that are collected under Chapters 343. and 3734. of 291
the Revised Code on the disposal of solid wastes at that 292
facility. 293

(3) This section does not apply to the disposal of source 294
separated materials that are exclusively composed of reinforced 295
or nonreinforced concrete, asphalt, clay tile, building or 296
paving brick, or building or paving stone at a construction and 297
demolition debris facility that is licensed under this chapter 298
when either of the following applies: 299

(a) The materials are placed within the limits of 300
construction and demolition debris placement at the facility as 301
specified in the license issued to the facility under section 302
3714.06 of the Revised Code, are not placed within the unloading 303
zone of the facility, and are used as a fire prevention measure 304
in accordance with rules adopted by the director under section 305
3714.02 of the Revised Code. 306

(b) The materials are not placed within the unloading zone 307
of the facility or within the limits of construction and 308
demolition debris placement at the facility as specified in the 309
license issued to the facility under section 3714.06 of the 310
Revised Code, but are used as fill material, either alone or in 311
conjunction with clean soil, sand, gravel, or other clean 312
aggregates, in legitimate fill operations for construction 313
purposes at the facility or to bring the facility up to a 314
consistent grade. 315

Sec. 4928.01. (A) As used in this chapter: 316

(1) "Ancillary service" means any function necessary to 317
the provision of electric transmission or distribution service 318
to a retail customer and includes, but is not limited to, 319
scheduling, system control, and dispatch services; reactive 320
supply from generation resources and voltage control service; 321
reactive supply from transmission resources service; regulation 322
service; frequency response service; energy imbalance service; 323
operating reserve-spinning reserve service; operating reserve- 324
supplemental reserve service; load following; back-up supply 325
service; real-power loss replacement service; dynamic 326
scheduling; system black start capability; and network stability 327
service. 328

(2) "Billing and collection agent" means a fully 329
independent agent, not affiliated with or otherwise controlled 330
by an electric utility, electric services company, electric 331
cooperative, or governmental aggregator subject to certification 332
under section 4928.08 of the Revised Code, to the extent that 333
the agent is under contract with such utility, company, 334
cooperative, or aggregator solely to provide billing and 335
collection for retail electric service on behalf of the utility 336

company, cooperative, or aggregator.	337
(3) "Certified territory" means the certified territory	338
established for an electric supplier under sections 4933.81 to	339
4933.90 of the Revised Code.	340
(4) "Competitive retail electric service" means a	341
component of retail electric service that is competitive as	342
provided under division (B) of this section.	343
(5) "Electric cooperative" means a not-for-profit electric	344
light company that both is or has been financed in whole or in	345
part under the "Rural Electrification Act of 1936," 49 Stat.	346
1363, 7 U.S.C. 901, and owns or operates facilities in this	347
state to generate, transmit, or distribute electricity, or a	348
not-for-profit successor of such company.	349
(6) "Electric distribution utility" means an electric	350
utility that supplies at least retail electric distribution	351
service.	352
(7) "Electric light company" has the same meaning as in	353
section 4905.03 of the Revised Code and includes an electric	354
services company, but excludes any self-generator to the extent	355
that it consumes electricity it so produces, sells that	356
electricity for resale, or obtains electricity from a generating	357
facility it hosts on its premises.	358
(8) "Electric load center" has the same meaning as in	359
section 4933.81 of the Revised Code.	360
(9) "Electric services company" means an electric light	361
company that is engaged on a for-profit or not-for-profit basis	362
in the business of supplying or arranging for the supply of only	363
a competitive retail electric service in this state. "Electric	364
services company" includes a power marketer, power broker,	365

aggregator, or independent power producer but excludes an 366
electric cooperative, municipal electric utility, governmental 367
aggregator, or billing and collection agent. 368

(10) "Electric supplier" has the same meaning as in 369
section 4933.81 of the Revised Code. 370

(11) "Electric utility" means an electric light company 371
that has a certified territory and is engaged on a for-profit 372
basis either in the business of supplying a noncompetitive 373
retail electric service in this state or in the businesses of 374
supplying both a noncompetitive and a competitive retail 375
electric service in this state. "Electric utility" excludes a 376
municipal electric utility or a billing and collection agent. 377

(12) "Firm electric service" means electric service other 378
than nonfirm electric service. 379

(13) "Governmental aggregator" means a legislative 380
authority of a municipal corporation, a board of township 381
trustees, or a board of county commissioners acting as an 382
aggregator for the provision of a competitive retail electric 383
service under authority conferred under section 4928.20 of the 384
Revised Code. 385

(14) A person acts "knowingly," regardless of the person's 386
purpose, when the person is aware that the person's conduct will 387
probably cause a certain result or will probably be of a certain 388
nature. A person has knowledge of circumstances when the person 389
is aware that such circumstances probably exist. 390

(15) "Level of funding for low-income customer energy 391
efficiency programs provided through electric utility rates" 392
means the level of funds specifically included in an electric 393
utility's rates on October 5, 1999, pursuant to an order of the 394

public utilities commission issued under Chapter 4905. or 4909. 395
of the Revised Code and in effect on October 4, 1999, for the 396
purpose of improving the energy efficiency of housing for the 397
utility's low-income customers. The term excludes the level of 398
any such funds committed to a specific nonprofit organization or 399
organizations pursuant to a stipulation or contract. 400

(16) "Low-income customer assistance programs" means the 401
percentage of income payment plan program, the home energy 402
assistance program, the home weatherization assistance program, 403
and the targeted energy efficiency and weatherization program. 404

(17) "Market development period" for an electric utility 405
means the period of time beginning on the starting date of 406
competitive retail electric service and ending on the applicable 407
date for that utility as specified in section 4928.40 of the 408
Revised Code, irrespective of whether the utility applies to 409
receive transition revenues under this chapter. 410

(18) "Market power" means the ability to impose on 411
customers a sustained price for a product or service above the 412
price that would prevail in a competitive market. 413

(19) "Mercantile customer" means a commercial or 414
industrial customer if the electricity consumed is for 415
nonresidential use and the customer consumes more than seven 416
hundred thousand kilowatt hours per year or is part of a 417
national account involving multiple facilities in one or more 418
states. 419

(20) "Municipal electric utility" means a municipal 420
corporation that owns or operates facilities to generate, 421
transmit, or distribute electricity. 422

(21) "Noncompetitive retail electric service" means a 423

component of retail electric service that is noncompetitive as 424
provided under division (B) of this section. 425

(22) "Nonfirm electric service" means electric service 426
provided pursuant to a schedule filed under section 4905.30 of 427
the Revised Code or pursuant to an arrangement under section 428
4905.31 of the Revised Code, which schedule or arrangement 429
includes conditions that may require the customer to curtail or 430
interrupt electric usage during nonemergency circumstances upon 431
notification by an electric utility. 432

(23) "Percentage of income payment plan arrears" means 433
funds eligible for collection through the percentage of income 434
payment plan rider, but uncollected as of July 1, 2000. 435

(24) "Person" has the same meaning as in section 1.59 of 436
the Revised Code. 437

(25) "Advanced energy project" means any technologies, 438
products, activities, or management practices or strategies that 439
facilitate the generation or use of electricity or energy and 440
that reduce or support the reduction of energy consumption or 441
support the production of clean, renewable energy for 442
industrial, distribution, commercial, institutional, 443
governmental, research, not-for-profit, or residential energy 444
users, including, but not limited to, advanced energy resources 445
and renewable energy resources. "Advanced energy project" also 446
includes any project described in division (A), (B), or (C) of 447
section 4928.621 of the Revised Code. 448

(26) "Regulatory assets" means the unamortized net 449
regulatory assets that are capitalized or deferred on the 450
regulatory books of the electric utility, pursuant to an order 451
or practice of the public utilities commission or pursuant to 452

generally accepted accounting principles as a result of a prior 453
commission rate-making decision, and that would otherwise have 454
been charged to expense as incurred or would not have been 455
capitalized or otherwise deferred for future regulatory 456
consideration absent commission action. "Regulatory assets" 457
includes, but is not limited to, all deferred demand-side 458
management costs; all deferred percentage of income payment plan 459
arrears; post-in-service capitalized charges and assets 460
recognized in connection with statement of financial accounting 461
standards no. 109 (receivables from customers for income taxes); 462
future nuclear decommissioning costs and fuel disposal costs as 463
those costs have been determined by the commission in the 464
electric utility's most recent rate or accounting application 465
proceeding addressing such costs; the undepreciated costs of 466
safety and radiation control equipment on nuclear generating 467
plants owned or leased by an electric utility; and fuel costs 468
currently deferred pursuant to the terms of one or more 469
settlement agreements approved by the commission. 470

(27) "Retail electric service" means any service involved 471
in supplying or arranging for the supply of electricity to 472
ultimate consumers in this state, from the point of generation 473
to the point of consumption. For the purposes of this chapter, 474
retail electric service includes one or more of the following 475
"service components": generation service, aggregation service, 476
power marketing service, power brokerage service, transmission 477
service, distribution service, ancillary service, metering 478
service, and billing and collection service. 479

(28) "Starting date of competitive retail electric 480
service" means January 1, 2001. 481

(29) "Customer-generator" means a user of a net metering 482

system. 483

(30) "Net metering" means measuring the difference in an 484
applicable billing period between the electricity supplied by an 485
electric service provider and the electricity generated by a 486
customer-generator that is fed back to the electric service 487
provider. 488

(31) "Net metering system" means a facility for the 489
production of electrical energy that does all of the following: 490

(a) Uses as its fuel either solar, wind, biomass, landfill 491
gas, or hydropower, or uses a microturbine or a fuel cell; 492

(b) Is located on a customer-generator's premises; 493

(c) Operates in parallel with the electric utility's 494
transmission and distribution facilities; 495

(d) Is intended primarily to offset part or all of the 496
customer-generator's requirements for electricity. For an 497
industrial customer-generator with a net metering system that 498
has a capacity of less than twenty megawatts and uses wind as 499
energy, this means the net metering system was sized so as to 500
not exceed one hundred per cent of the customer-generator's 501
annual requirements for electric energy at the time of 502
interconnection. 503

(32) "Self-generator" means an entity in this state that 504
owns or hosts on its premises an electric generation facility 505
that produces electricity primarily for the owner's consumption 506
and that may provide any such excess electricity to another 507
entity, whether the facility is installed or operated by the 508
owner or by an agent under a contract. 509

(33) "Rate plan" means the standard service offer in 510

effect on the effective date of the amendment of this section by	511
S.B. 221 of the 127th general assembly, July 31, 2008.	512
(34) "Advanced energy resource" means any of the	513
following:	514
(a) Any method or any modification or replacement of any	515
property, process, device, structure, or equipment that	516
increases the generation output of an electric generating	517
facility to the extent such efficiency is achieved without	518
additional carbon dioxide emissions by that facility;	519
(b) Any distributed generation system consisting of	520
customer cogeneration technology;	521
(c) Clean coal technology that includes a carbon-based	522
product that is chemically altered before combustion to	523
demonstrate a reduction, as expressed as ash, in emissions of	524
nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or	525
sulfur trioxide in accordance with the American society of	526
testing and materials standard D1757A or a reduction of metal	527
oxide emissions in accordance with standard D5142 of that	528
society, or clean coal technology that includes the design	529
capability to control or prevent the emission of carbon dioxide,	530
which design capability the commission shall adopt by rule and	531
shall be based on economically feasible best available	532
technology or, in the absence of a determined best available	533
technology, shall be of the highest level of economically	534
feasible design capability for which there exists generally	535
accepted scientific opinion;	536
(d) Advanced nuclear energy technology consisting of	537
generation III technology as defined by the nuclear regulatory	538
commission; other, later technology; or significant improvements	539

to existing facilities;	540
(e) Any fuel cell used in the generation of electricity,	541
including, but not limited to, a proton exchange membrane fuel	542
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or	543
solid oxide fuel cell;	544
(f) Advanced solid waste or construction and demolition	545
debris conversion technology, including, but not limited to,	546
advanced stoker technology, and advanced fluidized bed	547
gasification technology, that results in measurable greenhouse	548
gas emissions reductions as calculated pursuant to the United	549
States environmental protection agency's waste reduction model	550
(WARM);	551
(g) Demand-side management and any energy efficiency	552
improvement;	553
(h) Any new, retrofitted, refueled, or repowered	554
generating facility located in Ohio, including a simple or	555
combined-cycle natural gas generating facility or a generating	556
facility that uses biomass, coal, modular nuclear, or any other	557
fuel as its input;	558
(i) Any uprated capacity of an existing electric	559
generating facility if the uprated capacity results from the	560
deployment of advanced technology.	561
"Advanced energy resource" does not include a waste energy	562
recovery system that is, or has been, included in an energy	563
efficiency program of an electric distribution utility pursuant	564
to requirements under section 4928.66 of the Revised Code.	565
(35) "Air contaminant source" has the same meaning as in	566
section 3704.01 of the Revised Code.	567

(36) "Cogeneration technology" means technology that	568
produces electricity and useful thermal output simultaneously.	569
(37) (a) "Renewable energy resource" means any of the	570
following:	571
(i) Solar photovoltaic or solar thermal energy;	572
(ii) Wind energy;	573
(iii) Power produced by a hydroelectric facility;	574
(iv) Power produced by a small hydroelectric facility,	575
which is a facility that operates, or is rated to operate, at an	576
aggregate capacity of less than six megawatts;	577
(v) Power produced by a run-of-the-river hydroelectric	578
facility placed in service on or after January 1, 1980, that is	579
located within this state, relies upon the Ohio river, and	580
operates, or is rated to operate, at an aggregate capacity of	581
forty or more megawatts;	582
(vi) Geothermal energy;	583
(vii) Fuel derived from solid wastes, as defined in	584
section 3734.01 of the Revised Code, through fractionation,	585
biological decomposition, or other process that does not	586
principally involve combustion;	587
(viii) Biomass energy;	588
(ix) Energy produced by cogeneration technology that is	589
placed into service on or before December 31, 2015, and for	590
which more than ninety per cent of the total annual energy input	591
is from combustion of a waste or byproduct gas from an air	592
contaminant source in this state, which source has been in	593
operation since on or before January 1, 1985, provided that the	594

cogeneration technology is a part of a facility located in a 595
county having a population of more than three hundred sixty-five 596
thousand but less than three hundred seventy thousand according 597
to the most recent federal decennial census; 598

(x) Biologically derived methane gas; 599

(xi) Heat captured from a generator of electricity, 600
boiler, or heat exchanger fueled by biologically derived methane 601
gas; 602

(xii) Energy derived from nontreated by-products of the 603
pulping process or wood manufacturing process, including bark, 604
wood chips, sawdust, and lignin in spent pulping liquors. 605

"Renewable energy resource" includes, but is not limited 606
to, any fuel cell used in the generation of electricity, 607
including, but not limited to, a proton exchange membrane fuel 608
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or 609
solid oxide fuel cell; wind turbine located in the state's 610
territorial waters of Lake Erie; methane gas emitted from an 611
abandoned coal mine; waste energy recovery system placed into 612
service or retrofitted on or after the effective date of the 613
amendment of this section by S.B. 315 of the 129th general 614
assembly, September 10, 2012, except that a waste energy 615
recovery system described in division (A) (38) (b) of this section 616
may be included only if it was placed into service between 617
January 1, 2002, and December 31, 2004; storage facility that 618
will promote the better utilization of a renewable energy 619
resource; or distributed generation system used by a customer to 620
generate electricity from any such energy. 621

"Renewable energy resource" does not include a waste 622
energy recovery system that is, or was, on or after January 1, 623

2012, included in an energy efficiency program of an electric 624
distribution utility pursuant to requirements under section 625
4928.66 of the Revised Code. 626

(b) As used in division (A)(37) of this section, 627
"hydroelectric facility" means a hydroelectric generating 628
facility that is located at a dam on a river, or on any water 629
discharged to a river, that is within or bordering this state or 630
within or bordering an adjoining state and meets all of the 631
following standards: 632

(i) The facility provides for river flows that are not 633
detrimental for fish, wildlife, and water quality, including 634
seasonal flow fluctuations as defined by the applicable 635
licensing agency for the facility. 636

(ii) The facility demonstrates that it complies with the 637
water quality standards of this state, which compliance may 638
consist of certification under Section 401 of the "Clean Water 639
Act of 1977," 91 Stat. 1598, 1599, 33 U.S.C. 1341, and 640
demonstrates that it has not contributed to a finding by this 641
state that the river has impaired water quality under Section 642
303(d) of the "Clean Water Act of 1977," 114 Stat. 870, 33 643
U.S.C. 1313. 644

(iii) The facility complies with mandatory prescriptions 645
regarding fish passage as required by the federal energy 646
regulatory commission license issued for the project, regarding 647
fish protection for riverine, anadromous, and catadromous fish. 648

(iv) The facility complies with the recommendations of the 649
Ohio environmental protection agency and with the terms of its 650
federal energy regulatory commission license regarding watershed 651
protection, mitigation, or enhancement, to the extent of each 652

agency's respective jurisdiction over the facility. 653

(v) The facility complies with provisions of the 654
"Endangered Species Act of 1973," 87 Stat. 884, 16 U.S.C. 1531 655
to 1544, as amended. 656

(vi) The facility does not harm cultural resources of the 657
area. This can be shown through compliance with the terms of its 658
federal energy regulatory commission license or, if the facility 659
is not regulated by that commission, through development of a 660
plan approved by the Ohio historic preservation office, to the 661
extent it has jurisdiction over the facility. 662

(vii) The facility complies with the terms of its federal 663
energy regulatory commission license or exemption that are 664
related to recreational access, accommodation, and facilities 665
or, if the facility is not regulated by that commission, the 666
facility complies with similar requirements as are recommended 667
by resource agencies, to the extent they have jurisdiction over 668
the facility; and the facility provides access to water to the 669
public without fee or charge. 670

(viii) The facility is not recommended for removal by any 671
federal agency or agency of any state, to the extent the 672
particular agency has jurisdiction over the facility. 673

(c) The standards in divisions (A) (37) (b) (i) to (viii) of 674
this section do not apply to a small hydroelectric facility 675
under division (A) (37) (a) (iv) of this section. 676

(38) "Waste energy recovery system" means either of the 677
following: 678

(a) A facility that generates electricity through the 679
conversion of energy from either of the following: 680

(i) Exhaust heat from engines or manufacturing, 681
industrial, commercial, or institutional sites, except for 682
exhaust heat from a facility whose primary purpose is the 683
generation of electricity; 684

(ii) Reduction of pressure in gas pipelines before gas is 685
distributed through the pipeline, provided that the conversion 686
of energy to electricity is achieved without using additional 687
fossil fuels. 688

(b) A facility at a state institution of higher education 689
as defined in section 3345.011 of the Revised Code that recovers 690
waste heat from electricity-producing engines or combustion 691
turbines and that simultaneously uses the recovered heat to 692
produce steam, provided that the facility was placed into 693
service between January 1, 2002, and December 31, 2004. 694

(39) "Smart grid" means capital improvements to an 695
electric distribution utility's distribution infrastructure that 696
improve reliability, efficiency, resiliency, or reduce energy 697
demand or use, including, but not limited to, advanced metering 698
and automation of system functions. 699

(40) "Combined heat and power system" means the 700
coproduction of electricity and useful thermal energy from the 701
same fuel source designed to achieve thermal-efficiency levels 702
of at least sixty per cent, with at least twenty per cent of the 703
system's total useful energy in the form of thermal energy. 704

(41) "Legacy generation resource" means all generating 705
facilities owned directly or indirectly by a corporation that 706
was formed prior to 1960 by investor-owned utilities for the 707
original purpose of providing power to the federal government 708
for use in the nation's defense or in furtherance of national 709

interests, including the Ohio valley electric corporation. 710

(42) "Prudently incurred costs related to a legacy 711
generation resource" means costs, including deferred costs, 712
allocated pursuant to a power agreement approved by the federal 713
energy regulatory commission that relates to a legacy generation 714
resource, less any revenues realized from offering the 715
contractual commitment for the power agreement into the 716
wholesale markets, provided that where the net revenues exceed 717
net costs, those excess revenues shall be credited to customers. 718
Such costs shall exclude any return on investment in common 719
equity and, in the event of a premature retirement of a legacy 720
generation resource, shall exclude any recovery of remaining 721
debt. Such costs shall include any incremental costs resulting 722
from the bankruptcy of a current or former sponsor under such 723
power agreement or co-owner of the legacy generation resource if 724
not otherwise recovered through a utility rate cost recovery 725
mechanism. 726

~~(43)~~ (43) (a) "Green energy" means any energy generated by 727
using an energy resource that does one or more of the following: 728

~~(a)~~ (i) Releases reduced air pollutants, thereby reducing 729
cumulative air emissions; 730

~~(b)~~ (ii) Is more sustainable and reliable relative to some 731
fossil fuels. 732

(b) "Green energy" includes energy generated ~~by using~~ 733
~~natural gas the following as a resource:~~ 734

(i) Natural gas as a resource; 735

(ii) Nuclear reaction. 736

(B) For the purposes of this chapter, a retail electric 737

service component shall be deemed a competitive retail electric 738
service if the service component is competitive pursuant to a 739
declaration by a provision of the Revised Code or pursuant to an 740
order of the public utilities commission authorized under 741
division (A) of section 4928.04 of the Revised Code. Otherwise, 742
the service component shall be deemed a noncompetitive retail 743
electric service. 744

Section 2. That existing sections 155.34, 191.17, 191.21, 745
3714.07, and 4928.01 of the Revised Code are hereby repealed. 746