

**As Reported by the House Economic and Workforce Development  
Committee**

**135th General Assembly**

**Regular Session  
2023-2024**

**Sub. S. B. No. 41**

**Senator Roegner**

**Cosponsors: Senators Brenner, Cirino, Dolan, Gavarone, Hackett, Hoagland,  
Landis, Lang, Reineke, Romanchuk, Rulli, Schaffer, Wilkin, Wilson**

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**A BILL**

To amend sections 191.17, 191.21, 1707.043, 1  
3781.1011, 3781.19, 3781.20, 4928.01, 4939.07, 2  
and 5739.03 and to enact sections 3781.21, 3  
4113.14, 4123.325, and 4905.301 of the Revised 4  
Code to make changes to the law relating to real 5  
property, securities, public utilities, 6  
employment, energy efficiency, broadband, and 7  
taxation, and to name a portion of the act the 8  
Pay Stub Protection Act. 9

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

**Section 1.** That sections 191.17, 191.21, 1707.043, 10  
3781.1011, 3781.19, 3781.20, 4928.01, 4939.07, and 5739.03 be 11  
amended and sections 3781.21, 4113.14, 4123.325, and 4905.301 of 12  
the Revised Code be enacted to read as follows: 13

**Sec. 191.17.** (A) Not later than sixty days after receiving 14  
an application forwarded by the department of development, the 15  
broadband expansion program authority shall award program 16  
reimbursements to the applicant for costs described in divisions 17

(A) and (B) of section 191.21 of the Revised Code after 18  
reviewing the application, and establishing the applicant's 19  
eligibility for reimbursement under the Ohio broadband pole 20  
replacement and undergrounding program. ~~Except as provided in-~~ 21  
~~division (B) of this section, program-~~ 22

(B) For pole replacement or mid-span pole installation 23  
costs described under division (A) of section 191.21 of the 24  
Revised Code, reimbursements shall be in an amount equal to the 25  
lesser of ~~seven~~ either of the following: 26

(1) Seven thousand five hundred dollars ~~or seventy-five~~ 27  
multiplied by the number of pole replacements and mid-span pole 28  
installations in an application; 29

(2) ~~Seventy-five~~ per cent of the total ~~amount paid by the~~ 30  
applicant for each pole replacement or mid span pole 31  
installation ~~eligible~~ costs therein. 32

~~(B)~~ (C) For undergrounding costs described under division 33  
(B) of section 191.21 of the Revised Code, ~~the authority shall~~ 34  
~~approve program reimbursements as provided in division (A) of~~ 35  
~~this section~~ shall be in an amount not to exceed seventy-five per 36  
cent of the total eligible costs therein, except that the 37  
reimbursements may not exceed the reimbursement amount that 38  
would be available under division ~~(A)~~ (B) of this section, if the 39  
applicant ~~had attached broadband infrastructure to utility poles-~~ 40  
did a pole replacement or mid-span pole installation instead of 41  
undergrounding that infrastructure. 42

**Sec. 191.21.** If the broadband expansion program authority 43  
approves an application under the Ohio broadband pole 44  
replacement and undergrounding program, the following costs are 45  
eligible for reimbursement under the program: 46

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

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

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

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

(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.

(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.

(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.

(D) For applicants that obtain broadband grant funding

from sources other than reimbursements under the program, the 76  
authority may require the applicants to maintain accounting 77  
records sufficient to demonstrate that the other grant funds do 78  
not fully reimburse the same costs as those reimbursed under the 79  
program. 80

**Sec. 1707.043.** (A) For the purpose of preventing 81  
manipulative practices by a person who makes a proposal, or 82  
publicly discloses the intention or possibility of making a 83  
proposal, to acquire control of a corporation formed under the 84  
laws of this state, any profit realized, directly or indirectly, 85  
from the disposition of any equity securities of a corporation 86  
by a person who, within eighteen months before disposition 87  
directly or indirectly, alone or in concert with others, made a 88  
proposal, or publicly disclosed the intention or possibility of 89  
making a proposal, to acquire control of the corporation and 90  
engages in a manipulative practice with respect to such 91  
proposal, inures to and is recoverable by the corporation. 92

(B) No profit from the disposition of equity securities 93  
shall inure to or be recoverable by a corporation under this 94  
section if any of the following apply: 95

(1) The equity securities were acquired by the person 96  
disposing of them at any of the following times: 97

(a) More than eighteen months before the date on which the 98  
proposal or public disclosure was made; 99

(b) Before the effective date of this section; 100

(c) Pursuant to a contract executed prior to the effective 101  
date of this section. 102

(2) The person who disposed of the equity securities 103  
proves in a court of competent jurisdiction either of the 104

following:	105
(a) At the time the proposals or public disclosures were made, the person's sole purpose in making the proposals or public disclosures was to succeed in acquiring control of the corporation and under the circumstances, including, without limitation, the person's proposed price, financing and other acquisition plans, the person's financial resources and capabilities, and all other alternatives reasonably anticipated to become available to the corporation's shareholders, there were reasonable grounds to believe that the person would acquire control of the corporation;	106 107 108 109 110 111 112 113 114 115
(b) The person's public disclosure concerning the intention or possibility of making a proposal to acquire control of the corporation and all other potentially manipulative conduct and practices by or on <del>his</del> <u>the person's</u> behalf were not effected with a purpose of affecting market trading and thereby increasing any profit or decreasing any loss which the person might realize, directly or indirectly, from the disposition of the equity securities and did not have a material effect upon the price or volume of market trading in the equity securities. Evidence with respect to the past practices of such person is admissible and relevant in respect to the person's intent or purpose under divisions (B) (2) (a) and (b) of this section.	116 117 118 119 120 121 122 123 124 125 126 127
(3) The aggregate amount of all profit the person realized, directly or indirectly, does not exceed two hundred fifty thousand dollars.	128 129 130
(C) Equity securities acquired by a person as a result of a share split, share dividend, or other similar distribution by a corporation of equity securities issued by it not involving a sale of the equity securities, is deemed to have been acquired	131 132 133 134

by such person on the date on which the person acquired the 135  
equity security with respect to which the equity securities were 136  
subsequently distributed by the corporation. 137

(D) No profit or any portion thereof recoverable by a 138  
corporation in an action brought under section 16(b) of the 139  
federal "securities exchange act of 1934," is recoverable by the 140  
corporation under this section. 141

(E) (1) A corporation may commence an action to recover any 142  
profit recoverable under this section in any court of competent 143  
jurisdiction. If the corporation fails or refuses to bring the 144  
action within sixty days after written request by any holder of 145  
any equity security in the corporation or fails to diligently 146  
prosecute the action, the holder may bring the action on behalf 147  
of the corporation. If a court of competent jurisdiction enters 148  
a judgment requiring the payment of any such profits, the party 149  
who brought the action is entitled to all costs, including 150  
reasonable attorney fees, incurred in connection with the 151  
enforcement of this section. 152

(2) No action shall be brought by or on behalf of a 153  
corporation upon a cause of action arising under this section at 154  
any time after two years from the date on which the disposition 155  
of equity securities occurred. 156

(F) This section does not apply to any corporation which 157  
does not have issued and outstanding shares that are listed on a 158  
national securities exchange or are regularly quoted in an over- 159  
the-counter market by one or more members of a national or 160  
affiliated securities association or to any corporation whose 161  
articles or regulations provide by specific reference to this 162  
section that this section does not apply to the corporation and 163  
its equity securities. 164

(G) The division of securities, pursuant to Chapter 119.	165
of the Revised Code, may adopt reasonable rules to define terms	166
used in this section and types of conduct or practices which the	167
division determines are either of the following:	168
(1) Comprehended as within the purpose of this section as	169
set forth in division (A) of this section and therefore subject	170
to this section;	171
(2) Not comprehended as within the purpose of division (A)	172
of this section and therefore exempt from this section.	173
(H) As used in this section:	174
(1) "Corporation" and "person" have the same meanings as	175
in section 1701.01 of the Revised Code.	176
(2) "Profit from the disposition of equity securities of a	177
corporation" means both of the following:	178
(a) The excess of the fair market value of the	179
consideration directly or indirectly received or to be received	180
from the disposition, less the usual and customary broker's	181
commissions actually paid in connection with the disposition,	182
over the fair market value of the consideration directly or	183
indirectly paid for the acquisition of the equity securities,	184
plus the usual and customary broker's commissions actually paid	185
in connection with the acquisition;	186
(b) The value of any tax benefit to which a person is	187
directly or indirectly entitled resulting from disposition of	188
equity securities of the corporation for consideration with a	189
value that is less than the fair market value of the equity	190
securities at the time of disposition.	191
(3) "Disposition of equity securities of a corporation"	192

means any sale, exchange, transfer, or other disposition of any 193  
kind of the equity securities to the corporation or any contract 194  
to sell, exchange, transfer, or otherwise dispose of the equity 195  
securities, ~~to any other person, including the corporation,~~ for 196  
valuable consideration. 197

(4) "Equity securities" means any of the following: 198

(a) Shares of any class or series of a corporation; 199

(b) Any securities convertible into or exercisable for 200  
shares of any class or series of a corporation, with or without 201  
additional consideration; 202

(c) Any warrant, right, or option to subscribe for or to 203  
purchase shares of any class or series of the corporation, or 204  
any securities convertible into shares of any class or series; 205

(d) Any interest, direct or indirect, in any equity 206  
securities. 207

(5) For purposes of this section only, "manipulative 208  
practices" means either or both of the following: 209

(a) The act, sometimes referred to as greenmail, of 210  
staging a hostile takeover bid in order to manipulate a 211  
corporation into repurchasing the corporation's own common stock 212  
at a premium above the current market price; 213

(b) Any other act that the division of securities defines 214  
as a "manipulative practice" pursuant to division (G) of this 215  
section. 216

(6) "Publicly disclosed," "publicly discloses," and 217  
"public disclosure" includes, but is not limited to, any 218  
disclosure, whether or not required by law, that becomes public 219  
and was made or caused to be made by a person: 220



(a) With the intent or expectation that the disclosure 221  
become public; or 222

(b) To another person where the person making or causing 223  
to be made the disclosure, knows or reasonably should know, that 224  
the person who receives the disclosure is not under an 225  
obligation to refrain from making the disclosure, directly or 226  
indirectly, to the public and such person does make the 227  
disclosure, directly or indirectly, to the public. 228

~~(6)~~ (7) "To acquire control of the corporation" means the 229  
acquisition by any person, directly or indirectly, either alone 230  
or in concert with another person, of the power, whether or not 231  
exercised, to direct or cause the direction of the management 232  
and policies of the corporation, whether through the ownership 233  
of voting shares, or by contract ~~or otherwise~~, unless any 234  
proposal, or public disclosure of the intention or possibility 235  
of making a proposal, to acquire control of the corporation made 236  
by such person affirmatively states that the person does not 237  
intend, either alone or in concert with another person, to 238  
exercise control of the corporation and such person does not, 239  
directly or indirectly, exercise control of the corporation 240  
prior to ~~his~~ the person's disposition of any equity securities 241  
of the corporation. For purposes of this section only, "to 242  
acquire control of the corporation" does not include attempts by 243  
shareholders to influence a corporation's policies or actions, 244  
including attempts to nominate candidates for director of the 245  
corporation. 246

(I) The general assembly, in amending this section 247  
pursuant to this act, hereby declares its intent to clarify, and 248  
not alter, the scope of conduct or practices under this section. 249

**Sec. 3781.1011.** (A) As used in this section: 250

(1) "Alarm system" means a device or system that transmits a signal intended to summon law enforcement to a county, township, or municipal corporation in response to an alleged violation of an offense under Chapter 2911. of the Revised Code occurring in a nonresidential zone of the applicable county, township, or municipal corporation. The term includes an alarm that emits an audible signal on the exterior of a structure. The term does not include an alarm installed on a vehicle or an alarm designed to alert only the inhabitants within the premises. The term includes an alarm system for which a permit may be issued under any applicable section of the Revised Code or Ohio Constitution.

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

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

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

(c) Interfaces with a monitored alarm system;

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

(e) Is four to twelve inches behind a non-battery-charged perimeter fence, wall, or structure that is not less than five

<u>feet in height;</u>	280
<u>(f) Is ten feet in height, or two feet higher than the</u>	281
<u>height of the non-battery-charged perimeter fence, wall, or</u>	282
<u>structure, whichever is higher;</u>	283
<u>(g) Is marked with conspicuous warning signs that are</u>	284
<u>located on the battery-charged fence at not more than thirty-</u>	285
<u>foot intervals and that read: "WARNING-SHOCK HAZARD" or a</u>	286
<u>similar warning message.</u>	287
(3) "Permit" means a certificate, license, permit, or	288
other form of permission that authorizes a person to engage in	289
an action.	290
(B) <del>A-Subject to division (D) of this section, a person</del>	291
<del>may install, operate, and use a battery-charged fence installed-</del>	292
<del>on private, nonresidential property within a county, township,</del>	293
<del>or municipal corporation shall satisfy all of the following:</del>	294
<del>(1) Interface with a monitored alarm system;</del>	295
<del>(2) Have a battery operated energizer that is powered by a</del>	296
<del>commercial storage battery that is not more than twelve volts of</del>	297
<del>direct current, and that meets the standards set forth by the</del>	298
<del>international electrotechnical commission 60335-02-76 current-</del>	299
<del>edition;</del>	300
<del>(3) Be completely surrounded by a nonelectric perimeter</del>	301
<del>fence or wall that is not less than five feet in height;</del>	302
<del>(4) Be not more than the higher of ten feet in height, or</del>	303
<del>two feet higher than the height of the nonelectric perimeter</del>	304
<del>fence or wall; and</del>	305
<del>(5) Be marked with conspicuous warning signs that are</del>	306
<del>located on the battery charged fence at not more than forty foot-</del>	307

~~intervals and that read: "WARNING—ELECTRIC FENCE."~~ 308

(C) Division (B) of this section does not apply to any of 309  
the following fences, regardless of whether such fences are 310  
battery-charged fences under division (A)(2) of this section: 311

(1) Fences that are required to be constructed by persons 312  
or corporations owning, controlling, or managing a railroad 313  
pursuant to Chapter 4959. of the Revised Code; 314

(2) Partition fences constructed in accordance with 315  
Chapter 971. of the Revised Code; 316

(3) Fences constructed or installed by the state or a 317  
political subdivision, or by the federal government; 318

(4) Fences installed at a facility that is an accredited 319  
member of the association of zoos and aquariums or the 320  
zoological association of America and that is licensed by the 321  
United States department of agriculture under the federal animal 322  
welfare act; 323

(5) Fences installed at a wildlife sanctuary; 324

(6) Fences constructed and used for agricultural purposes, 325  
as agriculture is defined in either section 303.01 or 519.01 of 326  
the Revised Code. 327

(D) ~~Notwithstanding any other section of the Revised Code,~~ 328  
~~a~~A county, township, or municipal corporation may adopt and 329  
enforce an ordinance, order, resolution, or regulation that does 330  
any of the following: 331

(1) Imposes installation ~~or , operational, or use~~ 332  
requirements for battery-charged fences in nonresidential 333  
properties that ~~are do not in conflict with the requirements and~~ 334  
~~standards set forth in~~ expressly, implicitly, or functionally 335

prohibit the installation, operation, or use of such fences, as 336  
authorized under division (B) of this section; 337

(2) Requires a permit or fee for the installation, 338  
operation, or use of a battery-charged fence to which this 339  
section applies in accordance with a permit or fee for an alarm 340  
system issued or charged by the county, township, or municipal 341  
corporation; 342

(3) ~~Prohibits~~ Completely prohibits or imposes generally 343  
applicable requirements on the installation, operation, or use 344  
of a battery-charged fence non-battery-charged perimeter fence, 345  
wall, or structure or any system that does not constitute a 346  
battery-charged fence under division (A) (2) of this section in a 347  
nonresidential zone ~~that does not meet the requirements and~~ 348  
~~standards set forth in division (B) of this section.~~ 349

**Sec. 3781.19.** There is hereby established in the 350  
department of commerce a board of building appeals consisting of 351  
five members who shall be appointed by the governor with the 352  
advice and consent of the senate. Terms of office shall be for 353  
four years, commencing on the fourteenth day of October and 354  
ending on the thirteenth day of October. Each member shall hold 355  
office from the date of appointment until the end of the term 356  
for which the member was appointed. Any member appointed to fill 357  
a vacancy occurring prior to the expiration of the term for 358  
which the member's predecessor was appointed shall hold office 359  
for the remainder of such term. Any member shall continue in 360  
office subsequent to the expiration date of the member's term 361  
until a successor takes office, or until a period of sixty days 362  
has elapsed, whichever occurs first. One member shall be an 363  
attorney-at-law, admitted to the bar of this state and of the 364  
remaining members, one shall be a registered architect and one 365

shall be a professional engineer, each of whom shall be duly 366  
licensed to practice their respective professions in this state, 367  
one shall be a fire prevention officer qualified under section 368  
3737.66 of the Revised Code, and one shall be a person with 369  
recognized ability in the plumbing or pipefitting profession. No 370  
member of the board of building standards shall be a member of 371  
the board of building appeals. Each member shall be paid an 372  
amount fixed pursuant to Chapter 124. of the Revised Code per 373  
diem. The department shall provide and assign to the board such 374  
employees as are required by the board to perform its functions. 375  
The board may adopt its own rules of procedure not inconsistent 376  
with sections 3781.06 to 3781.18 and 3791.04 of the Revised 377  
Code, and may change them in its discretion. The board may 378  
establish reasonable fees, based on actual costs for 379  
administration of filing and processing, not to exceed two 380  
hundred dollars, for the costs of filing and processing appeals. 381  
The board may establish additional fees for any expedited appeal 382  
subject to section 3781.21 of the Revised Code. A full and 383  
complete record of all proceedings of the board shall be kept 384  
and be open to public inspection. 385

In the enforcement by any department of the state or any 386  
political subdivision of this chapter and Chapter 3791., and 387  
sections 3737.41, 3737.42, 4104.02, 4104.06, 4104.43, 4104.44, 388  
4104.45, 4105.011, and 4105.11 of the Revised Code and any rule 389  
made thereunder, such department is the agency referred to in 390  
sections 119.07, 119.08, and 119.10 of the Revised Code. 391

The appropriate municipal or county board of appeals, 392  
where one exists, certified pursuant to section 3781.20 of the 393  
Revised Code shall conduct the adjudication hearing referred to 394  
in sections 119.09 to 119.13 and required by section 3781.031 of 395  
the Revised Code. If there is no certified municipal or county 396

board of appeals, the board of building appeals shall conduct 397  
the adjudication hearing. If the adjudication hearing concerns 398  
section 3781.111 of the Revised Code or any rule made 399  
thereunder, reasonable notice of the time, date, place, and 400  
subject of the hearing shall be given to any local corporation, 401  
association, or other organization composed of or representing 402  
persons with disabilities, as defined in section 3781.111 of the 403  
Revised Code, or if there is no local organization, then to any 404  
statewide corporation, association, or other organization 405  
composed of or representing persons with disabilities. 406

In addition to the provisions of Chapter 119. of the 407  
Revised Code, the municipal, county, or state board of building 408  
appeals, as the agency conducting the adjudication hearing, may 409  
reverse or modify the order of the enforcing agency if it finds 410  
that the order is contrary to this chapter and Chapters 3791. 411  
and 4104., and sections 3737.41, 3737.42, 4105.011, and 4105.11 412  
of the Revised Code and any rule made thereunder or to a fair 413  
interpretation or application of such laws or any rule made 414  
thereunder, or that a variance from the provisions of such laws 415  
or any rule made thereunder, in the specific case, will not be 416  
contrary to the public interest where a literal enforcement of 417  
such provisions will result in unnecessary hardship. 418

~~The~~ Except for expedited proceedings pursuant to section 419  
3781.21 of the Revised Code, the state board of building appeals 420  
or a certified municipal or county board of appeals shall render 421  
its decision within thirty days after the date of the 422  
adjudication hearing. Following the adjudication hearing, any 423  
municipal or county officer, official municipal or county board, 424  
or person who was a party to the hearing before the municipal or 425  
county board of appeals may apply to the state board of appeals 426  
for a de novo hearing before the state board, or may appeal 427

directly to the court of common pleas pursuant to section 428  
3781.031 of the Revised Code. 429

In addition, any local corporation, association, or other 430  
organization composed of or representing persons with 431  
disabilities as defined in section 3781.111 of the Revised Code, 432  
or, if no local corporation, association, or organization 433  
exists, then any statewide corporation, association, or other 434  
organization composed of or representing persons with 435  
disabilities may apply for the de novo hearing or appeal to the 436  
court of common pleas from any decision of a certified municipal 437  
or county board of appeals interpreting, applying, or granting a 438  
variance from section 3781.111 of the Revised Code and any rule 439  
made thereunder. Application for a de novo hearing before the 440  
state board shall be made no later than thirty days after the 441  
municipal or county board renders its decision. 442

The state board of building appeals or the appropriate 443  
certified local board of building appeals shall grant variances 444  
and exemptions from the requirements of section 3781.108 of the 445  
Revised Code in accordance with rules adopted by the board of 446  
building standards pursuant to division (K) of section 3781.10 447  
of the Revised Code. 448

The state board of building appeals or the appropriate 449  
certified local board of building appeals shall, in granting a 450  
variance or exemption from section 3781.108 of the Revised Code, 451  
in addition to any other considerations the state or the 452  
appropriate local board determines appropriate, consider the 453  
architectural and historical significance of the building. 454

**Sec. 3781.20.** (A) The board of building standards may 455  
certify municipal and county boards of building appeals to hear 456  
and decide appeals from adjudication orders pertaining to the 457



enforcement of this chapter and Chapter 3791. of the Revised 458  
Code and any rules adopted pursuant thereto. Any board of 459  
appeals that has been certified by the board of building 460  
standards may contract with any municipal corporation or county 461  
certified to enforce this chapter and Chapter 3791. of the 462  
Revised Code to provide for appeals from adjudication orders 463  
arising from the certified municipal corporation or county. 464

(B) A certified local board of building appeals has 465  
exclusive jurisdiction to hear and decide all adjudication 466  
hearings arising from rulings of the local chief enforcement 467  
official concerning the provisions of this chapter and Chapter 468  
3791. of the Revised Code and any rules adopted pursuant 469  
thereto. The local board may establish reasonable fees, based on 470  
actual costs for administration of filing and processing, not to 471  
exceed one hundred dollars, for the costs of filing and 472  
processing appeals~~and~~. The board may charge any additional 473  
fees for expedited proceeding subject to section 3781.21 of the 474  
Revised Code. The board shall keep a full and complete record of 475  
all of its proceedings, and these records shall be open to 476  
public inspection. 477

(C) The local board of building appeals shall consist of 478  
five members, except that a municipal board may consist of more 479  
than five members if so provided by the charter of the municipal 480  
corporation, or any amendment to the charter, adopted prior to 481  
October 13, 1983. One member shall be an attorney at law 482  
admitted to the bar of this state, one shall be a registered 483  
architect, one shall be a registered professional engineer, 484  
specializing in structural engineering, and one shall be a 485  
registered professional engineer specializing in mechanical 486  
engineering, except that a municipal board need not have an 487  
attorney as a member if no attorney member is required by the 488

charter of the municipal corporation, or any amendment to the 489  
charter, adopted prior to October 13, 1983. Each of these four 490  
members shall be licensed to practice his profession in this 491  
state, and shall be a person of recognized ability and broad 492  
training who is experienced in problems and practice incidental 493  
to the construction and equipment of buildings and structures. 494  
One member shall be a representative of organized labor who is 495  
knowledgeable as to the construction and equipment of buildings 496  
and structures. 497

Members shall be appointed for five-year terms, except 498  
that original appointments shall be for terms of one, two, 499  
three, four, and five years. Each member shall hold office from 500  
the date of appointment until the end of the term for which he 501  
is appointed. Any member appointed to fill a vacancy occurring 502  
before the expiration of the term for which his predecessor was 503  
appointed shall hold office for the remainder of that term. Any 504  
member shall continue in office subsequent to the expiration 505  
date of his term until his successor takes office or until sixty 506  
days have elapsed, whichever occurs first. 507

(D) Certification shall be upon application by the county 508  
or municipal corporation to the board of building standards. The 509  
application shall set forth both of the following: 510

(1) The resolution, ordinance, or charter provision 511  
establishing the local board of appeals and making or providing 512  
for the making of appointments to the board; 513

(2) The dates of appointments, terms of the board members, 514  
and professional requirements and experience necessary for 515  
membership. 516

(E) Upon reviewing the application, the board of building 517

standards shall certify the local board if it finds all of the 518  
following: 519

(1) The applicant political subdivision has a building 520  
department that is certified pursuant to section 3781.10 of the 521  
Revised Code and such certification is not through a contract 522  
with another political subdivision; 523

(2) The local board is established pursuant to local 524  
resolution, ordinance, or municipal charter; 525

(3) The local board's membership meets the requirements of 526  
this section. 527

The board of building standards shall certify county and 528  
municipal boards of building appeals in accordance with Chapter 529  
119. of the Revised Code and shall schedule a hearing on an 530  
application within sixty days after receiving the application. 531

A certification may be revoked on petition to the board of 532  
building standards by any person affected by the local board of 533  
building appeals, or by the board of building standards on its 534  
own motion. Hearings shall be held and appeals permitted, on any 535  
proceedings for revocation of certification, in accordance with 536  
Chapter 119. of the Revised Code. 537

(F) Local boards of appeals certified pursuant to this 538  
section have the same powers to reverse or modify orders of the 539  
local enforcement official and to grant variances as are 540  
conferred on the board of building appeals by section 3781.19 of 541  
the Revised Code including variances and exemptions from the 542  
requirements of section 3781.108 of the Revised Code. 543

Nothing in this section shall be construed to grant to a 544  
municipal or county board of building appeals any authority to 545  
prohibit the use of materials or assemblages that have been 546

licensed for statewide use pursuant to section 3781.12 of the Revised Code.

Sec. 3781.21. (A) (1) Any appeal of an order requested under section 3781.19 or 3781.20 of the Revised Code may be requested to be expedited. If the expedited appeal is requested, the state board of building appeals or a certified municipal or county board of appeals shall do both of the following:

(a) Commence the appeal within one day after the request was made, excluding Saturdays, Sundays, and legal holidays as defined in section 1.14 of the Revised Code;

(b) Hold a hearing within five days after the request was made, excluding Saturdays, Sundays, and legal holidays as defined in section 1.14 of the Revised Code.

(2) (a) If a person requests an appeal of an order pursuant to section 3781.19 or 3781.20 of the Revised Code and the person did not request the appeal to be expedited under division (A) (1) of this section, the person may request the remainder of the appeal proceeding be expedited if, during the course of the appeal, the board issues a continuance of the hearing, such that no decision is made and additional evidence is requested in order to continue the proceeding. A person may request that any follow-up hearing be expedited within five days of the continuance being issued.

(b) If the expedited appeal is requested under division (A) (2) (a) of this section, the board shall hold the follow-up hearing within five days of the request, excluding Saturdays, Sundays, and legal holidays as defined in section 1.14 of the Revised Code.

(3) Any expedited appeal under this division shall apply

notwithstanding the seven-day notice requirement under section 576  
119.07 of the Revised Code or any other conflicting provision of 577  
the Revised Code. However, a board conducting an expedited 578  
appeal under this section shall provide all parties a notice of 579  
the hearing prior to conducting the hearing. 580

(B) The person making the request for an expedited appeal 581  
pursuant to division (A) of this section shall pay any fee 582  
established by the state board of building appeals under section 583  
3781.19 of the Revised Code or a certified municipal or county 584  
board of appeals under section 3781.20 of the Revised Code, 585  
which shall not exceed five hundred dollars for each day the 586  
appeal is pending and shall not exceed a total of one thousand 587  
dollars for the entire expedited appeal. 588

(C) Notwithstanding any provision of the Revised Code to 589  
the contrary, the state board of building appeals or a certified 590  
municipal or county board of appeals may conduct an expedited 591  
hearing, as described under this section, by means of 592  
teleconference, video conference, or any other similar 593  
electronic technology. 594

(D) The board of building standards may adopt rules to 595  
implement this section. 596

**Sec. 4113.14. (A) As used in this section:** 597

(1) "Employee" and "employer" have the same meanings as in 598  
section 4113.51 of the Revised Code. 599

(2) "Workweek" means a fixed, regularly recurring period 600  
of one hundred sixty-eight hours that an employer expressly 601  
adopts for purposes of complying with section 7 of the "Fair 602  
Labor Standards Act of 1938," 29 U.S.C. 207. 603

(B) Every employer shall provide each of the employer's 604

employees with a written or electronic statement or access to a 605  
statement of the employee's earnings and deductions for each pay 606  
period on the employer's regular paydays. An employer shall 607  
include all of the following information in the statement: 608

(1) The employee's name; 609

(2) The employee's address; 610

(3) The employer's name; 611

(4) The total gross wages earned by the employee during 612  
the pay period; 613

(5) The total net wages paid to the employee for the pay 614  
period; 615

(6) A listing of the amount and purpose of each addition 616  
to or deduction from the wages paid to the employee during the 617  
pay period; 618

(7) The date the employee was paid and the pay period 619  
covered by that payment; 620

(8) For an employee who is paid on an hourly basis, all of 621  
the following information: 622

(a) The total number of hours the employee worked in that 623  
pay period; 624

(b) The hourly wage rate at which the employee was paid; 625

(c) The employee's hours worked in excess of forty hours 626  
in one workweek. 627

(C) An employee who does not receive a statement as 628  
required by division (B) of this section shall make a written 629  
request to the employee's employer to receive the statement. The 630  
employer shall provide the employee with the statement not later 631

than ten days after receiving the request. If the employee does 632  
not receive the requested statement within the ten-day period, 633  
the employee may submit a report of the violation to the 634  
director of commerce. If, on receipt of a report, the director 635  
determines that there are reasonable grounds to believe that a 636  
violation exists, the director shall issue a written notice to 637  
the employee's employer. On receipt of a notice, the employer 638  
shall immediately post the notice, or a copy of the notice, in a 639  
conspicuous place on the employer's premises. The employer shall 640  
keep the notice posted for ten days. 641

**Sec. 4123.325.** No employer shall be required to provide a 642  
copy of a purchase agreement to the administrator of workers' 643  
compensation in order for the administrator to complete a 644  
transfer of experience if both of the following conditions are 645  
met: 646

(A) A predecessor employer is transferring a business in 647  
whole or in part to another employer, who is the successor in 648  
interest under division (B) of section 4123.32 of the Revised 649  
Code; 650

(B) There is a family relationship or other similar 651  
connection between the predecessor and the successor. 652

**Sec. 4905.301.** (A) As used in this section: 653

(1) "Governmental entity" has the same meaning as in 654  
section 9.23 of the Revised Code, except that "governmental 655  
entity" excludes a municipal corporation. 656

(2) "Right of way" means the surface of, and the space 657  
within, through, on, across, above, or below any land designated 658  
for public use that is owned or controlled by a governmental 659  
entity, except that "right of way" includes a public way as 660

defined in section 4939.01 of the Revised Code, and is not a 661  
private easement. 662

(B) A public utility subject to the rate-making 663  
jurisdiction of the public utilities commission may file an 664  
application with the commission for the accounting authority to 665  
classify a cost that meets the requirements of division (C) of 666  
this section as a regulatory asset for the purpose of recovering 667  
the cost. The commission, by order, shall authorize such 668  
accounting authority as may be reasonably necessary to classify 669  
the cost as a regulatory asset. 670

(C) A cost eligible for recovery as a regulatory asset 671  
under this section shall meet both of the following 672  
requirements: 673

(1) The cost is directly incurred by the public utility as 674  
a result of a governmental entity's regulation of the public 675  
utility's occupancy or use of a right of way. 676

(2) The cost is incurred by the public utility after the 677  
test year of the public utility's most recent rate proceeding or 678  
the initial effective date of rates in effect but not 679  
established through a proceeding for an increase in rates. 680

(D) If the commission determines, upon an application 681  
under division (B) of this section or its own initiative, that 682  
classification of a cost described in division (C) of this 683  
section as a regulatory asset is not practical or that deferred 684  
recovery of that cost would impose a hardship on the public 685  
utility or its customers, the commission shall establish a 686  
charge and collection mechanism to permit the public utility 687  
full recovery of that cost. 688

(E) Cost recovery authorized as a regulatory asset under 689



this section is not subject to any other provision of law or any 690  
agreement establishing price caps, rate freezes, or rate 691  
increase moratoria. 692

(F) The commission shall process applications submitted 693  
under this section in the same manner as set forth in divisions 694  
(E) and (F) of section 4939.07 of the Revised Code and according 695  
to rules adopted under division (G) of that section. A final 696  
order regarding a recovery mechanism authorized pursuant to 697  
division (D) of this section shall provide for such retroactive 698  
adjustment as the commission determines appropriate. 699

**Sec. 4928.01.** (A) As used in this chapter: 700

(1) "Ancillary service" means any function necessary to 701  
the provision of electric transmission or distribution service 702  
to a retail customer and includes, but is not limited to, 703  
scheduling, system control, and dispatch services; reactive 704  
supply from generation resources and voltage control service; 705  
reactive supply from transmission resources service; regulation 706  
service; frequency response service; energy imbalance service; 707  
operating reserve-spinning reserve service; operating reserve- 708  
supplemental reserve service; load following; back-up supply 709  
service; real-power loss replacement service; dynamic 710  
scheduling; system black start capability; and network stability 711  
service. 712

(2) "Billing and collection agent" means a fully 713  
independent agent, not affiliated with or otherwise controlled 714  
by an electric utility, electric services company, electric 715  
cooperative, or governmental aggregator subject to certification 716  
under section 4928.08 of the Revised Code, to the extent that 717  
the agent is under contract with such utility, company, 718  
cooperative, or aggregator solely to provide billing and 719

collection for retail electric service on behalf of the utility	720
company, cooperative, or aggregator.	721
(3) "Certified territory" means the certified territory	722
established for an electric supplier under sections 4933.81 to	723
4933.90 of the Revised Code.	724
(4) "Competitive retail electric service" means a	725
component of retail electric service that is competitive as	726
provided under division (B) of this section.	727
(5) "Electric cooperative" means a not-for-profit electric	728
light company that both is or has been financed in whole or in	729
part under the "Rural Electrification Act of 1936," 49 Stat.	730
1363, 7 U.S.C. 901, and owns or operates facilities in this	731
state to generate, transmit, or distribute electricity, or a	732
not-for-profit successor of such company.	733
(6) "Electric distribution utility" means an electric	734
utility that supplies at least retail electric distribution	735
service.	736
(7) "Electric light company" has the same meaning as in	737
section 4905.03 of the Revised Code and includes an electric	738
services company, but excludes any self-generator to the extent	739
that it consumes electricity it so produces, sells that	740
electricity for resale, or obtains electricity from a generating	741
facility it hosts on its premises.	742
(8) "Electric load center" has the same meaning as in	743
section 4933.81 of the Revised Code.	744
(9) "Electric services company" means an electric light	745
company that is engaged on a for-profit or not-for-profit basis	746
in the business of supplying or arranging for the supply of only	747
a competitive retail electric service in this state. "Electric	748

services company" includes a power marketer, power broker, 749  
aggregator, or independent power producer but excludes an 750  
electric cooperative, municipal electric utility, governmental 751  
aggregator, or billing and collection agent. 752

(10) "Electric supplier" has the same meaning as in 753  
section 4933.81 of the Revised Code. 754

(11) "Electric utility" means an electric light company 755  
that has a certified territory and is engaged on a for-profit 756  
basis either in the business of supplying a noncompetitive 757  
retail electric service in this state or in the businesses of 758  
supplying both a noncompetitive and a competitive retail 759  
electric service in this state. "Electric utility" excludes a 760  
municipal electric utility or a billing and collection agent. 761

(12) "Firm electric service" means electric service other 762  
than nonfirm electric service. 763

(13) "Governmental aggregator" means a legislative 764  
authority of a municipal corporation, a board of township 765  
trustees, or a board of county commissioners acting as an 766  
aggregator for the provision of a competitive retail electric 767  
service under authority conferred under section 4928.20 of the 768  
Revised Code. 769

(14) A person acts "knowingly," regardless of the person's 770  
purpose, when the person is aware that the person's conduct will 771  
probably cause a certain result or will probably be of a certain 772  
nature. A person has knowledge of circumstances when the person 773  
is aware that such circumstances probably exist. 774

(15) "Level of funding for low-income customer energy 775  
efficiency programs provided through electric utility rates" 776  
means the level of funds specifically included in an electric 777

utility's rates on October 5, 1999, pursuant to an order of the 778  
public utilities commission issued under Chapter 4905. or 4909. 779  
of the Revised Code and in effect on October 4, 1999, for the 780  
purpose of improving the energy efficiency of housing for the 781  
utility's low-income customers. The term excludes the level of 782  
any such funds committed to a specific nonprofit organization or 783  
organizations pursuant to a stipulation or contract. 784

(16) "Low-income customer assistance programs" means the 785  
percentage of income payment plan program, the home energy 786  
assistance program, the home weatherization assistance program, 787  
and the targeted energy efficiency and weatherization program. 788

(17) "Market development period" for an electric utility 789  
means the period of time beginning on the starting date of 790  
competitive retail electric service and ending on the applicable 791  
date for that utility as specified in section 4928.40 of the 792  
Revised Code, irrespective of whether the utility applies to 793  
receive transition revenues under this chapter. 794

(18) "Market power" means the ability to impose on 795  
customers a sustained price for a product or service above the 796  
price that would prevail in a competitive market. 797

(19) "Mercantile customer" means a commercial or 798  
industrial customer if the electricity consumed is for 799  
nonresidential use and the customer consumes more than seven 800  
hundred thousand kilowatt hours per year or is part of a 801  
national account involving multiple facilities in one or more 802  
states. 803

(20) "Municipal electric utility" means a municipal 804  
corporation that owns or operates facilities to generate, 805  
transmit, or distribute electricity. 806

(21) "Noncompetitive retail electric service" means a 807  
component of retail electric service that is noncompetitive as 808  
provided under division (B) of this section. 809

(22) "Nonfirm electric service" means electric service 810  
provided pursuant to a schedule filed under section 4905.30 of 811  
the Revised Code or pursuant to an arrangement under section 812  
4905.31 of the Revised Code, which schedule or arrangement 813  
includes conditions that may require the customer to curtail or 814  
interrupt electric usage during nonemergency circumstances upon 815  
notification by an electric utility. 816

(23) "Percentage of income payment plan arrears" means 817  
funds eligible for collection through the percentage of income 818  
payment plan rider, but uncollected as of July 1, 2000. 819

(24) "Person" has the same meaning as in section 1.59 of 820  
the Revised Code. 821

(25) "Advanced energy project" means any technologies, 822  
products, activities, or management practices or strategies that 823  
facilitate the generation or use of electricity or energy and 824  
that reduce or support the reduction of energy consumption or 825  
support the production of clean, renewable energy for 826  
industrial, distribution, commercial, institutional, 827  
governmental, research, not-for-profit, or residential energy 828  
users, including, but not limited to, advanced energy resources 829  
and renewable energy resources. "Advanced energy project" also 830  
includes any project described in division (A), (B), or (C) of 831  
section 4928.621 of the Revised Code. 832

(26) "Regulatory assets" means the unamortized net 833  
regulatory assets that are capitalized or deferred on the 834  
regulatory books of the electric utility, pursuant to an order 835

or practice of the public utilities commission or pursuant to 836  
generally accepted accounting principles as a result of a prior 837  
commission rate-making decision, and that would otherwise have 838  
been charged to expense as incurred or would not have been 839  
capitalized or otherwise deferred for future regulatory 840  
consideration absent commission action. "Regulatory assets" 841  
includes, but is not limited to, all deferred demand-side 842  
management costs; all deferred percentage of income payment plan 843  
arrears; post-in-service capitalized charges and assets 844  
recognized in connection with statement of financial accounting 845  
standards no. 109 (receivables from customers for income taxes); 846  
future nuclear decommissioning costs and fuel disposal costs as 847  
those costs have been determined by the commission in the 848  
electric utility's most recent rate or accounting application 849  
proceeding addressing such costs; the undepreciated costs of 850  
safety and radiation control equipment on nuclear generating 851  
plants owned or leased by an electric utility; and fuel costs 852  
currently deferred pursuant to the terms of one or more 853  
settlement agreements approved by the commission. 854

(27) "Retail electric service" means any service involved 855  
in supplying or arranging for the supply of electricity to 856  
ultimate consumers in this state, from the point of generation 857  
to the point of consumption. For the purposes of this chapter, 858  
retail electric service includes one or more of the following 859  
"service components": generation service, aggregation service, 860  
power marketing service, power brokerage service, transmission 861  
service, distribution service, ancillary service, metering 862  
service, and billing and collection service. 863

(28) "Starting date of competitive retail electric 864  
service" means January 1, 2001. 865

- (29) "Customer-generator" means a user of a net metering system. 866  
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- (30) "Net metering" means measuring the difference in an applicable billing period between the electricity supplied by an electric service provider and the electricity generated by a customer-generator that is fed back to the electric service provider. 868  
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- (31) "Net metering system" means a facility for the production of electrical energy that does all of the following: 873  
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- (a) Uses as its fuel either solar, wind, biomass, landfill gas, or hydropower, or uses a microturbine or a fuel cell; 875  
876
- (b) Is located on a customer-generator's premises; 877
- (c) Operates in parallel with the electric utility's transmission and distribution facilities; 878  
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- (d) Is intended primarily to offset part or all of the customer-generator's requirements for electricity. For an industrial customer-generator with a net metering system that has a capacity of less than twenty megawatts and uses wind as energy, this means the net metering system was sized so as to not exceed one hundred per cent of the customer-generator's annual requirements for electric energy at the time of interconnection. 880  
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- (32) "Self-generator" means an entity in this state that owns or hosts on its premises an electric generation facility that produces electricity primarily for the owner's consumption and that may provide any such excess electricity to another entity, whether the facility is installed or operated by the owner or by an agent under a contract. 888  
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(33) "Rate plan" means the standard service offer in effect on the effective date of the amendment of this section by S.B. 221 of the 127th general assembly, July 31, 2008.

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

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

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

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

(d) Advanced nuclear energy technology consisting of generation III technology as defined by the nuclear regulatory



commission; other, later technology; or significant improvements	923
to existing facilities;	924
(e) Any fuel cell used in the generation of electricity,	925
including, but not limited to, a proton exchange membrane fuel	926
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or	927
solid oxide fuel cell;	928
(f) Advanced solid waste or construction and demolition	929
debris conversion technology, including, but not limited to,	930
advanced stoker technology, and advanced fluidized bed	931
gasification technology, that results in measurable greenhouse	932
gas emissions reductions as calculated pursuant to the United	933
States environmental protection agency's waste reduction model	934
(WARM);	935
(g) Demand-side management and any energy efficiency	936
improvement;	937
(h) Any new, retrofitted, refueled, or repowered	938
generating facility located in Ohio, including a simple or	939
combined-cycle natural gas generating facility or a generating	940
facility that uses biomass, coal, modular nuclear, or any other	941
fuel as its input;	942
(i) Any uprated capacity of an existing electric	943
generating facility if the uprated capacity results from the	944
deployment of advanced technology.	945
"Advanced energy resource" does not include a waste energy	946
recovery system that is, or has been, included in an energy	947
efficiency program of an electric distribution utility pursuant	948
to requirements under section 4928.66 of the Revised Code.	949
(35) "Air contaminant source" has the same meaning as in	950
section 3704.01 of the Revised Code.	951

(36) "Cogeneration technology" means technology that	952
produces electricity and useful thermal output simultaneously.	953
(37) (a) "Renewable energy resource" means any of the	954
following:	955
(i) Solar photovoltaic or solar thermal energy;	956
(ii) Wind energy;	957
(iii) Power produced by a hydroelectric facility;	958
(iv) Power produced by a small hydroelectric facility,	959
which is a facility that operates, or is rated to operate, at an	960
aggregate capacity of less than six megawatts;	961
(v) Power produced by a run-of-the-river hydroelectric	962
facility placed in service on or after January 1, 1980, that is	963
located within this state, relies upon the Ohio river, and	964
operates, or is rated to operate, at an aggregate capacity of	965
forty or more megawatts;	966
(vi) Geothermal energy;	967
(vii) Fuel derived from solid wastes, as defined in	968
section 3734.01 of the Revised Code, through fractionation,	969
biological decomposition, or other process that does not	970
principally involve combustion;	971
(viii) Biomass energy;	972
(ix) Energy produced by cogeneration technology that is	973
placed into service on or before December 31, 2015, and for	974
which more than ninety per cent of the total annual energy input	975
is from combustion of a waste or byproduct gas from an air	976
contaminant source in this state, which source has been in	977
operation since on or before January 1, 1985, provided that the	978

cogeneration technology is a part of a facility located in a	979
county having a population of more than three hundred sixty-five	980
thousand but less than three hundred seventy thousand according	981
to the most recent federal decennial census;	982
(x) Biologically derived methane gas;	983
(xi) Heat captured from a generator of electricity,	984
boiler, or heat exchanger fueled by biologically derived methane	985
gas;	986
(xii) Energy derived from nontreated by-products of the	987
pulping process or wood manufacturing process, including bark,	988
wood chips, sawdust, and lignin in spent pulping liquors.	989
"Renewable energy resource" includes, but is not limited	990
to, any fuel cell used in the generation of electricity,	991
including, but not limited to, a proton exchange membrane fuel	992
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or	993
solid oxide fuel cell; wind turbine located in the state's	994
territorial waters of Lake Erie; methane gas emitted from an	995
abandoned coal mine; waste energy recovery system placed into	996
service or retrofitted on or after the effective date of the	997
amendment of this section by S.B. 315 of the 129th general	998
assembly, September 10, 2012, except that a waste energy	999
recovery system described in division (A) (38) (b) of this section	1000
may be included only if it was placed into service between	1001
January 1, 2002, and December 31, 2004; storage facility that	1002
will promote the better utilization of a renewable energy	1003
resource; or distributed generation system used by a customer to	1004
generate electricity from any such energy.	1005
"Renewable energy resource" does not include a waste	1006
energy recovery system that is, or was, on or after January 1,	1007

2012, included in an energy efficiency program of an electric 1008  
distribution utility pursuant to requirements under section 1009  
4928.66 of the Revised Code. 1010

(b) As used in division (A)(37) of this section, 1011  
"hydroelectric facility" means a hydroelectric generating 1012  
facility that is located at a dam on a river, or on any water 1013  
discharged to a river, that is within or bordering this state or 1014  
within or bordering an adjoining state and meets all of the 1015  
following standards: 1016

(i) The facility provides for river flows that are not 1017  
detrimental for fish, wildlife, and water quality, including 1018  
seasonal flow fluctuations as defined by the applicable 1019  
licensing agency for the facility. 1020

(ii) The facility demonstrates that it complies with the 1021  
water quality standards of this state, which compliance may 1022  
consist of certification under Section 401 of the "Clean Water 1023  
Act of 1977," 91 Stat. 1598, 1599, 33 U.S.C. 1341, and 1024  
demonstrates that it has not contributed to a finding by this 1025  
state that the river has impaired water quality under Section 1026  
303(d) of the "Clean Water Act of 1977," 114 Stat. 870, 33 1027  
U.S.C. 1313. 1028

(iii) The facility complies with mandatory prescriptions 1029  
regarding fish passage as required by the federal energy 1030  
regulatory commission license issued for the project, regarding 1031  
fish protection for riverine, anadromous, and catadromous fish. 1032

(iv) The facility complies with the recommendations of the 1033  
Ohio environmental protection agency and with the terms of its 1034  
federal energy regulatory commission license regarding watershed 1035  
protection, mitigation, or enhancement, to the extent of each 1036

agency's respective jurisdiction over the facility. 1037

(v) The facility complies with provisions of the 1038  
"Endangered Species Act of 1973," 87 Stat. 884, 16 U.S.C. 1531 1039  
to 1544, as amended. 1040

(vi) The facility does not harm cultural resources of the 1041  
area. This can be shown through compliance with the terms of its 1042  
federal energy regulatory commission license or, if the facility 1043  
is not regulated by that commission, through development of a 1044  
plan approved by the Ohio historic preservation office, to the 1045  
extent it has jurisdiction over the facility. 1046

(vii) The facility complies with the terms of its federal 1047  
energy regulatory commission license or exemption that are 1048  
related to recreational access, accommodation, and facilities 1049  
or, if the facility is not regulated by that commission, the 1050  
facility complies with similar requirements as are recommended 1051  
by resource agencies, to the extent they have jurisdiction over 1052  
the facility; and the facility provides access to water to the 1053  
public without fee or charge. 1054

(viii) The facility is not recommended for removal by any 1055  
federal agency or agency of any state, to the extent the 1056  
particular agency has jurisdiction over the facility. 1057

(c) The standards in divisions (A) (37) (b) (i) to (viii) of 1058  
this section do not apply to a small hydroelectric facility 1059  
under division (A) (37) (a) (iv) of this section. 1060

(38) "Waste energy recovery system" means ~~either~~ any of 1061  
the following: 1062

(a) A facility that generates electricity through the 1063  
conversion of energy from either of the following: 1064

(i) Exhaust heat from engines or manufacturing, 1065  
industrial, commercial, or institutional sites, except for 1066  
exhaust heat from a facility whose primary purpose is the 1067  
generation of electricity; 1068

(ii) Reduction of pressure in gas pipelines before gas is 1069  
distributed through the pipeline, provided that the conversion 1070  
of energy to electricity is achieved without using additional 1071  
fossil fuels. 1072

(b) A facility at a state institution of higher education 1073  
as defined in section 3345.011 of the Revised Code that recovers 1074  
waste heat from electricity-producing engines or combustion 1075  
turbines and that simultaneously uses the recovered heat to 1076  
produce steam, provided that the facility was placed into 1077  
service between January 1, 2002, and December 31, 2004; 1078

(c) A facility that produces steam from recovered waste 1079  
heat from a manufacturing process and uses that steam, or 1080  
transfers that steam to another facility, to provide heat to 1081  
another manufacturing process or to generate electricity. 1082

(39) "Smart grid" means capital improvements to an 1083  
electric distribution utility's distribution infrastructure that 1084  
improve reliability, efficiency, resiliency, or reduce energy 1085  
demand or use, including, but not limited to, advanced metering 1086  
and automation of system functions. 1087

(40) "Combined heat and power system" means the 1088  
coproduction of electricity and useful thermal energy from the 1089  
same fuel source designed to achieve thermal-efficiency levels 1090  
of at least sixty per cent, with at least twenty per cent of the 1091  
system's total useful energy in the form of thermal energy. 1092

(41) "Legacy generation resource" means all generating 1093

facilities owned directly or indirectly by a corporation that 1094  
was formed prior to 1960 by investor-owned utilities for the 1095  
original purpose of providing power to the federal government 1096  
for use in the nation's defense or in furtherance of national 1097  
interests, including the Ohio valley electric corporation. 1098

(42) "Prudently incurred costs related to a legacy 1099  
generation resource" means costs, including deferred costs, 1100  
allocated pursuant to a power agreement approved by the federal 1101  
energy regulatory commission that relates to a legacy generation 1102  
resource, less any revenues realized from offering the 1103  
contractual commitment for the power agreement into the 1104  
wholesale markets, provided that where the net revenues exceed 1105  
net costs, those excess revenues shall be credited to customers. 1106  
Such costs shall exclude any return on investment in common 1107  
equity and, in the event of a premature retirement of a legacy 1108  
generation resource, shall exclude any recovery of remaining 1109  
debt. Such costs shall include any incremental costs resulting 1110  
from the bankruptcy of a current or former sponsor under such 1111  
power agreement or co-owner of the legacy generation resource if 1112  
not otherwise recovered through a utility rate cost recovery 1113  
mechanism. 1114

(43) "Green energy" means any energy generated by using an 1115  
energy resource that does one or more of the following: 1116

(a) Releases reduced air pollutants, thereby reducing 1117  
cumulative air emissions; 1118

(b) Is more sustainable and reliable relative to some 1119  
fossil fuels. 1120

"Green energy" includes energy generated by using natural 1121  
gas as a resource. 1122

(B) For the purposes of this chapter, a retail electric 1123  
service component shall be deemed a competitive retail electric 1124  
service if the service component is competitive pursuant to a 1125  
declaration by a provision of the Revised Code or pursuant to an 1126  
order of the public utilities commission authorized under 1127  
division (A) of section 4928.04 of the Revised Code. Otherwise, 1128  
the service component shall be deemed a noncompetitive retail 1129  
electric service. 1130

**Sec. 4939.07.** (A) As used in this section, "most recent," 1131  
with respect to any rate proceeding, means the rate proceeding 1132  
most immediately preceding the date of any final order issued by 1133  
the public utilities commission under this section. 1134

(B) (1) Notwithstanding any other provision of law or any 1135  
agreement establishing price caps, rate freezes, or rate 1136  
increase moratoria, a public utility subject to the rate-making 1137  
jurisdiction of the commission may file an application with the 1138  
commission for, and the commission shall then authorize by 1139  
order, timely and full recovery of a public way fee levied upon 1140  
and payable by the public utility both after January 1, 2002, 1141  
and after the test year of the public utility's most recent rate 1142  
proceeding or the initial effective date of rates in effect but 1143  
not established through a proceeding for an increase in rates. 1144

(2) Any order issued by the commission pursuant to its 1145  
consideration of an application under division (B) (1) of this 1146  
section shall establish a cost recovery mechanism including, but 1147  
not limited to, an adder, tracker, rider, or percentage 1148  
surcharge, for recovering the amount to be recovered; specify 1149  
that amount; limit the amount to not more and not less than the 1150  
amount of the total public way fee incurred; and require 1151  
periodic adjustment of the mechanism based on revenues 1152



recovered. 1153

(a) In the case of a cost recovery mechanism for a public 1154  
way fee levied on and payable by a public utility but determined 1155  
unreasonable, unjust, unjustly discriminatory, or unlawful by 1156  
the commission pursuant to division (C) of section 4939.06 of 1157  
the Revised Code, the mechanism shall provide for recovery, only 1158  
from those customers of the public utility that receive its 1159  
service within the municipal corporation, of the difference 1160  
between that public way fee and the just and reasonable public 1161  
way fee determined by the commission under division (C) of 1162  
section 4939.06 of the Revised Code. 1163

(b) In all other cases, recovery shall be from all 1164  
customers of the public utility generally. 1165

(c) In the case of recovery under division (B) (2) (a) or 1166  
(b) of this section, the recovery mechanism payable by sale-for- 1167  
resale or wholesale telecommunications customers shall provide 1168  
for recovery limited to any public way fee not included in 1169  
established rates and prices for those customers and to the pro 1170  
rata share of the public way fee applicable to the portion of 1171  
the facilities that are sold, leased, or rented to the customers 1172  
and are located in the public way. The recovery shall be in a 1173  
nondiscriminatory and competitively neutral manner and prorated 1174  
on a per-line or per-line equivalent basis among all retail, 1175  
sale-for-resale, and wholesale telecommunications customers 1176  
subject to the recovery. 1177

(D) (1) Notwithstanding any other provision of law or any 1178  
agreement establishing price caps, rate freezes, or rate 1179  
increase moratoria, a public utility subject to the rate-making 1180  
jurisdiction of the commission may file an application with the 1181  
commission for, and the commission by order shall authorize, 1182

such accounting authority as may be reasonably necessary to 1183  
classify any cost described in division (D) (2) of this section 1184  
as a regulatory asset for the purpose of recovering that cost. 1185

(2) A cost eligible for recovery under ~~this division~~ (D) 1186  
of this section shall be only such cost as meets both of the 1187  
following: 1188

(a) The cost is directly incurred by the public utility as 1189  
a result of ~~local municipal corporation~~ regulation of its 1190  
occupancy or use of a public way or an appropriate allocation 1191  
and assignment of costs related to implementation of this 1192  
section, excluding any cost arising from a public way fee levied 1193  
upon and payable by the public utility. 1194

(b) The cost is incurred by the public utility both after 1195  
January 1, 2002, and after the test year of the public utility's 1196  
most recent rate proceeding or the initial effective date of 1197  
rates in effect but not established through a proceeding for an 1198  
increase in rates. 1199

(3) If the commission determines, upon an application 1200  
under division (D) (1) of this section or its own initiative, 1201  
that classification of a cost described in division (D) (2) of 1202  
this section as a regulatory asset is not practical or that 1203  
deferred recovery of that cost would impose a hardship on the 1204  
public utility or its customers, the commission shall establish 1205  
a charge and collection mechanism to permit the public utility 1206  
full recovery of that cost. A hardship shall be presumed for any 1207  
public utility with less than fifteen thousand bundled sales 1208  
service customers in this state and for any public utility for 1209  
which the annualized aggregate amount of additional cost that 1210  
otherwise may be eligible for such classification exceeds the 1211  
greater of five hundred thousand dollars or fifteen per cent of 1212

the total costs that are described in division (D) (2) (a) of this 1213  
section and were considered by the commission for the purpose of 1214  
establishing rates in the public utility's most recent rate 1215  
increase proceeding or the rate increase proceeding of the 1216  
public utility's predecessor, whichever is later. 1217

(E) Any application submitted to the commission under 1218  
divisions (B) to (D) of this section shall be processed by the 1219  
commission as an application not for an increase in rates under 1220  
section 4909.18 of the Revised Code. The application shall 1221  
include such information as the commission reasonably requires. 1222  
The commission shall conclude its consideration of the 1223  
application and issue a final order not later than one hundred 1224  
twenty days after the date that the application was submitted to 1225  
the commission. A final order regarding a recovery mechanism 1226  
authorized pursuant to this section shall provide for such 1227  
retroactive adjustment as the commission determines appropriate. 1228

(F) A public utility shall not be required to waive any 1229  
rights under this section as a condition of occupancy or use of 1230  
a public way. 1231

(G) The commission may issue such rules as it considers 1232  
necessary to carry out this section. 1233

**Sec. 5739.03.** (A) Except as provided in section 5739.05 or 1234  
section 5739.051 of the Revised Code, the tax imposed by or 1235  
pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of 1236  
the Revised Code shall be paid by the consumer to the vendor, 1237  
and each vendor shall collect from the consumer, as a trustee 1238  
for the state of Ohio, the full and exact amount of the tax 1239  
payable on each taxable sale, in the manner and at the times 1240  
provided as follows: 1241

(1) If the price is, at or prior to the provision of the 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 1272  
certificate. If it is determined the exemption was improperly 1273  
claimed, the consumer shall be liable for any tax due on that 1274  
sale under section 5739.02, 5739.021, 5739.023, or 5739.026 or 1275  
Chapter 5741. of the Revised Code. Relief under this division 1276  
from liability does not apply to any of the following: 1277

(i) A vendor that fraudulently fails to collect tax; 1278

(ii) A vendor that solicits consumers to participate in 1279  
the unlawful claim of an exemption; 1280

(iii) A vendor that accepts an exemption certificate from 1281  
a consumer that claims an exemption based on who purchases or 1282  
who sells property or a service, when the subject of the 1283  
transaction sought to be covered by the exemption certificate is 1284  
actually received by the consumer at a location operated by the 1285  
vendor in this state, and this state has posted to its web site 1286  
an exemption certificate form that clearly and affirmatively 1287  
indicates that the claimed exemption is not available in this 1288  
state; 1289

(iv) A vendor that accepts an exemption certificate from a 1290  
consumer who claims a multiple points of use exemption under 1291  
division (D) of section 5739.033 of the Revised Code, if the 1292  
item purchased is tangible personal property, other than 1293  
prewritten computer software. 1294

(2) The vendor shall maintain records, including exemption 1295  
certificates, of all sales on which a consumer has claimed an 1296  
exemption, and provide them to the tax commissioner on request. 1297

(3) The tax commissioner may establish an identification 1298  
system whereby the commissioner issues an identification number 1299  
to a consumer that is exempt from payment of the tax. The 1300

consumer must present the number to the vendor, if any sale is 1301  
claimed to be exempt as provided in this section. 1302

(4) If no certificate is provided or obtained within 1303  
ninety days after the date on which such sale is consummated, it 1304  
shall be presumed that the tax applies. Failure to have so 1305  
provided or obtained a certificate shall not preclude a vendor, 1306  
within one hundred twenty days after the tax commissioner gives 1307  
written notice of intent to levy an assessment, from either 1308  
establishing that the sale is not subject to the tax, or 1309  
obtaining, in good faith, a fully completed exemption 1310  
certificate. 1311

(5) Certificates need not be obtained nor provided where 1312  
the identity of the consumer is such that the transaction is 1313  
never subject to the tax imposed or where the item of tangible 1314  
personal property sold or the service provided is never subject 1315  
to the tax imposed, regardless of use, or when the sale is in 1316  
interstate commerce. 1317

(6) If a transaction is claimed to be exempt under 1318  
division (B) (13) of section 5739.02 of the Revised Code, the 1319  
contractor shall obtain certification of the claimed exemption 1320  
from the contractee. This certification shall be in addition to 1321  
an exemption certificate provided by the contractor to the 1322  
vendor. A contractee that provides a certification under this 1323  
division shall be deemed to be the consumer of all items 1324  
purchased by the contractor under the claim of exemption, if it 1325  
is subsequently determined that the exemption is not properly 1326  
claimed. The certification shall be in such form as the tax 1327  
commissioner prescribes. 1328

(7) (a) Division (B) (7) of this section applies to a sale 1329  
that is claimed to be exempt under division (B) (42) (n) of 1330

section 5739.02 of the Revised Code on the purchase of the 1331  
following items with the purpose to use or consume those items 1332  
primarily in producing tangible personal property for sale by 1333  
farming, agriculture, horticulture, or floriculture: 1334

(i) Trailers, as defined in section 4501.01 of the Revised 1335  
Code, but excluding vehicles designed to transport watercraft; 1336

(ii) Utility vehicles, as defined in section 4501.01 of 1337  
the Revised Code; 1338

(iii) All-purpose vehicles, as defined in section 4519.01 1339  
of the Revised Code; 1340

(iv) Compact tractors, as defined in section 1353.01 of 1341  
the Revised Code. 1342

(b) A consumer may verify eligibility for the exemption 1343  
by: 1344

(i) Providing the vendor with a certificate, prescribed 1345  
and issued by the tax commissioner, verifying that the consumer 1346  
has filed with the commissioner copies of a schedule F, as that 1347  
term is defined in section 718.01 of the Revised Code, filed by 1348  
the consumer for the three most recent preceding federal taxable 1349  
years for which federal income tax returns were due pursuant to 1350  
sections 6072 and 6081 of the Internal Revenue Code; 1351

(ii) Providing the commissioner with such a schedule F for 1352  
each of those taxable years. 1353

(c) If a consumer provides the documents described in 1354  
division (B)(7)(b) of this section, no other documentation or 1355  
explanation shall be required by the vendor or commissioner to 1356  
verify the consumer's exemption eligibility. 1357

(C) As used in this division, "contractee" means a person 1358

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.

Any contractor or vendor may request from any contractee a certification of what portion of the property to be transferred under such contract or agreement is to be incorporated into the realty and what portion will retain its status as tangible personal property after installation is completed. The contractor or vendor shall request the certification by certified mail delivered to the contractee, return receipt requested. Upon receipt of such request and prior to entering into the contract or agreement, the contractee shall provide to the contractor or vendor a certification sufficiently detailed to enable the contractor or vendor to ascertain the resulting classification of all materials purchased or fabricated by the contractor or vendor and transferred to the contractee. This requirement applies to a contractee regardless of whether the contractee holds a direct payment permit under section 5739.031 of the Revised Code or provides to the contractor or vendor an exemption certificate as provided under this section.

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



shall be excused from any liability on those materials. 1390

If a contractee fails to provide such certification upon 1391  
the request of the contractor or vendor, the contractor or 1392  
vendor shall comply with the provisions of this chapter and 1393  
Chapter 5741. of the Revised Code without the certification. If 1394  
the tax commissioner determines that such compliance has been 1395  
performed in good faith and that certain property treated as 1396  
tangible personal property by the contractor or vendor is, in 1397  
fact, real property, the contractee shall be considered to be 1398  
the consumer of all materials so incorporated into that real 1399  
property and shall be liable for the applicable tax, and the 1400  
construction contractor or vendor shall be excused from any 1401  
liability on those materials. 1402

This division does not apply to any contract or agreement 1403  
where the tax commissioner determines as a fact that a 1404  
certification under this division was made solely on the 1405  
decision or advice of the contractor or vendor. 1406

(D) Notwithstanding division (B) of section 5739.01 of the 1407  
Revised Code, whenever the total rate of tax imposed under this 1408  
chapter is increased after the date after a construction 1409  
contract is entered into, the contractee shall reimburse the 1410  
construction contractor for any additional tax paid on tangible 1411  
property consumed or services received pursuant to the contract. 1412

(E) A vendor who files a petition for reassessment 1413  
contesting the assessment of tax on sales for which the vendor 1414  
obtained no valid exemption certificates and for which the 1415  
vendor failed to establish that the sales were properly not 1416  
subject to the tax during the one-hundred-twenty-day period 1417  
allowed under division (B) of this section, may present to the 1418  
tax commissioner additional evidence to prove that the sales 1419

were properly subject to a claim of exception or exemption. The 1420  
vendor shall file such evidence within ninety days of the 1421  
receipt by the vendor of the notice of assessment, except that, 1422  
upon application and for reasonable cause, the period for 1423  
submitting such evidence shall be extended thirty days. 1424

The commissioner shall consider such additional evidence 1425  
in reaching the final determination on the assessment and 1426  
petition for reassessment. 1427

(F) Whenever a vendor refunds the price, minus any 1428  
separately stated delivery charge, of an item of tangible 1429  
personal property on which the tax imposed under this chapter 1430  
has been paid, the vendor shall also refund the amount of tax 1431  
paid, minus the amount of tax attributable to the delivery 1432  
charge. 1433

**Section 2.** That existing sections 191.17, 191.21, 1434  
1707.043, 3781.1011, 3781.19, 3781.20, 4928.01, 4939.07, and 1435  
5739.03 of the Revised Code are hereby repealed. 1436

**Section 3.** The amendment of section 5739.03 of the Revised 1437  
Code by this act applies on and after the first day of the first 1438  
month that begins after the effective date of this section. 1439

**Section 4.** The enactment of section 4113.14 of the Revised 1440  
Code in this act shall be known as the Pay Stub Protection Act. 1441