

As Passed by the House

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**

**Representatives Brennan, Carruthers, Claggett, Dell'Aquila, Dobos, Hillyer, Jones,
Liston, Mathews, Miller, J., Robb Blasdel, Rogers, Russo, Schmidt, Seitz, Thomas,
C., Williams**

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 47
replacement or mid-span pole installation, including the amount 48
of any expenditures to remove and dispose of an existing utility 49
pole, purchase and install a replacement utility pole, and 50
transfer any existing facilities to the new pole; 51

(B) Actual and reasonable undergrounding costs, including 52
the costs to dig a trench, perform directional boring, install 53
conduit, and seal the trench, if the undergrounding is ~~either~~ 54
one of the following: 55

(1) Required by law, regulation, or local ordinance; 56

(2) More economical than the cost of performing a pole 57
replacement; 58

(3) Needed because the process for obtaining access to 59
poles is causing, or is reasonably anticipated to cause, a delay 60
that will impact the ability of the applicant to meet deadlines 61
required by an agreement or terms of support to provide 62
qualifying broadband service to an address within an unserved 63
area. 64

(C) (1) Costs of deploying qualifying broadband service for 65
which the applicant is entitled to obtain full reimbursement 66
from another governmental entity are not eligible for 67
reimbursement under the program, except as provided in division 68
(C) (2) of this section. 69

(2) If an applicant's costs for deploying such service are 70
reimbursed in part by a governmental entity, the applicant may 71
apply for and obtain reimbursement under the program for the 72
portion of the eligible costs for which the applicant was not 73

reimbursed. 74

(D) For applicants that obtain broadband grant funding 75
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 106
made, the person's sole purpose in making the proposals or 107
public disclosures was to succeed in acquiring control of the 108
corporation and under the circumstances, including, without 109
limitation, the person's proposed price, financing and other 110
acquisition plans, the person's financial resources and 111
capabilities, and all other alternatives reasonably anticipated 112
to become available to the corporation's shareholders, there 113
were reasonable grounds to believe that the person would acquire 114
control of the corporation; 115

(b) The person's public disclosure concerning the 116
intention or possibility of making a proposal to acquire control 117
of the corporation and all other potentially manipulative 118
conduct and practices by or on ~~his~~the person's behalf were not 119
effected with a purpose of affecting market trading and thereby 120
increasing any profit or decreasing any loss which the person 121
might realize, directly or indirectly, from the disposition of 122
the equity securities and did not have a material effect upon 123
the price or volume of market trading in the equity securities. 124
Evidence with respect to the past practices of such person is 125
admissible and relevant in respect to the person's intent or 126
purpose under divisions (B) (2) (a) and (b) of this section. 127

(3) The aggregate amount of all profit the person 128
realized, directly or indirectly, does not exceed two hundred 129
fifty thousand dollars. 130

(C) Equity securities acquired by a person as a result of 131
a share split, share dividend, or other similar distribution by 132

a corporation of equity securities issued by it not involving a 133
sale of the equity securities, is deemed to have been acquired 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 its equity securities.	163 164
(G) The division of securities, pursuant to Chapter 119. of the Revised Code, may adopt reasonable rules to define terms used in this section and types of conduct or practices which the division determines are either of the following:	165 166 167 168
(1) Comprehended as within the purpose of this section as set forth in division (A) of this section and therefore subject to this section;	169 170 171
(2) Not comprehended as within the purpose of division (A) of this section and therefore exempt from this section.	172 173
(H) As used in this section:	174
(1) "Corporation" and "person" have the same meanings as in section 1701.01 of the Revised Code.	175 176
(2) "Profit from the disposition of equity securities of a corporation" means both of the following:	177 178
(a) The excess of the fair market value of the consideration directly or indirectly received or to be received from the disposition, less the usual and customary broker's commissions actually paid in connection with the disposition, over the fair market value of the consideration directly or indirectly paid for the acquisition of the equity securities, plus the usual and customary broker's commissions actually paid in connection with the acquisition;	179 180 181 182 183 184 185 186
(b) The value of any tax benefit to which a person is directly or indirectly entitled resulting from disposition of equity securities of the corporation for consideration with a value that is less than the fair market value of the equity	187 188 189 190

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 <u>to the corporation</u> 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) <u>For purposes of this section only, "manipulative</u>	208
<u>practices" means either or both of the following:</u>	209
(a) <u>The act, sometimes referred to as greenmail, of</u>	210
<u>staging a hostile takeover bid in order to manipulate a</u>	211
<u>corporation into repurchasing the corporation's own common stock</u>	212
<u>at a premium above the current market price;</u>	213
(b) <u>Any other act that the division of securities defines</u>	214
<u>as a "manipulative practice" pursuant to division (G) of this</u>	215
<u>section.</u>	216
(6) <u>"Publicly disclosed," "publicly discloses," and</u>	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
acquire control of the corporation" does not include attempts by
shareholders to influence a corporation's policies or actions,
including attempts to nominate candidates for director of the
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 251
a signal intended to summon law enforcement to a county, 252
township, or municipal corporation in response to an alleged 253
violation of an offense under Chapter 2911. of the Revised Code 254
occurring in a nonresidential zone of the applicable county, 255
township, or municipal corporation. The term includes an alarm 256
that emits an audible signal on the exterior of a structure. The 257
term does not include an alarm installed on a vehicle or an 258
alarm designed to alert only the inhabitants within the 259
premises. The term includes an alarm system for which a permit 260
may be issued under any applicable section of the Revised Code 261
or Ohio Constitution. 262

(2) "Battery-charged fence" means a ~~fence connected to~~ 263
system, including integrated components or equipment, that 264
satisfies all of the following: 265

(a) Functions with a battery-operated energizer that is 266
intended to periodically ~~to~~ deliver voltage impulses to the 267
~~fence,~~ system with an impulse repetition rate that does not 268
exceed one hertz and an impulse duration that does not exceed 269
ten milliseconds; 270

(b) Exclusively uses a battery charging device ~~used~~ 271
~~exclusively to charge the battery, and any other ancillary~~ 272
~~components or equipment attached to such a system;~~ 273

(c) Interfaces with a monitored alarm system; 274

(d) Has a battery-operated energizer that is powered by a 275
commercial storage battery that is not more than twelve volts of 276

<u>direct current;</u>	277
<u>(e) Is four to twelve inches behind a non-battery-charged perimeter fence, wall, or structure that is not less than five feet in height;</u>	278 279 280
<u>(f) Is ten feet in height, or two feet higher than the height of the non-battery-charged perimeter fence, wall, or structure, whichever is higher;</u>	281 282 283
<u>(g) Is marked with conspicuous warning signs that are located on the battery-charged fence at not more than thirty-foot intervals and that read: "WARNING-SHOCK HAZARD" or a similar warning message.</u>	284 285 286 287
(3) "Permit" means a certificate, license, permit, or other form of permission that authorizes a person to engage in an action.	288 289 290
(B) A-Subject to division (D) of this section, a person may install, operate, and use a battery-charged fence installed on private, nonresidential property within a county, township, or municipal corporation shall satisfy all of the following:	291 292 293 294
(1) Interface with a monitored alarm system;	295
(2) Have a battery-operated energizer that is powered by a commercial storage battery that is not more than twelve volts of direct current, and that meets the standards set forth by the international electrotechnical commission 60335-02-76 current-edition;	296 297 298 299 300
(3) Be completely surrounded by a nonelectric perimeter fence or wall that is not less than five feet in height;	301 302
(4) Be not more than the higher of ten feet in height, or two feet higher than the height of the nonelectric perimeter	303 304

~~fence or wall; and~~ 305

~~(5) Be marked with conspicuous warning signs that are~~ 306
~~located on the battery charged fence at not more than forty foot~~ 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 Revised Code shall conduct the adjudication hearing referred to in sections 119.09 to 119.13 and required by section 3781.031 of the Revised Code. If there is no certified municipal or county board of appeals, the board of building appeals shall conduct the adjudication hearing. If the adjudication hearing concerns section 3781.111 of the Revised Code or any rule made thereunder, reasonable notice of the time, date, place, and subject of the hearing shall be given to any local corporation, association, or other organization composed of or representing persons with disabilities, as defined in section 3781.111 of the Revised Code, or if there is no local organization, then to any statewide corporation, association, or other organization composed of or representing persons with disabilities.

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

The Except for expedited proceedings pursuant to section 3781.21 of the Revised Code, the state board of building appeals or a certified municipal or county board of appeals shall render its decision within thirty days after the date of the adjudication hearing. Following the adjudication hearing, any

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 547
Revised Code. 548

Sec. 3781.21. (A) (1) Any appeal of an order requested 549
under section 3781.19 or 3781.20 of the Revised Code may be 550
requested to be expedited. If the expedited appeal is requested, 551
the state board of building appeals or a certified municipal or 552
county board of appeals shall do both of the following: 553

(a) Commence the appeal within one day after the request 554
was made, excluding Saturdays, Sundays, and legal holidays as 555
defined in section 1.14 of the Revised Code; 556

(b) Hold a hearing within five days after the request was 557
made, excluding Saturdays, Sundays, and legal holidays as 558
defined in section 1.14 of the Revised Code. 559

(2) (a) If a person requests an appeal of an order pursuant 560
to section 3781.19 or 3781.20 of the Revised Code and the person 561
did not request the appeal to be expedited under division (A) (1) 562
of this section, the person may request the remainder of the 563
appeal proceeding be expedited if, during the course of the 564
appeal, the board issues a continuance of the hearing, such that 565
no decision is made and additional evidence is requested in 566
order to continue the proceeding. A person may request that any 567
follow-up hearing be expedited within five days of the 568
continuance being issued. 569

(b) If the expedited appeal is requested under division 570
(A) (2) (a) of this section, the board shall hold the follow-up 571

hearing within five days of the request, excluding Saturdays, 572
Sundays, and legal holidays as defined in section 1.14 of the 573
Revised Code. 574

(3) Any expedited appeal under this division shall apply 575
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 states.	802 803
(20) "Municipal electric utility" means a municipal corporation that owns or operates facilities to generate, transmit, or distribute electricity.	804 805 806
(21) "Noncompetitive retail electric service" means a component of retail electric service that is noncompetitive as provided under division (B) of this section.	807 808 809
(22) "Nonfirm electric service" means electric service provided pursuant to a schedule filed under section 4905.30 of the Revised Code or pursuant to an arrangement under section 4905.31 of the Revised Code, which schedule or arrangement includes conditions that may require the customer to curtail or interrupt electric usage during nonemergency circumstances upon notification by an electric utility.	810 811 812 813 814 815 816
(23) "Percentage of income payment plan arrears" means funds eligible for collection through the percentage of income payment plan rider, but uncollected as of July 1, 2000.	817 818 819
(24) "Person" has the same meaning as in section 1.59 of the Revised Code.	820 821
(25) "Advanced energy project" means any technologies, products, activities, or management practices or strategies that facilitate the generation or use of electricity or energy and that reduce or support the reduction of energy consumption or support the production of clean, renewable energy for industrial, distribution, commercial, institutional, governmental, research, not-for-profit, or residential energy users, including, but not limited to, advanced energy resources and renewable energy resources. "Advanced energy project" also	822 823 824 825 826 827 828 829 830

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 866
system. 867

(30) "Net metering" means measuring the difference in an 868
applicable billing period between the electricity supplied by an 869
electric service provider and the electricity generated by a 870
customer-generator that is fed back to the electric service 871
provider. 872

(31) "Net metering system" means a facility for the 873
production of electrical energy that does all of the following: 874

(a) Uses as its fuel either solar, wind, biomass, landfill 875
gas, or hydropower, or uses a microturbine or a fuel cell; 876

(b) Is located on a customer-generator's premises; 877

(c) Operates in parallel with the electric utility's 878
transmission and distribution facilities; 879

(d) Is intended primarily to offset part or all of the 880
customer-generator's requirements for electricity. For an 881
industrial customer-generator with a net metering system that 882
has a capacity of less than twenty megawatts and uses wind as 883
energy, this means the net metering system was sized so as to 884
not exceed one hundred per cent of the customer-generator's 885
annual requirements for electric energy at the time of 886
interconnection. 887

(32) "Self-generator" means an entity in this state that 888
owns or hosts on its premises an electric generation facility 889

that produces electricity primarily for the owner's consumption 890
and that may provide any such excess electricity to another 891
entity, whether the facility is installed or operated by the 892
owner or by an agent under a contract. 893

(33) "Rate plan" means the standard service offer in 894
effect on the effective date of the amendment of this section by 895
S.B. 221 of the 127th general assembly, July 31, 2008. 896

(34) "Advanced energy resource" means any of the 897
following: 898

(a) Any method or any modification or replacement of any 899
property, process, device, structure, or equipment that 900
increases the generation output of an electric generating 901
facility to the extent such efficiency is achieved without 902
additional carbon dioxide emissions by that facility; 903

(b) Any distributed generation system consisting of 904
customer cogeneration technology; 905

(c) Clean coal technology that includes a carbon-based 906
product that is chemically altered before combustion to 907
demonstrate a reduction, as expressed as ash, in emissions of 908
nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or 909
sulfur trioxide in accordance with the American society of 910
testing and materials standard D1757A or a reduction of metal 911
oxide emissions in accordance with standard D5142 of that 912
society, or clean coal technology that includes the design 913
capability to control or prevent the emission of carbon dioxide, 914
which design capability the commission shall adopt by rule and 915
shall be based on economically feasible best available 916
technology or, in the absence of a determined best available 917
technology, shall be of the highest level of economically 918

feasible design capability for which there exists generally	919
accepted scientific opinion;	920
(d) Advanced nuclear energy technology consisting of	921
generation III technology as defined by the nuclear regulatory	922
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 gas as a resource. 1121
1122

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

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

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

(2) Any order issued by the commission pursuant to its consideration of an application under division (B) (1) of this section shall establish a cost recovery mechanism including, but not limited to, an adder, tracker, rider, or percentage surcharge, for recovering the amount to be recovered; specify that amount; limit the amount to not more and not less than the 1145
1146
1147
1148
1149
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 1242
service or the delivery of possession of the thing sold to the 1243
consumer, paid in currency passed from hand to hand by the 1244
consumer or the consumer's agent to the vendor or the vendor's 1245
agent, the vendor or the vendor's agent shall collect the tax 1246
with and at the same time as the price; 1247

(2) If the price is otherwise paid or to be paid, the 1248
vendor or the vendor's agent shall, at or prior to the provision 1249
of the service or the delivery of possession of the thing sold 1250
to the consumer, charge the tax imposed by or pursuant to 1251
section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised 1252
Code to the account of the consumer, which amount shall be 1253
collected by the vendor from the consumer in addition to the 1254
price. Such sale shall be reported on and the amount of the tax 1255
applicable thereto shall be remitted with the return for the 1256
period in which the sale is made, and the amount of the tax 1257
shall become a legal charge in favor of the vendor and against 1258
the consumer. 1259

(B) (1) (a) If any sale is claimed to be exempt under 1260
division (E) of section 5739.01 of the Revised Code or under 1261
section 5739.02 of the Revised Code, with the exception of 1262
divisions (B) (1) to (11), (28), (48), (55), (59), or (66) of 1263
section 5739.02 of the Revised Code, the consumer must provide 1264
to the vendor, and the vendor must obtain from the consumer, a 1265
certificate specifying the reason that the sale is not legally 1266
subject to the tax. The certificate shall be in such form, and 1267
shall be provided either in a hard copy form or electronic form, 1268
as the tax commissioner prescribes. 1269

(b) A vendor that obtains a fully completed exemption 1270

certificate from a consumer is relieved of liability for 1271
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 1359
contractor or vendor for the construction of real property or 1360
for the sale and installation onto real property of tangible 1361
personal property. 1362

Any contractor or vendor may request from any contractee a 1363
certification of what portion of the property to be transferred 1364
under such contract or agreement is to be incorporated into the 1365
realty and what portion will retain its status as tangible 1366
personal property after installation is completed. The 1367
contractor or vendor shall request the certification by 1368
certified mail delivered to the contractee, return receipt 1369
requested. Upon receipt of such request and prior to entering 1370
into the contract or agreement, the contractee shall provide to 1371
the contractor or vendor a certification sufficiently detailed 1372
to enable the contractor or vendor to ascertain the resulting 1373
classification of all materials purchased or fabricated by the 1374
contractor or vendor and transferred to the contractee. This 1375
requirement applies to a contractee regardless of whether the 1376
contractee holds a direct payment permit under section 5739.031 1377
of the Revised Code or provides to the contractor or vendor an 1378
exemption certificate as provided under this section. 1379

For the purposes of the taxes levied by this chapter and 1380
Chapter 5741. of the Revised Code, the contractor or vendor may 1381
in good faith rely on the contractee's certification. 1382
Notwithstanding division (B) of section 5739.01 of the Revised 1383
Code, if the tax commissioner determines that certain property 1384
certified by the contractee as tangible personal property 1385
pursuant to this division is, in fact, real property, the 1386
contractee shall be considered to be the consumer of all 1387
materials so incorporated into that real property and shall be 1388

liable for the applicable tax, and the contractor or vendor 1389
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