

AN ACT

To amend sections 4905.02, 4905.10, and 5321.04 and to enact sections 4933.51, 4933.52, 4933.53, 4933.54, 4933.55, 4933.552, 4933.553, 4933.554, 4933.555, 4933.56, 4933.57, 4933.58, 4933.59, 4933.60, 4933.62, 4933.65, and 4933.66 of the Revised Code regarding submetered utility services.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 4905.02, 4905.10, and 5321.04 be amended and sections 4933.51, 4933.52, 4933.53, 4933.54, 4933.55, 4933.552, 4933.553, 4933.554, 4933.555, 4933.56, 4933.57, 4933.58, 4933.59, 4933.60, 4933.62, 4933.65, and 4933.66 of the Revised Code be enacted to read as follows:

Sec. 4905.02. (A) As used in this chapter, "public utility" includes every corporation, company, copartnership, person, or association, the lessees, trustees, or receivers of the foregoing, defined in section 4905.03 of the Revised Code, including any public utility that operates its utility not for profit, except the following:

- (1) An electric light company that operates its utility not for profit;
- (2) A public utility, other than a telephone company, that is owned and operated exclusively by and solely for the utility's customers, including any consumer or group of consumers purchasing, delivering, storing, or transporting, or seeking to purchase, deliver, store, or transport, natural gas exclusively by and solely for the consumer's or consumers' own intended use as the end user or end users and not for profit;
- (3) A public utility that is owned or operated by any municipal corporation;
- (4) A railroad as defined in sections 4907.02 and 4907.03 of the Revised Code;
- (5) Any provider, including a telephone company, with respect to its provision of any of the following:
 - (a) Advanced services as defined in 47 C.F.R. 51.5;
 - (b) Broadband service, however defined or classified by the federal communications commission;
 - (c) Information service as defined in the "Telecommunications Act of 1996," 110 Stat. 59, 47 U.S.C. 153(20);
 - (d) Subject to division (A) of section 4927.03 of the Revised Code, internet protocol-enabled services as defined in section 4927.01 of the Revised Code;
 - (e) Subject to division (A) of section 4927.03 of the Revised Code, any telecommunications service as defined in section 4927.01 of the Revised Code to which both of the following apply:

(i) The service was not commercially available on September 13, 2010, the effective date of the amendment of this section by S.B. 162 of the 128th general assembly.

(ii) The service employs technology that became available for commercial use only after September 13, 2010, the effective date of the amendment of this section by S.B. 162 of the 128th general assembly.

(6)(a) A person, business, or other entity that, either on its own behalf or under a contract with a property owner, provides, constructs, or installs for customers submetered utility service;

(b) As used in this division, "submetered utility service" means any of the following, if provided, constructed, or installed at a point after services provided by a public utility are delivered to the public utility's metered points of delivery at the customers' locations:

(i) Service or benefit from an advanced energy resource as defined in section 4928.01 of the Revised Code;

(ii) Electric service to nonresidential customers;

(iii) Billing service for services described in divisions (A)(6)(b)(i) and (ii) of this section;

(iv) Resale of electricity to a tenant's dwelling unit by a landlord or the landlord's agent that is based on metered consumption;

(v) Resale of electricity to a condominium by a unit owners association or the association's agent that is based on metered consumption.

(B)(1) "Public utility" includes a for-hire motor carrier even if the carrier is operated in connection with an entity described in division (A)(1), (2), (4), or (5) of this section.

(2) Division (A) of this section shall not be construed to relieve a private motor carrier, operated in connection with an entity described in division (A)(1), (2), (4), or (5) of this section, from compliance with either of the following:

(a) Chapter 4923. of the Revised Code;

(b) Rules governing unified carrier registration adopted under section 4921.11 of the Revised Code.

(C) As used in this section:

(1) "Condominium" and "unit owners association" have the same meanings as in section 5311.01 of the Revised Code.

(2) "Dwelling unit," "landlord," and "tenant" have the same meanings as in section 5321.01 of the Revised Code.

Sec. 4905.10. (A) For the sole purpose of maintaining and administering the public utilities commission and exercising its supervision and jurisdiction over the railroads and public utilities of this state, an amount equivalent to the appropriation from the public utilities fund created under division (B) of this section to the public utilities commission for railroad and public utilities regulation in each fiscal year shall be apportioned among and assessed against each railroad and public utility within this state by the commission by first computing an assessment as though it were to be made in proportion to the intrastate gross earnings or receipts, excluding earnings or receipts

from sales to other public utilities for resale, of the railroad or public utility for the calendar year next preceding that in which the assessment is made. The commission may include in that first computation any amount of a railroad's or public utility's intrastate gross earnings or receipts that were underreported in a prior year. In addition to whatever penalties apply under the Revised Code to such underreporting, the commission shall assess the railroad or public utility interest at the rate stated in division (A) of section 1343.01 of the Revised Code. The commission shall deposit any interest so collected into the public utilities fund. The commission may exclude from that first computation any such amounts that were overreported in a prior year.

The final computation of the assessment shall consist of imposing upon each railroad and public utility whose assessment under the first computation would have been one hundred dollars or less an assessment of one hundred dollars and recomputing the assessments of the remaining railroads and public utilities by apportioning an amount equal to the appropriation to the public utilities commission for administration of the utilities division in each fiscal year less the total amount to be recovered from those paying the minimum assessment, in proportion to the intrastate gross earnings or receipts of the remaining railroads and public utilities for the calendar year next preceding that in which the assessments are made.

In the case of an assessment based on intrastate gross receipts under this section against a public utility that is an electric utility as defined in section 4928.01 of the Revised Code, or an electric services company, electric cooperative, or governmental aggregator subject to certification under section 4928.08 of the Revised Code, such receipts shall be those specified in the utility's, company's, cooperative's, or aggregator's most recent report of intrastate gross receipts and sales of kilowatt hours of electricity, filed with the commission pursuant to division (F) of section 4928.06 of the Revised Code, and verified by the commission.

In the case of an assessment based on intrastate gross receipts under this section against a retail natural gas supplier or governmental aggregator subject to certification under section 4929.20 of the Revised Code, such receipts shall be those specified in the supplier's or aggregator's most recent report of intrastate gross receipts and sales of hundred cubic feet of natural gas, filed with the commission pursuant to division (B) of section 4929.23 of the Revised Code, and verified by the commission. However, no such retail natural gas supplier or such governmental aggregator serving or proposing to serve customers of a particular natural gas company, as defined in section 4929.01 of the Revised Code, shall be assessed under this section until after the commission, pursuant to section 4905.26 or 4909.18 of the Revised Code, has removed from the base rates of the natural gas company the amount of assessment under this section that is attributable to the value of commodity sales service, as defined in section 4929.01 of the Revised Code, in the base rates paid by those customers of the company that do not purchase that service from the natural gas company.

In the case of an assessment based on intrastate gross receipts under this section against a submetered utility service provider, such receipts shall be limited to receipts for submetered utility service.

(B) Through calendar year 2005, on or before the first day of October in each year, the commission shall notify each such railroad and public utility of the sum assessed against it, whereupon payment shall be made to the commission, which shall deposit it into the state treasury to the credit of the public utilities fund, which is hereby created. Beginning in calendar year 2006, on or before the fifteenth day of May in each year, the commission shall notify each railroad and public utility that had a sum assessed against it for the current fiscal year of more than one thousand dollars that fifty per cent of that amount shall be paid to the commission by the twentieth day of June of that year as an initial payment of the assessment against the company for the next fiscal year. On or before the first day of October in each year, the commission shall make a final determination of the sum of the assessment against each railroad and public utility and shall notify each railroad and public utility of the sum assessed against it. The commission shall deduct from the assessment for each railroad or public utility any initial payment received. Payment of the assessment shall be made to the commission by the first day of November of that year. The commission shall deposit the payments received into the state treasury to the credit of the public utilities fund. Any such amounts paid into the fund but not expended by the commission shall be credited ratably, after first deducting any deficits accumulated from prior years, by the commission to railroads and public utilities that pay more than the minimum assessment, according to the respective portions of such sum assessable against them for the ensuing fiscal year. The assessments for such fiscal year shall be reduced correspondingly.

(C) Within five days after the beginning of each fiscal year through fiscal year 2006, the director of budget and management shall transfer from the general revenue fund to the public utilities fund an amount sufficient for maintaining and administering the public utilities commission and exercising its supervision and jurisdiction over the railroads and public utilities of the state during the first four months of the fiscal year. The director shall transfer the same amount back to the general revenue fund from the public utilities fund at such time as the director determines that the balance of the public utilities fund is sufficient to support the appropriations from the fund for the fiscal year. The director may transfer less than that amount if the director determines that the revenues of the public utilities fund during the fiscal year will be insufficient to support the appropriations from the fund for the fiscal year, in which case the amount not paid back to the general revenue fund shall be payable to the general revenue fund in future fiscal years.

(D) For the purpose of this section only, "public utility" includes:

(1) In addition to an electric utility as defined in section 4928.01 of the Revised Code, an electric services company, an electric cooperative, or a governmental aggregator subject to certification under section 4928.08 of the Revised Code, to the extent of the company's, cooperative's, or aggregator's engagement in the business of supplying or arranging for the supply in this state of any retail electric service for which it must be so certified;

(2) In addition to a natural gas company as defined in section 4929.01 of the Revised Code, a retail natural gas supplier or governmental aggregator subject to certification under section 4929.20

of the Revised Code, to the extent of the supplier's or aggregator's engagement in the business of supplying or arranging for the supply in this state of any competitive retail natural gas service for which it must be certified;

(3) A submetered utility service provider.

(E) Each public utilities commissioner shall receive a salary fixed at the level set by pay range 49 under schedule E-2 of section 124.152 of the Revised Code.

(F) As used in this section, "submetered utility service" has the same meaning as in section 4905.02 of the Revised Code and "submetered utility service provider" has the same meaning as in section 4933.51 of the Revised Code.

Sec. 4933.51. As used in sections 4933.51 to 4933.66 of the Revised Code:

(A) "Building" has the same meaning as in section 3781.06 of the Revised Code.

(B) "Condominium" has the same meaning as in section 5311.01 of the Revised Code.

(C) "Dwelling unit," "landlord," and "tenant" have the same meanings as in section 5321.01 of the Revised Code.

(D) "Electric utility" has the same meaning as in section 4928.01 of the Revised Code.

(E) "Qualified low-income building" has the same meaning as in section 175.16 of the Revised Code.

(F) "Submetered utility service" has the same meaning as in section 4905.02 of the Revised Code.

(G)(1) "Submetered utility service provider" means, subject to divisions (G)(2) and (3) of this section, a person, business, or other entity that, either on its own behalf or under a contract with a property owner, provides, constructs, or installs for customers submetered utility service.

(2) In the case of resale of electricity to a tenant based on metered consumption at the tenant's dwelling unit, the submetered utility service provider is the master meter account holder, or customer of record, with the electric utility delivering service to the premises, except to the extent that such account holder or customer of record is a landlord who has assigned responsibility for compliance with some or all of the requirements of sections 4933.55 to 4933.59 of the Revised Code to a third party by contract. The third party that assumed responsibility for compliance with some or all of the requirements of sections 4933.55 to 4933.59 of the Revised Code is the submetered utility service provider to the extent that the third party has assumed such responsibility.

(3) "Submetered utility service provider" does not include a person, business, or other entity that, either on its own behalf or under a contract with a property owner, provides, constructs, or installs either of the following for customers:

(a) A mercantile customer self-power system, as defined in section 4928.73 of the Revised Code;

(b) A behind the meter electric generation facility.

(H) "Substantial improvement" means any repair or improvement to a building where the cost of the repair or improvement is at least fifty per cent of the county auditor's market value, as

defined in section 5705.01 of the Revised Code, of the property where the building is located during the tax year in which the repair or improvement is completed.

Sec. 4933.52. (A) Except for reasons of safety or reliability, the public utilities commission shall not adopt any rule that permits an electric utility to set the location of, or refuse to relocate, any of its meters so that the meter's location prevents a submetered utility service provider from providing, constructing, or installing submetered utility service at a point after the electric service is delivered to the electric utility's metered point of delivery at that location.

(B) Except for reasons of safety or reliability, no electric utility shall set the location of, or refuse to relocate, any of its meters so that the meter's location prevents a submetered utility service provider from providing, constructing, or installing submetered utility service at a point after the electric utility service is delivered to the electric utility's metered point of delivery at that location.

Sec. 4933.53. (A) An electric utility may sell its equipment to a submetered utility service provider at a property or community where the provider intends to provide submetered utility service.

(B) If an electric utility decides not to sell its equipment to a submetered utility service provider at a property or community where the provider intends to provide submetered utility service, then the utility shall remove the equipment in a timely manner.

(C) If an electric utility does not remove its equipment in a timely manner under division (B) of this section, then the utility shall pay all costs for the submetered utility service provider to remove the equipment.

Sec. 4933.54. Each electric utility shall maintain up-to-date reference tools on the utility's web site, or in another conspicuous and publicly accessible location, that permit automatic calculation of what the electric utility would charge its residential customers with a specific kilowatt-hour usage during any of the most recent twelve months.

Sec. 4933.55. A submetered utility service provider that resells electricity to a tenant based on metered consumption at the tenant's dwelling unit shall provide the tenant a discount resulting in the tenant's bill being at least three per cent less than the bill for the standard service offer and all tariffed charges and riders that the electric utility, in whose certified territory the dwelling unit is located, would charge its residential customers for electric service.

Sec. 4933.552. On and after the effective date of this section:

(A) No submetered utility service provider shall convert a building that receives electric service from an electric utility to receive submetered utility service, unless the submetered utility service provider begins installing submetered utility service equipment within one year after a substantial improvement to the building is completed.

(B) A submetered utility service provider may supply submetered utility service to a building that does not receive electric service from an electric utility.

Sec. 4933.553. No submetered utility service provider shall bill or otherwise recover from customers any amounts that were previously undercharged for unmetered electricity.

Sec. 4933.554. (A) The cost of electricity for electric vehicle charging stations located at a residential property shall not be included in any common area electricity charge or fee billed to tenants, regardless of whether the property is served by an electric utility or a submetered utility service provider.

(B) Electric vehicle charging station costs shall be billed exclusively on an as-used basis, directly to the tenant or vehicle owner who used the charging station during the applicable billing period.

(C) This section applies to both submetered utility service providers and landlords, regardless of whether the property is subject to submetered utility service.

(D) No landlord or submetered utility service provider shall recover the cost of electric vehicle charging station infrastructure, maintenance, or operation through common area charges assessed against tenants who do not use such charging stations.

Sec. 4933.555. (A) Except as provided in division (B) of this section, no submetered utility service provider that resells electricity to a tenant based on metered consumption at the tenant's dwelling unit shall charge a tenant a common area charge or fee, including any common area charge or fee for central systems air conditioning, heating, and hot water.

(B) A submetered utility service provider shall be solely responsible for calculating, billing, and collecting any common area charge or fee for electricity. Any such charge billed to a tenant shall both:

(1) Not exceed the actual cost of electricity billed to the submetered utility service provider by the electric utility for common area consumption, allocated on a pro-rata basis among the dwelling units served;

(2) Include no markup, administrative fee, service charge, or any other amount above the actual cost described in division (B)(1) of this section.

(C) No landlord shall independently bill or collect common area electricity charges from tenants at a property where a submetered utility service provider operates. The provider assumes full responsibility for the accuracy and compliance of all common area electricity billing.

Sec. 4933.56. A submetered utility service provider that resells electricity to a tenant based on metered consumption at the tenant's dwelling unit shall do all of the following:

(A) Register with the public utilities commission every two years and comply with the rules adopted pursuant to section 4933.59 of the Revised Code. Registration under this division shall include only the provider's name, business address, telephone number, regulatory contact, the type of services offered by the provider, and evidence of the managerial, financial, and technical capabilities to offer such services.

(B) At a minimum, comply with the requirements for the disconnection of electric service established in sections 4933.121 to 4933.123 of the Revised Code and the rules adopted pursuant to those sections, as applicable, or as otherwise ordered by the commission;

(C) Provide a separate disclosure and a report of historic monthly usage and corresponding

billed amounts for metered electricity to each tenant's dwelling unit for the preceding twelve months, if applicable, to its tenants solely for purposes of compliance with the pricing requirements under section 4933.55 of the Revised Code;

(D) Disclose its process and procedures for the disconnection of electric service to its tenants;

(E) Offer an alternative payment plan option to a tenant that receives submetered utility service from the provider;

(F) Accept a payment from the home energy assistance program when the account holder qualifies for the home energy assistance program;

(G) Ensure that each bill issued by the provider for submetered utility service complies with all of the following:

(1) Lists each charge or fee for submetered utility service in a separate and distinct manner that allows the tenant to understand each charge or fee;

(2) Contains no common area charge or fee, including any common area charge or fee for central systems air conditioning, heating, and hot water, except as provided in section 4933.555 of the Revised Code;

(3) Clearly states the tenant's actual metered electricity usage in kilowatt hours, or other standard measure, in a manner that allows the tenant to effectively use the reference tools required by section 4933.54 of the Revised Code;

(4) States the applicable standard service offer rate of the electric utility for the same billing period and equivalent usage, enabling the tenant to verify the savings required under section 4933.55 of the Revised Code.

(H) Furnish high quality, safe, and reliable service.

Sec. 4933.57. (A) Prior to the effective date of the rules adopted to implement section 4933.58 of the Revised Code, a submetered utility service provider that resells electricity to a tenant based on metered consumption at the tenant's dwelling unit at a property or community with more than fifty dwelling units shall file an interim compliance plan for approval with the public utilities commission for each property or community with more than fifty dwelling units at which submetered utility service is provided to tenants by either of the following dates, whichever is later:

(1) Not more than ninety days after the commission adopts rules to implement this section;

(2) Prior to the date that the provider initiates providing submetered utility service at the property or community.

(B) The commission may approve an interim compliance plan filing that does all of the following:

(1) Includes the provider's name, business address, telephone number, regulatory contact, and the type of services offered by the provider at the community or property;

(2) Describes the methods by which the provider intends to ensure that any bills to tenants at the property or community comply with the pricing requirements for the resale of electricity under

section 4933.55 of the Revised Code:

(3) Describes how the provider intends to comply with the electric service disconnection standards imposed by section 4933.56 of the Revised Code;

(4) If more than one submetered utility service provider provides submetered utility service at a single property or community with more than fifty dwelling units, or if more than one party is responsible for the compliance plan items described in this section, sets forth the responsibilities of each provider for each of the interim compliance plan items described in this section.

(C) The provider shall adhere to the interim compliance plan that is approved by the commission until the plan is terminated, unless otherwise directed by the commission.

(D) An interim compliance plan for a property or community approved by the commission terminates upon the commission approving a compliance plan under section 4933.58 of the Revised Code for the same property or community. An interim compliance plan continues until terminated pursuant to this division or terminated by the commission.

(E) The requirement that a provider file an interim compliance plan under this section terminates upon the effective date of rules to implement section 4933.58 of the Revised Code.

Sec. 4933.58. (A) A submetered utility service provider that resells electricity to a tenant based on metered consumption at the tenant's dwelling unit at a property or community with more than fifty dwelling units shall file a compliance plan for approval with the public utilities commission for each property or community with more than fifty dwelling units at which submetered utility service is provided to tenants by either of the following dates, whichever is later:

(1) Not more than ninety days after the commission adopts rules to implement this section;

(2) Prior to the date that the provider initiates providing submetered utility service at the property or community.

(B) The commission may approve a compliance plan filing that does all of the following:

(1) Describes the means by which the provider will ensure compliance with sections 4933.56 and 4933.59 of the Revised Code at the property or community, as applicable;

(2) Includes the provider's name, business address, telephone number, regulatory contact, and the type of services offered by the provider at the community or property;

(3) Describes the methods by which the provider intends to ensure that any bills to tenants at the property or community comply with the pricing requirements for the resale of electricity under section 4933.55 of the Revised Code;

(4) Describes how the provider intends to comply with the electric service disconnection standards imposed by section 4933.56 of the Revised Code;

(5) Includes a copy of the language included, or to be included, in each tenant's lease relating to submetered utility service that complies with division (C) of this section, as applicable, and section 5321.04 of the Revised Code;

(6) For submetered utility service provided or intended to be provided to a qualified low-income building, discloses any utility assistance programs available to tenants or condominium

owners of which the applicant is aware as of the date the application is submitted;

(7) If more than one submetered utility service provider provides submetered utility service at a single property or community with more than fifty dwelling units, or if more than one party is responsible for the compliance plan items described in this section, sets forth the responsibilities of each provider for each of the compliance plan items described in this section;

(8) Discloses the standard communication format used by the provider or landlord to provide information to tenants;

(9) Provide a description of the alternative payment plan required by section 4933.56 of the Revised Code.

(C) To the extent that a landlord of a property or community with more than fifty dwelling units is not the submetered utility service provider, the landlord shall separately contribute to or attest to the language included, or to be included, in each tenant's lease relating to submetered utility service.

(D) The provider shall adhere to the compliance plan that is approved by the commission, unless otherwise directed by the commission.

(E) The compliance plan shall be updated upon any material change to the information contained therein.

Sec. 4933.59. (A) Not later than one year after the effective date of this section, the public utilities commission shall adopt rules to do all of the following:

(1) Implement sections 4933.56 and 4933.58 of the Revised Code;

(2) Establish minimum service requirements for submetered utility service providers with respect to metering, outages and accident reports, and customer billing and payments as if the providers were electric utilities;

(3) Establish procedures for customer complaint and complaint handling for submetered utility service providers as if the providers were electric utilities;

(4) Establish requirements for submetered utility service providers governing retention of records and production of such records in response to requests by commission staff.

(B) The commission shall adopt rules to implement section 4933.57 of the Revised Code not more than one hundred eighty days after the effective date of this section.

(C) The commission may require submetered utility service providers that provide submetered utility service to residential end users other than providers that resell electricity to a tenant based on metered consumption at the tenant's dwelling unit to register every two years and to comply with any applicable registration requirements.

(D) Rules adopted under this section, including any requirements regarding classifications, procedures, terms, and conditions, shall be reasonable and shall not confer any undue economic, competitive, or market advantage or preference upon any electric utility, submetered utility service provider, or competitive retail electric service provider.

(E) The commission shall adopt rules consistent with this section that govern submetered

utility service providers that provide submetered utility service to residential end users other than providers that resell electricity to a tenant based on metered consumption at the tenant's dwelling.

(F) Notwithstanding any provision of section 121.95 of the Revised Code to the contrary, a regulatory restriction contained in rules adopted under sections 4933.51 to 4933.66 of the Revised Code is not subject to sections 121.95 to 121.953 of the Revised Code.

Sec. 4933.60. (A) The public utilities commission shall approve or issue a notice of deficiency in accordance with division (B)(2) of this section relating to any of the following not more than thirty days after receipt from a submetered utility service provider at a property or community with more than fifty dwelling units:

(1) A registration application required under section 4933.56 or 4933.59 of the Revised Code;

(2) An interim compliance plan filing required under section 4933.57 of the Revised Code;

(3) A compliance plan filing required under section 4933.58 of the Revised Code.

(B)(1) The commission may approve a provider's application or filing described in this section if the application or filing complies with all requirements under sections 4933.56 to 4933.59 of the Revised Code, as applicable.

(2) If a provider's application or filing described in this section does not comply with some or all of the requirements under sections 4933.56 to 4933.59 of the Revised Code, the commission shall notify the provider by using a notice of deficiency setting forth the manner of noncompliance in terms sufficiently specific to permit the provider to remedy the noncompliance. Upon a provider's amendment of an application or filing following a notice of deficiency, the commission shall approve or deny the provider's amended application or filing within ninety days of receipt.

(C) If the commission denies a provider's amended application or filing as described in this section, the commission shall notify the provider of the reason for such denial.

(D) Any application or filing described in this section that is not approved or for which a notice of deficiency is not submitted within ninety days is deemed approved by operation of law.

Sec. 4933.62. (A) No submetered utility service provider shall provide a submetered utility service to a consumer in this state without first being registered with the public utilities commission, to the extent registration is required under sections 4933.56 and 4933.59 of the Revised Code.

(B) Beginning one hundred twenty days after the effective date of rules adopted to implement section 4933.57 of the Revised Code and terminating upon the effective date of rules to implement section 4933.58 of the Revised Code, no submetered utility service provider that resells electricity to a tenant based on metered consumption at the tenant's dwelling unit at a property or community with more than fifty dwelling units shall provide a submetered utility service to a consumer in this state without an approved interim compliance plan under section 4933.57 of the Revised Code.

(C) Beginning one hundred twenty days after the effective date of rules adopted to implement section 4933.58 of the Revised Code, no submetered utility service provider that resells

electricity to a tenant based on metered consumption at the tenant's dwelling unit at a property or community with more than fifty dwelling units shall provide a submetered utility service to a consumer in this state without an approved compliance plan under section 4933.58 of the Revised Code.

Sec. 4933.65. (A) Any submetered utility service provider that is found to have violated or failed to comply with the requirements under sections 4933.55 to 4933.59 of the Revised Code may be assessed, or have any or all of the following penalties imposed, at the discretion of the public utilities commission:

(1) A forfeiture of not more than one hundred dollars for each violation or compliance failure per impacted dwelling unit. For purposes of a forfeiture under division (A)(1) of this section, each day that a provider violates or fails to comply with sections 4933.55 to 4933.59 of the Revised Code is a separate violation or compliance failure for each violation or compliance failure.

(2) A forfeiture of ten thousand dollars if the submetered utility service provider is found to have violated or failed to comply with division (C) of section 4933.62 of the Revised Code. A forfeiture under division (A)(2) of this section may be in addition to a forfeiture under division (A)(1) of this section.

(3) Revocation, vacation, or nullification of the provider's registration under section 4933.56 or 4933.59 of the Revised Code and issuance of an order and entry of the order in the journal of the commission barring such provider from providing submetered utility service in this state for not more than two years or permanently;

(4) Restitution paid to the provider's customers;

(5) Re-rating of the provider's customers;

(6) A refund or bill credit to the provider's customers.

(B) In addition to penalties under division (A) of this section, a submetered utility service provider that violates section 4933.55 or 4933.56 of the Revised Code shall be subject to the following graduated penalties, per tenant and per violation, where each billing period in which a tenant is overcharged is a separate violation:

(1) For a first violation, five times the amount of the overcharge to that tenant;

(2) For a second violation, ten times the amount of overcharge to that tenant;

(3) For a third or subsequent violation, ten times the amount of the overcharge to that tenant, plus an additional five thousand dollars.

(C) The commission shall track violations on a per-provider, per-property basis. Forfeitures under division (B) of this section shall first be paid as restitution to the affected tenant with any remainder credited to the general revenue fund.

(D) Forfeitures under this section shall be recovered by action prosecuted in the name of the state and may be brought in the court of common pleas of any county in which the provider who committed the violation or failed to comply is located. The action shall be commenced and prosecuted by the attorney general when directed by the commission. All forfeitures are cumulative,

and an action for recovery of one does not bar the recovery of another. Except as provided in division (C) of this section, forfeitures collected under this section shall be credited to the general revenue fund.

Sec. 4933.66. The public utilities commission may enter an order in the journal of the commission barring, for not more than two years or permanently, the provision of submetered utility service to the property or community of a landlord that is found to have failed to comply with division (C) of section 4933.58 of the Revised Code.

Sec. 5321.04. (A) A landlord who is a party to a rental agreement shall do all of the following:

(1) Comply with the requirements of all applicable building, housing, health, and safety codes that materially affect health and safety;

(2) Make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition;

(3) Keep all common areas of the premises in a safe and sanitary condition;

(4) Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, and air conditioning fixtures and appliances, and elevators, supplied or required to be supplied by the landlord;

(5) When the landlord is a party to any rental agreements that cover four or more dwelling units in the same structure, provide and maintain appropriate receptacles for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of a dwelling unit, and arrange for their removal;

(6) Supply running water, reasonable amounts of hot water, and reasonable heat at all times, except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection;

(7) Not abuse the right of access conferred by division (B) of section 5321.05 of the Revised Code;

(8) Except in the case of emergency or if it is impracticable to do so, give the tenant reasonable notice of the landlord's intent to enter and enter only at reasonable times. Twenty-four hours is presumed to be a reasonable notice in the absence of evidence to the contrary.

(9) Promptly commence an action under Chapter 1923. of the Revised Code, after complying with division (C) of section 5321.17 of the Revised Code, to remove a tenant from particular residential premises, if the tenant fails to vacate the premises within three days after the giving of the notice required by that division and if the landlord has actual knowledge of or has reasonable cause to believe that the tenant, any person in the tenant's household, or any person on the premises with the consent of the tenant previously has or presently is engaged in a violation as described in division (A)(6)(a)(i) of section 1923.02 of the Revised Code, whether or not the tenant or other

person has been charged with, has pleaded guilty to or been convicted of, or has been determined to be a delinquent child for an act that, if committed by an adult, would be a violation as described in that division. Such actual knowledge or reasonable cause to believe shall be determined in accordance with that division.

(10) Comply with the rights of tenants under the Servicemembers Civil Relief Act, 117 Stat. 2835, 50 U.S.C. App. 501;

(11) If the landlord, whether by itself or with the assistance of a submetered utility service provider, resells or permits resale of utility service to tenants, disclose the nature of such utility service and all related charges or fees in its leases with tenants, and, as applicable, comply with sections 4933.51 to 4933.66 of the Revised Code;

(12) Not independently bill or collect common area electricity charges from tenants at any property where a submetered utility service provider operates pursuant to section 4933.555 of the Revised Code.

(B) If the landlord makes an entry in violation of division (A)(8) of this section, makes a lawful entry in an unreasonable manner, or makes repeated demands for entry otherwise lawful that have the effect of harassing the tenant, the tenant may recover actual damages resulting from the entry or demands, obtain injunctive relief to prevent the recurrence of the conduct, and obtain a judgment for reasonable attorney's fees, or may terminate the rental agreement.

(C) As used in this section, "submetered utility service provider" has the same meaning as in section 4933.51 of the Revised Code.

SECTION 2. That existing sections 4905.02, 4905.10, and 5321.04 of the Revised Code are hereby repealed.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. H. B. No. 173

136th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____