

As Introduced

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H. B. No. 657

Representatives Rezabek, Celebrezze

A BILL

To amend sections 4911.18 and 4927.03 of the 1
Revised Code to exempt wireless service 2
providers and resellers from the Ohio Consumers' 3
Counsel operating assessment. 4

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

Section 1. That sections 4911.18 and 4927.03 of the 5
Revised Code be amended to read as follows: 6

Sec. 4911.18. (A) For the sole purpose of maintaining and 7
administering the office of the consumers' counsel and 8
exercising the powers of the consumers' counsel under this 9
chapter, an amount equal to the appropriation to the office of 10
the consumers' counsel in each fiscal year shall be apportioned 11
among and assessed against each public utility within this 12
state, as defined in section 4911.01 of the Revised Code, by 13
first computing an assessment as though it were to be made in 14
proportion to the intrastate gross earnings or receipts of the 15
public utility for the calendar year next preceding that in 16
which the assessment is made, excluding earnings or receipts 17
from sales to other public utilities for resale. The office may 18
include in that first computation any amount of a public 19

utility's intrastate gross earnings or receipts underreported in 20
a prior year. In addition to whatever penalties apply under the 21
Revised Code to such underreporting, the office shall assess the 22
public utility interest at the rate stated in division (A) of 23
section 1343.01 of the Revised Code. The office shall deposit 24
any interest so collected into the consumers' counsel operating 25
fund. The office may exclude from that first computation any 26
such amounts that were over-reported in a prior year. 27

The final computation of the assessment shall consist of 28
imposing upon each public utility whose assessment under the 29
first computation would have been one hundred dollars or less an 30
assessment of one hundred dollars and recomputing the assessment 31
of the remaining companies by apportioning an amount equal to 32
the appropriation to the office of consumers' counsel in each 33
fiscal year less the total amount to be recovered from those 34
paying the minimum assessment, in proportion to the intrastate 35
gross earnings or receipts of the remaining companies for the 36
calendar year next preceding that in which the assessments are 37
made, excluding earnings or receipts from sales to other public 38
utilities for resale. 39

In the case of an assessment based on intrastate gross 40
receipts under this section against a public utility that is an 41
electric utility as defined in section 4928.01 of the Revised 42
Code, or an electric services company, electric cooperative, or 43
governmental aggregator subject to certification under section 44
4928.08 of the Revised Code, such receipts shall be those 45
specified in the utility's, company's, cooperative's, or 46
aggregator's most recent report of intrastate gross receipts and 47
sales of kilowatt hours of electricity, filed with the public 48
utilities commission pursuant to division (F) of section 4928.06 49
of the Revised Code, and verified by the commission. 50

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.

(B) Through calendar year 2005, on or before the first day of October in each year, the office of consumers' counsel shall notify each public utility of the sum assessed against it, whereupon payment shall be made to the counsel, who shall deposit it into the state treasury to the credit of the consumers' counsel operating fund, which is hereby created. Beginning in calendar year 2006, on or before the fifteenth day of May in each year, the consumers' counsel shall notify each 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 consumers' counsel

by the twentieth day of June of that year as an initial payment 82
of the assessment against the company for the next fiscal year. 83
On or before the first day of October in each year, the 84
consumers' counsel shall make a final determination of the sum 85
of the assessment against each public utility and shall notify 86
each public utility of the sum assessed against it. The 87
consumers' counsel shall deduct from the assessment for each 88
public utility any initial payment received. Payment of the 89
assessment shall be made to the consumers' counsel by the first 90
day of November of that year. The consumers' counsel shall 91
deposit the payments received into the state treasury to the 92
credit of the consumers' counsel operating fund. Any such 93
amounts paid into the fund but not expended by the office shall 94
be credited ratably by the office to the public utilities that 95
pay more than the minimum assessment, according to the 96
respective portions of such sum assessable against them for the 97
ensuing fiscal year, after first deducting any deficits 98
accumulated from prior years. The assessments for such fiscal 99
year shall be reduced correspondingly. 100

(C) Within five days after the beginning of each fiscal 101
year through fiscal year 2006, the director of budget and 102
management shall transfer from the general revenue fund to the 103
consumers' counsel operating fund an amount sufficient for 104
maintaining and administering the office of the consumers' 105
counsel and exercising the powers of the consumers' counsel 106
under this chapter during the first four months of the fiscal 107
year. Not later than the thirty-first day of December of the 108
fiscal year, the same amount shall be transferred back to the 109
general revenue fund from the consumers' counsel operating fund. 110

(D) (1) As used in this section, "public utility" includes: 111

~~(1)~~ (a) In addition to an electric utility as defined in 112
section 4928.01 of the Revised Code, an electric services 113
company, an electric cooperative, or a governmental aggregator 114
subject to certification under section 4928.08 of the Revised 115
Code, to the extent of the company's, cooperative's, or 116
aggregator's engagement in the business of supplying or 117
arranging for the supply in this state of any retail electric 118
service for which it must be so certified; 119

~~(2)~~ (b) In addition to a natural gas company as defined in 120
section 4929.01 of the Revised Code, a retail natural gas 121
supplier or governmental aggregator subject to certification 122
under section 4929.20 of the Revised Code, to the extent of the 123
supplier's or aggregator's engagement in the business of 124
supplying or arranging for the supply in this state of any 125
competitive retail natural gas service for which it must be 126
certified. 127

(2) As used in this section, "public utility" does not 128
include a wireless service provider or reseller as defined in 129
section 128.01 of the Revised Code, to the extent either of them 130
are providing wireless service as defined under section 128.01 131
of the Revised Code. 132

Sec. 4927.03. (A) Except as provided in divisions (A) and 133
(B) of section 4927.04 of the Revised Code and except to the 134
extent required to exercise authority under federal law, the 135
public utilities commission has no authority over any 136
interconnected voice over internet protocol-enabled service or 137
any telecommunications service that is not commercially 138
available on September 13, 2010, and that employs technology 139
that became available for commercial use only after September 140
13, 2010, unless the commission, upon a finding that the 141

exercise of the commission's authority is necessary for the 142
protection, welfare, and safety of the public, adopts rules 143
specifying the necessary regulation. A consumer purchase of a 144
service that is not commercially available on September 13, 145
2010, and that employs technology that became available for 146
commercial use only after September 13, 2010, shall constitute a 147
consumer transaction for purposes of sections 1345.01 to 1345.13 148
of the Revised Code, notwithstanding any provision of those 149
sections to the contrary, unless the commission exercises 150
jurisdiction over the service in accordance with this division. 151
Notwithstanding any contrary provision of Chapter 4911. of the 152
Revised Code, to the extent that the commission adopts rules 153
under division (A) of this section regarding any interconnected 154
voice over internet protocol enabled service provided to 155
residential customers or regarding any telecommunications 156
service that is provided to residential customers, that is not 157
commercially available on September 13, 2010, and that employs 158
technology that became available for commercial use only after 159
September 13, 2010, the office of the consumers' counsel shall 160
have authority to assist and represent residential customers in 161
the implementation and enforcement of those rules. 162

(B) (1) The commission has no authority over wireless 163
service, resellers of wireless service, or wireless service 164
providers, except as follows: 165

(a) As provided under section 4905.84 of the Revised Code; 166

(b) With respect to division (C) of section 4927.15 of the 167
Revised Code; 168

(c) As provided in divisions (B) (2), (3), and (4) of this 169
section. 170

(2) The commission has authority over wireless service and wireless service providers as follows, but only to the extent authorized by federal law, including federal regulations:

(a) To the extent that the commission carries out the acts described in divisions (A), (B), (C), (D), and (F) of section 4927.04 of the Revised Code;

(b) As provided in sections 4927.05, 4927.20, and 4927.21 of the Revised Code.

(3) The requirements of sections 4905.10, ~~and~~ 4905.14, ~~and~~ ~~4911.18~~ of the Revised Code shall apply to a wireless service provider.

(4) The commission has such authority as is necessary to enforce division (B) of this section.

(C) For purposes of sections 4927.01 to 4927.21 of the Revised Code, sections 4903.02, 4903.03, 4903.24, 4903.25, 4905.04, 4905.05, 4905.06, 4905.13, 4905.15, 4905.16, 4905.17, 4905.22, 4905.26, 4905.27, 4905.28, 4905.29, 4905.31, 4905.32, 4905.33, 4905.35, 4905.37, 4905.38, 4905.39, 4905.48, 4905.54, 4905.55, 4905.56, and 4905.60 of the Revised Code do not apply to a telephone company or, as applicable, to an officer, employee, or agent of such company or provider, except to the extent necessary for the commission to carry out sections 4927.01 to 4927.21 of the Revised Code.

(D) Except as specifically authorized in sections 4927.01 to 4927.21 of the Revised Code, the commission has no authority over the quality of service and the service rates, terms, and conditions of telecommunications service provided to end users by a telephone company.

(E) The commission shall initially adopt the rules

required by this chapter not later than one hundred twenty days 200
after September 13, 2010. Subject to the authority granted to 201
the commission under this chapter, the commission may adopt 202
other rules, including rules regarding the removal from tariffs 203
of services that were required to be filed in tariffs prior to 204
September 13, 2010, as it finds necessary to carry out this 205
chapter. 206

Section 2. That existing sections 4911.18 and 4927.03 of 207
the Revised Code are hereby repealed. 208