

**As Passed by the House**

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**H. B. No. 226**

**Representatives Robb Blasdel, Jarrells**

**Cosponsors: Representatives Grim, Isaacsohn, Hillyer, Troy, Brennan, Miller, A.,  
Abdullahi, Baker, Blackshear, Brent, Brewer, Brown, Carruthers, Dell'Aquila,  
Denson, Dobos, Forhan, Humphrey, Jones, Liston, Manning, Mathews, Miller, J.,  
Miranda, Mohamed, Piccolantonio, Rogers, Russo, Schmidt, Seitz, Sims, Somani,  
Sweeney, Thomas, C., Upchurch, Williams, Young, T.**

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**A BILL**

To amend sections 4909.05 and 4909.15 and to enact 1  
sections 4909.173 and 4909.174 of the Revised 2  
Code to permit water-works companies to bear the 3  
costs for replacing certain customer-owned water 4  
service lines. 5

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

**Section 1.** That sections 4909.05 and 4909.15 be amended 6  
and sections 4909.173 and 4909.174 of the Revised Code be 7  
enacted to read as follows: 8

**Sec. 4909.05.** As used in this section: 9

(A) A "lease purchase agreement" is an agreement pursuant 10  
to which a public utility leasing property is required to make 11  
rental payments for the term of the agreement and either the 12  
utility is granted the right to purchase the property upon the 13  
completion of the term of the agreement and upon the payment of 14  
an additional fixed sum of money or title to the property vests 15

in the utility upon the making of the final rental payment. 16

(B) A "leaseback" is the sale or transfer of property by a 17  
public utility to another person contemporaneously followed by 18  
the leasing of the property to the public utility on a long-term 19  
basis. 20

(C) The public utilities commission shall prescribe the 21  
form and details of the valuation report of the property of each 22  
public utility or railroad in the state. Such report shall 23  
include all the kinds and classes of property, with the value of 24  
each, owned, held, or, with respect to a natural gas, water- 25  
works, or sewage disposal system company, projected to be owned 26  
or held as of the date certain, by each public utility or 27  
railroad used and useful, or, with respect to a natural gas, 28  
water-works, or sewage disposal system company, projected to be 29  
used and useful as of the date certain, for the service and 30  
convenience of the public. Such report shall contain the 31  
following facts in detail: 32

(1) The original cost of each parcel of land owned in fee 33  
and in use, or, with respect to a natural gas, water-works, or 34  
sewage disposal system company, projected to be owned in fee and 35  
in use as of the date certain, determined by the commission; and 36  
also a statement of the conditions of acquisition, whether by 37  
direct purchase, by donation, by exercise of the power of 38  
eminent domain, or otherwise; 39

(2) The actual acquisition cost, not including periodic 40  
rental fees, of rights-of-way, trailways, or other land rights 41  
held, or, with respect to a natural gas, water-works, or sewage 42  
disposal system company, projected to be held as of the date 43  
certain, by virtue of easements, leases, or other forms of 44  
grants of rights as to usage; 45

(3) The original cost of all other kinds and classes of property used and useful, or, with respect to a natural gas, water-works, or sewage disposal system company, projected to be used and useful as of the date certain, in the rendition of service to the public. Subject to section 4909.052 of the Revised Code, such original costs of property, other than land owned in fee, shall be the cost, as determined to be reasonable by the commission, to the person that first dedicated or dedicates the property to the public use and shall be set forth in property accounts and subaccounts as prescribed by the commission. To the extent that the costs of property comprising a coal research and development facility, as defined in section 1555.01 of the Revised Code, or a coal development project, as defined in section 1551.30 of the Revised Code, have been allowed for recovery as Ohio coal research and development costs under section 4905.304 of the Revised Code, none of those costs shall be included as a cost of property under this division.

(4) The cost of property constituting all or part of a project leased to or used by the utility, or, with respect to a natural gas, water-works, or sewage disposal system company, projected to be leased to or used by the utility as of the date certain, under Chapter 165., 3706., 6121., or 6123. of the Revised Code and not included under division (C) (3) of this section exclusive of any interest directly or indirectly paid by the utility with respect thereto whether or not capitalized;

(5) In the discretion of the commission, the cost to a utility, in an amount determined to be reasonable by the commission, of property constituting all or part of a project leased to the utility, or, with respect to a natural gas, water-works, or sewage disposal system company, projected to be leased to the utility as of the date certain, under a lease purchase

agreement or a leaseback and not included under division (C) (3) 77  
of this section exclusive of any interest directly or indirectly 78  
paid by the utility with respect thereto whether or not 79  
capitalized; 80

(6) The cost of the replacement of water service lines 81  
incurred by a water-works company under section 4909.173 of the 82  
Revised Code and the water service line replacement 83  
reimbursement amounts provided to customers under section 84  
4909.174 of the Revised Code; 85

(7) The proper and adequate reserve for depreciation, as 86  
determined to be reasonable by the commission; 87

~~(7)~~(8) Any sums of money or property that the company may 88  
have received, or, with respect to a natural gas, water-works, 89  
or sewage disposal system company, is projected to receive as of 90  
the date certain, as total or partial defrayal of the cost of 91  
its property; 92

~~(8)~~(9) The valuation of the property of the company, 93  
which shall be the sum of the amounts contained in the report 94  
pursuant to divisions (C) (1) to ~~(5)~~(6) of this section, less 95  
the sum of the amounts contained in the report pursuant to 96  
divisions ~~(C) (6)~~(C) (7) and ~~(7)~~(8) of this section. 97

The report shall show separately the property used and 98  
useful to such public utility or railroad in the furnishing of 99  
the service to the public, the property held by such public 100  
utility or railroad for other purposes, and the property 101  
projected to be used and useful to or held by a natural gas, 102  
water-works, or sewage disposal system company as of the date 103  
certain, and such other items as the commission considers 104  
proper. The commission may require an additional report showing 105

the extent to which the property is used and useful, or, with 106  
respect to a natural gas, water-works, or sewage disposal system 107  
company, projected to be used and useful as of the date certain. 108  
Such reports shall be filed in the office of the commission for 109  
the information of the governor and the general assembly. 110

**Sec. 4909.15.** (A) The public utilities commission, when 111  
fixing and determining just and reasonable rates, fares, tolls, 112  
rentals, and charges, shall determine: 113

(1) The valuation as of the date certain of the property 114  
of the public utility used and useful or, with respect to a 115  
natural gas, water-works, or sewage disposal system company, 116  
projected to be used and useful as of the date certain, in 117  
rendering the public utility service for which rates are to be 118  
fixed and determined. The valuation so determined shall be the 119  
total value as set forth in division ~~(C) (8)~~ (C) (9) of section 120  
4909.05 of the Revised Code, and a reasonable allowance for 121  
materials and supplies and cash working capital as determined by 122  
the commission. 123

The commission, in its discretion, may include in the 124  
valuation a reasonable allowance for construction work in 125  
progress but, in no event, may such an allowance be made by the 126  
commission until it has determined that the particular 127  
construction project is at least seventy-five per cent complete. 128

In determining the percentage completion of a particular 129  
construction project, the commission shall consider, among other 130  
relevant criteria, the per cent of time elapsed in construction; 131  
the per cent of construction funds, excluding allowance for 132  
funds used during construction, expended, or obligated to such 133  
construction funds budgeted where all such funds are adjusted to 134  
reflect current purchasing power; and any physical inspection 135

performed by or on behalf of any party, including the 136  
commission's staff. 137

A reasonable allowance for construction work in progress 138  
shall not exceed ten per cent of the total valuation as stated 139  
in this division, not including such allowance for construction 140  
work in progress. 141

Where the commission permits an allowance for construction 142  
work in progress, the dollar value of the project or portion 143  
thereof included in the valuation as construction work in 144  
progress shall not be included in the valuation as plant in 145  
service until such time as the total revenue effect of the 146  
construction work in progress allowance is offset by the total 147  
revenue effect of the plant in service exclusion. Carrying 148  
charges calculated in a manner similar to allowance for funds 149  
used during construction shall accrue on that portion of the 150  
project in service but not reflected in rates as plant in 151  
service, and such accrued carrying charges shall be included in 152  
the valuation of the property at the conclusion of the offset 153  
period for purposes of division ~~(C) (8)~~ (C) (9) of section 4909.05 154  
of the Revised Code. 155

From and after April 10, 1985, no allowance for 156  
construction work in progress as it relates to a particular 157  
construction project shall be reflected in rates for a period 158  
exceeding forty-eight consecutive months commencing on the date 159  
the initial rates reflecting such allowance become effective, 160  
except as otherwise provided in this division. 161

The applicable maximum period in rates for an allowance 162  
for construction work in progress as it relates to a particular 163  
construction project shall be tolled if, and to the extent, a 164  
delay in the in-service date of the project is caused by the 165

action or inaction of any federal, state, county, or municipal 166  
agency having jurisdiction, where such action or inaction 167  
relates to a change in a rule, standard, or approval of such 168  
agency, and where such action or inaction is not the result of 169  
the failure of the utility to reasonably endeavor to comply with 170  
any rule, standard, or approval prior to such change. 171

In the event that such period expires before the project 172  
goes into service, the commission shall exclude, from the date 173  
of expiration, the allowance for the project as construction 174  
work in progress from rates, except that the commission may 175  
extend the expiration date up to twelve months for good cause 176  
shown. 177

In the event that a utility has permanently canceled, 178  
abandoned, or terminated construction of a project for which it 179  
was previously permitted a construction work in progress 180  
allowance, the commission immediately shall exclude the 181  
allowance for the project from the valuation. 182

In the event that a construction work in progress project 183  
previously included in the valuation is removed from the 184  
valuation pursuant to this division, any revenues collected by 185  
the utility from its customers after April 10, 1985, that 186  
resulted from such prior inclusion shall be offset against 187  
future revenues over the same period of time as the project was 188  
included in the valuation as construction work in progress. The 189  
total revenue effect of such offset shall not exceed the total 190  
revenues previously collected. 191

In no event shall the total revenue effect of any offset 192  
or offsets provided under division (A) (1) of this section exceed 193  
the total revenue effect of any construction work in progress 194  
allowance. 195

(2) A fair and reasonable rate of return to the utility on	196
the valuation as determined in division (A) (1) of this section;	197
(3) The dollar annual return to which the utility is	198
entitled by applying the fair and reasonable rate of return as	199
determined under division (A) (2) of this section to the	200
valuation of the utility determined under division (A) (1) of	201
this section;	202
(4) The cost to the utility of rendering the public	203
utility service for the test period used for the determination	204
under division (C) (1) of this section, less the total of any	205
interest on cash or credit refunds paid, pursuant to section	206
4909.42 of the Revised Code, by the utility during the test	207
period.	208
(a) Federal, state, and local taxes imposed on or measured	209
by net income may, in the discretion of the commission, be	210
computed by the normalization method of accounting, provided the	211
utility maintains accounting reserves that reflect differences	212
between taxes actually payable and taxes on a normalized basis,	213
provided that no determination as to the treatment in the rate-	214
making process of such taxes shall be made that will result in	215
loss of any tax depreciation or other tax benefit to which the	216
utility would otherwise be entitled, and further provided that	217
such tax benefit as redounds to the utility as a result of such	218
a computation may not be retained by the company, used to fund	219
any dividend or distribution, or utilized for any purpose other	220
than the defrayal of the operating expenses of the utility and	221
the defrayal of the expenses of the utility in connection with	222
construction work.	223
(b) The amount of any tax credits granted to an electric	224
light company under section 5727.391 of the Revised Code for	225



Ohio coal burned prior to January 1, 2000, shall not be retained 226  
by the company, used to fund any dividend or distribution, or 227  
utilized for any purposes other than the defrayal of the 228  
allowable operating expenses of the company and the defrayal of 229  
the allowable expenses of the company in connection with the 230  
installation, acquisition, construction, or use of a compliance 231  
facility. The amount of the tax credits granted to an electric 232  
light company under that section for Ohio coal burned prior to 233  
January 1, 2000, shall be returned to its customers within three 234  
years after initially claiming the credit through an offset to 235  
the company's rates or fuel component, as determined by the 236  
commission, as set forth in schedules filed by the company under 237  
section 4905.30 of the Revised Code. As used in division (A) (4) 238  
(b) of this section, "compliance facility" has the same meaning 239  
as in section 5727.391 of the Revised Code. 240

(B) The commission shall compute the gross annual revenues 241  
to which the utility is entitled by adding the dollar amount of 242  
return under division (A) (3) of this section to the cost, for 243  
the test period used for the determination under division (C) (1) 244  
of this section, of rendering the public utility service under 245  
division (A) (4) of this section. 246

(C) (1) Except as provided in division (D) of this section, 247  
the revenues and expenses of the utility shall be determined 248  
during a test period. The utility may propose a test period for 249  
this determination that is any twelve-month period beginning not 250  
more than six months prior to the date the application is filed 251  
and ending not more than nine months subsequent to that date. 252  
The test period for determining revenues and expenses of the 253  
utility shall be the test period proposed by the utility, unless 254  
otherwise ordered by the commission. 255

(2) The date certain shall be not later than the date of 256  
filing, except that it shall be, for a natural gas, water-works, 257  
or sewage disposal system company, not later than the end of the 258  
test period. 259

(D) A natural gas, water-works, or sewage disposal system 260  
company may propose adjustments to the revenues and expenses to 261  
be determined under division (C) (1) of this section for any 262  
changes that are, during the test period or the twelve-month 263  
period immediately following the test period, reasonably 264  
expected to occur. The natural gas, water-works, or sewage 265  
disposal system company shall identify and quantify, 266  
individually, any proposed adjustments. The commission shall 267  
incorporate the proposed adjustments into the determination if 268  
the adjustments are just and reasonable. 269

(E) When the commission is of the opinion, after hearing 270  
and after making the determinations under divisions (A) and (B) 271  
of this section, that any rate, fare, charge, toll, rental, 272  
schedule, classification, or service, or any joint rate, fare, 273  
charge, toll, rental, schedule, classification, or service 274  
rendered, charged, demanded, exacted, or proposed to be 275  
rendered, charged, demanded, or exacted, is, or will be, unjust, 276  
unreasonable, unjustly discriminatory, unjustly preferential, or 277  
in violation of law, that the service is, or will be, 278  
inadequate, or that the maximum rates, charges, tolls, or 279  
rentals chargeable by any such public utility are insufficient 280  
to yield reasonable compensation for the service rendered, and 281  
are unjust and unreasonable, the commission shall: 282

(1) With due regard among other things to the value of all 283  
property of the public utility actually used and useful for the 284  
convenience of the public as determined under division (A) (1) of 285

this section, excluding from such value the value of any 286  
franchise or right to own, operate, or enjoy the same in excess 287  
of the amount, exclusive of any tax or annual charge, actually 288  
paid to any political subdivision of the state or county, as the 289  
consideration for the grant of such franchise or right, and 290  
excluding any value added to such property by reason of a 291  
monopoly or merger, with due regard in determining the dollar 292  
annual return under division (A) (3) of this section to the 293  
necessity of making reservation out of the income for surplus, 294  
depreciation, and contingencies, and; 295

(2) With due regard to all such other matters as are 296  
proper, according to the facts in each case, 297

(a) Including a fair and reasonable rate of return 298  
determined by the commission with reference to a cost of debt 299  
equal to the actual embedded cost of debt of such public 300  
utility, 301

(b) But not including the portion of any periodic rental 302  
or use payments representing that cost of property that is 303  
included in the valuation report under divisions (C) (4) and (5) 304  
of section 4909.05 of the Revised Code, fix and determine the 305  
just and reasonable rate, fare, charge, toll, rental, or service 306  
to be rendered, charged, demanded, exacted, or collected for the 307  
performance or rendition of the service that will provide the 308  
public utility the allowable gross annual revenues under 309  
division (B) of this section, and order such just and reasonable 310  
rate, fare, charge, toll, rental, or service to be substituted 311  
for the existing one. After such determination and order no 312  
change in the rate, fare, toll, charge, rental, schedule, 313  
classification, or service shall be made, rendered, charged, 314  
demanded, exacted, or changed by such public utility without the 315

order of the commission, and any other rate, fare, toll, charge, 316  
rental, classification, or service is prohibited. 317

(F) Upon application of any person or any public utility, 318  
and after notice to the parties in interest and opportunity to 319  
be heard as provided in Chapters 4901., 4903., 4905., 4907., 320  
4909., 4921., and 4923. of the Revised Code for other hearings, 321  
has been given, the commission may rescind, alter, or amend an 322  
order fixing any rate, fare, toll, charge, rental, 323  
classification, or service, or any other order made by the 324  
commission. Certified copies of such orders shall be served and 325  
take effect as provided for original orders. 326

Sec. 4909.173. (A) As used in this section and section 327  
4909.174 of the Revised Code: 328

(1) "Customer-owned water service line" means the water 329  
service line connected to the water-works company's water 330  
service line at the curb of a customer's property. 331

(2) "Water-works company" means an entity defined under 332  
division (G) of section 4905.03 of the Revised Code that is a 333  
public utility under section 4905.02 of the Revised Code. 334

(B) A water-works company may do any of the following: 335

(1) Replace lead customer-owned water service lines 336  
concurrently with a scheduled utility main replacement project, 337  
an emergency replacement, or company-initiated lead water 338  
service line replacement program; 339

(2) Replace lead customer-owned water service lines when 340  
mandated or ordered to replace such lines by law or a state or 341  
federal regulatory agency; 342

(3) Replace customer-owned water service lines of other 343

composition when mandated or ordered to replace such lines by 344  
law or a state or federal regulatory agency. 345

(C) If a water-works company replaces customer-owned water 346  
service lines under this section, then the company shall include 347  
the cost of the replacement of the water service lines, 348  
including the cost of replacement of both company side and 349  
customer-owned water service lines and the cost to evaluate 350  
customer-owned water service lines of unknown composition, in 351  
the valuation report of the property of the company as required 352  
under division (C) (6) of section 4909.05 of the Revised Code for 353  
inclusion in a rate case under this chapter. 354

(D) The water service customer who is responsible for the 355  
customer-owned water service line that was replaced under this 356  
section shall hold legal title to the replaced water service 357  
line. 358

**Sec. 4909.174.** (A) A water-works company shall reimburse a 359  
customer who replaces the customer's customer-owned water 360  
service line, if both of the following occur: 361

(1) The company confirms that the customer-owned water 362  
service line was composed of lead or other composition that was 363  
mandated or ordered to be replaced by law or a state or federal 364  
regulatory agency; 365

(2) The customer submits the reimbursement request to the 366  
company not later than twelve months after the completion of the 367  
water line replacement. 368

(B) A water-works company that provides a reimbursement to 369  
a customer under this section shall include the reimbursement 370  
amount in the valuation report of the property of the company as 371  
required under division (C) (6) of section 4909.05 of the Revised 372

Code for inclusion in a rate case under this chapter. 373

**Section 2.** That existing sections 4909.05 and 4909.15 of 374  
the Revised Code are hereby repealed. 375