

# As Passed by the Senate

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Sub. H. B. No. 9

**REPRESENTATIVES** Setzer, Olman, Manning, Hollister, Goodman, Niehaus,  
Hagan, Schmidt, Womer Benjamin, Metzger, Carey, Kilbane, Peterson, Evans,  
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**SENATORS** Blessing, Spada, Fingerhut, Prentiss, White, DiDonato, Mead,  
Brady, Johnson, Coughlin, Harris, Espy, Mumper, Furney

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## A B I L L

To amend sections 4719.01, 4905.10, 4905.302, 4911.18,	1
4929.01, 4929.02, 4929.14, 4935.03, 5727.01, and	2
5727.02 and to enact sections 4929.20 to 4929.30 of	3
the Revised Code and to amend Section 37 of Am.	4
Sub. H.B. 283 of the 123rd General Assembly, as	5
subsequently amended, to require certain	6
governmental aggregators and retail natural gas	7
suppliers to be certified by the Public Utilities	8
Commission; to authorize governmental aggregation	9
for competitive retail natural gas services under	10
specified circumstances; to authorize the	11
Commission to require large natural gas companies	12
to provide distribution service on a fully open,	13
equal, and nondiscriminatory basis to its	14
nonmercantile distribution customers upon	15
Commission approval of an application of a retail	16
gas supplier, or of a governmental aggregator	17
within the area of a governmental aggregation; to	18
consolidate consumer protection enforcement	19
authority with respect to natural gas transactions;	20
to authorize Project Temporary Heating Assistance	21

for Warmth; and to make an appropriation. 22  
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**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 4719.01, 4905.10, 4905.302, 4911.18, 24  
4929.01, 4929.02, 4929.14, 4935.03, 5727.01, and 5727.02 be 25  
amended and sections 4929.20, 4929.21, 4929.22, 4929.23, 4929.24, 26  
4929.25, 4929.26, 4929.27, 4929.28, 4929.29, and 4929.30 of the 27  
Revised Code be enacted to read as follows: 28

**Sec. 4719.01.** (A) As used in sections 4719.01 to 4719.18 of 29  
the Revised Code: 30

(1) "Affiliate" means a business entity that is owned by, 31  
operated by, controlled by, or under common control with another 32  
business entity. 33

(2) "Communication" means a written or oral notification or 34  
advertisement that meets both of the following criteria, as 35  
applicable: 36

(a) The notification or advertisement is transmitted by or on 37  
behalf of the seller of goods or services and by or through any 38  
printed, audio, video, cinematic, telephonic, or electronic means. 39

(b) In the case of a notification or advertisement other than 40  
by telephone, either of the following conditions is met: 41

(i) The notification or advertisement is followed by a 42  
telephone call from a telephone solicitor or salesperson. 43

(ii) The notification or advertisement invites a response by 44  
telephone, and, during the course of that response, a telephone 45  
solicitor or salesperson attempts to make or makes a sale of goods 46  
or services. As used in division (A)(2)(b)(ii) of this section, 47  
"invites a response by telephone" excludes the mere listing or 48

inclusion of a telephone number in a notification or  
advertisement.

(3) "Gift, award, or prize" means anything of value that is  
offered or purportedly offered, or given or purportedly given by  
chance, at no cost to the receiver and with no obligation to  
purchase goods or services. As used in this division, "chance"  
includes a situation in which a person is guaranteed to receive an  
item and, at the time of the offer or purported offer, the  
telephone solicitor does not identify the specific item that the  
person will receive.

(4) "Goods or services" means any real property or any  
tangible or intangible personal property, or services of any kind  
provided or offered to a person. "Goods or services" includes, but  
is not limited to, advertising; labor performed for the benefit of  
a person; personal property intended to be attached to or  
installed in any real property, regardless of whether it is so  
attached or installed; timeshare estates or licenses; and extended  
service contracts.

(5) "Purchaser" means a person that is solicited to become or  
does become financially obligated as a result of a telephone  
solicitation.

(6) "Salesperson" means an individual who is employed,  
appointed, or authorized by a telephone solicitor to make  
telephone solicitations but does not mean any of the following:

(a) An individual who comes within one of the exemptions in  
division (B) of this section;

(b) An individual employed, appointed, or authorized by a  
person who comes within one of the exemptions in division (B) of  
this section;

(c) An individual under a written contract with a person who  
comes within one of the exemptions in division (B) of this

section, if liability for all transactions with purchasers is  
assumed by the person so exempted.

(7) "Telephone solicitation" means a communication to a  
person that meets both of the following criteria:

(a) The communication is initiated by or on behalf of a  
telephone solicitor or by a salesperson.

(b) The communication either represents a price or the  
quality or availability of goods or services or is used to induce  
the person to purchase goods or services, including, but not  
limited to, inducement through the offering of a gift, award, or  
prize.

(8) "Telephone solicitor" means a person that engages in  
telephone solicitation directly or through one or more  
salespersons either from a location in this state, or from a  
location outside this state to persons in this state. "Telephone  
solicitor" includes, but is not limited to, any such person that  
is an owner, operator, officer, or director of, partner in, or  
other individual engaged in the management activities of, a  
business.

(B) A telephone solicitor is exempt from the provisions of  
sections 4719.02 to 4719.18 and section 4719.99 of the Revised  
Code if the telephone solicitor is any one of the following:

(1) A person engaging in a telephone solicitation that is a  
one-time or infrequent transaction not done in the course of a  
pattern of repeated transactions of a like nature;

(2) A person engaged in telephone solicitation solely for  
religious or political purposes; a charitable organization,  
fund-raising counsel, or professional solicitor in compliance with  
the registration and reporting requirements of Chapter 1716. of  
the Revised Code; or any person or other entity exempt under  
section 1716.03 of the Revised Code from filing a registration

statement under section 1716.02 of the Revised Code;

(3) A person, making a telephone solicitation involving a home solicitation sale as defined in section 1345.21 of the Revised Code, that makes the sales presentation and completes the sale at a later, face-to-face meeting between the seller and the purchaser rather than during the telephone solicitation. However, if the person, following the telephone solicitation, causes another person to collect the payment of any money, this exemption does not apply.

(4) A licensed securities, commodities, or investment broker, dealer, investment advisor, or associated person when making a telephone solicitation within the scope of the person's license. As used in division (B)(4) of this section, "licensed securities, commodities, or investment broker, dealer, investment advisor, or associated person" means a person subject to licensure or registration as such by the securities and exchange commission; the National Association of Securities Dealers or other self-regulatory organization, as defined by 15 U.S.C.A. 78c; by the division of securities under Chapter 1707. of the Revised Code; or by an official or agency of any other state of the United States.

(5)(a) A person primarily engaged in soliciting the sale of a newspaper of general circulation;

(b) As used in division (B)(5)(a) of this section, "newspaper of general circulation" includes, but is not limited to, both of the following:

(i) A newspaper that is a daily law journal designated as an official publisher of court calendars pursuant to section 2701.09 of the Revised Code;

(ii) A newspaper or publication that has at least twenty-five per cent editorial, non-advertising content, exclusive of inserts,

measured relative to total publication space, and an audited  
circulation to at least fifty per cent of the households in the  
newspaper's retail trade zone as defined by the audit.

(6)(a) An issuer, or its subsidiary, that has a class of  
securities to which all of the following apply:

(i) The class of securities is subject to section 12 of the  
"Securities Exchange Act of 1934," 15 U.S.C.A. 781, and is  
registered or is exempt from registration under 15 U.S.C.A.  
781(g)(2)(A), (B), (C), (E), (F), (G), or (H);

(ii) The class of securities is listed on the New York stock  
exchange, the American stock exchange, or the NASDAQ national  
market system;

(iii) The class of securities is a reported security as  
defined in 17 C.F.R. 240.11Aa3-1(a)(4).

(b) An issuer, or its subsidiary, that formerly had a class  
of securities that met the criteria set forth in division  
(B)(6)(a) of this section if the issuer, or its subsidiary, has a  
net worth in excess of one hundred million dollars, files or its  
parent files with the securities and exchange commission an S.E.C.  
form 10-K, and has continued in substantially the same business  
since it had a class of securities that met the criteria in  
division (B)(6)(a) of this section. As used in division (B)(6)(b)  
of this section, "issuer" and "subsidiary" include the successor  
to an issuer or subsidiary.

(7) A person soliciting a transaction regulated by the  
commodity futures trading commission, if the person is registered  
or temporarily registered for that activity with the commission  
under 7 U.S.C.A. 1 et. seq. and the registration or temporary  
registration has not expired or been suspended or revoked;

(8) A person soliciting the sale of any book, record, audio  
tape, compact disc, or video, if the person allows the purchaser

to review the merchandise for at least seven days and provides a  
full refund within thirty days to a purchaser who returns the  
merchandise or if the person solicits the sale on behalf of a  
membership club operating in compliance with regulations adopted  
by the federal trade commission in 16 C.F.R. 425;

(9) A supervised financial institution or its subsidiary. As  
used in division (B)(9) of this section, "supervised financial  
institution" means a bank, trust company, savings and loan  
association, savings bank, credit union, industrial loan company,  
consumer finance lender, commercial finance lender, or institution  
described in section 2(c)(2)(F) of the "Bank Holding Company Act  
of 1956," 12 U.S.C.A. 1841(c)(2)(F), as amended, supervised by an  
official or agency of the United States, this state, or any other  
state of the United States; or a licensee or registrant under  
sections 1321.01 to 1321.19, 1321.51 to 1321.60, or 1321.71 to  
1321.83 of the Revised Code.

(10)(a) An insurance company, association, or other  
organization that is licensed or authorized to conduct business in  
this state by the superintendent of insurance pursuant to Title  
XXXIX of the Revised Code or Chapter 1751. of the Revised Code,  
when soliciting within the scope of its license or authorization.

(b) A licensed insurance broker, agent, or solicitor when  
soliciting within the scope of the person's license. As used in  
division (B)(10)(b) of this section, "licensed insurance broker,  
agent, or solicitor" means any person licensed as an insurance  
broker, agent, or solicitor by the superintendent of insurance  
pursuant to Title XXXIX of the Revised Code.

(11) A person soliciting the sale of services provided by a  
cable television system operating under authority of a  
governmental franchise or permit;

(12) A person soliciting a business-to-business sale under

which any of the following conditions are met:	204
(a) The telephone solicitor has been operating continuously	205
for at least three years under the same business name under which	206
it solicits purchasers, and at least fifty-one per cent of its	207
gross dollar volume of sales consists of repeat sales to existing	208
customers to whom it has made sales under the same business name.	209
(b) The purchaser business intends to resell the goods	210
purchased.	211
(c) The purchaser business intends to use the goods or	212
services purchased in a recycling, reuse, manufacturing, or	213
remanufacturing process.	214
(d) The telephone solicitor is a publisher of a periodical or	215
of magazines distributed as controlled circulation publications as	216
defined in division (CC) of section 5739.01 of the Revised Code	217
and is soliciting sales of advertising, subscriptions, reprints,	218
lists, information databases, conference participation or	219
sponsorships, trade shows or media products related to the	220
periodical or magazine, or other publishing services provided by	221
the controlled circulation publication.	222
(13) A person that, not less often than once each year,	223
publishes and delivers to potential purchasers a catalog that	224
complies with both of the following:	225
(a) It includes all of the following:	226
(i) The business address of the seller;	227
(ii) A written description or illustration of each good or	228
service offered for sale;	229
(iii) A clear and conspicuous disclosure of the sale price of	230
each good or service; shipping, handling, and other charges; and	231
return policy;	232
(b) One of the following applies:	233



(i) The catalog includes at least twenty-four pages of written material and illustrations, is distributed in more than one state, and has an annual postage-paid mail circulation of not less than two hundred fifty thousand households;

(ii) The catalog includes at least ten pages of written material or an equivalent amount of material in electronic form on the internet or an on-line computer service, the person does not solicit customers by telephone but solely receives telephone calls made in response to the catalog, and during the calls the person takes orders but does not engage in further solicitation of the purchaser. As used in division (B)(13)(b)(ii) of this section, "further solicitation" does not include providing the purchaser with information about, or attempting to sell, any other item in the catalog that prompted the purchaser's call or in a substantially similar catalog issued by the seller.

(14) A political subdivision or instrumentality of the United States, this state, or any state of the United States;

(15) A college or university or any other public or private institution of higher education in this state;

(16) A public utility, as defined in section 4905.02 of the Revised Code or a retail natural gas supplier as defined in section 4929.01 of the Revised Code, ~~that if the utility or supplier~~ is subject to regulation by the public utilities commission, or ~~its~~ the affiliate of the utility or supplier;

(17) A travel agency or tour promoter that is registered in compliance with section 1333.96 of the Revised Code when soliciting within the scope of the agency's or promoter's registration;

(18) A person that solicits sales through a television program or advertisement that is presented in the same market area no fewer than twenty days per month or offers for sale no fewer

than ten distinct items of goods or services; and offers to the  
purchaser an unconditional right to return any good or service  
purchased within a period of at least seven days and to receive a  
full refund within thirty days after the purchaser returns the  
good or cancels the service;

(19)(a) A person that, for at least one year, has been  
operating a retail business under the same name as that used in  
connection with telephone solicitation and both of the following  
occur on a continuing basis:

(i) The person either displays goods and offers them for  
retail sale at the person's business premises or offers services  
for sale and provides them at the person's business premises.

(ii) At least fifty-one per cent of the person's gross dollar  
volume of retail sales involves purchases of goods or services at  
the person's business premises.

(b) An affiliate of a person that meets the requirements in  
division (B)(19)(a) of this section if the affiliate meets all of  
the following requirements:

(i) The affiliate has operated a retail business for a period  
of less than one year;

(ii) The affiliate either displays goods and offers them for  
retail sale at the affiliate's business premises or offers  
services for sale and provides them at the affiliate's business  
premises;

(iii) At least fifty-one per cent of the affiliate's gross  
dollar volume of retail sales involves purchases of goods or  
services at the affiliate's business premises.

(c) A person that, for a period of less than one year, has  
been operating a retail business in this state under the same name  
as that used in connection with telephone solicitation, as long as

all of the following requirements are met: 295

(i) The person either displays goods and offers them for 296  
retail sale at the person's business premises or offers services 297  
for sale and provides them at the person's business premises; 298

(ii) The goods or services that are the subject of telephone 299  
solicitation are sold at the person's business premises, and at 300  
least sixty-five per cent of the person's gross dollar volume of 301  
retail sales involves purchases of goods or services at the 302  
person's business premises; 303

(iii) The person conducts all telephone solicitation 304  
activities according to sections 310.3, 310.4, and 310.5 of the 305  
telemarketing sales rule adopted by the federal trade commission 306  
in 16 C.F.R. part 310. 307

(20) A person who performs telephone solicitation sales 308  
services on behalf of other persons and to whom one of the 309  
following applies: 310

(a) The person has operated under the same ownership, 311  
control, and business name for at least five years, and the person 312  
receives at least seventy-five per cent of its gross revenues from 313  
written telephone solicitation contracts with persons who come 314  
within one of the exemptions in division (B) of this section. 315

(b) The person is an affiliate of one or more exempt persons 316  
and makes telephone solicitations on behalf of only the exempt 317  
persons of which it is an affiliate. 318

(c) The person makes telephone solicitations on behalf of 319  
only exempt persons, the person and each exempt person on whose 320  
behalf telephone solicitations are made have entered into a 321  
written contract that specifies the manner in which the telephone 322  
solicitations are to be conducted and that at a minimum requires 323  
compliance with the telemarketing sales rule adopted by the 324  
federal trade commission in 16 C.F.R. part 310, and the person 325

conducts the telephone solicitations in the manner specified in 326  
the written contract. 327

(d) The person performs telephone solicitation for religious 328  
or political purposes, a charitable organization, a fund-raising 329  
council, or a professional solicitor in compliance with the 330  
registration and reporting requirements of Chapter 1716. of the 331  
Revised Code; and meets all of the following requirements: 332

(i) The person has operated under the same ownership, 333  
control, and business name for at least five years, and the person 334  
receives at least fifty-one per cent of its gross revenues from 335  
written telephone solicitation contracts with persons who come 336  
within the exemption in division (B)(2) of this section; 337

(ii) The person does not conduct a prize promotion or offer 338  
the sale of an investment opportunity; and 339

(iii) The person conducts all telephone solicitation 340  
activities according to sections 310.3, 310.4, and 310.5 of the 341  
telemarketing sales rules adopted by the federal trade commission 342  
in 16 C.F.R. part 310. 343

(21) A person that is a licensed real estate salesperson or 344  
broker under Chapter 4735. of the Revised Code when soliciting 345  
within the scope of the person's license; 346

(22)(a) Either of the following: 347

(i) A publisher that solicits the sale of the publisher's 348  
periodical or magazine of general, paid circulation, or a person 349  
that solicits a sale of that nature on behalf of a publisher under 350  
a written agreement directly between the publisher and the person. 351

(ii) A publisher that solicits the sale of the publisher's 352  
periodical or magazine of general, paid circulation, or a person 353  
that solicits a sale of that nature as authorized by a publisher 354  
under a written agreement directly with a publisher's 355

clearinghouse provided the person is a resident of Ohio for more  
than three years and initiates all telephone solicitations from  
Ohio and the person conducts the solicitation and sale in  
compliance with 16 C.F.R. Part 310, as adopted by the federal  
trade commission.

(b) As used in division (B)(22) of this section, "periodical  
or magazine of general, paid circulation" excludes a periodical or  
magazine circulated only as part of a membership package or given  
as a free gift or prize from the publisher or person.

(23) A person that solicits the sale of food, as defined in  
section 3715.01 of the Revised Code, or the sale of products of  
horticulture, as defined in section 5739.01 of the Revised Code,  
if the person does not intend the solicitation to result in, or  
the solicitation actually does not result in, a sale that costs  
the purchaser an amount greater than five hundred dollars.

(24) A funeral director licensed pursuant to Chapter 4717. of  
the Revised Code when soliciting within the scope of that license,  
if both of the following apply:

(a) The solicitation and sale are conducted in compliance  
with 16 C.F.R. part 453, as adopted by the federal trade  
commission, and with sections 1107.33 and 1345.21 to 1345.28 of  
the Revised Code;

(b) The person provides to the purchaser of any preneed  
funeral contract a notice that clearly and conspicuously sets  
forth the cancellation rights specified in division (G) of section  
1107.33 of the Revised Code, and retains a copy of the notice  
signed by the purchaser.

(25) A person, or affiliate thereof, licensed to sell or  
issue Ohio instruments designated as travelers checks pursuant to  
sections 1315.01 to 1315.11 of the Revised Code.

(26) A person that solicits sales from its previous

purchasers and meets all of the following requirements: 387

(a) The solicitation is made under the same business name 388  
that was previously used to sell goods or services to the 389  
purchaser; 390

(b) The person has, for a period of not less than three 391  
years, operated a business under the same business name as that 392  
used in connection with telephone solicitation; 393

(c) The person does not conduct a prize promotion or offer 394  
the sale of an investment opportunity; 395

(d) The person conducts all telephone solicitation activities 396  
according to sections 310.3, 310.4, and 310.5 of the telemarketing 397  
sales rules adopted by the federal trade commission in 16 C.F.R. 398  
part 310; 399

(e) Neither the person nor any of its principals has been 400  
convicted of, pleaded guilty to, or has entered a plea of no 401  
contest for a felony or a theft offense as defined in sections 402  
2901.02 and 2913.01 of the Revised Code or similar law of another 403  
state or of the United States; 404

(f) Neither the person nor any of its principals has had 405  
entered against them an injunction or a final judgment or order, 406  
including an agreed judgment or order, an assurance of voluntary 407  
compliance, or any similar instrument, in any civil or 408  
administrative action involving engaging in a pattern of corrupt 409  
practices, fraud, theft, embezzlement, fraudulent conversion, or 410  
misappropriation of property; the use of any untrue, deceptive, or 411  
misleading representation; or the use of any unfair, unlawful, 412  
deceptive, or unconscionable trade act or practice. 413

(27) An institution defined as a home health agency in 414  
section 3701.88 of the Revised Code, that conducts all telephone 415  
solicitation activities according to sections 310.3, 310.4, and 416  
310.5 of the telemarketing sales rules adopted by the federal 417

trade commission in 16 C.F.R. part 310, and engages in telephone  
solicitation only within the scope of the institution's  
certification, accreditation, contract with the department of  
aging, or status as a home health agency; and that meets one of  
the following requirements:

(a) The institution is certified as a provider of home health  
services under Title XVIII of the Social Security Act, 49 Stat.  
620, 42 U.S.C. 301, as amended; and is registered with the  
department of health pursuant to division (B) of section 3701.88  
of the Revised Code;

(b) The institution is accredited by either the joint  
commission on accreditation of health care organizations or the  
community health accreditation program;

(c) The institution is providing PASSPORT services under the  
direction of the Ohio department of aging under section 173.40 of  
the Revised Code;

(d) An affiliate of an institution that meets the  
requirements of division (B)(27)(a), (b), or (c) of this section  
when offering for sale substantially the same goods and services  
as those that are offered by the institution that meets the  
requirements of division (B)(27)(a), (b), or (c) of this section.

(28) A person licensed to provide a hospice care program by  
the department of health pursuant to section 3712.04 of the  
Revised Code when conducting telephone solicitations within the  
scope of the person's license and according to sections 310.3,  
310.4, and 310.5 of the telemarketing sales rules adopted by the  
federal trade commission in 16 C.F.R. part 310.

**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 ~~the~~ this state, an amount equivalent to the 448  
appropriation from the public utilities fund created under 449  
division (B) of this section to the public utilities commission 450  
for railroad and public utilities regulation in each fiscal year 451  
shall be apportioned among and assessed against each railroad and 452  
public utility within ~~the~~ this state by the commission by first 453  
computing an assessment as though it were to be made in proportion 454  
to the intrastate gross earnings or receipts, excluding earnings 455  
or receipts from sales to other public utilities for resale, of 456  
the railroad or public utility for the calendar year next 457  
preceding that in which the assessment is made. The commission may 458  
include in that first computation any amount of a railroad's or 459  
public utility's intrastate gross earnings or receipts that were 460  
underreported in a prior year. In addition to whatever penalties 461  
apply under the Revised Code to such underreporting, the 462  
commission shall assess the railroad or public utility interest at 463  
the rate stated in division (A) of section 1343.01 of the Revised 464  
Code. The commission shall deposit any interest so collected into 465  
the public utilities fund. 466

The final computation of the assessment shall consist of 467  
imposing upon each railroad and public utility whose assessment 468  
under the first computation would have been fifty dollars or less 469  
an assessment of fifty dollars and recomputing the assessments of 470  
the remaining railroads and public utilities by apportioning an 471  
amount equal to the appropriation to the public utilities 472  
commission for administration of the utilities division in each 473  
fiscal year less the total amount to be recovered from those 474  
paying the minimum assessment, in proportion to the intrastate 475  
gross earnings or receipts of the remaining railroads and public 476  
utilities for the calendar year next preceding that in which the 477  
assessments are made. 478

In the case of an assessment based on intrastate gross 479



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.

(B) 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.  
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 calendar year. The  
assessments for such calendar year shall be reduced  
correspondingly.

(C) Within five days after the beginning of each fiscal year,  
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, ~~in:~~

(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 544  
extent of the company's, cooperative's, or aggregator's engagement 545  
in the business of supplying or arranging for the supply in this 546  
state of any retail electric service for which it must be so 547  
certified; 548

(2) In addition to a natural gas company as defined in 549  
section 4929.01 of the Revised Code, a retail natural gas supplier 550  
or governmental aggregator subject to certification under section 551  
4929.20 of the Revised Code, to the extent of the supplier's or 552  
aggregator's engagement in the business of supplying or arranging 553  
for the supply in this state of any competitive retail natural gas 554  
service for which it must be certified. 555

(E) Each public utilities commissioner shall receive a salary 556  
fixed at the level set by pay range 49 under schedule E-2 of 557  
section 124.152 of the Revised Code. 558

**Sec. 4905.302.** (A)(1) For the purpose of this section, the 559  
term "purchased gas adjustment clause" means: 560

(a) A provision in a schedule of a gas company or natural gas 561  
company that requires or allows the company to, without adherence 562  
to section 4909.18 or 4909.19 of the Revised Code, adjust the 563  
rates that it charges to its customers in accordance with any 564  
fluctuation in the cost to the company of obtaining the gas that 565  
it sells, that has occurred since the time any order has been 566  
issued by the public utilities commission establishing rates for 567  
the company pertaining to those customers; 568

(b) A provision in an ordinance adopted pursuant to section 569  
743.26 or 4909.34 of the Revised Code or Section 4 of Article 570  
~~XVIII of the~~ Ohio Constitution, with respect to which a gas 571  
company or natural gas company is required or allowed to adjust 572  
the rates it charges under such an ordinance in accordance with 573  
any fluctuation in the cost to the company of obtaining the gas 574

that it sells, that has occurred since the time of the adoption of 575  
the ordinance. 576

(2) For the purpose of this section, the term "special 577  
purchase" means any purchase of interstate natural gas, any 578  
purchase of liquified natural gas, and any purchase of synthetic 579  
natural gas from any source developed after the effective date of 580  
this section, April 27, 1976, provided that this purchase be of 581  
less than one hundred twenty days duration and the price for this 582  
purchase is not regulated by the federal power commission. For the 583  
purpose of this division, the expansion or enlargement of a 584  
synthetic natural gas plant existing at such date shall be 585  
considered a source so developed. 586

(3) For the purpose of this section, the term "residential 587  
customer" means urban, suburban, and rural patrons of gas 588  
companies and natural gas companies insofar as their needs for gas 589  
are limited to their residence. Such term includes those patrons 590  
whose rates have been set under an ordinance adopted pursuant to 591  
sections 743.26 and 4909.34 of the Revised Code or Section 4 of 592  
Article XVIII ~~of the~~, Ohio Constitution. 593

(B) A purchased gas adjustment clause may not allow, and no 594  
such clause may be interpreted to allow, a gas company or natural 595  
gas company that has obtained an order from the public utilities 596  
commission permitting the company to curtail the service of any 597  
customer or class of customers other than residential customers, 598  
such order being based on the company's inability to secure a 599  
sufficient quantity of natural gas, to distribute the cost of any 600  
special purchase made subsequent to the effective date of such 601  
order, to the extent that such purchase decreases the level of 602  
curtailment of any such customer or class of customers, to any 603  
class of customers of the company that was not curtailed, to any 604  
class of residential customers of the company, or to any class of 605  
customers of the company whose level of curtailment was not 606

decreased and whose consumption increased as a result of, or in  
connection with, the special purchase.

(C)(1) The commission shall promulgate a purchased gas  
adjustment rule, consistent with this section, that establishes a  
uniform purchased gas adjustment clause to be included in the  
schedule of gas companies and natural gas companies subject to the  
jurisdiction of the public utilities commission and that  
establishes investigative procedures and proceedings including,  
but not limited to, periodic reports, audits, and hearings.

(2) Unless otherwise ordered by the commission for good cause  
shown:

(a) The commission's staff shall conduct any audit or other  
investigation of a natural gas company having fifteen thousand or  
fewer customers in this state that may be required under the  
purchased gas adjustment rule.

(b) Except as provided in section 4905.10 of the Revised  
Code, the commission shall not impose upon such company any fee,  
expense, or cost of such audit or other investigation or any  
related hearing under this section.

(3) Unless otherwise ordered by the commission for good cause  
shown either by an interested party or by the commission on its  
own motion, no natural gas company having fifteen thousand or  
fewer customers in this state shall be subject under the purchased  
gas adjustment rule to any audit or other investigation or any  
related hearing, other than a financial audit or, as necessary,  
any hearing related to a financial audit.

(4) In issuing an order under division (C)(2) or (3) of this  
section, the commission shall file a written opinion setting forth  
the reasons showing good cause under such division and the  
specific matters to be audited, investigated, or subjected to  
hearing. Nothing in division (C)(2) or (3) of this section

relieves such a natural gas company from the duty to file such  
information as the commission may require under the rule for the  
purpose of showing that a company has charged its customers  
accurately for the cost of gas obtained.

(D) Nothing in this section or any other provision of law  
shall be construed to mean that the commission, in the event of  
any cost distribution allowed under this section, may issue an  
order pursuant to which the prudent and reasonable cost of gas to  
a gas company or natural gas company of any special purchase may  
not be recovered by the company. For the purpose of this division,  
such cost of gas neither includes any applicable franchise taxes  
nor the ordinary losses of gas experienced by the company in the  
process of transmission and distribution.

(E) The commission shall not at any time prevent or restrain  
such costs as are distributable under this section from being so  
distributed, unless the commission has reason to believe that an  
arithmetic or accounting inaccuracy exists with respect to such a  
distribution or that the company has not accurately represented  
the amount of the cost of a special purchase, or has followed  
imprudent or unreasonable procurement policies and practices, has  
made errors in the estimation of cubic feet sold, or has employed  
such other practices, policies, or factors as the commission  
considers inappropriate.

(F) The cost of natural gas under this section shall not  
include any cost recovered by a natural gas company pursuant to  
section 4929.25 of the Revised Code.

**Sec. 4911.18.** (A) For the sole purpose of maintaining and  
administering the office of the consumers' counsel and exercising  
the powers of the consumers' counsel under this chapter, an amount  
equal to the appropriation to the office of the consumers' counsel  
in each fiscal year shall be apportioned among and assessed

against each public utility within ~~the~~ this state, as defined in 669  
section 4911.01 of the Revised Code, by first computing an 670  
assessment as though it were to be made in proportion to the 671  
intrastate gross earnings or receipts of the public utility for 672  
the calendar year next preceding that in which the assessment is 673  
made, excluding earnings or receipts from sales to other public 674  
utilities for resale. The office may include in that first 675  
computation any amount of a public utility's intrastate gross 676  
earnings or receipts underreported in a prior year. In addition to 677  
whatever penalties apply under the Revised Code to such 678  
underreporting, the office shall assess the public utility 679  
interest at the rate stated in division (A) of section 1343.01 of 680  
the Revised Code. The office shall deposit any interest so 681  
collected into the consumers' counsel operating fund. 682

The final computation of the assessment shall consist of 683  
imposing upon each public utility whose assessment under the first 684  
computation would have been fifty dollars or less an assessment of 685  
fifty dollars and recomputing the assessment of the remaining 686  
companies by apportioning an amount equal to the appropriation to 687  
the office of consumers' counsel in each fiscal year less the 688  
total amount to be recovered from those paying the minimum 689  
assessment, in proportion to the intrastate gross earnings or 690  
receipts of the remaining companies for the calendar year next 691  
preceding that in which the assessments are made, excluding 692  
earnings or receipts from sales to other public utilities for 693  
resale. 694

In the case of an assessment based on intrastate gross 695  
receipts under this section against a public utility that is an 696  
electric utility as defined in section 4928.01 of the Revised 697  
Code, or an electric services company, electric cooperative, or 698  
governmental aggregator subject to certification under section 699  
4928.08 of the Revised Code, such receipts shall be those 700

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 public  
utilities 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.

(B) 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. Any such amounts paid into the fund but not expended by  
the office shall be credited ratably by the office to the public  
utilities that pay more than the minimum assessment, according to



the respective portions of such sum assessable against them for  
the ensuing calendar year, after first deducting any deficits  
accumulated from prior years. The assessments for such calendar  
year shall be reduced correspondingly.

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

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

(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.

**Sec. 4929.01.** As used in this chapter:

(A) "Alternative rate plan" means a method, alternate to the 764  
method of section 4909.15 of the Revised Code, for establishing 765  
rates and charges, under which rates and charges may be 766  
established for a commodity sales service or ancillary service 767  
that is not exempt pursuant to section 4929.04 of the Revised Code 768  
or for a distribution service. Alternative rate plans may include, 769  
but are not limited to, methods that provide adequate and reliable 770  
natural gas services and goods in this state; minimize the costs 771  
and time expended in the regulatory process; tend to assess the 772  
costs of any natural gas service or goods to the entity, service, 773  
or goods that cause such costs to be incurred; afford rate 774  
stability; promote and reward efficiency, quality of service, or 775  
cost containment by a natural gas company; or provide sufficient 776  
flexibility and incentives to the natural gas industry to achieve 777  
high quality, technologically advanced, and readily available 778  
natural gas services and goods at just and reasonable rates and 779  
charges. Alternative rate plans also may include, but are not 780  
limited to, automatic adjustments based on a specified index or 781  
changes in a specified cost or costs. 782

(B) "Ancillary service" means a service that is ancillary to 783  
the receipt or delivery of natural gas to consumers, including, 784  
but not limited to, storage, pooling, balancing, and transmission. 785

(C) "Commodity sales service" means the sale of natural gas 786  
to consumers, exclusive of any distribution or ancillary service. 787

(D) "Comparable service" means any regulated service or goods 788  
whose availability, quality, price, terms, and conditions are the 789  
same as or better than those of the services or goods that the 790  
natural gas company provides to a person with which it is 791  
affiliated or which it controls, or, as to any consumer, that the 792  
natural gas company offers to that consumer as part of a bundled 793  
service that includes both regulated and exempt services or goods. 794

(E) "Consumer" means any person or association of persons 795

purchasing, delivering, storing, or transporting, or seeking to  
purchase, deliver, store, or transport, natural gas, including  
industrial consumers, commercial consumers, and residential  
consumers, but not including natural gas companies.

(F) "Distribution service" means the delivery of natural gas  
to a consumer at the consumer's facilities, by and through the  
instrumentalities and facilities of a natural gas company,  
regardless of the party having title to the natural gas.

(G) "Natural gas company" means a natural gas company, as  
defined in section 4905.03 of the Revised Code, that is a public  
utility as defined in section 4905.02 of the Revised Code and  
excludes a retail natural gas supplier.

(H) "Person," except as provided in division (N) of this  
section, has the same meaning as in section 1.59 of the Revised  
Code, and includes this state and any political subdivision,  
agency, or other instrumentality of this state and includes the  
United States and any agency or other instrumentality of the  
United States.

(I) "Billing or collection agent" means a fully independent  
agent, not affiliated with or otherwise controlled by a retail  
natural gas supplier or governmental aggregator subject to  
certification under section 4929.20 of the Revised Code, to the  
extent that the agent is under contract with such supplier or  
aggregator solely to provide billing and collection for  
competitive retail natural gas service on behalf of the supplier  
or aggregator.

(J) "Competitive retail natural gas service" means any retail  
natural gas service that may be competitively offered to consumers  
in this state as a result of revised schedules approved under  
division (C) of section 4929.29 of the Revised Code, a rule or  
order adopted or issued by the public utilities commission under

Chapter 4905. of the Revised Code, or an exemption granted by the  
commission under sections 4929.04 to 4929.08 of the Revised Code.

(K) "Governmental aggregator" means either of the following:

(1) A legislative authority of a municipal corporation, a  
board of township trustees, or a board of county commissioners  
acting exclusively under section 4929.26 or 4929.27 of the Revised  
Code as an aggregator for the provision of competitive retail  
natural gas service;

(2) A municipal corporation acting exclusively under Section  
4 of Article XVIII, Ohio Constitution, as an aggregator for the  
provision of competitive retail natural gas service.

(L)(1) "Mercantile customer" means a customer that consumes,  
other than for residential use, more than five hundred thousand  
cubic feet of natural gas per year at a single location within  
this state or consumes natural gas, other than for residential  
use, as part of an undertaking having more than three locations  
within or outside of this state. "Mercantile customer" excludes a  
customer for which a declaration under division (L)(2) of this  
section is in effect pursuant to that division.

(2) A not-for-profit customer that consumes, other than for  
residential use, more than five hundred thousand cubic feet of  
natural gas per year at a single location within this state or  
consumes natural gas, other than for residential use, as part of  
an undertaking having more than three locations within or outside  
this state may file a declaration under division (L)(2) of this  
section with the public utilities commission. The declaration  
shall take effect upon the date of filing, and by virtue of the  
declaration, the customer is not a mercantile customer for the  
purposes of this section and sections 4929.20 to 4929.29 of the  
Revised Code or the purposes of a governmental natural gas  
aggregation or arrangement or other contract entered into after

the declaration's effective date for the supply or arranging of 859  
the supply of natural gas to the customer to a location within 860  
this state. The customer may file a rescission of the declaration 861  
with the commission at any time. The rescission shall not affect 862  
any governmental natural gas aggregation or arrangement or other 863  
contract entered into by the customer prior to the date of the 864  
filing of the rescission and shall have effect only with respect 865  
to any subsequent such aggregation or arrangement or other 866  
contract. The commission shall prescribe rules under section 867  
4929.10 of the Revised Code specifying the form of the declaration 868  
or a rescission and procedures by which a declaration or 869  
rescission may be filed. 870

(M) "Retail natural gas service" means commodity sales 871  
service, ancillary service, natural gas aggregation service, 872  
natural gas marketing service, or natural gas brokerage service. 873

(N) "Retail natural gas supplier" means any person, as 874  
defined in section 1.59 of the Revised Code, that is engaged on a 875  
for-profit or not-for-profit basis in the business of supplying or 876  
arranging for the supply of a competitive retail natural gas 877  
service to consumers in this state that are not mercantile 878  
customers. "Retail natural gas supplier" includes a marketer, 879  
broker, or aggregator, but excludes a natural gas company, a 880  
governmental aggregator as defined in division (K)(1) or (2) of 881  
this section, an entity described in division (B) or (C) of 882  
section 4905.02 of the Revised Code, or a billing or collection 883  
agent, and excludes a producer or gatherer of gas to the extent 884  
such producer or gatherer is not a natural gas company under 885  
section 4905.03 of the Revised Code. 886

**Sec. 4929.02.** (A) It is the policy of this state to, 887  
throughout this state: 888

(1) Promote the availability to consumers of adequate, 889

reliable, and reasonably priced natural gas services and goods; 890

(2) Promote the availability of unbundled and comparable 891  
natural gas services and goods that provide wholesale and retail 892  
consumers with the supplier, price, terms, conditions, and quality 893  
options they elect to meet their respective needs; 894

(3) Promote diversity of natural gas supplies and suppliers, 895  
by giving consumers effective choices over the selection of those 896  
supplies and suppliers; 897

(4) Encourage innovation and market access for cost-effective 898  
supply- and demand-side natural gas services and goods; 899  
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(5) Encourage cost-effective and efficient access to 901  
information regarding the operation of the distribution systems of 902  
natural gas companies in order to promote effective customer 903  
choice of natural gas services and goods; 904

(6) Recognize the continuing emergence of competitive natural 905  
gas markets through the development and implementation of flexible 906  
regulatory treatment; 907

(7) Promote an expeditious transition to the provision of 908  
natural gas services and goods in a manner that achieves effective 909  
competition and transactions between willing buyers and willing 910  
sellers to reduce or eliminate the need for regulation of natural 911  
gas services and goods under Chapters 4905. and 4909. of the 912  
Revised Code; 913

(8) Promote effective competition in the provision of natural 914  
gas services and goods by avoiding subsidies flowing to or from 915  
regulated natural gas services and goods; 916

(9) Ensure that the risks and rewards of a natural gas 917  
company's offering of nonjurisdictional and exempt services and 918  
goods do not affect the rates, prices, terms, or conditions of 919

nonexempt, regulated services and goods of a natural gas company 920  
and do not affect the financial capability of a natural gas 921  
company to comply with the policy of this state specified in this 922  
section; 923

(10) Facilitate the state's competitiveness in the global 924  
economy; 925

(11) Facilitate additional choices for the supply of natural 926  
gas for residential consumers, including aggregation. 927

(B) The public utilities commission shall follow the policy 928  
specified in this section in carrying out sections 4929.03 to 929  
~~4929.10~~ 4929.30 of the Revised Code. 930

(C) Nothing in Chapter 4929. of the Revised Code shall be 931  
construed to alter the public utilities commission's construction 932  
or application of division (A)(6) of section 4905.03 of the 933  
Revised Code. 934

**Sec. 4929.14.** ~~(A) Subject to division (B) of this section,~~ 935  
~~sections~~ Sections 1345.01 to 1345.13 of the Revised Code shall 936  
apply to transactions between a natural gas company and its 937  
customers that involve natural gas services or goods that are 938  
exempt from or otherwise not subject to the jurisdiction of the 939  
public utilities commission pursuant to section 4929.03 to 4929.05 940  
of the Revised Code. 941

~~(B) For purposes of investigating and enforcing division (A)~~ 942  
~~of this section:~~ 943

~~(1) The attorney general, except as provided in division 944~~  
~~(B)(2) of this section, shall have the responsibilities and powers 945~~  
~~set forth in Chapter 1345. of the Revised Code. 946~~

~~(2) With respect to consumer transactions described in 947~~  
~~division (A) of this section, the consumers' counsel shall have 948~~  
~~the investigatory and enforcement powers set forth in sections 949~~

~~1345.06 and 1345.07 of the Revised Code.~~

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Sec. 4929.20. (A) No governmental aggregator as defined in  
division (K)(1) of section 4929.01 of the Revised Code or no  
retail natural gas supplier shall provide a competitive retail  
natural gas service on or after thirteen months following the  
effective date of this section to a consumer in this state without  
first being certified by the public utilities commission regarding  
its managerial, technical, and financial capability to provide  
that service and providing reasonable financial assurances  
sufficient to protect customers and natural gas companies from  
default. In addition, a retail natural gas supplier may be  
required to provide a performance bond sufficient to protect  
customers and natural gas companies from default. Certification  
shall be granted pursuant to procedures and standards the  
commission shall prescribe in accordance with rules adopted under  
section 4929.10 of the Revised Code. However, certification or  
certification renewal shall be deemed approved thirty days after  
the filing of an application with the commission unless the  
commission suspends that approval for good cause shown. In the  
case of such a suspension, the commission shall act to approve or  
deny certification or certification renewal to the applicant not  
later than ninety days after the date of the suspension.

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(B) Capability standards adopted in rules pursuant to  
division (A) of this section shall be sufficient to ensure  
compliance with section 4929.22 of the Revised Code and with the  
minimum service requirements established under section 4929.23 of  
the Revised Code. The standards shall allow flexibility for  
voluntary aggregation, to encourage market creativity in  
responding to consumer needs and demands. The rules shall include  
procedures for biennially renewing certification.

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(C)(1) The commission may suspend, rescind, or conditionally

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rescind the certification of any retail natural gas supplier or  
governmental aggregator issued under this section if the  
commission determines, after reasonable notice and opportunity for  
hearing, that the retail natural gas supplier or governmental  
aggregator has failed to comply with any applicable certification  
standards prescribed in rules adopted pursuant to this section or  
section 4929.22 of the Revised Code.

(2) An affected natural gas company may file an application  
with the commission for approval of authority to recover in  
accordance with division (C)(2) of this section incremental costs  
reasonably and prudently incurred by the company in connection  
with the commission's continuation, suspension, rescission, or  
conditional rescission of a particular retail natural gas  
supplier's certification under division (C)(1) of this section.  
Upon the filing of such an application, the commission shall  
conduct an audit of such incremental costs as are specified in the  
application. Cost recovery shall be through a rider on the base  
rates of customers of the company for which there is a choice of  
supplier of commodity sales service as a result of revised  
schedules approved under division (C) of section 4929.29 of the  
Revised Code, a rule or order adopted or issued by the commission  
under Chapter 4905. of the Revised Code, or an exemption granted  
by the commission under sections 4929.04 to 4929.08 of the Revised  
Code. The rider shall take effect ninety days after the date of  
the application's filing unless the commission, based on the audit  
results and for good cause shown, sets the matter for hearing.  
After the hearing, the commission shall approve the application,  
and authorize such cost recovery rider effective on the date  
specified in the order, only for such incremental costs as the  
commission determines were reasonably and prudently incurred by  
the company in connection with the continuation, suspension,  
rescission, or conditional rescission of a retail natural gas

supplier's certification under division (C)(1) of this section.  
Any proceeding under division (C)(2) of this section shall be  
governed by Chapter 4903. of the Revised Code.

(D) No natural gas company, on and after thirteen months  
following the effective date of this section, shall knowingly  
distribute natural gas, to a retail consumer in this state, for  
any governmental aggregator, as defined in division (K)(1) of  
section 4929.01 of the Revised Code, or retail natural gas  
supplier, that has not been certified by the commission pursuant  
to this section.

**Sec. 4929.21.** (A)(1) Beginning on the effective date of  
initial rules adopted pursuant to division (A) of section 4929.20  
of the Revised Code, no person shall operate in this state as a  
retail natural gas supplier, unless that person first does both of  
the following:

(a) Consents irrevocably to the jurisdiction of the courts of  
this state and service of process in this state, including,  
without limitation, service of summonses and subpoenas, for any  
civil or criminal proceeding arising out of or relating to such  
operation, by providing that irrevocable consent in accordance  
with division (A)(4) of this section;

(b) Designates an agent authorized to receive that service of  
process in this state, by filing with the public utilities  
commission a document designating that agent.

(2) Beginning on the effective date of initial rules adopted  
pursuant to division (A) of section 4929.20 of the Revised Code,  
no person shall continue to operate as such retail natural gas  
supplier unless that person continues to consent to such  
jurisdiction and service of process in this state and continues to  
designate an agent as provided under this division, by refileing in  
accordance with division (A)(4) of this section the appropriate

documents filed under division (A)(1) of this section or, as 1044  
applicable, the appropriate amended documents filed under division 1045  
(A)(3) of this section. Such refiling shall occur during the month 1046  
of December of every fourth year after the initial filing of a 1047  
document under division (A)(1) of this section. 1048

(3) If the address of the person filing a document under 1049  
division (A)(1) or (2) of this section changes, or if a person's 1050  
agent or the address of the agent changes, from that listed on the 1051  
most recently filed of such documents, the person shall file an 1052  
amended document containing the new information. 1053

(4) The consent and designation required by divisions (A)(1), 1054  
(2), and (3) of this section shall be in writing, on forms 1055  
prescribed by the commission. The original of each such document 1056  
or amended document shall be legible and shall be filed with the 1057  
commission, with a copy filed with the office of the consumers' 1058  
counsel and with the attorney general's office. 1059

(B) A person who enters this state pursuant to a summons, 1060  
subpoena, or other form of process authorized by this section is 1061  
not subject to arrest or service of process, whether civil or 1062  
criminal, in connection with other matters that arose before the 1063  
person's entrance into this state pursuant to such summons, 1064  
subpoena, or other form of process. 1065

(C) Divisions (A) and (B) of this section do not apply to any 1066  
of the following: 1067

(1) A corporation incorporated under the laws of this state 1068  
that has appointed a statutory agent pursuant to section 1701.07 1069  
or 1702.06 of the Revised Code; 1070

(2) A foreign corporation licensed to transact business in 1071  
this state that has appointed a designated agent pursuant to 1072  
section 1703.041 of the Revised Code; 1073

(3) Any other person that is a resident of this state or that 1074

files consent to service of process and designates a statutory 1075  
agent pursuant to other laws of this state. 1076

Sec. 4929.22. For the protection of consumers in this state, 1077  
the public utilities commission shall adopt rules under section 1078  
4929.10 of the Revised Code specifying the necessary minimum 1079  
service requirements of a retail natural gas supplier or 1080  
governmental aggregator subject to certification under section 1081  
4929.20 of the Revised Code regarding the marketing, solicitation, 1082  
sale, or provision, directly or through its billing and collection 1083  
agent, of any competitive retail natural gas service for which it 1084  
is subject to certification. Rules adopted under this section 1085  
shall include additional consumer protections concerning all of 1086  
the following: 1087

(A) Contract disclosure. The rules shall include requirements 1088  
that a retail natural gas supplier or governmental aggregator 1089  
subject to certification under section 4929.20 of the Revised Code 1090  
do both of the following: 1091

(1) Provide consumers with adequate, accurate, and 1092  
understandable pricing and terms and conditions of service, 1093  
including any switching fees, and with a document containing the 1094  
terms and conditions of pricing and service before the consumer 1095  
enters into the contract for service; 1096

(2) Disclose the conditions under which a customer may 1097  
rescind a contract without penalty. 1098

(B) Service qualification and termination. The rules shall 1099  
include a requirement that, before a consumer is eligible for 1100  
service from a retail natural gas supplier or governmental 1101  
aggregator subject to certification under section 4929.20 of the 1102  
Revised Code, the consumer shall discharge, or enter into a plan 1103  
to discharge, all existing arrearages owed to or being billed by 1104  
the natural gas company from which the consumer presently is 1105

receiving service. The rules also shall provide for disclosure of  
the terms identifying how customers may switch or terminate  
service, including any required notice and any penalties.

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(C) Minimum content of customer bills. The rules shall  
include all of the following requirements, which shall be  
standardized:

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(1) Price disclosure and disclosures of total billing units  
for the billing period and historical annual usage;

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(2) To the maximum extent practicable, separate listing of  
each service component to enable a customer to recalculate its  
bill for accuracy;

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(3) Identification of the supplier of each service;

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(4) Statement of where and how payment may be made and  
provision of a toll-free or local customer assistance and  
complaint number for the retail natural gas supplier or  
governmental aggregator, as well as a consumer assistance  
telephone number or numbers for state agencies, such as the  
commission, the office of the consumers' counsel, and the attorney  
general's office, with the available hours noted;

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(5) Other than for the first billing after the effective date  
of initial rules adopted pursuant to division (A) of section  
4929.20 of the Revised Code, highlighting and clear explanation on  
each customer bill, for two consecutive billing periods, of any  
changes in the rates, terms, and conditions of service.

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(D) Disconnection and service termination, including  
requirements with respect to master-metered buildings. The rules  
shall include policies and procedures that are consistent with  
sections 4933.12 and 4933.122 of the Revised Code and the  
commission's rules adopted under those sections, and that provide  
for all of the following:

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<u>(1) Coordination between suppliers for the purpose of</u>	1136
<u>maintaining service;</u>	1137
<u>(2) The allocation of partial payments between suppliers when</u>	1138
<u>service components are jointly billed;</u>	1139
<u>(3) A prohibition against switching, or authorizing the</u>	1140
<u>switching of, a customer's supplier of competitive retail natural</u>	1141
<u>gas service without the prior consent of the customer in</u>	1142
<u>accordance with appropriate confirmation practices, which may</u>	1143
<u>include independent, third-party verification procedures;</u>	1144
<u>(4) A requirement of disclosure of the conditions under which</u>	1145
<u>a customer may rescind a decision to switch its supplier without</u>	1146
<u>penalty;</u>	1147
<u>(5) Specification of any required notice and any penalty for</u>	1148
<u>early termination of contract.</u>	1149
<u>(E) Minimum service quality, safety, and reliability.</u>	1150
<u>(F) Customer information. The rules shall include</u>	1151
<u>requirements that a natural gas company make generic customer load</u>	1152
<u>pattern information available to a retail natural gas supplier or</u>	1153
<u>governmental aggregator as defined in division (K)(1) or (2) of</u>	1154
<u>section 4929.01 of the Revised Code on a comparable and</u>	1155
<u>nondiscriminatory basis, and make customer information available</u>	1156
<u>to a retail natural gas supplier or governmental aggregator as</u>	1157
<u>defined in division (K)(1) or (2) of section 4929.01 of the</u>	1158
<u>Revised Code on a comparable and nondiscriminatory basis unless,</u>	1159
<u>as to customer information, the customer objects. The rules shall</u>	1160
<u>ensure that each natural gas company provide clear and frequent</u>	1161
<u>notice to its customers of the right to object and of applicable</u>	1162
<u>procedures. The rules shall establish the exact language that</u>	1163
<u>shall be used in all such notices. The rules also shall require</u>	1164
<u>that, upon the request of a governmental aggregator defined in</u>	1165
<u>division (K)(1) of section 4929.01 of the Revised Code, solely for</u>	1166

purposes of the disclosure required by division (D) of section  
4929.26 of the Revised Code, or for purposes of a governmental  
aggregator defined in division (K)(2) of section 4929.01 of the  
Revised Code, a natural gas company or retail natural gas supplier  
must provide the governmental aggregator, in a timely manner and  
at such cost as the commission shall provide for in the rules,  
with the billing names and addresses of the customers of the  
company or supplier whose retail natural gas loads are to be  
included in the governmental aggregation.

(G) Ohio office. The rules shall require that a retail  
natural gas supplier maintain an office and an employee in this  
state.

**Sec. 4929.23.** (A) A retail natural gas supplier or  
governmental aggregator subject to certification under section  
4929.20 of the Revised Code shall provide the public utilities  
commission with such information, regarding a competitive retail  
natural gas service for which it is subject to certification, as  
the commission considers necessary to carry out sections 4929.20  
to 4929.24 of the Revised Code. The commission shall take such  
measures as it considers necessary to protect the confidentiality  
of any such information.

(B) The commission shall require each retail natural gas  
supplier or governmental aggregator subject to certification under  
section 4929.20 of the Revised Code to file an annual report of  
such receipts and sales from the provision of those competitive  
retail natural gas services for which it is subject to  
certification. For the purpose of the reports, sales of hundred  
cubic feet of natural gas are deemed to occur at the meter of the  
retail customer.

**Sec. 4929.24.** (A)(1) The public utilities commission has  
jurisdiction under section 4905.26 of the Revised Code, upon

complaint of any person or complaint or initiative of the 1198  
commission regarding the provision by a retail natural gas 1199  
supplier subject to certification under section 4929.20 of the 1200  
Revised Code of any service for which it is subject to 1201  
certification. 1202

(2) The commission also has jurisdiction under section 1203  
4905.26 of the Revised Code, upon complaint of any person or 1204  
complaint or initiative of the commission to determine whether a 1205  
retail natural gas supplier subject to certification under section 1206  
4929.20 of the Revised Code has violated or failed to comply with 1207  
any provision of sections 4929.20 to 4929.23 of the Revised Code 1208  
regarding a competitive retail natural gas service for which it is 1209  
subject to certification or any rule or order adopted or issued by 1210  
the commission for purposes of those sections. 1211

(B) In addition to its authority under division (C)(1) of 1213  
section 4929.20 of the Revised Code and to any other remedies 1214  
provided by law, the commission, after reasonable notice and 1215  
opportunity for hearing in accordance with section 4905.26 of the 1216  
Revised Code, may do any of the following: 1217

(1) Order rescission of a contract, or restitution to 1218  
customers, in any complaint brought pursuant to division (A)(1) or 1219  
(2) of this section; 1220

(2) Order any remedy or forfeiture provided under sections 1221  
4905.54 to 4905.60 and 4905.64 of the Revised Code upon a finding 1222  
under division (A)(2) of this section that the retail natural gas 1223  
supplier subject to certification under section 4929.20 of the 1224  
Revised Code has violated or failed to comply, regarding a 1225  
competitive retail natural gas service for which it is subject to 1226  
certification, with any provision of sections 4929.20 to 4929.23 1227  
of the Revised Code or any rule or order adopted or issued under 1228



those sections.

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(C)(1) In addition to the authority conferred under section 4911.15 of the Revised Code, the consumers' counsel may file a complaint under division (A)(1) or (2) of this section on behalf of residential consumers in this state or appear before the commission as a representative of those consumers pursuant to any complaint filed under division (A)(1) or (2) of this section.

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(2) In addition to the authority conferred under section 4911.19 of the Revised Code, the consumers' counsel, upon reasonable grounds, may file with the commission under section 4905.26 of the Revised Code a complaint for discovery if the recipient of an inquiry under section 4911.19 of the Revised Code fails to provide a response within the time specified in that section.

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(D) The commission's jurisdiction with respect to a natural gas company under Chapter 4905. of the Revised Code extends to any violation of division (D) of section 4929.20 or any failure to comply with division (C) of section 4929.29 of the Revised Code.

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**Sec. 4929.25.** (A) Upon the filing of an application by a natural gas company in such form and pursuant to such procedures as shall be prescribed by rule of the commission under section 4929.10 of the Revised Code for the purpose of this division, the commission shall determine the total allowable amount of capacity and commodity costs, and costs incidental thereto, of the company to be received as revenues under this division. Such amount shall be the just and reasonable costs of the company that the commission by order determines meet all of the following criteria:

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(1) The costs were prudently incurred.

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(2) The costs are legitimate, net, verifiable, and directly due to capacity and commodity obligations entered into by the

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natural gas company on behalf of consumers that take commodity 1259  
sales service from other than the natural gas company. 1260

(3) The costs are otherwise unrecoverable. 1261

(4) The company would otherwise be entitled to an opportunity 1262  
to recover those costs. 1263

The commission shall not authorize such revenue opportunity 1264  
for a company under this division without first setting the matter 1265  
for hearing, giving notice of the hearing date to the company, and 1266  
publishing notice of the hearing one time in a newspaper of 1267  
general circulation in each county affected by the application. At 1268  
the hearing, the company shall have the burden of demonstrating 1269  
allowable costs under this division. 1270

(B) Upon the issuance of an order under division (A) of this 1271  
section determining any allowable capacity and commodity costs, 1272  
and costs incidental thereto, of a natural gas company, the 1273  
company shall file with the commission under section 4905.30 of 1274  
the Revised Code revised schedules allowing the recovery of such 1275  
costs as the commission authorized in the order, and containing 1276  
such necessary and appropriate cost recovery mechanism or 1277  
mechanisms as the commission prescribes in the order. The 1278  
commission shall act promptly to approve such revised schedules as 1279  
it determines comply with the order. 1280

**Sec. 4929.26.** (A)(1) The legislative authority of a municipal 1281  
corporation may adopt an ordinance, or the board of township 1282  
trustees of a township or the board of county commissioners of a 1283  
county may adopt a resolution, under which, in accordance with 1284  
this section and except as otherwise provided in division (A)(2) 1285  
of this section, the legislative authority or board may aggregate 1286  
automatically, subject to the opt-out requirements of division (D) 1287  
of this section, competitive retail natural gas service for the 1288  
retail natural gas loads that are located, respectively, within 1289

the municipal corporation, township, or unincorporated area of the  
county and for which there is a choice of supplier of that service  
as a result of revised schedules approved under division (C) of  
section 4929.29 of the Revised Code, a rule or order adopted or  
issued by the commission under Chapter 4905. of the Revised Code,  
or an exemption granted by the commission under sections 4929.04  
to 4929.08 of the Revised Code. An ordinance or a resolution  
adopted under this section shall expressly state that it is  
adopted pursuant to the authority conferred by this section. The  
legislative authority or board also may exercise its authority  
under this section jointly with any other such legislative  
authority or board. For the purpose of the aggregation, the  
legislative authority or board may enter into service agreements  
to facilitate the sale and purchase of the service for the retail  
natural gas loads.

(2)(a) No aggregation under an ordinance or resolution  
adopted under division (A)(1) of this section shall include the  
retail natural gas load of any person that meets any of the  
following criteria:

(i) The person is both a distribution service customer and a  
mercantile customer on the date of commencement of service to the  
aggregated load, or the person becomes a distribution service  
customer after that date and also is a mercantile customer.

(ii) The person is supplied with commodity sales service  
pursuant to a contract with a retail natural gas supplier that is  
in effect on the effective date of the ordinance or resolution.

(iii) The person is supplied with commodity sales service as  
part of a retail natural gas load aggregation provided for  
pursuant to a rule or order adopted or issued by the commission  
under this chapter or Chapter 4905. of the Revised Code.

(b) Nothing in division (A)(2)(a) of this section precludes a

governmental aggregation under this section from permitting the  
retail natural gas load of a person described in division  
(A)(2)(a) of this section from being included in the aggregation  
upon the expiration of any contract or aggregation as described in  
division (A)(2)(a)(ii) or (iii) of this section or upon the person  
no longer being a customer as described in division (A)(2)(a)(i)  
of this section or qualifying to be included in an aggregation  
described under division (A)(2)(a)(iii) of this section.

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(B) An ordinance or resolution adopted under division (A) of  
this section shall direct the board of elections to submit the  
question of the authority to aggregate to the electors of the  
respective municipal corporation, township, or unincorporated area  
of a county at a special election on the day of the next primary  
or general election in the municipal corporation, township, or  
county. The legislative authority or board shall certify a copy of  
the ordinance or resolution to the board of elections not less  
than seventy-five days before the day of the special election. No  
ordinance or resolution adopted under division (A) of this section  
that provides for an election under this division shall take  
effect unless approved by a majority of the electors voting upon  
the ordinance or resolution at the election held pursuant to this  
division.

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(C) Upon the applicable requisite authority under divisions  
(A) and (B) of this section, the legislative authority or board  
shall develop a plan of operation and governance for the  
aggregation program so authorized. Before adopting a plan under  
this division, the legislative authority or board shall hold at  
least two public hearings on the plan. Before the first hearing,  
the legislative authority or board shall publish notice of the  
hearings once a week for two consecutive weeks in a newspaper of  
general circulation in the jurisdiction. The notice shall  
summarize the plan and state the date, time, and location of each

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hearing.

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(D) No legislative authority or board, pursuant to an ordinance or resolution under divisions (A) and (B) of this section, shall aggregate any retail natural gas load located within its jurisdiction unless it in advance clearly discloses to the person whose retail natural gas load is to be so aggregated that the person will be enrolled automatically in the aggregation and will remain so enrolled unless the person affirmatively elects by a stated procedure not to be so enrolled. The disclosure shall state prominently the rates, charges, and other terms and conditions of enrollment. The stated procedure shall allow any person enrolled in the aggregation the opportunity to opt out of the aggregation every two years, without paying a switching fee. Any such person that opts out of the aggregation pursuant to the stated procedure shall default to the natural gas company providing distribution service for the person's retail natural gas load, until the person chooses an alternative supplier.

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(E)(1) With respect to a governmental aggregation for a municipal corporation that is authorized pursuant to divisions (A) to (D) of this section, resolutions may be proposed by initiative or referendum petitions in accordance with sections 731.28 to 731.41 of the Revised Code.

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(2) With respect to a governmental aggregation for a township or the unincorporated area of a county, which aggregation is authorized pursuant to divisions (A) to (D) of this section, resolutions may be proposed by initiative or referendum petitions in accordance with sections 731.28 to 731.40 of the Revised Code, except that:

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(a) The petitions shall be filed, respectively, with the township clerk or the board of county commissioners, who shall perform those duties imposed under those sections upon the city auditor or village clerk.

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(b) The petitions shall contain the signatures of not less 1385  
than ten per cent of the total number of electors in the township 1386  
or the unincorporated area of the county, respectively, who voted 1387  
for the office of governor at the preceding general election for 1388  
that office in that area. 1389

(F) A governmental aggregator under division (A) of this 1390  
section is not a public utility engaging in the wholesale purchase 1391  
and resale of natural gas, and provision of the aggregated service 1392  
is not a wholesale utility transaction. A governmental aggregator 1393  
shall be subject to supervision and regulation by the public 1394  
utilities commission only to the extent of any competitive retail 1395  
natural gas service it provides and commission authority under 1396  
this chapter. 1397

**Sec. 4929.27.** (A)(1) The legislative authority of a municipal 1398  
corporation may adopt an ordinance, or the board of township 1399  
trustees of a township or the board of county commissioners of a 1400  
county may adopt a resolution, under which, in accordance with 1401  
this section and except as otherwise provided in division (A)(2) 1402  
of this section, the legislative authority or board may aggregate, 1403  
with the prior consent of each person whose retail natural gas 1404  
load is proposed to be aggregated, competitive retail natural gas 1405  
service for any such retail natural gas load that is located, 1406  
respectively, within the municipal corporation, township, or 1407  
unincorporated area of the county and for which there is a choice 1408  
of supplier of that service as a result of revised schedules 1409  
approved under division (C) of section 4929.29 of the Revised 1410  
Code, a rule or order adopted or issued by the commission under 1411  
Chapter 4905. of the Revised Code, or an exemption granted by the 1412  
commission under sections 4929.04 to 4929.08 of the Revised Code. 1413  
An ordinance or a resolution adopted under this section shall 1414  
expressly state that it is adopted pursuant to the authority 1415  
conferred by this section. The legislative authority or board also 1416

may exercise such authority jointly with any other such  
legislative authority or board. For the purpose of the  
aggregation, the legislative authority or board may enter into  
service agreements to facilitate the sale and purchase of the  
service for the retail natural gas loads.

(2)(a) No aggregation under an ordinance or resolution  
adopted under division (A)(1) of this section shall include the  
retail natural gas load of any person that meets either of the  
following criteria:

(i) The person is supplied with commodity sales service  
pursuant to a contract with a retail natural gas supplier that is  
in effect on the effective date of the ordinance or resolution.

(ii) The person is supplied with commodity sales service as  
part of a retail natural gas load aggregation provided for  
pursuant to a rule or order adopted or issued by the commission  
under this chapter or Chapter 4905. of the Revised Code.

(b) Nothing in division (A)(2)(a) of this section precludes a  
governmental aggregation under this section from permitting the  
retail natural gas load of a person described in division  
(A)(2)(a) of this section from being included in the aggregation  
upon the expiration of any contract or aggregation as described in  
division (A)(2)(a)(i) or (ii) of this section or upon the person  
no longer qualifying to be included in such an aggregation.

(B) Upon the applicable requisite authority under division  
(A) of this section, the legislative authority or board shall  
develop a plan of operation and governance for the aggregation  
program so authorized. Before adopting a plan under this division,  
the legislative authority or board shall hold at least two public  
hearings on the plan. Before the first hearing, the legislative  
authority or board shall publish notice of the hearings once a  
week for two consecutive weeks in a newspaper of general

circulation in the jurisdiction. The notice shall summarize the  
plan and state the date, time, and location of each hearing.

(C)(1) With respect to a governmental aggregation for a  
municipal corporation that is authorized pursuant to division (A)  
of this section, resolutions may be proposed by initiative or  
referendum petitions in accordance with sections 731.28 to 731.41  
of the Revised Code.

(2) With respect to a governmental aggregation for a township  
or the unincorporated area of a county, which aggregation is  
authorized pursuant to division (A) of this section, resolutions  
may be proposed by initiative or referendum petitions in  
accordance with sections 731.28 to 731.40 of the Revised Code,  
except that:

(a) The petitions shall be filed, respectively, with the  
township clerk or the board of county commissioners, who shall  
perform those duties imposed under those sections upon the city  
auditor or village clerk.

(b) The petitions shall contain the signatures of not less  
than ten per cent of the total number of electors in the township  
or the unincorporated area of the county, respectively, who voted  
for the office of governor at the preceding general election for  
that office in that area.

(D) A governmental aggregator under division (A) of this  
section is not a public utility engaging in the wholesale purchase  
and resale of natural gas, and provision of the aggregated service  
is not a wholesale utility transaction. A governmental aggregator  
shall be subject to supervision and regulation by the public  
utilities commission only to the extent of any competitive retail  
natural gas service it provides and commission authority under  
this chapter.



Sec. 4929.28. Any governmental aggregator as defined in 1478  
division (K)(1) or (2) of section 4929.01 of the Revised Code or 1479  
retail natural gas supplier shall act in good faith with a natural 1480  
gas company to resolve any issues regarding an aggregation prior 1481  
to the date of commencement of service to the aggregated load. In 1482  
the event agreement cannot be reached, either party may petition 1483  
the public utilities commission to resolve the issues. 1484

Sec. 4929.29. (A)(1) The legislative authority of a municipal 1485  
corporation described in division (K)(1) of section 4929.01 of the 1486  
Revised Code, the board of township trustees of a township, or the 1487  
board of county commissioners of a county may petition the public 1488  
utilities commission to require a natural gas company with fifteen 1489  
thousand or more customers in this state to provide, upon the 1490  
effective date of an ordinance or resolution authorized and 1491  
adopted under section 4929.26 or 4929.27 of the Revised Code, 1492  
distribution service on a fully open, equal, and nondiscriminatory 1493  
basis to consumers that are not mercantile customers and are 1494  
within the area of the governmental aggregation and to which the 1495  
company provides distribution service through distribution 1496  
facilities it singly or jointly owns or operates. 1497

(2) The legislative authority of a municipal corporation 1498  
described in division (K)(2) of section 4929.01 of the Revised 1499  
Code may petition the commission to require a natural gas company 1500  
with fifteen thousand or more customers in this state to provide, 1501  
upon the effective date of an ordinance adopted under Section 5 of 1502  
Article XVIII, Ohio Constitution, distribution service on a fully 1503  
open, equal, and nondiscriminatory basis to consumers that are 1504  
within the area of the governmental aggregation and to which the 1505  
company provides distribution service through distribution 1506  
facilities it singly or jointly owns or operates. 1507

(3) A retail natural gas supplier may petition the commission 1508

to require a natural gas company with fifteen thousand or more  
customers in this state to so provide such fully open, equal, and  
nondiscriminatory service to all consumers that are not mercantile  
customers and to which the company provides distribution service  
through distribution facilities it singly or jointly owns or  
operates.

(B) Upon petition under division (A)(1), (2), or (3) of this  
section, the commission, after notice and opportunity for hearing  
and by order, may require that the natural gas company provide the  
service within the area specified in the petition, provided that  
the commission finds that the provision of the service within the  
area is in the public interest. The applicant shall have the  
burden of proof under this division. Chapter 4903. of the Revised  
Code shall apply to a proceeding under this division.

(C) Upon the issuance of an order under division (B) of this  
section requiring distribution service on a comparable and  
nondiscriminatory basis within the area specified in the order,  
the natural gas company shall file with the commission under  
section 4905.30 of the Revised Code revised schedules under which  
the company shall provide the service so ordered. The commission  
shall act promptly to approve the schedules.

**Sec. 4929.30.** (A) Nothing in sections 4929.20 to 4929.29 of  
the Revised Code affects any arrangement or other contract to  
supply or arrange for the supply of commodity sales service or  
ancillary service to a consumer in this state, which arrangement  
or contract was entered into prior to the effective date of  
initial rules adopted pursuant to division (A) of section 4929.20  
of the Revised Code, and was authorized as a result of a rule or  
order adopted or issued by the public utilities commission under  
Chapter 4905. of the Revised Code; and nothing in sections 4929.20  
to 4929.29 of the Revised Code affects any rights or duties of any

person under such an arrangement or contract for the term of the  
arrangement or contract.

(B) Nothing in sections 4929.20 to 4929.29 of the Revised  
Code applies to a community aggregation program that is designed  
and operated to avoid gaps in the cumulative coverage of the  
aggregation and under which more than fifty per cent of a natural  
gas company's customers were enrolled in the program as of January  
1, 2001. A municipal corporation served under such a program by  
the facilities of a natural gas company may continue to provide  
competitive retail natural gas service to customers in the  
aggregation, including school districts and customers outside the  
boundaries of the municipal corporation.

**Sec. 4935.03.** (A) The public utilities commission shall  
adopt, and may amend or rescind, rules in accordance with section  
111.15 of the Revised Code, with the approval of the governor,  
defining various foreseen types and levels of energy emergency  
conditions for critical shortages or interruptions in the supply  
of electric power, natural gas, coal, or individual petroleum  
fuels and specifying appropriate measures to be taken at each  
level or for each type of energy emergency as necessary to protect  
the public health or safety or prevent unnecessary or avoidable  
damage to property. The rules may prescribe different measures for  
each different type or level of declared energy emergency, and for  
any type or level shall empower the governor to:

(1) Restrict the energy consumption of state and local  
government offices and industrial and commercial establishments;

(2) Restrict or curtail public or private transportation or  
require or encourage the use of car pools or mass transit systems;

(3) Order, during a declared energy emergency, any electric  
light, natural gas or gas, or pipeline company; any supplier

subject to certification under section 4928.08 or 4929.20 of the  
Revised Code; electric power or gas utility that is owned by a  
municipal corporation or not for profit; coal producer or  
supplier; electric power producer or marketer; or petroleum fuel  
producer, refiner, wholesale distributor, or retail dealer to sell  
electricity, gas, coal, or petroleum fuel in order to alleviate  
hardship, or if possible to acquire or produce emergency supplies  
to meet emergency needs;

(4) Order, during a declared energy emergency, other energy  
conservation or emergency energy production or distribution  
measures to be taken in order to alleviate hardship;

(5) Mobilize emergency management, national guard, law  
enforcement, or emergency medical services.

The rules shall be designed to protect the public health and  
safety and prevent unnecessary or avoidable damage to property.  
They shall encourage the equitable distribution of available  
electric power and fuel supplies among all geographic regions in  
the state.

(B) The governor may, after consultation with the ~~chairman~~  
chairperson of the commission, declare an energy emergency by  
filing with the secretary of state a written declaration of an  
energy emergency at any time ~~he~~ the governor finds that the  
health, safety, or welfare of the residents of this state or of  
one or more counties of this state is so imminently and  
substantially threatened by an energy shortage that immediate  
action of state government is necessary to prevent loss of life,  
protect the public health or safety, and prevent unnecessary or  
avoidable damage to property. The declaration shall state the  
counties, utility service areas, or fuel market areas affected, or  
its statewide effect, and what fuels or forms of energy are in  
critically short supply. An energy emergency goes into immediate  
effect upon filing and continues in effect for the period

prescribed in the declaration, but not more than thirty days. At 1602  
the end of any thirty-day or shorter energy emergency, the 1603  
governor may issue another declaration extending the emergency. 1604  
The general assembly may by concurrent resolution terminate any 1605  
declaration of an energy emergency. The emergency is terminated at 1606  
the time of filing of the concurrent resolution with the secretary 1607  
of state. When an energy emergency is declared, the commission 1608  
shall implement the measures which it determines are appropriate 1609  
for the type and level of emergency in effect. 1610

(C) Energy emergency orders issued by the governor pursuant 1611  
to this section shall take effect immediately upon issuance, and 1612  
the person to whom the order is directed shall initiate compliance 1613  
measures immediately upon receiving the order. During an energy 1614  
emergency the attorney general or the prosecuting attorney of the 1615  
county where violation of a rule adopted or order issued under 1616  
this section occurs may bring an action for immediate injunction 1617  
or other appropriate relief to secure prompt compliance. The court 1618  
may issue an ex parte temporary order without notice which shall 1619  
enforce the prohibitions, restrictions, or actions that are 1620  
necessary to secure compliance with the rule or order. Compliance 1621  
with rules or orders issued under this section is a matter of 1622  
statewide concern. 1623

(D) During a declared energy emergency the governor may use 1624  
the services, equipment, supplies, and facilities of existing 1625  
departments, offices, and agencies of the state and of the 1626  
political subdivisions thereof to the maximum extent practicable 1627  
and necessary to meet the energy emergency, and the officers and 1628  
personnel of all such departments, offices, and agencies shall 1629  
cooperate with and extend such services and facilities to the 1630  
governor upon request. 1631

(E) During an energy emergency declared under this section, 1632  
no person shall violate any rule adopted or order issued under 1633

this section. Whoever violates this division is guilty of a minor  
misdemeanor on a first offense, and a misdemeanor of the first  
degree upon subsequent offenses or if the violation was purposely  
committed.

**Sec. 5727.01.** As used in this chapter:

(A) "Public utility" means each person referred to as a  
telephone company, telegraph company, electric company, natural  
gas company, pipe-line company, water-works company, water  
transportation company, heating company, rural electric company,  
railroad company, or combined company.

(B) "Gross receipts" means the entire receipts for business  
done by any person from operations as a public utility, or  
incidental thereto, or in connection therewith, including any  
receipts received under Chapter 4928. of the Revised Code. The  
gross receipts for business done by an incorporated company  
engaged in operation as a public utility includes the entire  
receipts for business done by such company under the exercise of  
its corporate powers, whether from the operation as a public  
utility or from any other business.

(C) "Rural electric company" means any nonprofit corporation,  
organization, association, or cooperative engaged in the business  
of supplying electricity to its members or persons owning an  
interest therein in an area the major portion of which is rural.

(D) Any person:

(1) Is a telegraph company when engaged in the business of  
transmitting telegraphic messages to, from, through, or in this  
state;

(2) Is a telephone company when primarily engaged in the  
business of providing local exchange telephone service, excluding  
cellular radio service, in this state;

(3) Is an electric company when engaged in the business of  
generating, transmitting, or distributing electricity within this  
state for use by others, but excludes a rural electric company;

(4) Is a natural gas company when engaged in the business of  
supplying or distributing natural gas for lighting, power, or  
heating purposes to consumers within this state, excluding a  
person that is a governmental aggregator or retail natural gas  
supplier as defined in section 4929.01 of the Revised Code;

(5) Is a pipe-line company when engaged in the business of  
transporting natural gas, oil, or coal or its derivatives through  
pipes or tubing, either wholly or partially within this state;

(6) Is a water-works company when engaged in the business of  
supplying water through pipes or tubing, or in a similar manner,  
to consumers within this state;

(7) Is a water transportation company when engaged in the  
transportation of passengers or property, by boat or other  
watercraft, over any waterway, whether natural or artificial, from  
one point within this state to another point within this state, or  
between points within this state and points without this state;

(8) Is a heating company when engaged in the business of  
supplying water, steam, or air through pipes or tubing to  
consumers within this state for heating purposes;

(9) Is a railroad company when engaged in the business of  
owning or operating a railroad either wholly or partially within  
this state on rights-of-way acquired and held exclusively by such  
company, or otherwise, and includes a passenger, street, suburban,  
or interurban railroad company.

As used in division (D)(2) of this section, "local exchange  
telephone service" means making available or furnishing access and  
a dial tone to all persons within a local calling area for use in  
originating and receiving voice grade communications over a

switched network operated by the provider of the service within 1695  
the area and for gaining access to other telecommunication 1696  
services. 1697

(E) "Taxable property" means the property required by section 1698  
5727.06 of the Revised Code to be assessed by the tax 1699  
commissioner, but does not include either of the following: 1700

(1) An item of tangible personal property that for the period 1701  
subsequent to the effective date of an air, water, or noise 1702  
pollution control certificate and continuing so long as the 1703  
certificate is in force, has been certified as part of the 1704  
pollution control facility with respect to which the certificate 1705  
has been issued; 1706

(2) An item of tangible personal property that during the 1707  
construction of a plant or facility and until the item is first 1708  
capable of operation, whether actually used in operation or not, 1709  
is incorporated in or being held exclusively for incorporation in 1710  
that plant or facility. 1711

(F) "Taxing district" means a municipal corporation of 1712  
township, or part thereof, in which the aggregate rate of taxation 1713  
is uniform. 1714

(G) "Telecommunications service" has the same meaning as in 1715  
division (AA) of section 5739.01 of the Revised Code. 1716

(H) "Interexchange telecommunications company" means a person 1717  
that is engaged in the business of transmitting telephonic 1718  
messages to, from, through, or in this state, but that is not a 1719  
telephone company. 1720

(I) "Sale and leaseback transaction" means a transaction in 1721  
which a public utility or interexchange telecommunications company 1722  
sells any tangible personal property to a person other than a 1723  
public utility or interexchange telecommunications company and 1724  
leases that property back from the buyer. 1725



(J) "Production equipment" means all taxable steam, nuclear, 1726  
hydraulic, and other production plant equipment used to generate 1727  
electricity. For tax years prior to 2001, "production equipment" 1728  
includes taxable station equipment that is located at a production 1729  
plant. 1730

(K) "Tax year" means the year for which property or gross 1731  
receipts are subject to assessment under this chapter. This 1732  
division does not limit the tax commissioner's ability to assess 1733  
and value property or gross receipts outside the tax year. 1734

(L) "Combined company" means any person engaged in the 1735  
activity of an electric company or rural electric company that is 1736  
also engaged in the activity of a heating company or a natural gas 1737  
company, or any combination thereof. 1738

**Sec. 5727.02.** As used in this chapter, "public utility," 1739  
"electric company," "natural gas company," "pipe-line company," 1740  
"water-works company," "water transportation company" or "heating 1741  
company" does not include any of the following: 1742

(A) Any person that is engaged in some other primary business 1743  
to which the supplying of electricity, heat, natural gas, water, 1744  
water transportation, steam, or air to others is incidental. As 1745  
used in this division, "supplying of electricity" means 1746  
generating, transmitting, or distributing electricity. 1747

(B) Any person that supplies electricity, natural gas, water, 1748  
water transportation, steam, or air to its tenants, whether for a 1749  
separate charge or otherwise; 1750

(C) Any person whose primary business in this state consists 1751  
of producing, refining, or marketing petroleum or its products. 1752

(D) Any person whose primary business in this state consists 1753  
of producing or gathering natural gas rather than supplying or 1754  
distributing natural gas to consumers. 1755

**Section 2.** That existing sections 4719.01, 4905.10, 4905.302, 1756  
4911.18, 4929.01, 4929.02, 4929.14, 4935.03, 5727.01, and 5727.02 1757  
of the Revised Code are hereby repealed. 1758

**Section 3.** Any person, as defined in section 4929.01 of the 1759  
Revised Code, as amended by this act, that, prior to the effective 1760  
date of section 4929.20 of the Revised Code, as enacted by this 1761  
act, is engaged in supplying or arranging for the supply of 1762  
commodity sales service to consumers in this state as authorized 1763  
by law, may continue to so engage until the person's initial 1764  
application for certification under division (A) of section 1765  
4929.20 of the Revised Code, as enacted by this act, is approved 1766  
or denied pursuant to that division. 1767

**Section 4.** All items in this section are hereby appropriated 1768  
as designated out of any moneys in the state treasury to the 1769  
credit of the General Revenue Fund. For all appropriations made in 1770  
this act, those in the first column are for fiscal year 2000 and 1771  
those in the second column are for fiscal year 2001. The 1772  
appropriations made in this act are in addition to any other 1773  
appropriations made for the 1999-2001 biennium. 1774

JFS DEPARTMENT OF JOB AND FAMILY SERVICES 1775

GRF 600-437 Temporary Heating	\$	0	\$	20,000,000	1776
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Assistance for Warmth

TOTAL GRF General Revenue Fund	\$	0	\$	20,000,000	1777
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TOTAL ALL BUDGET FUND GROUPS	\$	0	\$	20,000,000	1778
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TEMPORARY HEATING ASSISTANCE FOR WARMTH 1779

The foregoing appropriation item 600-437, Temporary Heating 1780  
Assistance for Warmth, shall be used for Project Temporary Heating 1781  
Assistance for Warmth, which is a program hereby authorized to 1782  
provide assistance with the payment of winter heating expenses for 1783  
persons not eligible for assistance under Title IV-A of the Social 1784

Security Act, and whose gross monthly income does not exceed 200  
per cent of the federal poverty guidelines, as established by the  
United States Secretary of Health and Human Services. The  
Department of Job and Family Services may provide funds for this  
program from this appropriation to county departments of job and  
family services to provide assistance on behalf of eligible  
households. Each eligible household may receive a one-time benefit  
of 50 per cent of one primary heating bill for any heating fuel,  
including any arrearages that arose due to primary heating bills  
incurred between December 1, 2000, and April 1, 2001, not to  
exceed \$250. No assistance shall be provided for fuel purchased  
prior to October 1, 2000, or after March 31, 2001. The Department  
of Job and Family Services may issue guidelines for the  
implementation of this program. Total expenditures for this  
program shall not exceed \$20,000,000.

If the balance in the General Revenue Fund is not sufficient  
to fund the foregoing appropriation item 600-437, Temporary  
Heating Assistance for Warmth, the Director of Budget and  
Management is authorized to reduce other General Revenue Fund  
appropriations for fiscal year 2001 proportionately to fund this  
appropriation item.

Within the limits set forth in this act, the Director of  
Budget and Management shall establish accounts indicating the  
source and amount of funds for each appropriation made in this  
act, and shall determine the form and manner in which  
appropriation accounts shall be maintained. Expenditures from  
appropriations contained in this act shall be accounted for as  
though made in Am. Sub. H.B. 283 of the 123rd General Assembly.  
The appropriations made in this act are subject to all provisions  
of Am. Sub. H.B. 283 of the 123rd General Assembly that are  
generally applicable to such appropriations.

**Section 5.** That Section 37 of Am. Sub. H.B. 283 of the 123rd General Assembly, as most recently amended by Am. Sub. H.B. 640 of the 123rd General Assembly, be amended to read as follows:

**"Sec. 37. DEV DEPARTMENT OF DEVELOPMENT**

General Revenue Fund

GRF 195-100	Personal Services	\$	2,578,880	\$	2,583,300	
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GRF 195-200	Maintenance	\$	608,000	\$	608,000	
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GRF 195-300	Equipment	\$	111,550	\$	111,550	
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GRF 195-401	Thomas Edison Program	\$	25,553,540	\$	25,528,749	
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GRF 195-404	Small Business	\$	2,445,388	\$	2,465,504	
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Development

GRF 195-405	Minority Business	\$	2,323,570	\$	2,324,418	
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Development Division

GRF 195-406	Transitional and	\$	2,760,270	\$	2,826,679	
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Permanent Housing

GRF 195-407	Travel and Tourism	\$	6,300,000	\$	6,327,600	
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GRF 195-408	Coal Research	\$	588,465	\$	587,907	
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Development

GRF 195-409	Energy Credit	\$	0	\$	694,814	
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Administration

GRF 195-410	Defense Conversion	\$	740,000	\$	500,000	
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Assistance Program

GRF 195-412	Business Development	\$	15,005,000	\$	10,005,000	
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Grants

GRF 195-414	First Frontier Match	\$	485,000	\$	496,628	
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GRF 195-415	Regional Offices and	\$	6,414,854	\$	6,338,038	
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Economic Development

GRF 195-416	Governor's Office of	\$	1,628,800	\$	5,059,376	
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Appalachia

GRF 195-417	Urban/Rural Initiative	\$	1,000,000	\$	1,000,000	
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GRF 195-422	Technology Action	\$	15,100,000	\$	15,100,000	
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GRF 195-428	Project 100	\$	2,000,000	\$	2,000,000	1838
GRF 195-429	Y2K Compliance	\$	10,000,000	\$	0	1839
GRF 195-431	Community Development Corporation Grants	\$	2,520,386	\$	2,582,510	1840
GRF 195-432	International Trade	\$	5,291,540	\$	5,416,621	1841
GRF 195-434	Industrial Training Grants	\$	18,000,000	\$	20,000,000	1842
GRF 195-436	Labor/Management Cooperation	\$	1,164,000	\$	1,164,000	1843
GRF 195-440	Emergency Shelter Housing Grants	\$	2,930,029	\$	2,999,139	1844
GRF 195-441	Low and Moderate Income Housing	\$	7,760,000	\$	7,760,000	1845
GRF 195-497	CDBG Operating Match	\$	1,147,067	\$	1,176,608	1846
GRF 195-498	State Energy Match	\$	147,221	\$	151,299	1847
GRF 195-501	Appalachian Local Development Districts	\$	452,370	\$	463,227	1848
GRF 195-502	Appalachian Regional Commission Dues	\$	190,000	\$	194,400	1849
GRF 195-505	Utility Bill Credits	\$	0	\$	7,500,000	1850
GRF 195-507	Travel & Tourism Grants	\$	1,795,000	\$	1,640,000	1851
GRF 195-513	Empowerment Zones/Enterprise Communities	\$	2,000,000	\$	0	1852
TOTAL GRF General Revenue Fund		\$	139,040,930	\$	135,605,367	1853
General Services Fund Group						1854
135 195-605	Supportive Services	\$	7,463,030	\$	7,472,165	1855
136 195-621	International Trade	\$	75,000	\$	0	1856
685 195-636	General Reimbursements	\$	1,199,500	\$	1,222,233	1857
TOTAL GSF General Services Fund						1858
Group		\$	8,737,530	\$	8,694,398	1859

Federal Special Revenue Fund Group					1860		
3K8	195-613	Community Development	\$	65,000,000	\$	65,000,000	1861
Block Grant							
3K9	195-611	Home Energy Assistance	\$	55,000,000	\$	<del>55,000,000</del>	1862
							1863
Block Grant							<u>75,000,000</u>
3K9	195-614	HEAP Weatherization	\$	10,421,000	\$	10,412,041	1864
3L0	195-612	Community Services	\$	20,090,000	\$	20,090,000	1865
Block Grant							
308	195-602	Appalachian Regional	\$	650,000	\$	650,000	1866
Commission							
308	195-603	Housing and Urban	\$	34,895,700	\$	34,895,700	1867
Development							
308	195-605	Federal Projects	\$	7,871,000	\$	7,855,501	1868
308	195-609	Small Business	\$	3,701,900	\$	3,701,900	1869
Administration							
308	195-616	Technology Programs	\$	117,700	\$	0	1870
308	195-618	Energy Federal Grants	\$	2,832,325	\$	2,803,560	1871
335	195-610	Oil Overcharge	\$	8,500,000	\$	8,500,000	1872
380	195-622	Housing Development	\$	3,711,800	\$	3,938,200	1873
Operating							
TOTAL FED Federal Special Revenue							1874
Fund Group			\$	212,791,425	\$	<del>212,846,902</del>	1875
							<u>232,846,902</u>
							1876
State Special Revenue Fund Group							1877
4F2	195-639	State Special Projects	\$	1,530,000	\$	1,030,100	1878
4H4	195-641	First Frontier	\$	1,000,000	\$	1,000,000	1879
4S0	195-630	Enterprise Zone	\$	323,079	\$	323,355	1880
Operating							
4S1	195-634	Job Creation Tax	\$	251,856	\$	258,422	1881
Credit Operating							
4W1	195-646	Minority Business	\$	3,898,213	\$	3,972,954	1882
Enterprise Loan							

444	195-607	Water and Sewer Commission Loans	\$	500,000	\$	500,000	1883
445	195-617	Housing Finance Agency	\$	3,669,522	\$	3,532,181	1884
450	195-624	Minority Business Bonding Program Administration	\$	12,644	\$	12,947	1885
451	195-625	Economic Development Financing Operating	\$	1,906,075	\$	1,970,014	1886
586	195-653	Scrap Tire Loans and Grants	\$	1,000,000	\$	1,000,000	1887
5F7	195-658	Local Government Y2K Loan Program	\$	10,000,000	\$	0	1888
611	195-631	Water and Sewer Administration	\$	15,000	\$	15,000	1889
617	195-654	Volume Cap Administration	\$	200,000	\$	196,640	1890
646	195-638	Low and Moderate Income Housing Trust Fund	\$	20,445,200	\$	21,034,500	1891
TOTAL SSR State Special Revenue							1892
Fund Group			\$	44,751,589	\$	34,846,113	1893
Facilities Establishment Fund							1894
037	195-615	Facilities Establishment	\$	53,970,000	\$	55,481,100	1895
4Z6	195-647	Rural Industrial Park Loan	\$	3,000,000	\$	5,000,000	1896
5D1	195-649	Port Authority Bond Reserves	\$	2,500,000	\$	2,500,000	1897
5D2	195-650	Urban Redevelopment Loans	\$	10,000,000	\$	10,000,000	1898
5H1	195-652	Family Farm Loan	\$	2,246,375	\$	2,246,375	1899
TOTAL 037 Facilities							1900
Establishment Fund			\$	71,716,375	\$	75,227,475	1901

Coal Research/Development Fund				1902	
046 195-632 Coal Research and	\$	12,276,000	\$	12,570,624	1903
Development Fund					
TOTAL 046 Coal Research/					1904
Development Fund	\$	12,276,000	\$	12,570,624	1905
TOTAL ALL BUDGET FUND GROUPS	\$	489,313,849	\$	<del>479,790,879</del>	1906
				<u>499,790,879"</u>	1907

**Section 6.** That existing Section 37 of Am. Sub. H.B. 283 of 1909  
the 123rd General Assembly, as most recently amended by Am. Sub. 1910  
H.B. 640 of the 123rd General Assembly, is hereby repealed. 1911

**Section 7.** Sections 4, 5, 6, and 7 of this act are not 1912  
subject to the referendum. Therefore, under Ohio Constitution, 1913  
Article II, Section 1d and section 1.471 of the Revised Code, 1914  
Sections 4, 5, 6, and 7 of this act go into immediate effect when 1915  
this act becomes law. 1916