

**As Pending in the Senate Energy and Public Utilities Committee**

**127th General Assembly**

**Regular Session**

**2007-2008**

**Sub. S. B. No. 221**

**—**

**A B I L L**

To amend sections 122.41, 122.451, 3706.01, 3706.02, 1  
3706.03, 3706.04, 3706.041, 3706.05, 3706.06, 2  
3706.07, 3706.08, 3706.09, 3706.10, 3706.11, 3  
3706.12, 3706.13, 3706.14, 3706.15, 3706.16, 4  
3706.17, 3706.18, 4905.31, 4905.40, 4928.02, 5  
4928.05, 4928.14, 4928.17, 4928.20, and 4928.21 6  
and to enact sections 1551.41, 4928.111, 4928.141, 7  
4928.142, 4928.64, 4928.68, and 4928.69 of the 8  
Revised Code to revise state energy policy to 9  
address electric service price regulation and to 10  
provide for new bonding authority for advanced 11  
energy projects, advanced (including sustainable 12  
resource) energy portfolio standards, energy 13  
efficiency standards, and greenhouse gas emission 14  
reporting and carbon control planning 15  
requirements. 16

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

**Section 1.** That sections 122.41, 122.451, 3706.01, 3706.02, 17  
3706.03, 3706.04, 3706.041, 3706.05, 3706.06, 3706.07, 3706.08, 18  
3706.09, 3706.10, 3706.11, 3706.12, 3706.13, 3706.14, 3706.15, 19  
3706.16, 3706.17, 3706.18, 4905.31, 4905.40, 4928.02, 4928.05, 20  
4928.14, 4928.17, 4928.20, and 4928.21 be amended and sections 21  
1551.41, 4928.111, 4928.141, 4928.142, 4928.64, 4928.68, and 22  
4928.69 of the Revised Code be enacted to read as follows: 23

**Sec. 122.41.** (A) The development financing advisory council 24  
and the director of development are invested with the powers and 25  
duties provided in Chapter 122. of the Revised Code, in order to 26  
promote the welfare of the people of the state, to stabilize the 27  
economy, to provide employment, to assist in the development 28  
within the state of industrial, commercial, distribution, and 29  
research activities required for the people of the state, and for 30  
their gainful employment, or otherwise to create or preserve jobs 31  
and employment opportunities, or improve the economic welfare of 32  
the people of the state, and also to assist in the financing of 33  
air, water, or thermal pollution control facilities, advanced 34  
energy facilities, and solid waste disposal facilities by mortgage 35  
insurance as provided in section 122.451 of the Revised Code. It 36  
is hereby determined that the accomplishment of such purposes is 37  
essential so that the people of the state may maintain their 38  
present high standards in comparison with the people of other 39  
states and so that opportunities for employment and for favorable 40  
markets for the products of the state's natural resources, 41  
agriculture, and manufacturing shall be improved and that it is 42  
necessary for the state to establish the programs authorized 43  
pursuant to Chapter 122. of the Revised Code, to establish the 44  
development financing advisory council, and to invest it and the 45  
director of development with the powers and duties provided in 46  
Chapter 122. of the Revised Code. The powers granted to the 47  
director of development by Chapter 165. of the Revised Code are 48  
independent of and in addition and alternate to, and are not 49  
limited or restricted by, Chapter 122. of the Revised Code. 50

(B) The development financing advisory council shall: 51

(1) Make recommendations to the director of development as to 52  
applications for assistance pursuant to sections 122.39 to 122.62 53  
or Chapter 166. of the Revised Code. The council may revise its 54  
recommendations to reflect any changes in the proposed assistance 55

made by the director. 56

(2) Advise the director in the administration of sections 57  
122.39 to 122.62 and Chapter 166. of the Revised Code; 58

(3) Adopt bylaws to govern the conduct of the council's 59  
business. 60

**Sec. 122.451.** Upon application of any person, partnership, or 61  
corporation, or upon application of any community improvement 62  
corporation organized as provided in section 1724.01 of the 63  
Revised Code, the director of development, with controlling board 64  
approval, may, pledging therefor moneys in the mortgage insurance 65  
fund created by section 122.561 of the Revised Code, insure or 66  
make advance commitments to insure not more than ninety per cent 67  
of any mortgage payments required. Before insuring any such 68  
mortgage payments the director shall determine that: 69

(A) The project, in accordance with Section 13 of Article 70  
VIII, Ohio Constitution, will create or preserve jobs and 71  
employment opportunities, or improve the economic welfare of the 72  
people of the state, or be an air quality facility, advanced 73  
energy facility, waste water facility, or solid waste facility, as 74  
defined in section 3706.01, 6121.01, or 6123.01 of the Revised 75  
Code. 76

(B) The principal obligation, including initial service 77  
charges and appraisal, inspection, and other fees approved by the 78  
director, does not exceed one hundred per cent of the cost of the 79  
project. 80

(C) The mortgage has a satisfactory maturity date in no case 81  
later than twenty-five years from the date of the insurance. 82

(D) The mortgagor is responsible and able to meet the 83  
payments under the mortgage. 84

(E) The mortgage contains complete amortization provisions 85

satisfactory to the director requiring periodic payments by the 86  
mortgagor which may include principal and interest payments, cost 87  
of local property taxes and assessments, land lease rentals, if 88  
any, and hazard insurance on the property and such mortgage 89  
insurance premiums as are required under section 122.561 of the 90  
Revised Code, all as the director from time to time prescribes or 91  
approves. 92

(F) The mortgage is in such form and contains such terms and 93  
provisions with respect to property insurance, repairs, 94  
alterations, payment of taxes and assessments, default reserves, 95  
delinquency charges, default remedies, anticipation of maturity, 96  
additional and secondary liens, and other matters as the director 97  
may prescribe. 98

The director may take assignments of insured mortgages and 99  
other forms of security and may take title by foreclosure or 100  
conveyance to any project when an insured mortgage loan thereon is 101  
clearly in default and when in the opinion of the director such 102  
acquisition is necessary to safeguard the mortgage insurance fund, 103  
and may sell, or on a temporary basis lease or rent, such project. 104

Sec. 1551.41. The department of natural resources, the 105  
environmental protection agency, and the public utilities 106  
commission jointly by rule shall develop an interim policy 107  
framework for the supervision and regulation by those agencies of 108  
pilot and demonstration carbon sequestration activities located in 109  
or sequestration products produced in this state. 110

**Sec. 3706.01.** As used in this chapter: 111

(A) "Governmental agency" means a department, division, or 112  
other unit of state government, a municipal corporation, county, 113  
township, and other political subdivision, or any other public 114  
corporation or agency having the power to acquire, construct, or 115

operate air quality facilities, the United States or any agency 116  
thereof, and any agency, commission, or authority established 117  
pursuant to an interstate compact or agreement. 118

(B) "Person" means any individual, firm, partnership, 119  
association, or corporation, or any combination thereof. 120

(C) "Air contaminant" means particulate matter, dust, fumes, 121  
gas, mist, smoke, noise, vapor, heat, radioactivity, radiation, or 122  
odorous substance, or any combination thereof. 123

(D) "Air pollution" means the presence in the ambient air of 124  
one or more air contaminants in sufficient quantity and of such 125  
characteristics and duration as to injure human health or welfare, 126  
plant or animal life, or property, or that unreasonably interferes 127  
with the comfortable enjoyment of life or property. 128

(E) "Ambient air" means that portion of the atmosphere 129  
outside of buildings and other enclosures, stacks, or ducts that 130  
surrounds human, plant, or animal life, or property. 131

(F) "Emission" means the release into the outdoor atmosphere 132  
of an air contaminant. 133

(G) "Air quality facility" means any of the following: 134

(1) Any method, or any modification or replacement of 135  
property, process, device, structure, or equipment that removes, 136  
reduces, prevents, contains, alters, conveys, stores, disperses, 137  
or disposes of air contaminants or substances containing air 138  
contaminants, or that renders less noxious or reduces the 139  
concentration of air contaminants in the ambient air, including, 140  
without limitation, facilities and expenditures that qualify as 141  
air pollution control facilities under section 103 (C)(4)(F) of 142  
the Internal Revenue Code of 1954, as amended, and regulations 143  
adopted thereunder; 144

(2) Motor vehicle inspection stations operated in accordance 145

with, and any equipment used for motor vehicle inspections 146  
conducted under, section 3704.14 of the Revised Code and rules 147  
adopted under it; 148

(3) Ethanol or other biofuel facilities, including any 149  
equipment used at the ethanol or other biofuel facility for the 150  
production of ethanol or other biofuels; 151

(4) Any property or portion thereof used for the collection, 152  
storage, treatment, utilization, processing, or final disposal of 153  
a by-product or solid waste resulting from any method, process, 154  
device, structure, or equipment that removes, reduces, prevents, 155  
contains, alters, conveys, stores, disperses, or disposes of air 156  
contaminants, or that renders less noxious or reduces the 157  
concentration of air contaminants in the ambient air; 158

(5) Any property, device, or equipment that promotes the 159  
reduction of emissions of air contaminants into the ambient air 160  
through improvements in the efficiency of energy utilization or 161  
energy conservation; 162

(6) Any coal research and development project conducted under 163  
Chapter 1555. of the Revised Code; 164

(7) As determined by the director of the Ohio coal 165  
development office, any property or portion thereof that is used 166  
for the collection, storage, treatment, utilization, processing, 167  
or final disposal of a by-product resulting from a coal research 168  
and development project as defined in section 1555.01 of the 169  
Revised Code or from the use of clean coal technology, excluding 170  
any property or portion thereof that is used primarily for other 171  
subsequent commercial purposes; 172

(8) Any property or portion thereof that is part of the 173  
FutureGen project of the United States department of energy or 174  
related to the siting of the FutureGen project; 175

(9) Any property, device, or equipment that reduces emissions 176

of air contaminants into the ambient air through the generation of 177  
electricity using sustainable resources; 178

(10) Any property, device, or equipment necessary for the 179  
manufacture and production of equipment that qualifies as an air 180  
quality facility. 181

"Air quality facility" further includes any property or 182  
system to be used in whole or in part for any of the purposes in 183  
divisions (G)(1) to ~~(8)~~(10) of this section, whether another 184  
purpose is also served, and any property or system incidental to 185  
or that has to do with, or the end purpose of which is, any of the 186  
foregoing. Air quality facilities that are defined in this 187  
division for industry, commerce, distribution, or research, 188  
including public utility companies, are hereby determined to be 189  
those that qualify as facilities for the control of air pollution 190  
and thermal pollution related to air under Section 13 of Article 191  
VIII, Ohio Constitution. 192

(H) "Project," ~~or~~ "air quality project," or "advanced energy 193  
project" means any air quality facility or advanced energy 194  
facility, including undivided or other interests therein, acquired 195  
or to be acquired or constructed or to be constructed by the Ohio 196  
air quality development authority under this chapter, or acquired 197  
or to be acquired or constructed or to be constructed by a 198  
governmental agency or person with all or a part of the cost 199  
thereof being paid from a loan or grant from the authority under 200  
this chapter or otherwise paid from the proceeds of ~~air-quality~~ 201  
revenue bonds, including all buildings and facilities that the 202  
authority determines necessary for the operation of the project, 203  
together with all property, rights, easements, and interests that 204  
may be required for the operation of the project. 205

(I) "Cost" as applied to an air quality project or advanced 206  
energy project means the cost of acquisition and construction, the 207  
cost of acquisition of all land, rights-of-way, property rights, 208

easements, franchise rights, and interests required for such 209  
acquisition and construction, the cost of demolishing or removing 210  
any buildings or structures on land so acquired, including the 211  
cost of acquiring any lands to which such buildings or structures 212  
may be moved, the cost of acquiring or constructing and equipping 213  
a principal office and sub-offices of the authority, the cost of 214  
diverting highways, interchange of highways, and access roads to 215  
private property, including the cost of land or easements for such 216  
access roads, the cost of public utility and common carrier 217  
relocation or duplication, the cost of all machinery, furnishings, 218  
and equipment, financing charges, interest prior to and during 219  
construction and for no more than eighteen months after completion 220  
of construction, engineering, expenses of research and development 221  
with respect to air quality facilities, the cost of any commodity 222  
contract, including fees and expenses related thereto, legal 223  
expenses, plans, specifications, surveys, studies, estimates of 224  
cost and revenues, working capital, other expenses necessary or 225  
incident to determining the feasibility or practicability of 226  
acquiring or constructing such project, administrative expense, 227  
and such other expense as may be necessary or incident to the 228  
acquisition or construction of the project, the financing of such 229  
acquisition or construction, including the amount authorized in 230  
the resolution of the authority providing for the issuance of ~~air~~ 231  
~~quality~~ revenue bonds to be paid into any special funds from the 232  
proceeds of such bonds, and the financing of the placing of such 233  
project in operation. Any obligation, cost, or expense incurred by 234  
any governmental agency or person for surveys, borings, 235  
preparation of plans and specifications, and other engineering 236  
services, or any other cost described above, in connection with 237  
the acquisition or construction of a project may be regarded as a 238  
part of the cost of that project and may be reimbursed out of the 239  
proceeds of ~~air-quality~~ revenue bonds as authorized by this 240  
chapter. 241



(J) "Owner" includes an individual, copartnership, 242  
association, or corporation having any title or interest in any 243  
property, rights, easements, or interests authorized to be 244  
acquired by this chapter. 245

(K) "Revenues" means all rentals and other charges received 246  
by the authority for the use or services of any air quality 247  
project, any gift or grant received with respect to any air 248  
quality project, any moneys received with respect to the lease, 249  
sublease, sale, including installment sale or conditional sale, or 250  
other disposition of an air quality project, moneys received in 251  
repayment of and for interest on any loans made by the authority 252  
to a person or governmental agency, whether from the United States 253  
or any department, administration, or agency thereof, or 254  
otherwise, proceeds of such bonds to the extent that use thereof 255  
for payment of principal of, premium, if any, or interest on the 256  
bonds is authorized by the authority, amounts received or 257  
otherwise derived from a commodity contract or from the sale of 258  
the related commodity under such a contract, proceeds from any 259  
insurance, condemnation, or guaranty pertaining to a project or 260  
property mortgaged to secure bonds or pertaining to the financing 261  
of the project, and income and profit from the investment of the 262  
proceeds of ~~air-quality~~ revenue bonds or of any revenues. 263

(L) "Public roads" includes all public highways, roads, and 264  
streets in the state, whether maintained by the state, county, 265  
city, township, or other political subdivision. 266

(M) "Public utility facilities" includes tracks, pipes, 267  
mains, conduits, cables, wires, towers, poles, and other equipment 268  
and appliances of any public utility. 269

(N) "Construction," unless the context indicates a different 270  
meaning or intent, includes reconstruction, enlargement, 271  
improvement, or providing furnishings or equipment. 272

(O) "~~Air quality revenue~~ Revenue bonds," unless the context 273  
indicates a different meaning or intent, includes ~~air quality~~ 274  
revenue notes, ~~air quality~~ revenue renewal notes, and ~~air quality~~ 275  
revenue refunding bonds, except that notes issued in anticipation 276  
of the issuance of bonds shall have a maximum maturity of five 277  
years as provided in section 3706.05 of the Revised Code and notes 278  
or renewal notes issued as the definitive obligation may be issued 279  
maturing at such time or times with a maximum maturity of forty 280  
years from the date of issuance of the original note. 281

(P) "Solid waste" means any garbage; refuse; sludge from a 282  
waste water treatment plant, water supply treatment plant, or air 283  
pollution control facility; and other discarded material, 284  
including solid, liquid, semisolid, or contained gaseous material 285  
resulting from industrial, commercial, mining, and agricultural 286  
operations, and from community activities, but not including solid 287  
or dissolved material in domestic sewage, or solid or dissolved 288  
material in irrigation return flows or industrial discharges that 289  
are point sources subject to permits under section 402 of the 290  
"Federal Water Pollution Control Act Amendments of 1972," 86 Stat. 291  
880, 33 U.S.C.A. 1342, as amended, or source, special nuclear, or 292  
byproduct material as defined by the "Atomic Energy Act of 1954," 293  
68 Stat. 921, 42 U.S.C.A. 2011, as amended. 294

(Q) "Sludge" means any solid, semisolid, or liquid waste, 295  
other than a recyclable by-product, generated from a municipal, 296  
commercial, or industrial waste water treatment plant, water 297  
supply plant, or air pollution control facility or any other such 298  
wastes having similar characteristics and effects. 299

(R) "Ethanol or other biofuel facility" means a plant at 300  
which ethanol or other biofuel is produced. 301

(S) "Ethanol" means fermentation ethyl alcohol derived from 302  
agricultural products, including potatoes, cereal, grains, cheese 303  
whey, and sugar beets; forest products; or other renewable or 304

biomass resources, including residue and waste generated from the 305  
production, processing, and marketing of agricultural products, 306  
forest products, and other renewable or biomass resources, that 307  
meets all of the specifications in the American society for 308  
testing and materials (ASTM) specification D 4806-88 and is 309  
denatured as specified in Parts 20 and 21 of Title 27 of the Code 310  
of Federal Regulations. 311

(T) "Biofuel" means any fuel that is made from cellulosic 312  
biomass resources, including renewable organic matter, crop waste 313  
residue, wood, aquatic plants and other crops, animal waste, solid 314  
waste, or sludge, and that is used for the production of energy 315  
for transportation or other purposes. 316

(U) "FutureGen project" means the buildings, equipment, and 317  
real property and functionally related buildings, equipment, and 318  
real property, including related research projects that support 319  
the development and operation of the buildings, equipment, and 320  
real property, designated by the United States department of 321  
energy and the FutureGen industrial alliance, inc., as the 322  
coal-fueled, zero-emissions power plant designed to prove the 323  
technical and economic feasibility of producing electricity and 324  
hydrogen from coal and nearly eliminating carbon dioxide emissions 325  
through capture and permanent storage. 326

(V) "Commodity contract" means a contract or series of 327  
contracts entered into in connection with the acquisition or 328  
construction of air quality facilities or advanced energy 329  
facilities for the purchase or sale of a commodity that is 330  
eligible for prepayment with the proceeds of federally taxable or 331  
tax exempt bonds under sections 103, 141, and 148 of the Internal 332  
Revenue Code of 1986, as amended, and regulations adopted under 333  
it. 334

(W) "Sustainable resources" includes, but is not limited to, 335  
solar, wind, tidal or wave, biomass, including, but not limited 336

to, biomass involving the utilization of trees or any part 337  
thereof, biofuel, hydro, or geothermal resources that are used in 338  
the generation of electricity and includes fuel cells powered by 339  
sustainable resources. 340

(X) "Advanced energy facility" means any method or any 341  
modification or replacement of any property, process, device, 342  
structure, or equipment that meets any of the following: 343

(1) With regard to clean coal technology, technology that 344  
includes the design capability to control or prevent the emission 345  
of carbon dioxide, which design capability the commission shall 346  
adopt by rule and shall be based on economically feasible best 347  
available technology or, in the absence of a determined best 348  
available technology, shall be of the highest level of 349  
economically feasible design capability for which there exists 350  
generally accepted scientific opinion; 351

(2) With regard to advanced nuclear energy production, 352  
consists of generation III technology as defined by the nuclear 353  
regulatory commission, other later technology, or significant 354  
improvements to existing facilities; 355

(3) With regard to fuel cells used in the generation of 356  
electricity, consists of, but is not limited to, a proton exchange 357  
membrane fuel cell, phosphoric acid fuel cell, molten carbonate 358  
fuel cell, or solid fuel cell; 359

(4) With regard to cogeneration technology, consists of a 360  
technology using a heat engine or power station to generate 361  
electricity and useful heat simultaneously. 362

"Advanced energy facility" further includes any property or 363  
system to be used in whole or in part for any of the purposes of 364  
divisions (X)(1) to (4) of this section, whether another purpose 365  
also is served, and any property or system incidental to or that 366  
has to do with, or the end purpose of which is, any of the 367

foregoing. 368

**Sec. 3706.02.** There is hereby created the Ohio air quality 369  
development authority. Such authority is a body both corporate and 370  
politic in this state, and the carrying out of its purposes and 371  
the exercise by it of the powers conferred by Chapter 3706. of the 372  
Revised Code shall be held to be, and are hereby determined to be, 373  
essential governmental functions and public purposes of the state, 374  
but the authority shall not be immune from liability by reason 375  
thereof. 376

The authority shall consist of seven members as follows: five 377  
members appointed by the governor, with the advice and consent of 378  
the senate, no more than three of whom shall be members of the 379  
same political party, and the director of environmental protection 380  
and the director of health, who shall be members ex officio 381  
without compensation. Each appointive member shall be a resident 382  
of the state, and a qualified elector therein. The members of the 383  
authority first appointed shall continue in office for terms 384  
expiring on June 30, 1971, June 30, 1973, June 30, 1975, June 30, 385  
1977, and June 30, 1978, respectively, the term of each member to 386  
be designated by the governor. Appointed members' terms of office 387  
shall be for eight years, commencing on the first day of July and 388  
ending on the thirtieth day of June. Each appointed member shall 389  
hold office from the date of ~~his~~ appointment until the end of the 390  
term for which ~~he was~~ appointed. Any member appointed to fill a 391  
vacancy occurring prior to the expiration of the term for which 392  
~~his~~ the member's predecessor was appointed shall hold office for 393  
the remainder of such term. Any appointed member shall continue in 394  
office subsequent to the expiration date of ~~his~~ the member's term 395  
until ~~his~~ the member's successor takes office, or until a period 396  
of sixty days has elapsed, whichever occurs first. A member of the 397  
authority is eligible for reappointment. Each appointed member of 398  
the authority, before entering upon ~~his~~ official duties, shall 399

take an oath as provided by Section 7 of Article XV, Ohio 400  
Constitution. The governor may at any time remove any member of 401  
the authority for misfeasance, nonfeasance, or malfeasance in 402  
office. The authority shall elect one of its appointed members as 403  
~~chairman~~ chairperson and another as ~~vice-chairman~~ 404  
vice-chairperson, and shall appoint a secretary-treasurer who need 405  
not be a member of the authority. Four members of the authority 406  
shall constitute a quorum, and the affirmative vote of four 407  
members shall be necessary for any action taken by vote of the 408  
authority. No vacancy in the membership of the authority shall 409  
impair the rights of a quorum by such vote to exercise all the 410  
rights and perform all the duties of the authority. 411

Before the issuance of any ~~air-quality~~ revenue bonds under 412  
Chapter 3706. of the Revised Code, each appointed member of the 413  
authority shall give a surety bond to the state in the penal sum 414  
of twenty-five thousand dollars and the secretary-treasurer shall 415  
give such a bond in the penal sum of fifty thousand dollars, each 416  
such surety bond to be conditioned upon the faithful performance 417  
of the duties of the office, to be executed by a surety company 418  
authorized to transact business in this state, and to be approved 419  
by the governor and filed in the office of the secretary of state. 420  
Each appointed member of the authority shall receive an annual 421  
salary of five thousand dollars, payable in monthly installments. 422  
Each member shall be reimbursed for ~~his~~ the actual expenses 423  
necessarily incurred in the performance of ~~his~~ official duties. 424  
All expenses incurred in carrying out Chapter 3706. of the Revised 425  
Code shall be payable solely from funds provided under Chapter 426  
3706. of the Revised Code, appropriated for such purpose by the 427  
general assembly, or provided by the controlling board. No 428  
liability or obligation shall be incurred by the authority beyond 429  
the extent to which moneys have been so provided or appropriated. 430

**Sec. 3706.03. (A)** It is hereby declared to be the public 431

policy of the state through the operations of the Ohio air quality 432  
development authority under this chapter to contribute toward one 433  
or more of the following: to provide for the conservation of air 434  
as a natural resource of the state, and to prevent or abate the 435  
pollution thereof, to provide for the comfort, health, safety, and 436  
general welfare of all employees, as well as all other inhabitants 437  
of the state, to assist in the financing of air quality facilities 438  
and advanced energy facilities for industry, commerce, 439  
distribution, and research, including public utility companies, to 440  
create or preserve jobs and employment opportunities or improve 441  
the economic welfare of the people, or assist and cooperate with 442  
governmental agencies in achieving such purposes. ~~In~~ Additionally, 443  
advanced energy facilities for industry, commerce, distribution, 444  
or research, including public utility companies, are hereby deemed 445  
to qualify as facilities for the control of air pollution and 446  
thermal pollution related to air under Section 13, Article VIII, 447  
Ohio Constitution. 448

(B) In furtherance of such public policy the Ohio air quality 450  
development authority may initiate, acquire, construct, maintain, 451  
repair, and operate air quality projects and advanced energy 452  
projects or cause the same to be operated pursuant to a lease, 453  
sublease, or agreement with any person or governmental agency; may 454  
make loans and grants to governmental agencies for the acquisition 455  
or construction of air quality facilities and advanced energy 456  
facilities by such governmental agencies; may make loans to 457  
persons for the acquisition or construction of air quality 458  
facilities and advanced energy facilities by such persons; may 459  
enter into commodity contracts with, or make loans for the purpose 460  
of entering into commodity contracts to, any person, governmental 461  
agency, or entity located within or without the state in 462  
connection with the acquisition or construction of air quality 463  
facilities and advanced energy facilities; and may issue ~~air~~ 464

~~quality~~ revenue bonds of this state payable solely from revenues, 465  
to pay the cost of such projects, including any related commodity 466  
contracts. Any air quality project or advanced energy project 467  
shall be determined by the authority to be not inconsistent with 468  
any applicable air quality standards duly established and then 469  
required to be met pursuant to the "Clean Air Act," 84 Stat. 1679 470  
(1970), 42 U.S.C.A. 1857, as amended. Any resolution of the 471  
authority providing for acquiring or constructing such projects or 472  
for making a loan or grant for such projects shall include a 473  
finding by the authority that such determination has been made. 474  
Determinations by resolution of the authority that a project is an 475  
air quality facility or advanced energy facility under this 476  
chapter and is consistent with the purposes of section 13 of 477  
Article VIII, Ohio Constitution, and this chapter, shall be 478  
conclusive as to the validity and enforceability of the ~~air~~ 479  
~~quality~~ revenue bonds issued to finance such project and of the 480  
resolutions, trust agreements or indentures, leases, subleases, 481  
sale agreements, loan agreements, and other agreements made in 482  
connection therewith, all in accordance with their terms. 483

(C) Nothing in this chapter authorizes the Ohio air quality 485  
development authority to build, own, or operate an air quality 486  
facility or advanced energy facility, except as may be required to 487  
effect the financing of the facility. 488

**Sec. 3706.04.** The Ohio air quality development authority may: 489

(A) Adopt bylaws for the regulation of its affairs and the 491  
conduct of its business; 492

(B) Adopt an official seal; 493

(C) Maintain a principal office and suboffices at such places 494  
within the state as it designates; 495



(D) Sue and plead in its own name; be sued and impleaded in 496  
its own name with respect to its contracts or torts of its 497  
members, employees, or agents acting within the scope of their 498  
employment, or to enforce its obligations and covenants made under 499  
sections 3706.05, 3706.07, and 3706.12 of the Revised Code. Any 500  
such actions against the authority shall be brought in the court 501  
of common pleas of the county in which the principal office of the 502  
authority is located, or in the court of common pleas of the 503  
county in which the cause of action arose, provided such county is 504  
located within this state, and all summonses, exceptions, and 505  
notices of every kind shall be served on the authority by leaving 506  
a copy thereof at the principal office with the person in charge 507  
thereof or with the secretary-treasurer of the authority. 508

(E) Make loans and grants to governmental agencies for the 509  
acquisition or construction of air quality projects or advanced 510  
energy projects by any such governmental agency and adopt rules 511  
and procedures for making such loans and grants; 512

(F) Acquire, construct, reconstruct, enlarge, improve, 513  
furnish, equip, maintain, repair, operate, lease or rent to, or 514  
contract for operation by, a person or governmental agency, air 515  
quality projects or advanced energy projects, and establish rules 516  
for the use of such projects; 517

(G) Make available the use or services of any air quality 518  
project or advanced energy project to one or more persons, one or 519  
more governmental agencies, or any combination thereof; 520

(H) Issue ~~air quality~~ revenue bonds and notes and ~~air quality~~ 521  
revenue refunding bonds of the state, payable solely from revenues 522  
as provided in section 3706.05 of the Revised Code, unless the 523  
bonds be refunded by refunding bonds, for the purpose of paying 524  
any part of the cost of one or more air quality projects or 525  
advanced energy projects or parts thereof; 526

(I) Acquire by gift or purchase, hold, and dispose of real 527  
and personal property in the exercise of the powers of the 528  
authority and the performance of its duties under this chapter; 529

(J) Acquire, in the name of the state, by purchase or 530  
otherwise, on such terms and in such manner as the authority finds 531  
proper, or by the exercise of the right of condemnation in the 532  
manner provided by section 3706.17 of the Revised Code, such 533  
public or private lands, including public parks, playgrounds, or 534  
reservations, or parts thereof or rights therein, rights-of-way, 535  
property, rights, easements, and interests as it finds necessary 536  
for carrying out this chapter, but excluding the acquisition by 537  
the exercise of the right of condemnation of any air quality 538  
facility or advanced energy facility owned by any person or 539  
governmental agency; and compensation shall be paid for public or 540  
private lands so taken; 541

(K) Make and enter into all contracts and agreements and 542  
execute all instruments necessary or incidental to the performance 543  
of its duties and the execution of its powers under this chapter. 544

(1) When the cost under any such contract or agreement, other 545  
than compensation for personal services, involves an expenditure 546  
of more than two thousand dollars, the authority shall make a 547  
written contract with the lowest responsive and responsible 548  
bidder, in accordance with section 9.312 of the Revised Code, 549  
after advertisement for not less than two consecutive weeks in a 550  
newspaper of general circulation in Franklin county, and in such 551  
other publications as the authority determines, which notice shall 552  
state the general character of the work and the general character 553  
of the materials to be furnished, the place where plans and 554  
specifications therefor may be examined, and the time and place of 555  
receiving bids; provided, that a contract or lease for the 556  
operation of an air quality project or advanced energy project 557  
constructed and owned by the authority or an agreement for 558

cooperation in the acquisition or construction of an air quality 559  
project or advanced energy project pursuant to section 3706.12 of 560  
the Revised Code or any contract for the construction of an air 561  
quality project or advanced energy project that is to be leased by 562  
the authority to, and operated by, persons ~~who~~ that are not 563  
governmental agencies and the cost of such project is to be 564  
amortized exclusively from rentals or other charges paid to the 565  
authority by persons ~~who~~ that are not governmental agencies is not 566  
subject to the foregoing requirements and the authority may enter 567  
into such contract, lease, or agreement pursuant to negotiation 568  
and upon such terms and conditions and for such period as it finds 569  
to be reasonable and proper in the circumstances and in the best 570  
interests of proper operation or of efficient acquisition or 571  
construction of such project. 572

(2) Each bid for a contract for the construction, demolition, 573  
alteration, repair, or reconstruction of an improvement shall 574  
contain the full name of every person interested in it and meet 575  
the requirements of section 153.54 of the Revised Code. 576

(3) Each bid for a contract except as provided in division 577  
(K)(2) of this section shall contain the full name of every person 578  
interested in it and shall be accompanied by a sufficient bond or 579  
certified check on a solvent bank that if the bid is accepted a 580  
contract will be entered into and the performance thereof secured. 581

(4) The authority may reject any and all bids. 582

(5) A bond with good and sufficient surety, approved by the 583  
authority, shall be required of every contractor awarded a 584  
contract except as provided in division (K)(2) of this section, in 585  
an amount equal to at least fifty per cent of the contract price, 586  
conditioned upon the faithful performance of the contract. 587

(L) Employ managers, superintendents, and other employees and 588  
retain or contract with consulting engineers, financial 589

consultants, accounting experts, architects, attorneys, and such 590  
other consultants and independent contractors as are necessary in 591  
its judgment to carry out this chapter, and fix the compensation 592  
thereof. All expenses thereof shall be payable solely from the 593  
proceeds of ~~air-quality~~ revenue bonds or notes issued under this 594  
chapter, from revenues, or from funds appropriated for such 595  
purpose by the general assembly. 596

(M) Receive and accept from any federal agency, subject to 597  
the approval of the governor, grants for or in aid of the 598  
construction of any air quality project or advanced energy project 599  
or for research and development with respect to air quality 600  
facilities and advanced energy facilities, and receive and accept 601  
aid or contributions from any source of money, property, labor, or 602  
other things of value, to be held, used, and applied only for the 603  
purposes for which such grants and contributions are made; 604

(N) Engage in research and development with respect to air 605  
quality facilities and advanced energy facilities; 606

(O) Purchase fire and extended coverage and liability 607  
insurance for any air quality project and advanced energy project 608  
and for the principal office and suboffices of the authority, 609  
insurance protecting the authority and its officers and employees 610  
against liability for damage to property or injury to or death of 611  
persons arising from its operations, and any other insurance the 612  
authority may agree to provide under any resolution authorizing 613  
its ~~air-quality~~ revenue bonds or in any trust agreement securing 614  
the same; 615

(P) Charge, alter, and collect rentals and other charges for 616  
the use or services of any air quality project or advanced energy 617  
project as provided in section 3706.13 of the Revised Code; 618

(Q) Provide coverage for its employees under Chapters 145., 619  
4123., and 4141. of the Revised Code; 620

(R) Develop, encourage, promote, support, and implement 621  
programs to achieve best cost rates for state-owned buildings, 622  
facilities, and operations, state-supported colleges and 623  
universities, willing local governments, and willing school 624  
districts through pooled purchases of electricity and the 625  
financing of taxable or tax-exempt prepayment of commodities; 626

(S) Develop, encourage, promote, support, and implement 627  
programs to achieve optimal cost financing for electric generating 628  
facilities to be constructed on or after January 1, 2009; 629

630

(T) Develop, encourage, and provide incentives for 631  
investments in energy efficiency; 632

(U) Develop, encourage, promote, and support implementation 633  
in this state of sustainable resource energy installations; 634

(V) Lead, encourage, promote, and support siting, financing, 635  
construction, and operation for early implementations of 636  
next-generation base load generating systems, including clean coal 637  
generating facilities with carbon capture or sequestration or 638  
advanced nuclear power plants, and reduce the costs of associated 639  
risks; 640

(W) Engage in and coordinate state-supported energy research 641  
and development with respect to reliable, affordable, and 642  
sustainable energy in this state; 643

(X) Develop, encourage, promote, support, and implement 644  
programs to attract and retain key industrial and energy-intensive 645  
sectors of the economy of this state; 646

(Y) Do all acts necessary or proper to carry out the powers 647  
expressly granted in this chapter. 648

Any instrument by which real property is acquired pursuant to 649  
this section shall identify the agency of the state that has the 650

use and benefit of the real property as specified in section 651  
5301.012 of the Revised Code. 652

**Sec. 3706.041.** (A) With respect to projects, and the 653  
financing thereof, for industry, commerce, distribution, or 654  
research, including public utility companies, under agreements 655  
whereby the person to whom the project is to be leased, subleased, 656  
or sold, or to whom a loan is to be made for the project, is to 657  
make payments sufficient to pay all of the principal of, premium, 658  
if any, and interest on the ~~air-quality~~ revenue bonds issued for 659  
the project, or the counterparty under any related commodity 660  
contract agrees to make payments sufficient in amount to pay all 661  
of the principal of, premium, if any, and interest on the related 662  
~~air-quality~~ revenue bonds, the Ohio air quality development 663  
authority may, in addition to other powers under this chapter: 664

(1) Make loans for the acquisition or construction of the 665  
project to such person upon such terms as the authority may 666  
determine or authorize, including secured or unsecured loans, and, 667  
in connection therewith, enter into loan agreements and other 668  
agreements, including commodity contracts, accept notes and other 669  
forms of obligation to evidence such indebtedness and mortgages, 670  
liens, pledges, assignments, or other security interests to secure 671  
such indebtedness, which may be prior or subordinate to or on a 672  
parity with other indebtedness, obligations, mortgages, pledges, 673  
assignments, other security interests, or liens or encumbrances, 674  
and take such actions as may be considered by it appropriate to 675  
protect such security and safeguard against losses, including, 676  
without limitation thereto, foreclosure and the bidding upon and 677  
purchase of property upon foreclosure or other sale. 678

(2) Sell such project under such terms as it may determine, 679  
including, without limitation thereto, sale by conditional sale or 680  
installment sale, under which title may pass prior to or after 681

completion of the project or payment or provisions for payment of 682  
all principal of, premium, if any, and interest on such bonds, or 683  
at any other time provided in such agreement pertaining to such 684  
sale, and including sale under an option to purchase at a price 685  
which may be a nominal amount or less than true value at the time 686  
of purchase. 687

(3) Grant a mortgage, lien, or other encumbrance on, or 688  
pledge or assignment of, or other security interest with respect 689  
to, all or any part of the project, revenues, reserve funds, or 690  
other funds established in connection with such bonds, or on, of, 691  
or with respect to any lease, sublease, sale, conditional sale or 692  
installment sale agreement, loan agreement, or other agreement 693  
pertaining to the lease, sublease, sale, or other disposition of a 694  
project or pertaining to a loan made for a project, or any 695  
guaranty or insurance agreement made with respect thereto, or any 696  
interest of the authority therein, or any other interest granted, 697  
assigned, or released to secure payments of the principal of, 698  
premium, if any, or interest on the bonds or to secure any other 699  
payments to be made by the authority, which mortgage, lien, 700  
encumbrance, pledge, assignment, or other security interest may be 701  
prior or subordinate to or on a parity with any other mortgage, 702  
assignment, other security interest, or lien or encumbrance. 703

(4) Provide that the interest on such bonds may be at a 704  
variable rate or rates changing from time to time in accordance 705  
with a base or formula as authorized by the authority. 706

(5) Contract for the acquisition or construction of such 707  
project or any part thereof, including any related commodity 708  
contracts, and for the leasing, subleasing, sale or other 709  
disposition of such project in a manner determined by the 710  
authority in its sole discretion, without necessity for 711  
competitive bidding or performance bonds. 712

(B) Property comprising a project shall not be subject to 713

taxes or assessments and so long as the bonds or notes issued to 714  
finance the costs of such project are outstanding, and the 715  
transfer of title to or possession of such property to the person 716  
to whom a loan or installment sale or conditional sale with 717  
respect to such project is made shall not be subject to the taxes 718  
levied pursuant to Chapters 5739. and 5741. of the Revised Code. 719

The authority shall certify the property comprising a project 720  
which is exempt from taxes and assessments pursuant to this 721  
section, and shall send, by certified mail, copies of such 722  
certification to the owner of such exempt property, to the tax 723  
commissioner, and to the county auditor of the county or counties 724  
in which any such exempt property is located. 725

Each county auditor shall maintain a separate list of all 726  
property exempt pursuant to this section and sections 6121.044 and 727  
6123.041 of the Revised Code, in addition to the list of exempt 728  
property required to be maintained pursuant to section 5713.07 of 729  
the Revised Code. 730

(C) The authority, in the lease, sale or loan agreement with 731  
respect to a project referred to in division (A) of this section, 732  
shall make appropriate provision for adequate maintenance of the 733  
project. 734

(D) With respect to the projects referred to in this section, 735  
the authority granted by this section is cumulative and 736  
supplementary to all other authority granted in this chapter. The 737  
authority granted by this section does not alter or impair any 738  
similar authority granted elsewhere in this chapter for or with 739  
respect to other projects. 740

**Sec. 3706.05.** The Ohio air quality development authority may 741  
at any time issue revenue bonds and notes of the state in such 742  
principal amount as, in the opinion of the authority, are 743  
necessary for the purpose of paying any part of the cost of one or 744



more air quality projects or advanced energy projects or parts 745  
thereof, including one or more payments pursuant to a commodity 746  
contract entered into in connection with the acquisition or 747  
construction of air quality facilities or advanced energy 748  
facilities. The authority may at any time issue renewal notes, 749  
issue bonds to pay such notes and whenever it deems refunding 750  
expedient, refund any bonds by the issuance of ~~air-quality~~ revenue 751  
refunding bonds of the state, whether the bonds to be refunded 752  
have or have not matured, and issue bonds partly to refund bonds 753  
then outstanding, and partly for any other authorized purpose. The 754  
refunding bonds shall be sold and the proceeds applied to the 755  
purchase, redemption, or payment of the bonds to be refunded. 756  
Except as may otherwise be expressly provided by the authority, 757  
every issue of its bonds or notes shall be general obligations of 758  
the authority payable out of the revenues of the authority that 759  
are pledged for such payment, without preference or priority of 760  
the first bonds issued, subject only to any agreements with the 761  
holders of particular bonds or notes pledging any particular 762  
revenues. Such pledge shall be valid and binding from the time the 763  
pledge is made and the revenues so pledged and thereafter received 764  
by the authority shall immediately be subject to the lien of such 765  
pledge without any physical delivery thereof or further act, and 766  
the lien of any such pledge is valid and binding as against all 767  
parties having claims of any kind in tort, contract, or otherwise 768  
against the authority, irrespective of whether such parties have 769  
notice thereof. Neither the resolution nor any trust agreement by 770  
which a pledge is created need be filed or recorded except in the 771  
records of the authority. 772

Whether or not the bonds or notes are of such form and 773  
character as to be negotiable instruments, the bonds or notes 774  
shall have all the qualities and incidents of negotiable 775  
instruments, subject only to the provisions of the bonds or notes 776  
for registration. 777

The bonds and notes shall be authorized by resolution of the  
authority, shall bear such date or dates, and shall mature at such  
time or times, in the case of any such note or any renewals  
thereof not exceeding five years from the date of issue of such  
original note and in the case of any such bond not exceeding forty  
years from the date of issue, as such resolution or resolutions  
may provide. The bonds and notes shall bear interest at such rate  
or rates, be in such denominations, be in such form, either coupon  
or registered, carry such registration privileges, be payable in  
such medium of payment, at such place or places, and be subject to  
such terms of redemption as the authority may authorize. The bonds  
and notes of the authority may be sold by the authority, at public  
or private sale, at or at not less than such price or prices as  
the authority determines. The bonds and notes shall be executed by  
the chairperson and vice-chairperson of the authority, either or  
both of whom may use a facsimile signature, the official seal of  
the authority or a facsimile thereof shall be affixed thereto or  
printed thereon and attested, manually or by facsimile signature,  
by the secretary-treasurer of the authority, and any coupons  
attached thereto shall bear the signature or facsimile signature  
of the chairperson of the authority. In case any officer whose  
signature, or a facsimile of whose signature, appears on any  
bonds, notes or coupons ceases to be such officer before delivery  
of bonds or notes, such signature or facsimile shall nevertheless  
be sufficient for all purposes the same as if the officer had  
remained in office until such delivery, and in case the seal of  
the authority has been changed after a facsimile has been  
imprinted on such bonds or notes, such facsimile seal will  
continue to be sufficient for all purposes.

Any resolution or resolutions authorizing any bonds or notes  
or any issue thereof may contain provisions, subject to such  
agreements with bondholders or noteholders as may then exist,  
which provisions shall be a part of the contract with the holders

thereof, as to: the pledging of all or any part of the revenues of 811  
the authority to secure the payment of the bonds or notes or of 812  
any issue thereof; the use and disposition of revenues of the 813  
authority; a covenant to fix, alter, and collect rentals and other 814  
charges so that pledged revenues will be sufficient to pay costs 815  
of operation, maintenance, and repairs, pay principal of and 816  
interest on bonds or notes secured by the pledge of such revenues, 817  
and provide such reserves as may be required by the applicable 818  
resolution or trust agreement; the setting aside of reserve funds, 819  
sinking funds, or replacement and improvement funds and the 820  
regulation and disposition thereof; the crediting of the proceeds 821  
of the sale of bonds or notes to and among the funds referred to 822  
or provided for in the resolution authorizing the issuance of the 823  
bonds or notes; the use, lease, sale, or other disposition of any 824  
air quality project or any other assets of the authority; 825  
limitations on the purpose to which the proceeds of sale of bonds 826  
or notes may be applied and the pledging of such proceeds to 827  
secure the payment of the bonds or notes or of any issue thereof; 828  
as to notes issued in anticipation of the issuance of bonds, the 829  
agreement of the authority to do all things necessary for the 830  
authorization, issuance, and sale of such bonds in such amounts as 831  
may be necessary for the timely retirement of such notes; 832  
limitations on the issuance of additional bonds or notes; the 833  
terms upon which additional bonds or notes may be issued and 834  
secured; the refunding of outstanding bonds or notes; the 835  
procedure, if any, by which the terms of any contract with 836  
bondholders or noteholders may be amended or abrogated, the amount 837  
of bonds or notes the holders of which must consent thereto, and 838  
the manner in which such consent may be given; limitations on the 839  
amount of moneys to be expended by the authority for operating, 840  
administrative, or other expenses of the authority; securing any 841  
bonds or notes by a trust agreement in accordance with section 842  
3706.07 of the Revised Code; any other matters, of like or 843

different character, that in any way affect the security or 844  
protection of the bonds or notes. 845

Neither the members of the authority nor any person executing 846  
the bonds or notes shall be liable personally on the bonds or 847  
notes or be subject to any personal liability or accountability by 848  
reason of the issuance thereof. 849

**Sec. 3706.06.** The issuance of ~~air-quality~~ revenue bonds and 850  
notes or ~~air-quality~~ revenue refunding bonds under Chapter 3706. 851  
of the Revised Code need not comply with any other law applicable 852  
to the issuance of bonds or notes. 853

**Sec. 3706.07.** In the discretion of the Ohio air quality 854  
development authority, any ~~air-quality~~ revenue bonds or notes or 855  
~~air-quality~~ revenue refunding bonds issued under Chapter 3706. of 856  
the Revised Code, may be secured by a trust agreement between the 857  
authority and a corporate trustee, which trustee may be any trust 858  
company or bank having the powers of a trust company within or 859  
without the state. 860

Any such trust agreement may pledge or assign revenues of the 861  
authority to be received, but shall not convey or mortgage any air 862  
quality project or any part thereof. Any such trust agreement or 863  
any resolution providing for the issuance of such bonds or notes 864  
may contain such provisions for protecting and enforcing the 865  
rights and remedies of the bondholders or noteholders as are 866  
reasonable and proper and not in violation of law, including 867  
covenants setting forth the duties of the authority in relation to 868  
the acquisition of property, the construction, improvement, 869  
maintenance, repair, operation, and insurance of the air quality 870  
project or projects in connection with which such bonds or notes 871  
are authorized, the rentals or other charges to be imposed for the 872  
use or services of any air quality project, the application of 873

revenues received or otherwise derived from a commodity contract 874  
or from the sale of the related commodity under such contract, the 875  
custody, safeguarding, and application of all moneys, and 876  
provisions for the employment of consulting engineers in 877  
connection with the construction or operation of such air quality 878  
project or projects. Any bank or trust company incorporated under 879  
the laws of this state that may act as depository of the proceeds 880  
of bonds or notes or of revenues may furnish such indemnifying 881  
bonds or may pledge such securities as are required by the 882  
authority. Any such trust agreement may set forth the rights and 883  
remedies of the bondholders and noteholders and of the trustee, 884  
and may restrict the individual right of action by bondholders and 885  
noteholders as is customary in trust agreements or trust 886  
indentures securing similar bonds. Such trust agreement may 887  
contain such other provisions as the authority determines 888  
reasonable and proper for the security of the bondholders or 889  
noteholders. All expenses incurred in carrying out the provisions 890  
of any such trust agreement may be treated as a part of the cost 891  
of the operation of the air quality project or projects. Any such 892  
trust agreement or resolution authorizing the issuance of ~~air~~ 893  
~~quality~~ revenue bonds may provide the method whereby the general 894  
administrative overhead expenses of the authority shall be 895  
allocated among the several projects acquired or constructed by it 896  
as a factor of the operation expense of each such project. 897

**Sec. 3706.08.** Any holder of ~~air-quality~~ revenue bonds issued 898  
under Chapter 3706. of the Revised Code, or any of the coupons 899  
appertaining thereto, and the trustee under any trust agreement, 900  
except to the extent the rights given by such chapter may be 901  
restricted by the applicable resolution or such trust agreement, 902  
may by suit, action, mandamus, or other proceedings, protect and 903  
enforce any rights under the laws of the state or granted under 904  
such chapter, trust agreement, or the resolution authorizing the 905

issuance of such bonds, and may enforce and compel the performance 906  
of all duties required by such chapter, or by the trust agreement 907  
or resolution, to be performed by the Ohio air quality development 908  
authority or any officer thereof, including the fixing, charging, 909  
and collecting of rentals or other charges. 910

**Sec. 3706.09.** ~~Air quality revenue~~ Revenue bonds and notes and 911  
~~air quality~~ revenue refunding bonds issued under Chapter 3706. of 912  
the Revised Code do not constitute a debt, or a pledge of the 913  
faith and credit, of the state or any political subdivision 914  
thereof, and the holders or owners thereof have no right to have 915  
taxes levied by the general assembly or taxing authority of any 916  
political subdivision of the state for the payment of the 917  
principal thereof or interest thereon, but such bonds and notes 918  
are payable solely from the revenues and funds pledged for their 919  
payment as authorized by such chapter, unless the notes are issued 920  
in anticipation of the issuance of bonds or the bonds are refunded 921  
by refunding bonds issued under such chapter, which bonds or 922  
refunding bonds shall be payable solely from revenues and funds 923  
pledged for their payment as authorized by such sections. All such 924  
bonds and notes shall contain on the face thereof a statement to 925  
the effect that the bonds or notes, as to both principal and 926  
interest, are not debts of the state or any political subdivision 927  
thereof, but are payable solely from revenues and funds pledged 928  
for their payment. 929

All expenses incurred in carrying out Chapter 3706. of the 930  
Revised Code are payable solely from funds provided under such 931  
chapter. Such chapter does not authorize the Ohio air quality 932  
development authority to incur indebtedness or liability on behalf 933  
of or payable by the state or any political subdivision thereof. 934

**Sec. 3706.10.** All moneys, funds, properties, and assets 935  
acquired by the Ohio air quality development authority under 936

Chapter 3706. of the Revised Code, whether as proceeds from the 937  
sale of ~~air-quality~~ revenue bonds or as revenues, or otherwise, 938  
shall be held by it in trust for the purposes of carrying out its 939  
powers and duties, shall be used and reused as provided in such 940  
chapter, and shall at no time be part of other public funds. Such 941  
funds, except as otherwise provided in any resolution authorizing 942  
its ~~air-quality~~ revenue bonds or in any trust agreement securing 943  
the same, or except when invested pursuant to section 3706.11 of 944  
the Revised Code, shall be kept in depositories selected by the 945  
authority in the manner provided in Chapter 135. of the Revised 946  
Code, and the deposits shall be secured as provided in Chapter 947  
135. of the Revised Code. The resolution authorizing the issuance 948  
of such bonds of any issue or the trust agreement securing such 949  
bonds shall provide that any officer to whom, or any bank or trust 950  
company to which, such moneys are paid shall act as trustee of 951  
such moneys and hold and apply them for the purposes hereof, 952  
subject to such conditions as such chapter and such resolutions or 953  
trust agreement provide. 954

**Sec. 3706.11.** Moneys in the funds of the Ohio air quality 955  
development authority, except as otherwise provided in any 956  
resolution authorizing the issuance of its ~~air-quality~~ revenue 957  
bonds or in any trust agreement securing the same, in excess of 958  
current needs, may be invested in notes, bonds, or other 959  
obligations of the United States of America or any agency or 960  
instrumentality thereof, or in obligations of this state or any 961  
political subdivision thereof. Income from all such investments of 962  
moneys in any fund shall be credited to such funds as the 963  
authority determines, subject to the provisions of any such 964  
resolution or trust agreement and such investments may be sold at 965  
such times as the authority determines. 966

**Sec. 3706.12.** The Ohio air quality development authority may 967

charge, alter, and collect rentals or other charges for the use or 968  
services of any air quality project or advanced energy project and 969  
contract in the manner provided by this section with one or more 970  
persons, one or more governmental agencies, or any combination 971  
thereof, desiring the use or services of such project, and fix the 972  
terms, conditions, rentals, or other charges for such use or 973  
services. Such rentals or other charges shall not be subject to 974  
supervision or regulation by any other authority, commission, 975  
board, bureau, or agency of the state and such contract may 976  
provide for acquisition by such person or governmental agency of 977  
all or any part of such air quality project or advanced energy 978  
project for such consideration payable over the period of the 979  
contract or otherwise as the authority in its sole discretion 980  
determines to be appropriate, but subject to the provisions of any 981  
resolution authorizing the issuance of ~~air-quality~~ revenue bonds 982  
or notes or ~~air-quality~~ revenue refunding bonds of the authority 983  
or any trust agreement securing the same. Any governmental agency 984  
that has power to construct, operate, and maintain air quality 985  
facilities or advanced energy facilities may enter into a contract 986  
or lease with the authority whereby the use or services of any air 987  
quality project or advanced energy project of the authority will 988  
be made available to such governmental agency and may pay for such 989  
use or services such rentals or other charges as may be agreed to 990  
by the authority and such governmental agency. 991

Any governmental agency or combination of governmental 992  
agencies may cooperate with the authority in the acquisition or 993  
construction of an air quality project or advanced energy project 994  
and shall enter into such agreements with the authority as may be 995  
necessary, with a view to effective cooperative action and 996  
safeguarding of the respective interests of the parties thereto, 997  
which agreements shall provide for such contributions by the 998  
parties thereto in such proportion as may be agreed upon and such 999  
other terms as may be mutually satisfactory to the parties 1000



including without limitation the authorization of the construction 1001  
of the project by one of the parties acting as agent for all of 1002  
the parties and the ownership and control of the project by the 1003  
authority to the extent necessary or appropriate for purposes of 1004  
the issuance of ~~air quality~~ revenue bonds by the authority. Any 1005  
governmental agency may provide the funds for the payment of such 1006  
contribution as is required under such agreements by the levy of 1007  
taxes, assessments or rentals and other charges for the use of the 1008  
utility system of which the air quality project or advanced energy 1009  
project is a part or to which it is connected, if otherwise 1010  
authorized by the laws governing such governmental agency in the 1011  
construction of the type of air quality project or advanced energy 1012  
project provided for in the agreements, and may pay the proceeds 1013  
from the collection of such taxes, assessments, utility rentals, 1014  
or other charges to the authority pursuant to such agreements; or 1015  
the governmental agency may issue bonds or notes, if authorized by 1016  
such laws, in anticipation of the collection of such taxes, 1017  
assessments, utility rentals, or other charges and may pay the 1018  
proceeds of such bonds or notes to the authority pursuant to such 1019  
agreements. In addition any governmental agency may provide the 1020  
funds for the payment of such contribution by the appropriation of 1021  
money or, if otherwise authorized by law, by the issuance of bonds 1022  
or notes and may pay such appropriated money or the proceeds of 1023  
such bonds or notes to the authority pursuant to such agreements. 1024  
The agreement by the governmental agency to provide such 1025  
contribution, whether from appropriated money or from the proceeds 1026  
of such taxes, assessments, utility rentals, or other charges, or 1027  
such bonds or notes, or any combination thereof, shall not be 1028  
subject to Chapter 133. of the Revised Code or any regulations or 1029  
limitations contained therein. The proceeds from the collection of 1030  
such taxes or assessments, and any interest earned thereon, shall 1031  
be paid into a special fund immediately upon the collection 1032  
thereof by the governmental agency for the purpose of providing 1033

such contribution at the times required under such agreements. 1034

When the contribution of any governmental agency is to be 1035  
made over a period of time from the proceeds of the collection of 1036  
special assessments, the interest accrued and to accrue before the 1037  
first installment of such assessments shall be collected which is 1038  
payable by such governmental agency on such contribution under the 1039  
terms and provisions of such agreements shall be treated as part 1040  
of the cost of the improvement for which such assessments are 1041  
levied, and that portion of such assessments as are collected in 1042  
installments shall bear interest at the same rate as such 1043  
governmental agency is obligated to pay on such contribution under 1044  
the terms and provisions of such agreements and for the same 1045  
period of time as the contribution is to be made under such 1046  
agreements. If the assessment or any installment thereof is not 1047  
paid when due, it shall bear interest until the payment thereof at 1048  
the same rate as such contribution and the county auditor shall 1049  
annually place on the tax list and duplicate the interest 1050  
applicable to such assessment and the penalty and additional 1051  
interest thereon as otherwise authorized by law. 1052

Any governmental agency, pursuant to a favorable vote of the 1053  
electors in an election held before or after June 1, 1970, for the 1054  
purpose of issuing bonds to provide funds to acquire, construct, 1055  
or equip, or provide real estate and interests in real estate for, 1056  
an air quality facility or advanced energy facility, whether or 1057  
not such governmental agency, at the time of such election, had 1058  
the authority to pay the proceeds from such bonds or notes issued 1059  
in anticipation thereof to the authority as provided in this 1060  
section, may issue such bonds or notes in anticipation of the 1061  
issuance thereof and pay the proceeds thereof to the authority in 1062  
accordance with its agreement with the authority; provided, that 1063  
the legislative authority of the governmental agency find and 1064  
determine that the air quality project or advanced energy project 1065

to be acquired or constructed by the authority in cooperation with 1066  
such governmental agency will serve the same public purpose and 1067  
meet substantially the same public need as the facility otherwise 1068  
proposed to be acquired or constructed by the governmental agency 1069  
with the proceeds of such bonds or notes. 1070

**Sec. 3706.13.** Each air quality project or advanced energy 1071  
project, when constructed and placed in operation, shall be 1072  
maintained and kept in good condition and repair by the Ohio air 1073  
quality development authority, or the authority shall cause the 1074  
same to be maintained and kept in good condition and repair. Each 1075  
such project shall be operated by such operating employees as the 1076  
authority employs or pursuant to a contract or lease with a person 1077  
or governmental agency. All public or private property damaged or 1078  
destroyed in carrying out the powers granted by Chapter 3706. of 1079  
the Revised Code, shall be restored or repaired and placed in its 1080  
original condition, as nearly as practicable, or adequate 1081  
compensation shall be paid therefor from funds provided under such 1082  
chapter. 1083

On or before the twentieth day of April in each year, the 1084  
authority shall make a report of its activities for the preceding 1085  
calendar year to the governor and the general assembly. Each such 1086  
report shall set forth a complete operating and financial 1087  
statement covering the authority's operations during the year. The 1088  
authority shall cause an audit of its books and accounts to be 1089  
made at least once each year by certified public accountants and 1090  
the cost thereof may be treated as a part of the cost of 1091  
construction or of operations of its projects. 1092

**Sec. 3706.14.** All ~~air-quality~~ revenue bonds issued under this 1093  
chapter are lawful investments of banks, societies for savings, 1094  
savings and loan associations, deposit guarantee associations, 1095  
trust companies, trustees, fiduciaries, insurance companies, 1096

including domestic for life and domestic not for life, trustees or 1097  
other officers having charge of sinking and bond retirement or 1098  
other special funds of political subdivisions and taxing districts 1099  
of this state, the commissioners of the sinking fund of the state, 1100  
the administrator of workers' compensation, the state teachers 1101  
retirement system, the public employees retirement system, the 1102  
school employees retirement system, and the Ohio police and fire 1103  
pension fund, and are acceptable as security for the deposit of 1104  
public moneys. 1105

**Sec. 3706.15.** The exercise of the powers granted by Chapter 1106  
3706. of the Revised Code, will be for the benefit of the people 1107  
of the state, for the improvement of their health, safety, 1108  
convenience, and welfare, and for the enhancement of their 1109  
residential, agricultural, recreational, economic, commercial, and 1110  
industrial opportunities and is a public purpose. As the operation 1111  
and maintenance of air quality projects or advanced energy 1112  
projects will constitute the performance of essential governmental 1113  
functions, the Ohio air quality development authority shall not be 1114  
required to pay any taxes or assessments upon any ~~air quality~~ such 1115  
project, ~~or~~ upon any property acquired or used by the authority 1116  
under Chapter 3706. of the Revised Code, or upon the income 1117  
therefrom, nor shall the transfer to or from the Ohio air quality 1118  
development authority of title or possession of any air quality 1119  
project or advanced energy project, part thereof, or item included 1120  
or to be included in any such project, be subject to the taxes 1121  
levied pursuant to Chapters 5739. and 5741. of the Revised Code, 1122  
and the bonds and notes issued under this chapter, their transfer, 1123  
and the income therefrom, including any profit made on the sale 1124  
thereof, shall at all times be free from taxation within the 1125  
state. 1126

**Sec. 3706.16.** The Ohio air quality development authority may 1127

acquire by purchase, whenever it finds such purchase expedient, 1128  
any land, property, rights, rights-of-way, franchises, easements, 1129  
and other interests in lands as it finds to be necessary or 1130  
convenient for the construction and operation of any air quality 1131  
project or advanced energy project, upon such terms and at such 1132  
price as it considers reasonable and are agreed upon between the 1133  
authority and the owner thereof, and take title thereto in the 1134  
name of the state. 1135

Any governmental agency, notwithstanding any contrary 1136  
provision of law and without the necessity for an advertisement, 1137  
auction, order of court, or other action or formality, other than 1138  
the regular and formal action of such governmental agency 1139  
concerned, may lease, lend, grant, or convey to the authority, at 1140  
its request, upon such terms as the proper authorities of such 1141  
governmental agency find reasonable and fair any real property or 1142  
interests therein including improvements thereto or personal 1143  
property which is necessary or convenient to effect the authorized 1144  
purposes of the authority, including public roads and real or 1145  
personal property already devoted to public use. 1146

**Sec. 3706.17.** The Ohio air quality development authority may 1147  
acquire by appropriation pursuant to division (J) of section 1148  
3706.04 of the Revised Code any land, rights, rights-of-way, 1149  
franchises, easements, or other property necessary or proper for 1150  
the construction or the efficient operation of any air quality 1151  
project or advanced energy project. In any proceedings for 1152  
appropriation under this section, the procedure to be followed 1153  
shall be in accordance with Chapter 163. of the Revised Code. 1154

This section does not empower the authority to take or 1155  
disturb property or facilities belonging to and required for the 1156  
proper and convenient operation of any public utility or any 1157  
common carrier engaged in interstate commerce, unless provision is 1158

made for the restoration, relocation, or duplication of such 1159  
property or facilities elsewhere at the sole cost of the 1160  
authority. 1161

**Sec. 3706.18.** When the Ohio air quality development authority 1162  
finds it necessary to change the location of any portion of any 1163  
public road, state highway, railroad, or public utility facility 1164  
in connection with the construction of an air quality project or 1165  
advanced energy project, it shall cause the same to be 1166  
reconstructed at such location as the division of government 1167  
having jurisdiction over such road, highway, railroad, or public 1168  
utility facility finds most favorable. Such reconstruction shall 1169  
be of substantially the same type and in as good condition as the 1170  
original road, highway, railroad, or public utility facility. The 1171  
cost of such reconstruction, relocation, or removal and any damage 1172  
incurred in changing the location of any such road, highway, 1173  
railroad, or public utility facility shall be paid by the 1174  
authority as a part of the cost of ~~such air quality~~ the project. 1175

When the authority finds it necessary that any public highway 1176  
or portion thereof be vacated by reason of the acquisition or 1177  
construction of an air quality project or advanced energy project, 1178  
the authority may request the director of transportation, in 1179  
writing, to vacate such highway or portion thereof in accordance 1180  
with section 5511.07 of the Revised Code if the highway or portion 1181  
thereof to be vacated is on the state highway system, or, if the 1182  
highway or portion thereof to be vacated is under the jurisdiction 1183  
of the county commissioners, the authority shall request the 1184  
director, in writing, to petition the board of county 1185  
commissioners, in the manner provided in section 5553.041 of the 1186  
Revised Code, to vacate such highway or portion thereof. The 1187  
authority shall pay to the director or to the county, as a part of 1188  
the cost of ~~such air quality~~ the project, any amounts required to 1189  
be deposited with any court in connection with proceedings for the 1190

determination of compensation and damages and all amounts of 1191  
compensation and damages finally determined to be payable as a 1192  
result of such vacation. 1193

The authority may make reasonable regulations for the 1194  
installation, construction, maintenance, repair, renewal, 1195  
relocation, and removal of railroad or public utility facilities 1196  
in, on, over, or under any air quality project or advanced energy 1197  
project. Whenever the authority determines that it is necessary 1198  
that any such facilities installed or constructed in, on, over, or 1199  
under property of the authority pursuant to such regulations be 1200  
relocated, the public utility owning or operating such facilities 1201  
shall relocate or remove them in accordance with the order of the 1202  
authority. The cost and expenses of such relocation or removal, 1203  
including the cost of installing such facilities in a new 1204  
location, and the cost of any lands, or any rights or interests in 1205  
lands, and the cost of any other rights, acquired to accomplish 1206  
such relocation or removal, may be paid by the authority as a part 1207  
of the cost of ~~such air quality~~ the project. In case of any such 1208  
relocation or removal of facilities, the railroad or public 1209  
utility owning or operating them, its successors, or assigns may 1210  
maintain and operate such facilities, with the necessary 1211  
appurtenances, in the new location in, on, over, or under the 1212  
property of the authority for as long a period and upon the same 1213  
terms as it had the right to maintain and operate such facilities 1214  
in their former location. 1215

**Sec. 4905.31.** Except as provided in section 4933.29 of the 1216  
Revised Code, Chapters 4901., 4903., 4905., 4907., 4909., 4921., 1217  
~~and 4923., and 4928.~~ of the Revised Code do not prohibit a public 1218  
utility from filing a schedule or entering into any reasonable 1219  
arrangement with another public utility or with its customers, 1220  
consumers, or employees providing for: 1221

(A) The division or distribution of its surplus profits;	1222
(B) A sliding scale of charges, including variations in rates	1223
based upon either of the following:	1224
(1) Stipulated variations in cost as provided in the schedule	1225
or arrangement;	1226
(2) Any emissions fee levied upon an electric light company	1227
under Substitute Senate Bill No. 359 of the 119th general assembly	1228
as provided in the schedule. The public utilities commission shall	1229
permit an electric light company to recover the emissions fee	1230
pursuant to such a variable rate schedule.	1231
(3) Any emissions fee levied upon an electric light company	1232
under division (C) or (D) of section 3745.11 of the Revised Code	1233
as provided in the schedule. The public utilities commission shall	1234
permit an electric light company to recover any such emission fee	1235
pursuant to such a variable rate schedule.	1236
(4) Any schedule of variable rates filed under division (B)	1237
of this section shall provide for the recovery of any such	1238
emissions fee by applying a uniform percentage increase to the	1239
base rate charged each customer of the electric light company for	1240
service during the period that the variable rate is in effect.	1241
(C) A minimum charge for service to be rendered unless such	1242
minimum charge is made or prohibited by the terms of the	1243
franchise, grant, or ordinance under which such public utility is	1244
operated;	1245
(D) A classification of service based upon the quantity used,	1246
the time when used, the purpose for which used, the duration of	1247
use, and any other reasonable consideration;	1248
(E) Any other financial device that may be practicable or	1249
advantageous to the parties interested. No such arrangement,	1250
sliding scale, minimum charge, classification, variable rate, or	1251



device is lawful unless it is filed with and approved by the 1252  
commission. 1253

Every such public utility is required to conform its 1254  
schedules of rates, tolls, and charges to such arrangement, 1255  
sliding scale, classification, or other device, and where variable 1256  
rates are provided for in any such schedule or arrangement, the 1257  
cost data or factors upon which such rates are based and fixed 1258  
shall be filed with the commission in such form and at such times 1259  
as the commission directs. The commission shall review the cost 1260  
data or factors upon which a variable rate schedule filed under 1261  
division (B)(2) or (3) of this section is based and shall adjust 1262  
the base rates of the electric light company or order the company 1263  
to refund any charges that it has collected under the variable 1264  
rate schedule that the commission finds to have resulted from 1265  
errors or erroneous reporting. After recovery of all of the 1266  
emissions fees upon which a variable rate authorized under 1267  
division (B)(2) or (3) of this section is based, collection of the 1268  
variable rate shall end and the variable rate schedule shall be 1269  
terminated. 1270

Every such arrangement, sliding scale, minimum charge, 1271  
classification, variable rate, or device shall be under the 1272  
supervision and regulation of the commission, and is subject to 1273  
change, alteration, or modification by the commission. 1274

**Sec. 4905.40.** (A) A public utility or a railroad may, when 1275  
authorized by order of the public utilities commission, issue 1276  
stocks, bonds, notes, and other evidences of indebtedness, payable 1277  
at periods of more than twelve months after their date of 1278  
issuance, when necessary: 1279

(1) For the acquisition of property, the construction, 1280  
completion, extension, renewal, or improvement of its facilities, 1281  
or the improvement of its service; or 1282

(2) For reorganization or readjustment of its indebtedness 1283  
and capitalization, for the discharge or lawful refunding of its 1284  
obligation, or for the reimbursement of moneys actually expended 1285  
for such purposes from income or from any other moneys in the 1286  
treasury of the public utility or railroad not secured or obtained 1287  
from the issue of stocks, bonds, notes, or other evidences of 1288  
indebtedness of such public utility or railroad. No reimbursement 1289  
of moneys expended for such purposes from income or other moneys 1290  
in the treasury shall be authorized unless the applicant has kept 1291  
its accounts and vouchers of such expenditures in such manner as 1292  
to enable the commission to ascertain the amount and purposes of 1293  
such expenditures. 1294

(B) Any public utility, subject to the jurisdiction of the 1295  
commission, may, when authorized by the commission, issue shares 1296  
of common capital stock to acquire or pay for shares of common 1297  
capital stock of a public utility of this or an adjoining state 1298  
whose property is so located as to permit the operation of the 1299  
properties of such utilities as an integrated system if the 1300  
applicant owns, or by this issue will acquire, not less than 1301  
sixty-five per cent of the issued and outstanding common capital 1302  
shares of the company whose shares are to be acquired, and if the 1303  
consideration to be capitalized by the acquiring company does not 1304  
exceed the par or stated value at which the shares so acquired 1305  
were issued. 1306

(C) Any bonds, notes, or other evidences of indebtedness 1307  
payable at periods of more than twelve months after their date may 1308  
be issued as provided in sections 4905.40 to 4905.43 of the 1309  
Revised Code, regardless of the amount of the capital stock of the 1310  
public utility or railroad, subject to the approval of the 1311  
commission of the excess of such bonds, notes, or other evidences 1312  
of indebtedness above the amount of the capital stock of such 1313  
public utility or railroad. 1314

(D) The commission shall authorize on the best terms 1315  
obtainable such issues of stocks, bonds, and other evidences of 1316  
indebtedness as are necessary to enable any public utility to 1317  
comply with any contract made between such public utility and any 1318  
municipal corporation prior to June 30, 1911. 1319

(E) The commission may authorize a public utility that is an 1320  
electric light company to issue equity securities, or debt 1321  
securities having a term of more than twelve months from the date 1322  
of issuance, for the purpose of yielding to the company the 1323  
capacity to acquire a facility that produces fuel for the 1324  
generation of electricity. 1325

(F) In any proceeding under division (A)(1) of this section 1326  
initiated by a public utility, the commission shall determine and 1327  
set forth in its order: 1328

(1) Whether the purpose to which the issue or any proceeds of 1329  
it shall be applied was or is reasonably required by the utility 1330  
to meet its present and prospective obligations to provide utility 1331  
service; 1332

(2) Whether the amount of the issue and the probable cost of 1333  
such stocks, bonds, notes, or other evidences of indebtedness is 1334  
just and reasonable; 1335

(3) What effect, if any, the issuance of such stocks, bonds, 1336  
notes, or other evidences of indebtedness and the cost thereof 1337  
will have upon the present and prospective revenue requirements of 1338  
the utility. 1339

(G) Sections 4905.40 to 4905.42 of the Revised Code do not 1340  
apply to stocks, bonds, notes, or other evidence of indebtedness 1341  
issued for the purpose of financing oil or natural gas drilling, 1342  
producing, gathering, and associated activities and facilities by 1343  
a producer which supplies to no more than twenty purchasers only 1344  
such gas as is produced, gathered, or purchased by such producer 1345

within this state. 1346

(H) Each public utility seeking authorization from the 1347  
commission for the issuance of securities to finance the 1348  
installation, construction, extension, or improvement of an air 1349  
quality facility or advanced energy facility, as defined in 1350  
section 3706.01 of the Revised Code, shall consider the 1351  
availability of financing therefor from the Ohio air quality 1352  
development authority and shall demonstrate to the commission that 1353  
the proposed financing will be obtained on the best terms 1354  
obtainable. 1355

**Sec. 4928.02.** It is the policy of this state to do the 1356  
following throughout this state ~~beginning on the starting date of~~ 1357  
~~competitive retail electric service:~~ 1358

(A) Ensure the availability to consumers of adequate, 1359  
reliable, safe, efficient, nondiscriminatory, and reasonably 1360  
priced retail electric service; 1361

(B) Ensure the availability of unbundled and comparable 1362  
retail electric service that provides consumers with the supplier, 1363  
price, terms, conditions, and quality options they elect to meet 1364  
their respective needs; 1365

(C) Ensure diversity of electricity supplies and suppliers, 1366  
by giving consumers effective choices over the selection of those 1367  
supplies and suppliers and by encouraging the development of 1368  
distributed and small generation facilities; 1369

(D) Encourage innovation and market access for cost-effective 1370  
~~supply and demand side~~ retail electric service including, but not 1371  
limited to, demand-side management, time-differentiated pricing, 1372  
and implementation of advanced metering infrastructure; 1373

(E) Encourage cost-effective and efficient access to 1374  
information regarding the operation of the transmission and 1375

distribution systems of electric utilities in order to promote 1376  
both effective customer choice of retail electric service and the 1377  
development of performance standards and targets for service 1378  
quality for all consumers, including annual achievement reports 1379  
written in plain language; 1380

(F) Recognize the continuing emergence of competitive 1381  
electricity markets through the development and implementation of 1382  
flexible regulatory treatment; 1383

(G) Ensure effective competition in the provision of retail 1384  
electric service by avoiding anticompetitive subsidies flowing 1385  
from a noncompetitive retail electric service to a competitive 1386  
retail electric service or to a product or service other than 1387  
retail electric service, and vice versa; 1388

(H) Ensure retail electric service consumers just and 1389  
reasonable rates and protection against unreasonable sales 1390  
practices, market deficiencies, and market power; 1391

(I) Preclude imbalances in knowledge and expertise among 1392  
parties in a proceeding under this chapter to eliminate any 1393  
appearance of disproportionate influence by any of those parties; 1394

(J) Ensure that consumers and shareholders share the benefits 1395  
of electric utility investment in facilities supplying retail 1396  
electric generation service; 1397

(K) Provide coherent, transparent means of giving appropriate 1398  
incentives to technologies that can adapt successfully to 1399  
potential environmental mandates; 1400

(L) Protect at-risk populations when considering the 1401  
implementation of any new advanced energy technology; 1402

(M) Encourage implementation of distributed generation across 1403  
customer classes through regular review and updating of rules 1404  
governing critical issues such as, but not limited to, 1405

interconnection standards, standby charges, and net metering; 1406

(N) Encourage the education of small business owners in this 1407  
state regarding the use of, and encourage the use of, energy 1408  
efficiency programs and advanced energy technologies in their 1409  
businesses; 1410

(O) Facilitate the state's effectiveness in the global 1411  
economy. 1412

**Sec. 4928.05.** (A)(1)(a) On and after the starting date of 1413  
competitive retail electric service, a competitive retail electric 1414  
service supplied by an electric utility or electric services 1415  
company shall not be subject to supervision and regulation by a 1416  
municipal corporation under Chapter 743. of the Revised Code or by 1417  
the public utilities commission under Chapters 4901. to 4909., 1418  
4933., 4935., and 4963. of the Revised Code, except ~~section~~ 1419  
sections 4905.10 and 4905.31, division (B) of section 4905.33, and 1420  
sections 4905.35 and 4933.81 to 4933.90; except sections 4905.06, 1421  
4935.03, 4963.40, and 4963.41 of the Revised Code only to the 1422  
extent related to service reliability and public safety; and 1423  
except as otherwise provided in this chapter. The commission's 1424  
authority to enforce those excepted provisions with respect to a 1425  
competitive retail electric service shall be such authority as is 1426  
provided for their enforcement under Chapters 4901. to 4909., 1427  
4933., 4935., and 4963. of the Revised Code and this chapter. 1428

(b) Notwithstanding division (A)(1)(a) of this section, the 1429  
commission may so supervise and regulate competitive retail 1430  
electric service provided to consumers by an electric utility in 1431  
this state if the commission determines the supervision and 1432  
regulation is necessary to implement the state policy specified in 1433  
section 4928.02 of the Revised Code. 1434

(c) On and after the starting date of competitive retail 1435  
electric service, a competitive retail electric service supplied 1436

by an electric cooperative shall not be subject to supervision and 1437  
regulation by the commission under Chapters 4901. to 4909., 4933., 1438  
4935., and 4963. of the Revised Code, except as otherwise 1439  
expressly provided in sections 4928.01 to 4928.10 and 4928.16 of 1440  
the Revised Code. 1441

(2) On and after the starting date of competitive retail 1442  
electric service, a noncompetitive retail electric service 1443  
supplied by an electric utility shall be subject to supervision 1444  
and regulation by the commission under Chapters 4901. to 4909., 1445  
4933., 4935., and 4963. of the Revised Code and this chapter, to 1446  
the extent that authority is not preempted by federal law. The 1447  
commission's authority to enforce those provisions with respect to 1448  
a noncompetitive retail electric service shall be the authority 1449  
provided under those chapters and this chapter, to the extent the 1450  
authority is not preempted by federal law. 1451

The commission shall exercise its jurisdiction with respect 1452  
to the delivery of electricity by an electric utility in this 1453  
state on or after the starting date of competitive retail electric 1454  
service so as to ensure that no aspect of the delivery of 1455  
electricity by the utility to consumers in this state that 1456  
consists of a noncompetitive retail electric service is 1457  
unregulated. 1458

On and after that starting date, a noncompetitive retail 1459  
electric service supplied by an electric cooperative shall not be 1460  
subject to supervision and regulation by the commission under 1461  
Chapters 4901. to 4909., 4933., 4935., and 4963. of the Revised 1462  
Code, except sections 4933.81 to 4933.90 and 4935.03 of the 1463  
Revised Code. The commission's authority to enforce those excepted 1464  
sections with respect to a noncompetitive retail electric service 1465  
of an electric cooperative shall be such authority as is provided 1466  
for their enforcement under Chapters 4933. and 4935. of the 1467  
Revised Code. 1468

(B) Nothing in this chapter affects the authority of the  
commission under Title XLIX of the Revised Code to regulate an  
electric light company in this state or an electric service  
supplied in this state prior to the starting date of competitive  
retail electric service.

Sec. 4928.111. An electric distribution utility for which a  
standard service offer consisting of an electric security plan  
under section 4928.14 of the Revised Code has been approved by the  
public utilities commission shall file with the commission a  
long-term energy delivery infrastructure modernization plan or any  
plan providing for the utility's recovery of costs and a just and  
reasonable rate of return on such infrastructure modernization. A  
plan shall specify the initiatives the utility must take to  
improve electric service reliability by rebuilding, upgrading, or  
replacing the utility's distribution system. The plan shall be  
filed under an application under section 4909.18 of the Revised  
Code.

~~Sec. 4928.14. (A) After its market development period, an~~ An  
electric distribution utility in this state shall provide  
consumers, on a comparable and nondiscriminatory basis within its  
certified territory, a ~~market-based~~ standard service offer of all  
competitive retail electric services necessary to maintain  
essential electric service to consumers, including a firm supply  
of electric generation service. ~~Such offer shall be filed with the  
public utilities commission under section 4909.18 of the Revised  
Code.~~

~~(B) After that market development period, each electric  
distribution utility also shall offer customers within its  
certified territory an option to purchase competitive retail  
electric service the price of which is determined through a  
competitive bidding process. Prior to January 1, 2004, the~~



~~commission shall adopt rules concerning the conduct of the~~ 1500  
~~competitive bidding process, including the information~~ 1501  
~~requirements necessary for customers to choose this option and the~~ 1502  
~~requirements to evaluate qualified bidders. The commission may~~ 1503  
~~require that the competitive bidding process be reviewed by an~~ 1504  
~~independent third party. No generation supplier shall be~~ 1505  
~~prohibited from participating in the bidding process, provided~~ 1506  
~~that any winning bidder shall be considered a certified supplier~~ 1507  
~~for purposes of obligations to customers. At the election of the~~ 1508  
~~electric distribution utility, and approval of the commission, the~~ 1509  
~~competitive bidding option under this division may be used as the~~ 1510  
~~market based standard offer required by division (A) of this~~ 1511  
~~section. The commission may determine at any time that a~~ 1512  
~~competitive bidding process is not required, if other means to~~ 1513  
~~accomplish generally the same option for customers is readily~~ 1514  
~~available in the market and a reasonable means for customer~~ 1515  
~~participation is developed.~~ 1516

~~(C) After the market development period, the (B) Except as~~ 1517  
~~otherwise provided in this section, the standard service offer of~~ 1518  
~~an electric utility in effect on the effective date of the~~ 1519  
~~amendment of this section by S.B. 221 of the 127th general~~ 1520  
~~assembly shall continue, as to each customer and customer class,~~ 1521  
~~as the utility's standard service offer for the purpose of~~ 1522  
~~compliance with division (A) of this section as the section is so~~ 1523  
~~amended.~~ 1524

(C) Beginning on the effective date of the amendment of this 1525  
section by S.B. 221 of the 127th general assembly and pursuant to 1526  
filing requirements the commission shall prescribe by rule, a 1527  
utility may file an application for commission approval of a 1528  
modified standard service offer. Upon that filing, the commission 1529  
shall set the date and time for hearing, send written notice of 1530  
the hearing to the utility, and publish notice of the hearing one 1531

time in a newspaper of general circulation in each county in the 1532  
service area affected by the application. 1533

(D)(1) A standard service offer proposed under division (C) 1534  
of this section, and herein designated an electric security plan, 1535  
shall adjust a utility's standard service offer relative to a 1536  
change in one or more costs incurred on or after January 1, 2009, 1537  
by the utility in rendering retail electric generation service 1538  
under the offer, as each such cost shall be specified in the 1539  
application. However, the amount of the adjustment shall be offset 1540  
by any positive revenue associated with that cost. Costs may 1541  
include, but not be limited to, any of the following: 1542

(a) Environmental compliance costs incurred by the utility 1543  
for any specified generating facility, as determined by the 1544  
commission; 1545

(b) The utility's cost of fuel for any specified generating 1546  
facility or of purchased power, incurred to maintain reliable 1547  
electricity supply for its generating service territory; 1548

(c) The cost of construction of a specified generating 1549  
facility that is located in this state and that, superseding 1550  
Chapter 4906. of the Revised Code, the commission determines and 1551  
certificates the need for on the basis of resource planning 1552  
projections developed in accordance with policies and procedures 1553  
the commission shall prescribe by rule. A price adjustment under 1554  
division (D)(1)(c) of this section shall be a blended price and 1555  
shall be for the life of the facility. 1556

(d) A cost based upon a specified index, which cost shall be 1557  
allocated to the appropriate customer class or classes. 1558

However, costs under this division shall exclude financial 1559  
penalties, fines, court costs, and attorney's fees associated with 1560  
noncompliance with state or federal environmental laws or with 1561  
facilities' permits. 1562

A standard service offer that includes costs under division 1563  
(D)(1)(a), (b), or (c) of this section may provide for automatic 1564  
increases or decreases in the standard service offer price. A 1565  
standard service offer that includes costs under division 1566  
(D)(1)(d) of this section shall provide for automatic increases or 1567  
decreases in the standard service offer price or prices. 1568

In the case of an advanced energy technology or facility 1569  
under section 4928.142 of the Revised Code, the costs of which are 1570  
included in a standard service offer as authorized under this 1571  
division, the portion of the standard service offer price 1572  
attributable to those costs shall be bypassable by a consumer that 1573  
has exercised choice of supplier under section 4928.03 of the 1574  
Revised Code, but bypassable only to the extent the commission 1575  
determines that the advanced energy technology or facilities 1576  
implemented by that supplier are comparable to that implemented by 1577  
the utility under section 4928.142 of the Revised Code as of the 1578  
issuance of an order under division (D)(5) of this section for the 1579  
purpose of the utility's compliance with division (A) of section 1580  
4928.142 of the Revised Code. 1581

(2)(a) For the purpose of a utility's initial application 1582  
under division (D)(1) of this section, the adjustment for a 1583  
particular cost shall be determined using a baseline measure of 1584  
cost and associated revenue as of January 1, 2008. 1585

(b) If a utility continues to provide its standard service 1586  
offer pursuant to an electric security plan, for any later such 1587  
application by the utility, the baseline measure shall be the cost 1588  
and associated revenue as determined under the utility's then 1589  
existing approved plan. 1590

(3) A standard service offer under division (D)(1) of this 1591  
section may specify the standard, factors, or methodology that the 1592  
commission shall use for the purpose of division (E)(2)(b) of this 1593  
section if the utility, within such timeframe as the commission 1594

shall specify in its order under division (D)(5) of this section, 1595  
later files an application pursuant to division (E) of this 1596  
section. 1597

(4) Regarding an application filed under division (D)(1) of 1598  
this section by a utility that transferred all or part of its 1599  
generating facilities to an affiliate of the utility and to the 1600  
extent authorized by federal law, the commission may consider 1601  
purchased power or other contracts or agreements between the 1602  
utility and any of its affiliates or between the utility and the 1603  
holding company owning or controlling the utility. 1604

(5) The burden of proof under division (D)(5) of this section 1605  
shall be on the utility. The commission by order may approve or 1606  
modify and approve a standard service offer under division (D)(1) 1607  
of this section if it finds both of the following: 1608

(a) The offer and the prices it establishes are just, 1609  
reasonable, and prudent as to each customer class and are in 1610  
furtherance of the policy specified in section 4928.02 of the 1611  
Revised Code. 1612

(b) Adjustments for construction costs under division 1613  
(D)(1)(c) of this section are consistent with section 4909.15 of 1614  
the Revised Code. 1615

(c) The utility is in compliance with section 4928.141 of the 1616  
Revised Code. 1617

In its order, the commission shall prescribe any requirements 1618  
for the utility as the commission considers necessary for the 1619  
utility to implement the policy specified in section 4928.02 of 1620  
the Revised Code. The order also shall provide a schedule and the 1621  
procedural and substantive terms and conditions for periodic 1622  
commission review of the approved offer. 1623

(E)(1) A standard service offer proposed under division (C) 1624  
of this section, and herein designated a market rate option, shall 1625

require that the utility's standard service offer price be 1626  
determined periodically through an open, competitive bidding 1627  
process. Prior to the approval of such an offer under division 1628  
(E)(2) of this section, the utility shall conduct such competitive 1629  
bidding for the purpose of establishing the original price under 1630  
the offer. 1631

(2) The burden of proof under division (E)(2) of this section 1632  
shall be on the utility. The commission by order shall approve or 1633  
modify and approve the standard service offer under division 1634  
(E)(1) of this section if the commission determines all of the 1635  
following are met: 1636

(a) The utility is in compliance with section 4928.141 of the 1637  
Revised Code. 1638

(b) With respect to generation service, the relevant markets 1639  
are subject to effective competition. For that purpose and except 1640  
as otherwise provided under division (D)(3) of this section, the 1641  
commission shall consider the factors prescribed in division (D) 1642  
of section 4928.06 of the Revised Code and such other or 1643  
additional factors as the commission may prescribe by rule. The 1644  
commission shall prescribe by rule the methodology it will use to 1645  
evaluate whether the effective competition standard under division 1646  
(E)(2)(b) of this section is met. 1647

(c) The standard service offer price for a customer class as 1648  
determined under competitive bidding under division (E)(1) of this 1649  
section is more favorable than, or at least comparable to, its 1650  
price-to-compare for that class. That price-to-compare shall be 1651  
the price that the commission shall determine for the comparable 1652  
time period and in the manner of an electric security plan under 1653  
division (D) of this section: 1654

In its order, the commission shall prescribe any requirements 1655  
for the utility as it considers necessary for the utility to 1656

implement the policy specified in section 4928.02 of the Revised 1657  
Code. The order also shall provide the procedural and substantive 1658  
terms and conditions for periodic commission review of the 1659  
approved offer. That review shall provide for the reconciliation 1660  
of the standard service offer price to ensure that the price is 1661  
just, reasonable, and prudent and in furtherance of the policy 1662  
specified in section 4928.02 of the Revised Code. 1663

(F) A utility's standard service offer approved under this 1664  
section shall take effect on the date the commission shall specify 1665  
in the approval order and, on that date, the newly approved offer 1666  
shall supersede the prior standard service offer of the utility. 1667

(G)(1) Nothing in this section precludes a utility for which 1668  
a standard service offer under division (D) of this section has 1669  
been approved by the commission in accordance with this section 1670  
from later filing an application under division (E) of this 1671  
section, or vice versa. 1672

(2) The commission has no authority to require a utility, for 1673  
which it has ever approved a market rate option standard service 1674  
offer under division (E) of this section, to file an application 1675  
under division (D) of this section. 1676

(H) The failure of a supplier to provide retail electric 1677  
generation service to customers within the certified territory of 1678  
the electric distribution utility shall result in the supplier's 1679  
customers, after reasonable notice, defaulting to the utility's 1680  
standard service offer filed under division (A) of this section 1681  
until the customer chooses an alternative supplier. A supplier is 1682  
deemed under this division to have failed to provide such service 1683  
if the commission finds, after reasonable notice and opportunity 1684  
for hearing, that any of the following conditions are met: 1685

(1) The supplier has defaulted on its contracts with 1686  
customers, is in receivership, or has filed for bankruptcy. 1687

(2) The supplier is no longer capable of providing the 1688  
service. 1689

(3) The supplier is unable to provide delivery to 1690  
transmission or distribution facilities for such period of time as 1691  
may be reasonably specified by commission rule adopted under 1692  
division (A) of section 4928.06 of the Revised Code. 1693

(4) The supplier's certification has been suspended, 1694  
conditionally rescinded, or rescinded under division (D) of 1695  
section 4928.08 of the Revised Code. 1696

(I) Nothing in this section limits an electric distribution 1697  
utility providing competitive retail electric service to electric 1698  
load centers within the certified territory of another such 1699  
utility. 1700

Sec. 4928.141. During a proceeding under section 4928.14 of 1701  
the Revised Code and upon submission of an appropriate discovery 1702  
request, an electric distribution utility shall make available to 1703  
the requesting party every contract or agreement that is between 1704  
the utility or any of its affiliates and a party to the 1705  
proceeding, consumer, electric services company, or political 1706  
subdivision and that is relevant to the proceeding, subject to 1707  
such protection for proprietary or confidential information as is 1708  
determined appropriate by the public utilities commission. 1709

Sec. 4928.142. (A) Subject to division (B) of this section, 1710  
an electric distribution utility by the end of 2025 shall provide 1711  
a portion of the electricity supply required for its standard 1712  
service offer under section 4928.14 of the Revised Code from 1713  
advanced energy. That portion shall equal twenty-five per cent of 1714  
the total number of kilowatt-hours of electricity supplied by the 1715  
utility to any and all electric consumers whose electric load 1716  
centers are located within the utility's certified territory. 1717

However, subject to division (B) of this section, nothing in this 1718  
section precludes a utility from providing a greater percentage. 1719  
The advanced energy supply shall be consistent with the following 1720  
requirements: 1721

(1) At least half of the advanced energy implemented by 2025 1722  
shall be generated from sustainable resources as defined in 1723  
section 3706.01 of the Revised Code and shall include solar power. 1724  
The remainder shall be supplied from advanced energy facilities as 1725  
defined in divisions (X)(1) to (4) of section 3706.01 of the 1726  
Revised Code. 1727

(2) At least half of the advanced energy implemented by the 1728  
end of 2025 shall be met through facilities located in this state. 1729

The utility shall comply with division (A) of this section in 1730  
a manner that considers available technology, costs, job creation, 1731  
and economic impacts. To be counted toward the utility's 1732  
compliance with division (A) of this section, the on-site 1733  
construction of an advanced energy technology or facility shall be 1734  
initiated after the effective date of this section. Any such 1735  
technology or facility that complies with that division shall be 1736  
and remain counted toward the utility's compliance. 1737

(B)(1) If the commission determines, after notice and 1738  
hearing, that the utility has failed to comply with division (A) 1739  
of this section, the commission shall issue an order requiring the 1740  
utility to comply fully within such time as shall be specified in 1741  
the order and shall specify in the order the process and schedule 1742  
for verifying to the commission the utility's compliance with the 1743  
order. 1744

(2) Full compliance shall not be mandated under division 1745  
(B)(1) of this section to the extent that the ratio between the 1746  
blended advanced energy and nonadvanced energy price under this 1747  
section in 2025 and the portion of that price attributable to 1748



nonadvanced energy exceeds one and three-hundredths. 1749

(3) Only division (B)(2) of section 4928.16 of the Revised 1750  
Code applies if the commission determines in an order issued under 1751  
division (B)(1) of this section that the utility has failed to 1752  
comply with division (A) of this section, or if the commission by 1753  
order determines in a later proceeding and after notice and 1754  
hearing that the utility has failed to comply with an order issued 1755  
under division (B)(1) of this section. 1756

(C) The commission annually shall submit to the general 1757  
assembly in accordance with section 101.68 of the Revised Code a 1758  
report describing the compliance of electric distribution 1759  
utilities with divisions (A) and (B) of this section and any 1760  
interim goals or strategy for utility compliance with those 1761  
divisions or for encouraging the use of advanced energy in 1762  
supplying this state's electricity needs in a manner that 1763  
considers available technology, costs, job creation, and economic 1764  
impacts. The commission shall allow and consider public comments 1765  
on the report prior to its submission to the general assembly. 1766  
Nothing in the report shall be binding on any person, including 1767  
any utility for the purpose of its compliance with division (A) of 1768  
this section, or the enforcement of that provision under division 1769  
(B) of this section. 1770

**Sec. 4928.17.** (A) Except as otherwise provided in sections 1771  
4928.14 and 4928.31 to 4928.40 of the Revised Code and beginning 1772  
on the starting date of competitive retail electric service, no 1773  
electric utility shall engage in this state, either directly or 1774  
through an affiliate, in the businesses of supplying a 1775  
noncompetitive retail electric service and supplying a competitive 1776  
retail electric service, or in the businesses of supplying a 1777  
noncompetitive retail electric service and supplying a product or 1778  
service other than retail electric service, unless the utility 1779

implements and operates under a corporate separation plan that is 1780  
approved by the public utilities commission under this section, is 1781  
consistent with the policy specified in section 4928.02 of the 1782  
Revised Code, and achieves all of the following: 1783

(1) The plan provides, at minimum, for the provision of the 1784  
competitive retail electric service or the nonelectric product or 1785  
service through a fully separated affiliate of the utility, and 1786  
the plan includes separate accounting requirements, the code of 1787  
conduct as ordered by the commission pursuant to a rule it shall 1788  
adopt under division (A) of section 4928.06 of the Revised Code, 1789  
and such other measures as are necessary to effectuate the policy 1790  
specified in section 4928.02 of the Revised Code. 1791

(2) The plan satisfies the public interest in preventing 1792  
unfair competitive advantage and preventing the abuse of market 1793  
power. 1794

(3) The plan is sufficient to ensure that the utility will 1795  
not extend any undue preference or advantage to any affiliate, 1796  
division, or part of its own business engaged in the business of 1797  
supplying the competitive retail electric service or nonelectric 1798  
product or service, including, but not limited to, utility 1799  
resources such as trucks, tools, office equipment, office space, 1800  
supplies, customer and marketing information, advertising, billing 1801  
and mailing systems, personnel, and training, without compensation 1802  
based upon fully loaded embedded costs charged to the affiliate; 1803  
and to ensure that any such affiliate, division, or part will not 1804  
receive undue preference or advantage from any affiliate, 1805  
division, or part of the business engaged in business of supplying 1806  
the noncompetitive retail electric service. No such utility, 1807  
affiliate, division, or part shall extend such undue preference. 1808  
Notwithstanding any other division of this section, a utility's 1809  
obligation under division (A)(3) of this section shall be 1810  
effective January 1, 2000. 1811

(B) The commission may approve, modify and approve, or 1812  
disapprove a corporate separation plan filed with the commission 1813  
under division (A) of this section. As part of the code of conduct 1814  
required under division (A)(1) of this section, the commission 1815  
shall adopt rules pursuant to division (A) of section 4928.06 of 1816  
the Revised Code regarding corporate separation and procedures for 1817  
plan filing and approval. The rules shall include limitations on 1818  
affiliate practices solely for the purpose of maintaining a 1819  
separation of the affiliate's business from the business of the 1820  
utility to prevent unfair competitive advantage by virtue of that 1821  
relationship. The rules also shall include an opportunity for any 1822  
person having a real and substantial interest in the corporate 1823  
separation plan to file specific objections to the plan and 1824  
propose specific responses to issues raised in the objections, 1825  
which objections and responses the commission shall address in its 1826  
final order. Prior to commission approval of the plan, the 1827  
commission shall afford a hearing upon those aspects of the plan 1828  
that the commission determines reasonably require a hearing. The 1829  
commission may reject and require refiling of a substantially 1830  
inadequate plan under this section. 1831

(C) The commission shall issue an order approving or 1832  
modifying and approving a corporate separation plan under this 1833  
section, to be effective on the date specified in the order, only 1834  
upon findings that the plan reasonably complies with the 1835  
requirements of division (A) of this section and will provide for 1836  
ongoing compliance with the policy specified in section 4928.02 of 1837  
the Revised Code. However, for good cause shown, the commission 1838  
may issue an order approving or modifying and approving a 1839  
corporate separation plan under this section that does not comply 1840  
with division (A)(1) of this section but complies with such 1841  
functional separation requirements as the commission authorizes to 1842  
apply for an interim period prescribed in the order, upon a 1843  
finding that such alternative plan will provide for ongoing 1844

compliance with the policy specified in section 4928.02 of the Revised Code.

(D) Any party may seek an amendment to a corporate separation plan approved under this section, and the commission, pursuant to a request from any party or on its own initiative, may order as it considers necessary the filing of an amended corporate separation plan to reflect changed circumstances.

(E) ~~Notwithstanding section 4905.20, 4905.21, 4905.46, or 4905.48 of the Revised Code, an No electric utility may divest itself of shall sell or transfer any generating asset at any time facility it owns in whole or in part to any person without prior~~ commission approval, ~~subject to the provisions of Title XLIX of the Revised Code relating to the transfer of transmission, distribution, or ancillary service provided by such generating asset.~~

**Sec. 4928.20.** (A) The legislative authority of a municipal corporation may adopt an ordinance, or the board of township trustees of a township or the board of county commissioners of a county may adopt a resolution, under which, on or after the starting date of competitive retail electric service, it may aggregate in accordance with this section the retail electrical loads located, respectively, within the municipal corporation, township, or unincorporated area of the county and, for that purpose, may enter into service agreements to facilitate for those loads the sale and purchase of electricity. The legislative authority or board also may exercise such authority jointly with any other such legislative authority or board. For customers that are not mercantile commercial customers, an ordinance or resolution under this division shall specify whether the aggregation will occur only with the prior, affirmative consent of each person owning, occupying, controlling, or using an electric

load center proposed to be aggregated or will occur automatically 1876  
for all such persons pursuant to the opt-out requirements of 1877  
division (D) of this section. The aggregation of mercantile 1878  
commercial customers shall occur only with the prior, affirmative 1879  
consent of each such person owning, occupying, controlling, or 1880  
using an electric load center proposed to be aggregated. Nothing 1881  
in this division, however, authorizes the aggregation of the 1882  
retail electric loads of an electric load center, as defined in 1883  
section 4933.81 of the Revised Code, that is located in the 1884  
certified territory of a nonprofit electric supplier under 1885  
sections 4933.81 to 4933.90 of the Revised Code or an electric 1886  
load center served by transmission or distribution facilities of a 1887  
municipal electric utility. 1888

(B) If an ordinance or resolution adopted under division (A) 1889  
of this section specifies that aggregation of customers that are 1890  
not mercantile commercial customers will occur automatically as 1891  
described in that division, the ordinance or resolution shall 1892  
direct the board of elections to submit the question of the 1893  
authority to aggregate to the electors of the respective municipal 1894  
corporation, township, or unincorporated area of a county at a 1895  
special election on the day of the next primary or general 1896  
election in the municipal corporation, township, or county. The 1897  
legislative authority or board shall certify a copy of the 1898  
ordinance or resolution to the board of elections not less than 1899  
seventy-five days before the day of the special election. No 1900  
ordinance or resolution adopted under division (A) of this section 1901  
that provides for an election under this division shall take 1902  
effect unless approved by a majority of the electors voting upon 1903  
the ordinance or resolution at the election held pursuant to this 1904  
division. 1905

(C) Upon the applicable requisite authority under divisions 1906  
(A) and (B) of this section, the legislative authority or board 1907

shall develop a plan of operation and governance for the 1908  
aggregation program so authorized. Before adopting a plan under 1909  
this division, the legislative authority or board shall hold at 1910  
least two public hearings on the plan. Before the first hearing, 1911  
the legislative authority or board shall publish notice of the 1912  
hearings once a week for two consecutive weeks in a newspaper of 1913  
general circulation in the jurisdiction. The notice shall 1914  
summarize the plan and state the date, time, and location of each 1915  
hearing. 1916

(D) No legislative authority or board, pursuant to an 1917  
ordinance or resolution under divisions (A) and (B) of this 1918  
section that provides for automatic aggregation of customers that 1919  
are not mercantile commercial customers as described in division 1920  
(A) of this section, shall aggregate the electrical load of any 1921  
electric load center located within its jurisdiction unless it in 1922  
advance clearly discloses to the person owning, occupying, 1923  
controlling, or using the load center that the person will be 1924  
enrolled automatically in the aggregation program and will remain 1925  
so enrolled unless the person affirmatively elects by a stated 1926  
procedure not to be so enrolled. The disclosure shall state 1927  
prominently the rates, charges, and other terms and conditions of 1928  
enrollment. The stated procedure shall allow any person enrolled 1929  
in the aggregation program the opportunity to opt out of the 1930  
program up to every ~~two~~ four years, without paying a switching 1931  
fee. Any such person that opts out of the aggregation program 1932  
pursuant to the stated procedure shall default to the standard 1933  
service offer provided under division (A) of section 4928.14 or 1934  
division (D) of section 4928.35 of the Revised Code until the 1935  
person chooses an alternative supplier. 1936

(E)(1) With respect to a governmental aggregation for a 1937  
municipal corporation that is authorized pursuant to divisions (A) 1938  
to (D) of this section, resolutions may be proposed by initiative 1939

or referendum petitions in accordance with sections 731.28 to 1940  
731.41 of the Revised Code. 1941

(2) With respect to a governmental aggregation for a township 1942  
or the unincorporated area of a county, which aggregation is 1943  
authorized pursuant to divisions (A) to (D) of this section, 1944  
resolutions may be proposed by initiative or referendum petitions 1945  
in accordance with sections 731.28 to 731.40 of the Revised Code, 1946  
except that: 1947

(a) The petitions shall be filed, respectively, with the 1948  
township fiscal officer or the board of county commissioners, who 1949  
shall perform those duties imposed under those sections upon the 1950  
city auditor or village clerk. 1951

(b) The petitions shall contain the signatures of not less 1952  
than ten per cent of the total number of electors in, 1953  
respectively, the township or the unincorporated area of the 1954  
county who voted for the office of governor at the preceding 1955  
general election for that office in that area. 1956

(F) A governmental aggregator under division (A) of this 1957  
section is not a public utility engaging in the wholesale purchase 1958  
and resale of electricity, and provision of the aggregated service 1959  
is not a wholesale utility transaction. A governmental aggregator 1960  
shall be subject to supervision and regulation by the public 1961  
utilities commission only to the extent of any competitive retail 1962  
electric service it provides and commission authority under this 1963  
chapter. 1964

(G) This section does not apply in the case of a municipal 1965  
corporation that supplies such aggregated service to electric load 1966  
centers to which its municipal electric utility also supplies a 1967  
noncompetitive retail electric service through transmission or 1968  
distribution facilities the utility singly or jointly owns or 1969  
operates. 1970

(H) A governmental aggregator shall not include in its aggregation the accounts of any of the following:

(1) A customer that has opted out of the aggregation;

(2) A customer in contract with a certified competitive retail electric services provider;

(3) A customer that has a special contract with an electric distribution utility;

(4) A customer that is not located within the governmental aggregator's governmental boundaries;

(5) Subject to division (C) of section 4928.21 of the Revised Code, a customer who appears on the "do not aggregate" list maintained under that section.

**Sec. 4928.21.** (A) A customer that desires to remove itself from the pool of customers eligible to participate in governmental aggregation under section 4928.20 of the Revised Code may register with the public utilities commission to appear on the "do not aggregate" list.

(B) The commission, by rule, shall establish a "do not aggregate" list. The commission shall maintain the "do not aggregate" list and make it publicly available on the commission's web site.

(C) If a customer is enrolled in a governmental aggregation program at the time the customer first appears on the "do not aggregate" list, the governmental aggregator shall remove the customer from the program at the next ~~two-year~~ opt out opportunity that is available to the customer under division (D) of section 4928.20 of the Revised Code.

**Sec. 4928.64.** The public utilities commission shall adopt rules to establish energy efficiency standards applicable to



electric distribution utilities such that, by 2025, any such 2000  
utility shall implement energy efficiency measures that will 2001  
result in not less than twenty-five per cent of actual growth in 2002  
electric load and not less than ten per cent of total peak demand 2003  
being achieved through those measures. The rules shall include a 2004  
requirement that an electric distribution utility provide a 2005  
customer upon request with three years' consumption data in an 2006  
accessible form. Additionally, the rules may provide for 2007  
decoupling. 2008

**Sec. 4928.68.** The public utilities commission shall employ a 2009  
federal energy advocate to monitor the activities of the federal 2010  
energy regulatory commission and other federal agencies and 2011  
advocate on behalf of the interests of retail electric service 2012  
consumers in this state. The attorney general shall represent the 2013  
advocate before the federal energy regulatory commission and other 2014  
federal agencies. Among other duties assigned to the advocate by 2015  
the commission, the advocate shall examine the value of the 2016  
participation of this state's electric utilities in regional 2017  
transmission organizations and submit a report to the public 2018  
utilities commission on whether continued participation of those 2019  
utilities is in the interest of those consumers. 2020

**Sec. 4928.69.** The public utilities commission shall adopt 2021  
rules establishing greenhouse gas emission reporting requirements, 2022  
including participation in the climate registry, and carbon 2023  
control planning requirements for each electric generating 2024  
facility located in this state that emits greenhouse gases, 2025  
including facilities in operation on the effective date of this 2026  
section. 2027

**Section 2.** That existing sections 122.41, 122.451, 3706.01, 2028  
3706.02, 3706.03, 3706.04, 3706.041, 3706.05, 3706.06, 3706.07, 2029

3706.08, 3706.09, 3706.10, 3706.11, 3706.12, 3706.13, 3706.14,	2030
3706.15, 3706.16, 3706.17, 3706.18, 4905.31, 4905.40, 4928.02,	2031
4928.05, 4928.14, 4928.17, 4928.20, and 4928.21 of the Revised	2032
Code are hereby repealed.	2033