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Senators Schuler (By Request), Jacobson

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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, 4909.161, 5
4928.01, 4928.02, 4928.05, 4928.06, 4928.12, 6
4928.14, 4928.15, 4928.16, 4928.17, 4928.18, 7
4928.20, and 4928.21, to enact sections 1551.41, 8
4928.111, 4928.141, 4928.142, 4928.64, 4928.68, 9
and 4928.69, and to repeal sections 4928.31, 10
4928.32, 4928.33, 4928.34, 4928.35, 4928.36, 11
4928.37, 4928.38, 4928.39, 4928.40, 4928.41, 12
4928.42, 4928.431, and 4928.44 of the Revised Code 13
to revise state energy policy to address electric 14
service pricereregulation and to provide for new 15
bonding authority for advanced energy projects, 16
advanced (including sustainable resource) energy 17
portfolio standards, energy efficiency standards, 18
and greenhouse gas emission reporting and carbon 19
control planning requirements. 20

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

Section 1. That sections 122.41, 122.451, 3706.01, 3706.02, 22

3706.03, 3706.04, 3706.041, 3706.05, 3706.06, 3706.07, 3706.08, 23
3706.09, 3706.10, 3706.11, 3706.12, 3706.13, 3706.14, 3706.15, 24
3706.16, 3706.17, 3706.18, 4905.31, 4905.40, 4909.161, 4928.01, 25
4928.02, 4928.05, 4928.06, 4928.12, 4928.14, 4928.15, 4928.16, 26
4928.17, 4928.18, 4928.20, and 4928.21 be amended and sections 27
1551.41, 4928.111, 4928.141, 4928.142, 4928.64, 4928.68, and 28
4928.69 of the Revised Code be enacted to read as follows: 29

Sec. 122.41. (A) The development financing advisory council 30
and the director of development are invested with the powers and 31
duties provided in Chapter 122. of the Revised Code, in order to 32
promote the welfare of the people of the state, to stabilize the 33
economy, to provide employment, to assist in the development 34
within the state of industrial, commercial, distribution, and 35
research activities required for the people of the state, and for 36
their gainful employment, or otherwise to create or preserve jobs 37
and employment opportunities, or improve the economic welfare of 38
the people of the state, and also to assist in the financing of 39
air, water, or thermal pollution control facilities, advanced 40
energy facilities, and solid waste disposal facilities by mortgage 41
insurance as provided in section 122.451 of the Revised Code. It 42
is hereby determined that the accomplishment of such purposes is 43
essential so that the people of the state may maintain their 44
present high standards in comparison with the people of other 45
states and so that opportunities for employment and for favorable 46
markets for the products of the state's natural resources, 47
agriculture, and manufacturing shall be improved and that it is 48
necessary for the state to establish the programs authorized 49
pursuant to Chapter 122. of the Revised Code, to establish the 50
development financing advisory council, and to invest it and the 51
director of development with the powers and duties provided in 52
Chapter 122. of the Revised Code. The powers granted to the 53

director of development by Chapter 165. of the Revised Code are 54
independent of and in addition and alternate to, and are not 55
limited or restricted by, Chapter 122. of the Revised Code. 56

(B) The development financing advisory council shall: 57

(1) Make recommendations to the director of development as to 58
applications for assistance pursuant to sections 122.39 to 122.62 59
or Chapter 166. of the Revised Code. The council may revise its 60
recommendations to reflect any changes in the proposed assistance 61
made by the director. 62

(2) Advise the director in the administration of sections 63
122.39 to 122.62 and Chapter 166. of the Revised Code; 64

(3) Adopt bylaws to govern the conduct of the council's 65
business. 66

Sec. 122.451. Upon application of any person, partnership, or 67
corporation, or upon application of any community improvement 68
corporation organized as provided in section 1724.01 of the 69
Revised Code, the director of development, with controlling board 70
approval, may, pledging therefor moneys in the mortgage insurance 71
fund created by section 122.561 of the Revised Code, insure or 72
make advance commitments to insure not more than ninety per cent 73
of any mortgage payments required. Before insuring any such 74
mortgage payments the director shall determine that: 75

(A) The project, in accordance with Section 13 of Article 76
VIII, Ohio Constitution, will create or preserve jobs and 77
employment opportunities, or improve the economic welfare of the 78
people of the state, or be an air quality facility, advanced 79
energy facility, waste water facility, or solid waste facility, as 80
defined in section 3706.01, 6121.01, or 6123.01 of the Revised 81
Code. 82

(B) The principal obligation, including initial service 83

charges and appraisal, inspection, and other fees approved by the 84
director, does not exceed one hundred per cent of the cost of the 85
project. 86

(C) The mortgage has a satisfactory maturity date in no case 87
later than twenty-five years from the date of the insurance. 88

(D) The mortgagor is responsible and able to meet the 89
payments under the mortgage. 90

(E) The mortgage contains complete amortization provisions 91
satisfactory to the director requiring periodic payments by the 92
mortgagor which may include principal and interest payments, cost 93
of local property taxes and assessments, land lease rentals, if 94
any, and hazard insurance on the property and such mortgage 95
insurance premiums as are required under section 122.561 of the 96
Revised Code, all as the director from time to time prescribes or 97
approves. 98

(F) The mortgage is in such form and contains such terms and 99
provisions with respect to property insurance, repairs, 100
alterations, payment of taxes and assessments, default reserves, 101
delinquency charges, default remedies, anticipation of maturity, 102
additional and secondary liens, and other matters as the director 103
may prescribe. 104

The director may take assignments of insured mortgages and 105
other forms of security and may take title by foreclosure or 106
conveyance to any project when an insured mortgage loan thereon is 107
clearly in default and when in the opinion of the director such 108
acquisition is necessary to safeguard the mortgage insurance fund, 109
and may sell, or on a temporary basis lease or rent, such project. 110

Sec. 1551.41. The department of natural resources, the 111
environmental protection agency, and the public utilities 112
commission jointly by rule shall develop an interim policy 113

framework for the supervision and regulation by those agencies of 114
pilot and demonstration carbon sequestration activities located in 115
or sequestration products produced in this state. 116

Sec. 3706.01. As used in this chapter: 117

(A) "Governmental agency" means a department, division, or 118
other unit of state government, a municipal corporation, county, 119
township, and other political subdivision, or any other public 120
corporation or agency having the power to acquire, construct, or 121
operate air quality facilities or advanced energy facilities, the 122
United States or any agency thereof, and any agency, commission, 123
or authority established pursuant to an interstate compact or 124
agreement. 125

(B) "Person" means any individual, firm, partnership, 126
association, or corporation, or any combination thereof. 127

(C) "Air contaminant" means particulate matter, dust, fumes, 128
gas, mist, smoke, noise, vapor, heat, radioactivity, radiation, or 129
odorous substance, or any combination thereof. 130

(D) "Air pollution" means the presence in the ambient air of 131
one or more air contaminants in sufficient quantity and of such 132
characteristics and duration as to injure human health or welfare, 133
plant or animal life, or property, or that unreasonably interferes 134
with the comfortable enjoyment of life or property. 135

(E) "Ambient air" means that portion of the atmosphere 136
outside of buildings and other enclosures, stacks, or ducts that 137
surrounds human, plant, or animal life, or property. 138

(F) "Emission" means the release into the outdoor atmosphere 139
of an air contaminant. 140

(G) "Air quality facility" means any of the following: 141

(1) Any method, or any modification or replacement of 142

property, process, device, structure, or equipment that removes, 143
reduces, prevents, contains, alters, conveys, stores, disperses, 144
or disposes of air contaminants or substances containing air 145
contaminants, or that renders less noxious or reduces the 146
concentration of air contaminants in the ambient air, including, 147
without limitation, facilities and expenditures that qualify as 148
air pollution control facilities under section 103 (C)(4)(F) of 149
the Internal Revenue Code of 1954, as amended, and regulations 150
adopted thereunder; 151

(2) Motor vehicle inspection stations operated in accordance 152
with, and any equipment used for motor vehicle inspections 153
conducted under, section 3704.14 of the Revised Code and rules 154
adopted under it; 155

(3) Ethanol or other biofuel facilities, including any 156
equipment used at the ethanol or other biofuel facility for the 157
production of ethanol or other biofuels; 158

(4) Any property or portion thereof used for the collection, 159
storage, treatment, utilization, processing, or final disposal of 160
a by-product or solid waste resulting from any method, process, 161
device, structure, or equipment that removes, reduces, prevents, 162
contains, alters, conveys, stores, disperses, or disposes of air 163
contaminants, or that renders less noxious or reduces the 164
concentration of air contaminants in the ambient air; 165

(5) Any property, device, or equipment that promotes the 166
reduction of emissions of air contaminants into the ambient air 167
through improvements in the efficiency of energy utilization or 168
energy conservation; 169

(6) Any coal research and development project conducted under 170
Chapter 1555. of the Revised Code; 171

(7) As determined by the director of the Ohio coal 172
development office, any property or portion thereof that is used 173

for the collection, storage, treatment, utilization, processing, 174
or final disposal of a by-product resulting from a coal research 175
and development project as defined in section 1555.01 of the 176
Revised Code or from the use of clean coal technology, excluding 177
any property or portion thereof that is used primarily for other 178
subsequent commercial purposes; 179

(8) Any property or portion thereof that is part of the 180
FutureGen project of the United States department of energy or 181
related to the siting of the FutureGen project; 182

(9) Any property, device, or equipment that reduces emissions 183
of air contaminants into the ambient air through the generation of 184
electricity using sustainable resources; 185

(10) Any property, device, or equipment necessary for the 186
manufacture and production of equipment that qualifies as an air 187
quality facility. 188

"Air quality facility" further includes any property or 189
system to be used in whole or in part for any of the purposes in 190
divisions (G)(1) to ~~(8)~~(10) of this section, whether another 191
purpose is also served, and any property or system incidental to 192
or that has to do with, or the end purpose of which is, any of the 193
foregoing. Air quality facilities that are defined in this 194
division for industry, commerce, distribution, or research, 195
including public utility companies, are hereby determined to be 196
those that qualify as facilities for the control of air pollution 197
and thermal pollution related to air under Section 13 of Article 198
VIII, Ohio Constitution. 199

(H) "Project₁" ~~or~~ "air quality project₁" or "advanced energy 200
project" means any air quality facility or advanced energy 201
facility, including undivided or other interests therein, acquired 202
or to be acquired or constructed or to be constructed by the Ohio 203
air quality development authority under this chapter, or acquired 204

or to be acquired or constructed or to be constructed by a 205
governmental agency or person with all or a part of the cost 206
thereof being paid from a loan or grant from the authority under 207
this chapter or otherwise paid from the proceeds of ~~air quality~~ 208
revenue bonds, including all buildings and facilities that the 209
authority determines necessary for the operation of the project, 210
together with all property, rights, easements, and interests that 211
may be required for the operation of the project. 212

(I) "Cost" as applied to an air quality project or advanced 213
energy project means the cost of acquisition and construction, the 214
cost of acquisition of all land, rights-of-way, property rights, 215
easements, franchise rights, and interests required for such 216
acquisition and construction, the cost of demolishing or removing 217
any buildings or structures on land so acquired, including the 218
cost of acquiring any lands to which such buildings or structures 219
may be moved, the cost of acquiring or constructing and equipping 220
a principal office and sub-offices of the authority, the cost of 221
diverting highways, interchange of highways, and access roads to 222
private property, including the cost of land or easements for such 223
access roads, the cost of public utility and common carrier 224
relocation or duplication, the cost of all machinery, furnishings, 225
and equipment, financing charges, interest prior to and during 226
construction and for no more than eighteen months after completion 227
of construction, engineering, expenses of research and development 228
with respect to air quality facilities, the cost of any commodity 229
contract, including fees and expenses related thereto, legal 230
expenses, plans, specifications, surveys, studies, estimates of 231
cost and revenues, working capital, other expenses necessary or 232
incident to determining the feasibility or practicability of 233
acquiring or constructing such project, administrative expense, 234
and such other expense as may be necessary or incident to the 235
acquisition or construction of the project, the financing of such 236
acquisition or construction, including the amount authorized in 237

the resolution of the authority providing for the issuance of ~~air~~ 238
~~quality~~ revenue bonds to be paid into any special funds from the 239
proceeds of such bonds, and the financing of the placing of such 240
project in operation. Any obligation, cost, or expense incurred by 241
any governmental agency or person for surveys, borings, 242
preparation of plans and specifications, and other engineering 243
services, or any other cost described above, in connection with 244
the acquisition or construction of a project may be regarded as a 245
part of the cost of that project and may be reimbursed out of the 246
proceeds of ~~air-quality~~ revenue bonds as authorized by this 247
chapter. 248

(J) "Owner" includes an individual, copartnership, 249
association, or corporation having any title or interest in any 250
property, rights, easements, or interests authorized to be 251
acquired by this chapter. 252

(K) "Revenues" means all rentals and other charges received 253
by the authority for the use or services of any air quality 254
project or advanced energy project, any gift or grant received 255
with respect to any ~~air-quality~~ such project, any moneys received 256
with respect to the lease, sublease, sale, including installment 257
sale or conditional sale, or other disposition of an air quality 258
project or advanced energy project, moneys received in repayment 259
of and for interest on any loans made by the authority to a person 260
or governmental agency, whether from the United States or any 261
department, administration, or agency thereof, or otherwise, 262
proceeds of such bonds to the extent that use thereof for payment 263
of principal of, premium, if any, or interest on the bonds is 264
authorized by the authority, amounts received or otherwise derived 265
from a commodity contract or from the sale of the related 266
commodity under such a contract, proceeds from any insurance, 267
condemnation, or guaranty pertaining to a project or property 268
mortgaged to secure bonds or pertaining to the financing of the 269

project, and income and profit from the investment of the proceeds 270
of ~~air-quality~~ revenue bonds or of any revenues. 271

(L) "Public roads" includes all public highways, roads, and 272
streets in the state, whether maintained by the state, county, 273
city, township, or other political subdivision. 274

(M) "Public utility facilities" includes tracks, pipes, 275
mains, conduits, cables, wires, towers, poles, and other equipment 276
and appliances of any public utility. 277

(N) "Construction," unless the context indicates a different 278
meaning or intent, includes reconstruction, enlargement, 279
improvement, or providing furnishings or equipment. 280

(O) "~~Air-quality revenue~~ Revenue bonds," unless the context 281
indicates a different meaning or intent, includes ~~air-quality~~ 282
revenue notes, ~~air-quality~~ revenue renewal notes, and ~~air-quality~~ 283
revenue refunding bonds, except that notes issued in anticipation 284
of the issuance of bonds shall have a maximum maturity of five 285
years as provided in section 3706.05 of the Revised Code and notes 286
or renewal notes issued as the definitive obligation may be issued 287
maturing at such time or times with a maximum maturity of forty 288
years from the date of issuance of the original note. 289

(P) "Solid waste" means any garbage; refuse; sludge from a 290
waste water treatment plant, water supply treatment plant, or air 291
pollution control facility; and other discarded material, 292
including solid, liquid, semisolid, or contained gaseous material 293
resulting from industrial, commercial, mining, and agricultural 294
operations, and from community activities, but not including solid 295
or dissolved material in domestic sewage, or solid or dissolved 296
material in irrigation return flows or industrial discharges that 297
are point sources subject to permits under section 402 of the 298
"Federal Water Pollution Control Act Amendments of 1972," 86 Stat. 299
880, 33 U.S.C.A. 1342, as amended, or source, special nuclear, or 300

byproduct material as defined by the "Atomic Energy Act of 1954," 301
68 Stat. 921, 42 U.S.C.A. 2011, as amended. 302

(Q) "Sludge" means any solid, semisolid, or liquid waste, 303
other than a recyclable by-product, generated from a municipal, 304
commercial, or industrial waste water treatment plant, water 305
supply plant, or air pollution control facility or any other such 306
wastes having similar characteristics and effects. 307

(R) "Ethanol or other biofuel facility" means a plant at 308
which ethanol or other biofuel is produced. 309

(S) "Ethanol" means fermentation ethyl alcohol derived from 310
agricultural products, including potatoes, cereal, grains, cheese 311
whey, and sugar beets; forest products; or other renewable or 312
biomass resources, including residue and waste generated from the 313
production, processing, and marketing of agricultural products, 314
forest products, and other renewable or biomass resources, that 315
meets all of the specifications in the American society for 316
testing and materials (ASTM) specification D 4806-88 and is 317
denatured as specified in Parts 20 and 21 of Title 27 of the Code 318
of Federal Regulations. 319

(T) "Biofuel" means any fuel that is made from cellulosic 320
biomass resources, including renewable organic matter, crop waste 321
residue, wood, aquatic plants and other crops, animal waste, solid 322
waste, or sludge, and that is used for the production of energy 323
for transportation or other purposes. 324

(U) "FutureGen project" means the buildings, equipment, and 325
real property and functionally related buildings, equipment, and 326
real property, including related research projects that support 327
the development and operation of the buildings, equipment, and 328
real property, designated by the United States department of 329
energy and the FutureGen industrial alliance, inc., as the 330
coal-fueled, zero-emissions power plant designed to prove the 331

technical and economic feasibility of producing electricity and 332
hydrogen from coal and nearly eliminating carbon dioxide emissions 333
through capture and permanent storage. 334

(V) "Commodity contract" means a contract or series of 335
contracts entered into in connection with the acquisition or 336
construction of air quality facilities or advanced energy 337
facilities for the purchase or sale of a commodity that is 338
eligible for prepayment with the proceeds of federally taxable or 339
tax exempt bonds under sections 103, 141, and 148 of the Internal 340
Revenue Code of 1986, as amended, and regulations adopted under 341
it. 342

(W) "Sustainable resources" includes, but is not limited to, 343
solar, wind, tidal or wave, biomass, including, but not limited 344
to, biomass involving the utilization of trees or any part 345
thereof, landfill gas, biofuel, hydro, or geothermal resources 346
that are used in the generation of electricity and includes fuel 347
cells powered by sustainable resources. 348

(X) "Advanced energy facility" means any method or any 349
modification or replacement of any property, process, device, 350
structure, or equipment that meets any of the following: 351

(1) With regard to clean coal technology, technology that 352
includes the design capability to control or prevent the emission 353
of carbon dioxide, which design capability the commission shall 354
adopt by rule and shall be based on economically feasible best 355
available technology or, in the absence of a determined best 356
available technology, shall be of the highest level of 357
economically feasible design capability for which there exists 358
generally accepted scientific opinion; 359

(2) With regard to advanced nuclear energy production, 360
consists of generation III technology as defined by the nuclear 361
regulatory commission, other later technology, or significant 362

improvements to existing facilities; 363

(3) With regard to fuel cells used in the generation of 364
electricity, consists of, but is not limited to, a proton exchange 365
membrane fuel cell, phosphoric acid fuel cell, molten carbonate 366
fuel cell, or solid fuel cell; 367

(4) With regard to cogeneration technology, consists of a 368
technology using a heat engine or power station to generate 369
electricity and useful heat simultaneously. 370

"Advanced energy facility" further includes any property or 371
system to be used in whole or in part for any of the purposes of 372
divisions (X)(1) to (4) of this section, whether another purpose 373
also is served, and any property or system incidental to or that 374
has to do with, or the end purpose of which is, any of the 375
foregoing. 376

Sec. 3706.02. There is hereby created the Ohio air quality 377
development authority. Such authority is a body both corporate and 378
politic in this state, and the carrying out of its purposes and 379
the exercise by it of the powers conferred by Chapter 3706. of the 380
Revised Code shall be held to be, and are hereby determined to be, 381
essential governmental functions and public purposes of the state, 382
but the authority shall not be immune from liability by reason 383
thereof. 384

The authority shall consist of seven members as follows: five 385
members appointed by the governor, with the advice and consent of 386
the senate, no more than three of whom shall be members of the 387
same political party, and the director of environmental protection 388
and the director of health, who shall be members ex officio 389
without compensation. Each appointive member shall be a resident 390
of the state, and a qualified elector therein. The members of the 391
authority first appointed shall continue in office for terms 392
expiring on June 30, 1971, June 30, 1973, June 30, 1975, June 30, 393

1977, and June 30, 1978, respectively, the term of each member to 394
be designated by the governor. Appointed members' terms of office 395
shall be for eight years, commencing on the first day of July and 396
ending on the thirtieth day of June. Each appointed member shall 397
hold office from the date of ~~his~~ appointment until the end of the 398
term for which ~~he was~~ appointed. Any member appointed to fill a 399
vacancy occurring prior to the expiration of the term for which 400
~~his~~ the member's predecessor was appointed shall hold office for 401
the remainder of such term. Any appointed member shall continue in 402
office subsequent to the expiration date of ~~his~~ the member's term 403
until ~~his~~ the member's successor takes office, or until a period 404
of sixty days has elapsed, whichever occurs first. A member of the 405
authority is eligible for reappointment. Each appointed member of 406
the authority, before entering upon ~~his~~ official duties, shall 407
take an oath as provided by Section 7 of Article XV, Ohio 408
Constitution. The governor may at any time remove any member of 409
the authority for misfeasance, nonfeasance, or malfeasance in 410
office. The authority shall elect one of its appointed members as 411
~~chairman~~ chairperson and another as ~~vice-chairman~~ 412
vice-chairperson, and shall appoint a secretary-treasurer who 413
need not be a member of the authority. Four members of the 414
authority shall constitute a quorum, and the affirmative vote of 415
four members shall be necessary for any action taken by vote of 416
the authority. No vacancy in the membership of the authority shall 417
impair the rights of a quorum by such vote to exercise all the 418
rights and perform all the duties of the authority. 419

Before the issuance of any ~~air-quality~~ revenue bonds under 420
Chapter 3706. of the Revised Code, each appointed member of the 421
authority shall give a surety bond to the state in the penal sum 422
of twenty-five thousand dollars and the secretary-treasurer shall 423
give such a bond in the penal sum of fifty thousand dollars, each 424
such surety bond to be conditioned upon the faithful performance 425
of the duties of the office, to be executed by a surety company 426

authorized to transact business in this state, and to be approved 427
by the governor and filed in the office of the secretary of state. 428
Each appointed member of the authority shall receive an annual 429
salary of five thousand dollars, payable in monthly installments. 430
Each member shall be reimbursed for ~~his~~ the actual expenses 431
necessarily incurred in the performance of ~~his~~ official duties. 432
All expenses incurred in carrying out Chapter 3706. of the Revised 433
Code shall be payable solely from funds provided under Chapter 434
3706. of the Revised Code, appropriated for such purpose by the 435
general assembly, or provided by the controlling board. No 436
liability or obligation shall be incurred by the authority beyond 437
the extent to which moneys have been so provided or appropriated. 438

Sec. 3706.03. (A) It is hereby declared to be the public 439
policy of the state through the operations of the Ohio air quality 440
development authority under this chapter to contribute toward one 441
or more of the following: to provide for the conservation of air 442
as a natural resource of the state, and to prevent or abate the 443
pollution thereof, to provide for the comfort, health, safety, and 444
general welfare of all employees, as well as all other inhabitants 445
of the state, to assist in the financing of air quality facilities 446
and advanced energy facilities for industry, commerce, 447
distribution, and research, including public utility companies, to 448
create or preserve jobs and employment opportunities or improve 449
the economic welfare of the people, or assist and cooperate with 450
governmental agencies in achieving such purposes. ~~In~~ Additionally, 451
advanced energy facilities for industry, commerce, distribution, 452
or research, including public utility companies, are hereby deemed 453
to qualify as facilities for the control of air pollution and 454
thermal pollution related to air under Section 13, Article VIII, 455
Ohio Constitution. 456

(B) In furtherance of such public policy the Ohio air quality 458

development authority may initiate, acquire, construct, maintain, 459
repair, and operate air quality projects and advanced energy 460
projects or cause the same to be operated pursuant to a lease, 461
sublease, or agreement with any person or governmental agency; may 462
make loans and grants to governmental agencies for the acquisition 463
or construction of air quality facilities and advanced energy 464
facilities by such governmental agencies; may make loans to 465
persons for the acquisition or construction of air quality 466
facilities and advanced energy facilities by such persons; may 467
enter into commodity contracts with, or make loans for the purpose 468
of entering into commodity contracts to, any person, governmental 469
agency, or entity located within or without the state in 470
connection with the acquisition or construction of air quality 471
facilities and advanced energy facilities; and may issue ~~air~~ 472
~~quality~~ revenue bonds of this state payable solely from revenues, 473
to pay the cost of such projects, including any related commodity 474
contracts. Any air quality project or advanced energy project 475
shall be determined by the authority to be not inconsistent with 476
any applicable air quality standards duly established and then 477
required to be met pursuant to the "Clean Air Act," 84 Stat. 1679 478
(1970), 42 U.S.C.A. 1857, as amended. Any resolution of the 479
authority providing for acquiring or constructing such projects or 480
for making a loan or grant for such projects shall include a 481
finding by the authority that such determination has been made. 482
Determinations by resolution of the authority that a project is an 483
air quality facility or advanced energy facility under this 484
chapter and is consistent with the purposes of section 13 of 485
Article VIII, Ohio Constitution, and this chapter, shall be 486
conclusive as to the validity and enforceability of the ~~air~~ 487
~~quality~~ revenue bonds issued to finance such project and of the 488
resolutions, trust agreements or indentures, leases, subleases, 489
sale agreements, loan agreements, and other agreements made in 490
connection therewith, all in accordance with their terms. 491

492

(C) Nothing in this chapter authorizes the Ohio air quality 493
development authority to build, own, or operate an air quality 494
facility or advanced energy facility, except as may be required to 495
effect the financing of the facility. 496

Sec. 3706.04. The Ohio air quality development authority may: 497
498

(A) Adopt bylaws for the regulation of its affairs and the 499
conduct of its business; 500

(B) Adopt an official seal; 501

(C) Maintain a principal office and suboffices at such places 502
within the state as it designates; 503

(D) Sue and plead in its own name; be sued and impleaded in 504
its own name with respect to its contracts or torts of its 505
members, employees, or agents acting within the scope of their 506
employment, or to enforce its obligations and covenants made under 507
sections 3706.05, 3706.07, and 3706.12 of the Revised Code. Any 508
such actions against the authority shall be brought in the court 509
of common pleas of the county in which the principal office of the 510
authority is located, or in the court of common pleas of the 511
county in which the cause of action arose, provided such county is 512
located within this state, and all summonses, exceptions, and 513
notices of every kind shall be served on the authority by leaving 514
a copy thereof at the principal office with the person in charge 515
thereof or with the secretary-treasurer of the authority. 516

(E) Make loans and grants to governmental agencies for the 517
acquisition or construction of air quality projects or advanced 518
energy projects by any such governmental agency and adopt rules 519
and procedures for making such loans and grants; 520

(F) Acquire, construct, reconstruct, enlarge, improve, 521

furnish, equip, maintain, repair, operate, lease or rent to, or 522
contract for operation by, a person or governmental agency, air 523
quality projects or advanced energy projects, and establish rules 524
for the use of such projects; 525

(G) Make available the use or services of any air quality 526
project or advanced energy project to one or more persons, one or 527
more governmental agencies, or any combination thereof; 528

(H) Issue ~~air quality~~ revenue bonds and notes and ~~air quality~~ 529
revenue refunding bonds of the state, payable solely from revenues 530
as provided in section 3706.05 of the Revised Code, unless the 531
bonds be refunded by refunding bonds, for the purpose of paying 532
any part of the cost of one or more air quality projects or 533
advanced energy projects or parts thereof; 534

(I) Acquire by gift or purchase, hold, and dispose of real 535
and personal property in the exercise of the powers of the 536
authority and the performance of its duties under this chapter; 537

(J) Acquire, in the name of the state, by purchase or 538
otherwise, on such terms and in such manner as the authority finds 539
proper, or by the exercise of the right of condemnation in the 540
manner provided by section 3706.17 of the Revised Code, such 541
public or private lands, including public parks, playgrounds, or 542
reservations, or parts thereof or rights therein, rights-of-way, 543
property, rights, easements, and interests as it finds necessary 544
for carrying out this chapter, but excluding the acquisition by 545
the exercise of the right of condemnation of any air quality 546
facility or advanced energy facility owned by any person or 547
governmental agency; and compensation shall be paid for public or 548
private lands so taken; 549

(K) Make and enter into all contracts and agreements and 550
execute all instruments necessary or incidental to the performance 551
of its duties and the execution of its powers under this chapter. 552

(1) When the cost under any such contract or agreement, other than compensation for personal services, involves an expenditure of more than two thousand dollars, the authority shall make a written contract with the lowest responsive and responsible bidder, in accordance with section 9.312 of the Revised Code, after advertisement for not less than two consecutive weeks in a newspaper of general circulation in Franklin county, and in such other publications as the authority determines, which notice shall state the general character of the work and the general character of the materials to be furnished, the place where plans and specifications therefor may be examined, and the time and place of receiving bids; provided, that a contract or lease for the operation of an air quality project or advanced energy project constructed and owned by the authority or an agreement for cooperation in the acquisition or construction of an air quality project or advanced energy project pursuant to section 3706.12 of the Revised Code or any contract for the construction of an air quality project or advanced energy project that is to be leased by the authority to, and operated by, persons ~~who~~ that are not governmental agencies and the cost of such project is to be amortized exclusively from rentals or other charges paid to the authority by persons ~~who~~ that are not governmental agencies is not subject to the foregoing requirements and the authority may enter into such contract, lease, or agreement pursuant to negotiation and upon such terms and conditions and for such period as it finds to be reasonable and proper in the circumstances and in the best interests of proper operation or of efficient acquisition or construction of such project.

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

(3) Each bid for a contract except as provided in division 585
(K)(2) of this section shall contain the full name of every person 586
interested in it and shall be accompanied by a sufficient bond or 587
certified check on a solvent bank that if the bid is accepted a 588
contract will be entered into and the performance thereof secured. 589

(4) The authority may reject any and all bids. 590

(5) A bond with good and sufficient surety, approved by the 591
authority, shall be required of every contractor awarded a 592
contract except as provided in division (K)(2) of this section, in 593
an amount equal to at least fifty per cent of the contract price, 594
conditioned upon the faithful performance of the contract. 595

(L) Employ managers, superintendents, and other employees and 596
retain or contract with consulting engineers, financial 597
consultants, accounting experts, architects, attorneys, and such 598
other consultants and independent contractors as are necessary in 599
its judgment to carry out this chapter, and fix the compensation 600
thereof. All expenses thereof shall be payable solely from the 601
proceeds of ~~air-quality~~ revenue bonds or notes issued under this 602
chapter, from revenues, or from funds appropriated for such 603
purpose by the general assembly. 604

(M) Receive and accept from any federal agency, subject to 605
the approval of the governor, grants for or in aid of the 606
construction of any air quality project or advanced energy project 607
or for research and development with respect to air quality 608
facilities and advanced energy facilities, and receive and accept 609
aid or contributions from any source of money, property, labor, or 610
other things of value, to be held, used, and applied only for the 611
purposes for which such grants and contributions are made; 612

(N) Engage in research and development with respect to air 613
quality facilities and advanced energy facilities; 614

(O) Purchase fire and extended coverage and liability 615

insurance for any air quality project and advanced energy project 616
and for the principal office and suboffices of the authority, 617
insurance protecting the authority and its officers and employees 618
against liability for damage to property or injury to or death of 619
persons arising from its operations, and any other insurance the 620
authority may agree to provide under any resolution authorizing 621
its ~~air quality~~ revenue bonds or in any trust agreement securing 622
the same; 623

(P) Charge, alter, and collect rentals and other charges for 624
the use or services of any air quality project or advanced energy
project as provided in section 3706.13 of the Revised Code; 625
626

(Q) Provide coverage for its employees under Chapters 145., 627
4123., and 4141. of the Revised Code; 628

(R) Develop, encourage, promote, support, and implement 629
programs to achieve best cost rates for state-owned buildings, 630
facilities, and operations, state-supported colleges and 631
universities, willing local governments, and willing school 632
districts through pooled purchases of electricity and the 633
financing of taxable or tax-exempt prepayment of commodities; 634

(S) Develop, encourage, promote, support, and implement 635
programs to achieve optimal cost financing for electric generating 636
facilities to be constructed on or after January 1, 2009; 637
638

(T) Develop, encourage, and provide incentives for 639
investments in energy efficiency; 640

(U) Develop, encourage, promote, and support implementation 641
in this state of sustainable resource energy installations; 642

(V) Lead, encourage, promote, and support siting, financing, 643
construction, and operation for early implementations of 644
next-generation base load generating systems, including clean coal 645
generating facilities with carbon capture or sequestration or 646

advanced nuclear power plants, and reduce the costs of associated risks; 647
648

(W) Engage in and coordinate state-supported energy research and development with respect to reliable, affordable, and sustainable energy in this state; 649
650
651

(X) Develop, encourage, promote, support, and implement programs to attract and retain key industrial and energy-intensive sectors of the economy of this state; 652
653
654

(Y) Do all acts necessary or proper to carry out the powers expressly granted in this chapter. 655
656

Any instrument by which real property is acquired pursuant to this section shall identify the agency of the state that has the use and benefit of the real property as specified in section 5301.012 of the Revised Code. 657
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Sec. 3706.041. (A) With respect to projects, and the financing thereof, for industry, commerce, distribution, or research, including public utility companies, under agreements whereby the person to whom the project is to be leased, subleased, or sold, or to whom a loan is to be made for the project, is to make payments sufficient to pay all of the principal of, premium, if any, and interest on the ~~air-quality~~ revenue bonds issued for the project, or the counterparty under any related commodity contract agrees to make payments sufficient in amount to pay all of the principal of, premium, if any, and interest on the related ~~air-quality~~ revenue bonds, the Ohio air quality development authority may, in addition to other powers under this chapter: 661
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(1) Make loans for the acquisition or construction of the project to such person upon such terms as the authority may determine or authorize, including secured or unsecured loans, and, in connection therewith, enter into loan agreements and other 673
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agreements, including commodity contracts, accept notes and other 677
forms of obligation to evidence such indebtedness and mortgages, 678
liens, pledges, assignments, or other security interests to secure 679
such indebtedness, which may be prior or subordinate to or on a 680
parity with other indebtedness, obligations, mortgages, pledges, 681
assignments, other security interests, or liens or encumbrances, 682
and take such actions as may be considered by it appropriate to 683
protect such security and safeguard against losses, including, 684
without limitation thereto, foreclosure and the bidding upon and 685
purchase of property upon foreclosure or other sale. 686

(2) Sell such project under such terms as it may determine, 687
including, without limitation thereto, sale by conditional sale or 688
installment sale, under which title may pass prior to or after 689
completion of the project or payment or provisions for payment of 690
all principal of, premium, if any, and interest on such bonds, or 691
at any other time provided in such agreement pertaining to such 692
sale, and including sale under an option to purchase at a price 693
which may be a nominal amount or less than true value at the time 694
of purchase. 695

(3) Grant a mortgage, lien, or other encumbrance on, or 696
pledge or assignment of, or other security interest with respect 697
to, all or any part of the project, revenues, reserve funds, or 698
other funds established in connection with such bonds, or on, of, 699
or with respect to any lease, sublease, sale, conditional sale or 700
installment sale agreement, loan agreement, or other agreement 701
pertaining to the lease, sublease, sale, or other disposition of a 702
project or pertaining to a loan made for a project, or any 703
guaranty or insurance agreement made with respect thereto, or any 704
interest of the authority therein, or any other interest granted, 705
assigned, or released to secure payments of the principal of, 706
premium, if any, or interest on the bonds or to secure any other 707
payments to be made by the authority, which mortgage, lien, 708

encumbrance, pledge, assignment, or other security interest may be 709
prior or subordinate to or on a parity with any other mortgage, 710
assignment, other security interest, or lien or encumbrance. 711

(4) Provide that the interest on such bonds may be at a 712
variable rate or rates changing from time to time in accordance 713
with a base or formula as authorized by the authority. 714

(5) Contract for the acquisition or construction of such 715
project or any part thereof, including any related commodity 716
contracts, and for the leasing, subleasing, sale or other 717
disposition of such project in a manner determined by the 718
authority in its sole discretion, without necessity for 719
competitive bidding or performance bonds. 720

(B) Property comprising a project shall not be subject to 721
taxes or assessments and so long as the bonds or notes issued to 722
finance the costs of such project are outstanding, and the 723
transfer of title to or possession of such property to the person 724
to whom a loan or installment sale or conditional sale with 725
respect to such project is made shall not be subject to the taxes 726
levied pursuant to Chapters 5739. and 5741. of the Revised Code. 727

The authority shall certify the property comprising a project 728
which is exempt from taxes and assessments pursuant to this 729
section, and shall send, by certified mail, copies of such 730
certification to the owner of such exempt property, to the tax 731
commissioner, and to the county auditor of the county or counties 732
in which any such exempt property is located. 733

Each county auditor shall maintain a separate list of all 734
property exempt pursuant to this section and sections 6121.044 and 735
6123.041 of the Revised Code, in addition to the list of exempt 736
property required to be maintained pursuant to section 5713.07 of 737
the Revised Code. 738

(C) The authority, in the lease, sale or loan agreement with 739

respect to a project referred to in division (A) of this section, 740
shall make appropriate provision for adequate maintenance of the 741
project. 742

(D) With respect to the projects referred to in this section, 743
the authority granted by this section is cumulative and 744
supplementary to all other authority granted in this chapter. The 745
authority granted by this section does not alter or impair any 746
similar authority granted elsewhere in this chapter for or with 747
respect to other projects. 748

Sec. 3706.05. The Ohio air quality development authority may 749
at any time issue revenue bonds and notes of the state in such 750
principal amount as, in the opinion of the authority, are 751
necessary for the purpose of paying any part of the cost of one or 752
more air quality projects or advanced energy projects or parts 753
thereof, including one or more payments pursuant to a commodity 754
contract entered into in connection with the acquisition or 755
construction of air quality facilities or advanced energy 756
facilities. The authority may at any time issue renewal notes, 757
issue bonds to pay such notes and whenever it deems refunding 758
expedient, refund any bonds by the issuance of ~~air-quality~~ revenue 759
refunding bonds of the state, whether the bonds to be refunded 760
have or have not matured, and issue bonds partly to refund bonds 761
then outstanding, and partly for any other authorized purpose. The 762
refunding bonds shall be sold and the proceeds applied to the 763
purchase, redemption, or payment of the bonds to be refunded. 764
Except as may otherwise be expressly provided by the authority, 765
every issue of its bonds or notes shall be general obligations of 766
the authority payable out of the revenues of the authority that 767
are pledged for such payment, without preference or priority of 768
the first bonds issued, subject only to any agreements with the 769
holders of particular bonds or notes pledging any particular 770
revenues. Such pledge shall be valid and binding from the time the 771

pledge is made and the revenues so pledged and thereafter received 772
by the authority shall immediately be subject to the lien of such 773
pledge without any physical delivery thereof or further act, and 774
the lien of any such pledge is valid and binding as against all 775
parties having claims of any kind in tort, contract, or otherwise 776
against the authority, irrespective of whether such parties have 777
notice thereof. Neither the resolution nor any trust agreement by 778
which a pledge is created need be filed or recorded except in the 779
records of the authority. 780

Whether or not the bonds or notes are of such form and 781
character as to be negotiable instruments, the bonds or notes 782
shall have all the qualities and incidents of negotiable 783
instruments, subject only to the provisions of the bonds or notes 784
for registration. 785

The bonds and notes shall be authorized by resolution of the 786
authority, shall bear such date or dates, and shall mature at such 787
time or times, in the case of any such note or any renewals 788
thereof not exceeding five years from the date of issue of such 789
original note and in the case of any such bond not exceeding forty 790
years from the date of issue, as such resolution or resolutions 791
may provide. The bonds and notes shall bear interest at such rate 792
or rates, be in such denominations, be in such form, either coupon 793
or registered, carry such registration privileges, be payable in 794
such medium of payment, at such place or places, and be subject to 795
such terms of redemption as the authority may authorize. The bonds 796
and notes of the authority may be sold by the authority, at public 797
or private sale, at or at not less than such price or prices as 798
the authority determines. The bonds and notes shall be executed by 799
the chairperson and vice-chairperson of the authority, either or 800
both of whom may use a facsimile signature, the official seal of 801
the authority or a facsimile thereof shall be affixed thereto or 802
printed thereon and attested, manually or by facsimile signature, 803

by the secretary-treasurer of the authority, and any coupons 804
attached thereto shall bear the signature or facsimile signature 805
of the chairperson of the authority. In case any officer whose 806
signature, or a facsimile of whose signature, appears on any 807
bonds, notes or coupons ceases to be such officer before delivery 808
of bonds or notes, such signature or facsimile shall nevertheless 809
be sufficient for all purposes the same as if the officer had 810
remained in office until such delivery, and in case the seal of 811
the authority has been changed after a facsimile has been 812
imprinted on such bonds or notes, such facsimile seal will 813
continue to be sufficient for all purposes. 814

Any resolution or resolutions authorizing any bonds or notes 815
or any issue thereof may contain provisions, subject to such 816
agreements with bondholders or noteholders as may then exist, 817
which provisions shall be a part of the contract with the holders 818
thereof, as to: the pledging of all or any part of the revenues of 819
the authority to secure the payment of the bonds or notes or of 820
any issue thereof; the use and disposition of revenues of the 821
authority; a covenant to fix, alter, and collect rentals and other 822
charges so that pledged revenues will be sufficient to pay costs 823
of operation, maintenance, and repairs, pay principal of and 824
interest on bonds or notes secured by the pledge of such revenues, 825
and provide such reserves as may be required by the applicable 826
resolution or trust agreement; the setting aside of reserve funds, 827
sinking funds, or replacement and improvement funds and the 828
regulation and disposition thereof; the crediting of the proceeds 829
of the sale of bonds or notes to and among the funds referred to 830
or provided for in the resolution authorizing the issuance of the 831
bonds or notes; the use, lease, sale, or other disposition of any 832
air quality project or any other assets of the authority; 833
limitations on the purpose to which the proceeds of sale of bonds 834
or notes may be applied and the pledging of such proceeds to 835
secure the payment of the bonds or notes or of any issue thereof; 836

as to notes issued in anticipation of the issuance of bonds, the 837
agreement of the authority to do all things necessary for the 838
authorization, issuance, and sale of such bonds in such amounts as 839
may be necessary for the timely retirement of such notes; 840
limitations on the issuance of additional bonds or notes; the 841
terms upon which additional bonds or notes may be issued and 842
secured; the refunding of outstanding bonds or notes; the 843
procedure, if any, by which the terms of any contract with 844
bondholders or noteholders may be amended or abrogated, the amount 845
of bonds or notes the holders of which must consent thereto, and 846
the manner in which such consent may be given; limitations on the 847
amount of moneys to be expended by the authority for operating, 848
administrative, or other expenses of the authority; securing any 849
bonds or notes by a trust agreement in accordance with section 850
3706.07 of the Revised Code; any other matters, of like or 851
different character, that in any way affect the security or 852
protection of the bonds or notes. 853

Neither the members of the authority nor any person executing 854
the bonds or notes shall be liable personally on the bonds or 855
notes or be subject to any personal liability or accountability by 856
reason of the issuance thereof. 857

Sec. 3706.06. The issuance of ~~air-quality~~ revenue bonds and 858
notes or ~~air-quality~~ revenue refunding bonds under Chapter 3706. 859
of the Revised Code need not comply with any other law applicable 860
to the issuance of bonds or notes. 861

Sec. 3706.07. In the discretion of the Ohio air quality 862
development authority, any ~~air-quality~~ revenue bonds or notes or 863
~~air-quality~~ revenue refunding bonds issued under Chapter 3706. of 864
the Revised Code, may be secured by a trust agreement between the 865
authority and a corporate trustee, which trustee may be any trust 866
company or bank having the powers of a trust company within or 867

without the state. 868

Any such trust agreement may pledge or assign revenues of the 869
authority to be received, but shall not convey or mortgage any air 870
quality project or any part thereof. Any such trust agreement or 871
any resolution providing for the issuance of such bonds or notes 872
may contain such provisions for protecting and enforcing the 873
rights and remedies of the bondholders or noteholders as are 874
reasonable and proper and not in violation of law, including 875
covenants setting forth the duties of the authority in relation to 876
the acquisition of property, the construction, improvement, 877
maintenance, repair, operation, and insurance of the air quality 878
project or projects in connection with which such bonds or notes 879
are authorized, the rentals or other charges to be imposed for the 880
use or services of any air quality project, the application of 881
revenues received or otherwise derived from a commodity contract 882
or from the sale of the related commodity under such contract, the 883
custody, safeguarding, and application of all moneys, and 884
provisions for the employment of consulting engineers in 885
connection with the construction or operation of such air quality 886
project or projects. Any bank or trust company incorporated under 887
the laws of this state that may act as depository of the proceeds 888
of bonds or notes or of revenues may furnish such indemnifying 889
bonds or may pledge such securities as are required by the 890
authority. Any such trust agreement may set forth the rights and 891
remedies of the bondholders and noteholders and of the trustee, 892
and may restrict the individual right of action by bondholders and 893
noteholders as is customary in trust agreements or trust 894
indentures securing similar bonds. Such trust agreement may 895
contain such other provisions as the authority determines 896
reasonable and proper for the security of the bondholders or 897
noteholders. All expenses incurred in carrying out the provisions 898
of any such trust agreement may be treated as a part of the cost 899
of the operation of the air quality project or projects. Any such 900

trust agreement or resolution authorizing the issuance of ~~air~~ 901
~~quality~~ revenue bonds may provide the method whereby the general 902
administrative overhead expenses of the authority shall be 903
allocated among the several projects acquired or constructed by it 904
as a factor of the operation expense of each such project. 905

Sec. 3706.08. Any holder of ~~air-quality~~ revenue bonds issued 906
under Chapter 3706. of the Revised Code, or any of the coupons 907
appertaining thereto, and the trustee under any trust agreement, 908
except to the extent the rights given by such chapter may be 909
restricted by the applicable resolution or such trust agreement, 910
may by suit, action, mandamus, or other proceedings, protect and 911
enforce any rights under the laws of the state or granted under 912
such chapter, trust agreement, or the resolution authorizing the 913
issuance of such bonds, and may enforce and compel the performance 914
of all duties required by such chapter, or by the trust agreement 915
or resolution, to be performed by the Ohio air quality development 916
authority or any officer thereof, including the fixing, charging, 917
and collecting of rentals or other charges. 918

Sec. 3706.09. ~~Air-quality revenue~~ Revenue bonds and notes and 919
~~air-quality~~ revenue refunding bonds issued under Chapter 3706. of 920
the Revised Code do not constitute a debt, or a pledge of the 921
faith and credit, of the state or any political subdivision 922
thereof, and the holders or owners thereof have no right to have 923
taxes levied by the general assembly or taxing authority of any 924
political subdivision of the state for the payment of the 925
principal thereof or interest thereon, but such bonds and notes 926
are payable solely from the revenues and funds pledged for their 927
payment as authorized by such chapter, unless the notes are issued 928
in anticipation of the issuance of bonds or the bonds are refunded 929
by refunding bonds issued under such chapter, which bonds or 930
refunding bonds shall be payable solely from revenues and funds 931

pledged for their payment as authorized by such sections. All such 932
bonds and notes shall contain on the face thereof a statement to 933
the effect that the bonds or notes, as to both principal and 934
interest, are not debts of the state or any political subdivision 935
thereof, but are payable solely from revenues and funds pledged 936
for their payment. 937

All expenses incurred in carrying out Chapter 3706. of the 938
Revised Code are payable solely from funds provided under such 939
chapter. Such chapter does not authorize the Ohio air quality 940
development authority to incur indebtedness or liability on behalf 941
of or payable by the state or any political subdivision thereof. 942

Sec. 3706.10. All moneys, funds, properties, and assets 943
acquired by the Ohio air quality development authority under 944
Chapter 3706. of the Revised Code, whether as proceeds from the 945
sale of ~~air-quality~~ revenue bonds or as revenues, or otherwise, 946
shall be held by it in trust for the purposes of carrying out its 947
powers and duties, shall be used and reused as provided in such 948
chapter, and shall at no time be part of other public funds. Such 949
funds, except as otherwise provided in any resolution authorizing 950
its ~~air-quality~~ revenue bonds or in any trust agreement securing 951
the same, or except when invested pursuant to section 3706.11 of 952
the Revised Code, shall be kept in depositories selected by the 953
authority in the manner provided in Chapter 135. of the Revised 954
Code, and the deposits shall be secured as provided in Chapter 955
135. of the Revised Code. The resolution authorizing the issuance 956
of such bonds of any issue or the trust agreement securing such 957
bonds shall provide that any officer to whom, or any bank or trust 958
company to which, such moneys are paid shall act as trustee of 959
such moneys and hold and apply them for the purposes hereof, 960
subject to such conditions as such chapter and such resolutions or 961
trust agreement provide. 962

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

Sec. 3706.12. The Ohio air quality development authority may charge, alter, and collect rentals or other charges for the use or services of any air quality project or advanced energy project and contract in the manner provided by this section with one or more persons, one or more governmental agencies, or any combination thereof, desiring the use or services of such project, and fix the terms, conditions, rentals, or other charges for such use or services. Such rentals or other charges shall not be subject to supervision or regulation by any other authority, commission, board, bureau, or agency of the state and such contract may provide for acquisition by such person or governmental agency of all or any part of such air quality project or advanced energy project for such consideration payable over the period of the contract or otherwise as the authority in its sole discretion determines to be appropriate, but subject to the provisions of any resolution authorizing the issuance of ~~air-quality~~ revenue bonds or notes or ~~air-quality~~ revenue refunding bonds of the authority or any trust agreement securing the same. Any governmental agency that has power to construct, operate, and maintain air quality

facilities or advanced energy facilities may enter into a contract 994
or lease with the authority whereby the use or services of any air 995
quality project or advanced energy project of the authority will 996
be made available to such governmental agency and may pay for such 997
use or services such rentals or other charges as may be agreed to 998
by the authority and such governmental agency. 999

Any governmental agency or combination of governmental 1000
agencies may cooperate with the authority in the acquisition or 1001
construction of an air quality project or advanced energy project 1002
and shall enter into such agreements with the authority as may be 1003
necessary, with a view to effective cooperative action and 1004
safeguarding of the respective interests of the parties thereto, 1005
which agreements shall provide for such contributions by the 1006
parties thereto in such proportion as may be agreed upon and such 1007
other terms as may be mutually satisfactory to the parties 1008
including without limitation the authorization of the construction 1009
of the project by one of the parties acting as agent for all of 1010
the parties and the ownership and control of the project by the 1011
authority to the extent necessary or appropriate for purposes of 1012
the issuance of ~~air quality~~ revenue bonds by the authority. Any 1013
governmental agency may provide the funds for the payment of such 1014
contribution as is required under such agreements by the levy of 1015
taxes, assessments or rentals and other charges for the use of the 1016
utility system of which the air quality project or advanced energy 1017
project is a part or to which it is connected, if otherwise 1018
authorized by the laws governing such governmental agency in the 1019
construction of the type of air quality project or advanced energy 1020
project provided for in the agreements, and may pay the proceeds 1021
from the collection of such taxes, assessments, utility rentals, 1022
or other charges to the authority pursuant to such agreements; or 1023
the governmental agency may issue bonds or notes, if authorized by 1024
such laws, in anticipation of the collection of such taxes, 1025
assessments, utility rentals, or other charges and may pay the 1026

proceeds of such bonds or notes to the authority pursuant to such 1027
agreements. In addition any governmental agency may provide the 1028
funds for the payment of such contribution by the appropriation of 1029
money or, if otherwise authorized by law, by the issuance of bonds 1030
or notes and may pay such appropriated money or the proceeds of 1031
such bonds or notes to the authority pursuant to such agreements. 1032
The agreement by the governmental agency to provide such 1033
contribution, whether from appropriated money or from the proceeds 1034
of such taxes, assessments, utility rentals, or other charges, or 1035
such bonds or notes, or any combination thereof, shall not be 1036
subject to Chapter 133. of the Revised Code or any regulations or 1037
limitations contained therein. The proceeds from the collection of 1038
such taxes or assessments, and any interest earned thereon, shall 1039
be paid into a special fund immediately upon the collection 1040
thereof by the governmental agency for the purpose of providing 1041
such contribution at the times required under such agreements. 1042

When the contribution of any governmental agency is to be 1043
made over a period of time from the proceeds of the collection of 1044
special assessments, the interest accrued and to accrue before the 1045
first installment of such assessments shall be collected which is 1046
payable by such governmental agency on such contribution under the 1047
terms and provisions of such agreements shall be treated as part 1048
of the cost of the improvement for which such assessments are 1049
levied, and that portion of such assessments as are collected in 1050
installments shall bear interest at the same rate as such 1051
governmental agency is obligated to pay on such contribution under 1052
the terms and provisions of such agreements and for the same 1053
period of time as the contribution is to be made under such 1054
agreements. If the assessment or any installment thereof is not 1055
paid when due, it shall bear interest until the payment thereof at 1056
the same rate as such contribution and the county auditor shall 1057
annually place on the tax list and duplicate the interest 1058
applicable to such assessment and the penalty and additional 1059

interest thereon as otherwise authorized by law. 1060

Any governmental agency, pursuant to a favorable vote of the 1061
electors in an election held before or after June 1, 1970, for the 1062
purpose of issuing bonds to provide funds to acquire, construct, 1063
or equip, or provide real estate and interests in real estate for, 1064
an air quality facility or advanced energy facility, whether or 1065
not such governmental agency, at the time of such election, had 1066
the authority to pay the proceeds from such bonds or notes issued 1067
in anticipation thereof to the authority as provided in this 1068
section, may issue such bonds or notes in anticipation of the 1069
issuance thereof and pay the proceeds thereof to the authority in 1070
accordance with its agreement with the authority; provided, that 1071
the legislative authority of the governmental agency find and 1072
determine that the air quality project or advanced energy project 1073
to be acquired or constructed by the authority in cooperation with 1074
such governmental agency will serve the same public purpose and 1075
meet substantially the same public need as the facility otherwise 1076
proposed to be acquired or constructed by the governmental agency 1077
with the proceeds of such bonds or notes. 1078

Sec. 3706.13. Each air quality project or advanced energy 1079
project, when constructed and placed in operation, shall be 1080
maintained and kept in good condition and repair by the Ohio air 1081
quality development authority, or the authority shall cause the 1082
same to be maintained and kept in good condition and repair. Each 1083
such project shall be operated by such operating employees as the 1084
authority employs or pursuant to a contract or lease with a person 1085
or governmental agency. All public or private property damaged or 1086
destroyed in carrying out the powers granted by Chapter 3706. of 1087
the Revised Code, shall be restored or repaired and placed in its 1088
original condition, as nearly as practicable, or adequate 1089
compensation shall be paid therefor from funds provided under such 1090
chapter. 1091

On or before the twentieth day of April in each year, the 1092
authority shall make a report of its activities for the preceding 1093
calendar year to the governor and the general assembly. Each such 1094
report shall set forth a complete operating and financial 1095
statement covering the authority's operations during the year. The 1096
authority shall cause an audit of its books and accounts to be 1097
made at least once each year by certified public accountants and 1098
the cost thereof may be treated as a part of the cost of 1099
construction or of operations of its projects. 1100

Sec. 3706.14. All ~~air-quality~~ revenue bonds issued under this 1101
chapter are lawful investments of banks, societies for savings, 1102
savings and loan associations, deposit guarantee associations, 1103
trust companies, trustees, fiduciaries, insurance companies, 1104
including domestic for life and domestic not for life, trustees or 1105
other officers having charge of sinking and bond retirement or 1106
other special funds of political subdivisions and taxing districts 1107
of this state, the commissioners of the sinking fund of the state, 1108
the administrator of workers' compensation, the state teachers 1109
retirement system, the public employees retirement system, the 1110
school employees retirement system, and the Ohio police and fire 1111
pension fund, and are acceptable as security for the deposit of 1112
public moneys. 1113

Sec. 3706.15. The exercise of the powers granted by Chapter 1114
3706. of the Revised Code, will be for the benefit of the people 1115
of the state, for the improvement of their health, safety, 1116
convenience, and welfare, and for the enhancement of their 1117
residential, agricultural, recreational, economic, commercial, and 1118
industrial opportunities and is a public purpose. As the operation 1119
and maintenance of air quality projects or advanced energy 1120
projects will constitute the performance of essential governmental 1121
functions, the Ohio air quality development authority shall not be 1122

required to pay any taxes or assessments upon any ~~air quality~~ such 1123
project, ~~or~~ upon any property acquired or used by the authority 1124
under Chapter 3706. of the Revised Code, or upon the income 1125
therefrom, nor shall the transfer to or from the Ohio air quality 1126
development authority of title or possession of any air quality 1127
project or advanced energy project, part thereof, or item included 1128
or to be included in any such project, be subject to the taxes 1129
levied pursuant to Chapters 5739. and 5741. of the Revised Code, 1130
and the bonds and notes issued under this chapter, their transfer, 1131
and the income therefrom, including any profit made on the sale 1132
thereof, shall at all times be free from taxation within the 1133
state. 1134

Sec. 3706.16. The Ohio air quality development authority may 1135
acquire by purchase, whenever it finds such purchase expedient, 1136
any land, property, rights, rights-of-way, franchises, easements, 1137
and other interests in lands as it finds to be necessary or 1138
convenient for the construction and operation of any air quality 1139
project or advanced energy project, upon such terms and at such 1140
price as it considers reasonable and are agreed upon between the 1141
authority and the owner thereof, and take title thereto in the 1142
name of the state. 1143

Any governmental agency, notwithstanding any contrary 1144
provision of law and without the necessity for an advertisement, 1145
auction, order of court, or other action or formality, other than 1146
the regular and formal action of such governmental agency 1147
concerned, may lease, lend, grant, or convey to the authority, at 1148
its request, upon such terms as the proper authorities of such 1149
governmental agency find reasonable and fair any real property or 1150
interests therein including improvements thereto or personal 1151
property which is necessary or convenient to effect the authorized 1152
purposes of the authority, including public roads and real or 1153
personal property already devoted to public use. 1154

Sec. 3706.17. The Ohio air quality development authority may 1155
acquire by appropriation pursuant to division (J) of section 1156
3706.04 of the Revised Code any land, rights, rights-of-way, 1157
franchises, easements, or other property necessary or proper for 1158
the construction or the efficient operation of any air quality 1159
project or advanced energy project. In any proceedings for 1160
appropriation under this section, the procedure to be followed 1161
shall be in accordance with Chapter 163. of the Revised Code. 1162

This section does not empower the authority to take or 1163
disturb property or facilities belonging to and required for the 1164
proper and convenient operation of any public utility or any 1165
common carrier engaged in interstate commerce, unless provision is 1166
made for the restoration, relocation, or duplication of such 1167
property or facilities elsewhere at the sole cost of the 1168
authority. 1169

Sec. 3706.18. When the Ohio air quality development authority 1170
finds it necessary to change the location of any portion of any 1171
public road, state highway, railroad, or public utility facility 1172
in connection with the construction of an air quality project or 1173
advanced energy project, it shall cause the same to be 1174
reconstructed at such location as the division of government 1175
having jurisdiction over such road, highway, railroad, or public 1176
utility facility finds most favorable. Such reconstruction shall 1177
be of substantially the same type and in as good condition as the 1178
original road, highway, railroad, or public utility facility. The 1179
cost of such reconstruction, relocation, or removal and any damage 1180
incurred in changing the location of any such road, highway, 1181
railroad, or public utility facility shall be paid by the 1182
authority as a part of the cost of ~~such air quality~~ the project. 1183

When the authority finds it necessary that any public highway 1184
or portion thereof be vacated by reason of the acquisition or 1185

construction of an air quality project or advanced energy project, 1186
the authority may request the director of transportation, in 1187
writing, to vacate such highway or portion thereof in accordance 1188
with section 5511.07 of the Revised Code if the highway or portion 1189
thereof to be vacated is on the state highway system, or, if the 1190
highway or portion thereof to be vacated is under the jurisdiction 1191
of the county commissioners, the authority shall request the 1192
director, in writing, to petition the board of county 1193
commissioners, in the manner provided in section 5553.041 of the 1194
Revised Code, to vacate such highway or portion thereof. The 1195
authority shall pay to the director or to the county, as a part of 1196
the cost of ~~such air quality~~ the project, any amounts required to 1197
be deposited with any court in connection with proceedings for the 1198
determination of compensation and damages and all amounts of 1199
compensation and damages finally determined to be payable as a 1200
result of such vacation. 1201

The authority may make reasonable regulations for the 1202
installation, construction, maintenance, repair, renewal, 1203
relocation, and removal of railroad or public utility facilities 1204
in, on, over, or under any air quality project or advanced energy 1205
project. Whenever the authority determines that it is necessary 1206
that any such facilities installed or constructed in, on, over, or 1207
under property of the authority pursuant to such regulations be 1208
relocated, the public utility owning or operating such facilities 1209
shall relocate or remove them in accordance with the order of the 1210
authority. The cost and expenses of such relocation or removal, 1211
including the cost of installing such facilities in a new 1212
location, and the cost of any lands, or any rights or interests in 1213
lands, and the cost of any other rights, acquired to accomplish 1214
such relocation or removal, may be paid by the authority as a part 1215
of the cost of ~~such air quality~~ the project. In case of any such 1216
relocation or removal of facilities, the railroad or public 1217
utility owning or operating them, its successors, or assigns may 1218

maintain and operate such facilities, with the necessary 1219
appurtenances, in the new location in, on, over, or under the 1220
property of the authority for as long a period and upon the same 1221
terms as it had the right to maintain and operate such facilities 1222
in their former location. 1223

Sec. 4905.31. Except as provided in section 4933.29 of the 1224
Revised Code, Chapters 4901., 4903., 4905., 4907., 4909., 4921., 1225
~~and~~ 4923., and 4928. of the Revised Code do not prohibit a public 1226
utility from filing a schedule or entering into any reasonable 1227
arrangement with another public utility or with its customers, 1228
consumers, or employees providing for: 1229

(A) The division or distribution of its surplus profits; 1230

(B) A sliding scale of charges, including variations in rates 1231
based upon either of the following: 1232

(1) Stipulated variations in cost as provided in the schedule 1233
or arrangement; 1234

(2) Any emissions fee levied upon an electric light company 1235
under Substitute Senate Bill No. 359 of the 119th general assembly 1236
as provided in the schedule. The public utilities commission shall 1237
permit an electric light company to recover the emissions fee 1238
pursuant to such a variable rate schedule. 1239

(3) Any emissions fee levied upon an electric light company 1240
under division (C) or (D) of section 3745.11 of the Revised Code 1241
as provided in the schedule. The public utilities commission shall 1242
permit an electric light company to recover any such emission fee 1243
pursuant to such a variable rate schedule. 1244

(4) Any schedule of variable rates filed under division (B) 1245
of this section shall provide for the recovery of any such 1246
emissions fee by applying a uniform percentage increase to the 1247
base rate charged each customer of the electric light company for 1248

service during the period that the variable rate is in effect. 1249

(C) A minimum charge for service to be rendered unless such 1250
minimum charge is made or prohibited by the terms of the 1251
franchise, grant, or ordinance under which such public utility is 1252
operated; 1253

(D) A classification of service based upon the quantity used, 1254
the time when used, the purpose for which used, the duration of 1255
use, and any other reasonable consideration; 1256

(E) Any other financial device that may be practicable or 1257
advantageous to the parties interested. No such arrangement, 1258
sliding scale, minimum charge, classification, variable rate, or 1259
device is lawful unless it is filed with and approved by the 1260
commission. 1261

Every such public utility is required to conform its 1262
schedules of rates, tolls, and charges to such arrangement, 1263
sliding scale, classification, or other device, and where variable 1264
rates are provided for in any such schedule or arrangement, the 1265
cost data or factors upon which such rates are based and fixed 1266
shall be filed with the commission in such form and at such times 1267
as the commission directs. The commission shall review the cost 1268
data or factors upon which a variable rate schedule filed under 1269
division (B)(2) or (3) of this section is based and shall adjust 1270
the base rates of the electric light company or order the company 1271
to refund any charges that it has collected under the variable 1272
rate schedule that the commission finds to have resulted from 1273
errors or erroneous reporting. After recovery of all of the 1274
emissions fees upon which a variable rate authorized under 1275
division (B)(2) or (3) of this section is based, collection of the 1276
variable rate shall end and the variable rate schedule shall be 1277
terminated. 1278

Every such arrangement, sliding scale, minimum charge, 1279

classification, variable rate, or device shall be under the 1280
supervision and regulation of the commission, and is subject to 1281
change, alteration, or modification by the commission. 1282

Sec. 4905.40. (A) A public utility or a railroad may, when 1283
authorized by order of the public utilities commission, issue 1284
stocks, bonds, notes, and other evidences of indebtedness, payable 1285
at periods of more than twelve months after their date of 1286
issuance, when necessary: 1287

(1) For the acquisition of property, the construction, 1288
completion, extension, renewal, or improvement of its facilities, 1289
or the improvement of its service; or 1290

(2) For reorganization or readjustment of its indebtedness 1291
and capitalization, for the discharge or lawful refunding of its 1292
obligation, or for the reimbursement of moneys actually expended 1293
for such purposes from income or from any other moneys in the 1294
treasury of the public utility or railroad not secured or obtained 1295
from the issue of stocks, bonds, notes, or other evidences of 1296
indebtedness of such public utility or railroad. No reimbursement 1297
of moneys expended for such purposes from income or other moneys 1298
in the treasury shall be authorized unless the applicant has kept 1299
its accounts and vouchers of such expenditures in such manner as 1300
to enable the commission to ascertain the amount and purposes of 1301
such expenditures. 1302

(B) Any public utility, subject to the jurisdiction of the 1303
commission, may, when authorized by the commission, issue shares 1304
of common capital stock to acquire or pay for shares of common 1305
capital stock of a public utility of this or an adjoining state 1306
whose property is so located as to permit the operation of the 1307
properties of such utilities as an integrated system if the 1308
applicant owns, or by this issue will acquire, not less than 1309
sixty-five per cent of the issued and outstanding common capital 1310

shares of the company whose shares are to be acquired, and if the
consideration to be capitalized by the acquiring company does not
exceed the par or stated value at which the shares so acquired
were issued.

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

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

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

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

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

(2) Whether the amount of the issue and the probable cost of

such stocks, bonds, notes, or other evidences of indebtedness is 1342
just and reasonable; 1343

(3) What effect, if any, the issuance of such stocks, bonds, 1344
notes, or other evidences of indebtedness and the cost thereof 1345
will have upon the present and prospective revenue requirements of 1346
the utility. 1347

(G) Sections 4905.40 to 4905.42 of the Revised Code do not 1348
apply to stocks, bonds, notes, or other evidence of indebtedness 1349
issued for the purpose of financing oil or natural gas drilling, 1350
producing, gathering, and associated activities and facilities by 1351
a producer which supplies to no more than twenty purchasers only 1352
such gas as is produced, gathered, or purchased by such producer 1353
within this state. 1354

(H) Each public utility seeking authorization from the 1355
commission for the issuance of securities to finance the 1356
installation, construction, extension, or improvement of an air 1357
quality facility or advanced energy facility, as defined in 1358
section 3706.01 of the Revised Code, shall consider the 1359
availability of financing therefor from the Ohio air quality 1360
development authority and shall demonstrate to the commission that 1361
the proposed financing will be obtained on the best terms 1362
obtainable. 1363

Sec. 4909.161. (A) Notwithstanding the provisions of Chapters 1364
4905. and 4909. of the Revised Code, the payment of any type of 1365
increased excise tax levy shall be considered to be a normal 1366
expense incurred by a public utility in the course of rendering 1367
service to the public, and may be recovered as such in accordance 1368
with an order of the public utilities commission. Any public 1369
utility required to pay any such increased excise tax levy may 1370
file with the public utilities commission revised rate schedules 1371
that will permit full recovery on an interim or permanent basis in 1372

its rates, of the amount of any resultant increased tax payments 1373
and the commission shall promptly act to approve such schedules. 1374

1375

(B) Notwithstanding Chapters 4905. and 4909. of the Revised 1376
Code, the payment of the kilowatt-hour tax imposed by section 1377
5727.81 of the Revised Code shall be considered a normal expense 1378
incurred by an electric distribution utility, as defined in 1379
section 4928.01 of the Revised Code, in the course of rendering 1380
service to the public, and may be recovered as such in accordance 1381
with an order of the commission. An electric distribution utility 1382
required to pay the kilowatt-hour tax may file with the commission 1383
revised rate schedules, consistent with Chapters 4905. and 4909. 1384
~~and division (A)(6) of section 4928.34~~ of the Revised Code, that 1385
will permit full recovery on a permanent basis in its rates, of 1386
the amount of any resultant tax payments, after taking into 1387
account any reductions of taxes in its rates resulting from Sub. 1388
S.B. No. 3 of the 123rd general assembly, and the commission shall 1389
act promptly to approve those schedules. 1390

Sec. 4928.01. (A) As used in this chapter: 1391

(1) "Ancillary service" means any function necessary to the 1392
provision of electric transmission or distribution service to a 1393
retail customer and includes, but is not limited to, scheduling, 1394
system control, and dispatch services; reactive supply from 1395
generation resources and voltage control service; reactive supply 1396
from transmission resources service; regulation service; frequency 1397
response service; energy imbalance service; operating 1398
reserve-spinning reserve service; operating reserve-supplemental 1399
reserve service; load following; back-up supply service; 1400
real-power loss replacement service; dynamic scheduling; system 1401
black start capability; and network stability service. 1402

(2) "Billing and collection agent" means a fully independent 1403

agent, not affiliated with or otherwise controlled by an electric utility, electric services company, electric cooperative, or governmental aggregator subject to certification under section 4928.08 of the Revised Code, to the extent that the agent is under contract with such utility, company, cooperative, or aggregator solely to provide billing and collection for retail electric service on behalf of the utility company, cooperative, or aggregator.

(3) "Certified territory" means the certified territory established for an electric supplier under sections 4933.81 to 4933.90 of the Revised Code as amended by Sub. S.B. No. 3 of the 123rd general assembly.

(4) "Competitive retail electric service" means a component of retail electric service that is competitive as provided under division (B) of this section.

(5) "Electric cooperative" means a not-for-profit electric light company that both is or has been financed in whole or in part under the "Rural Electrification Act of 1936," 49 Stat. 1363, 7 U.S.C. 901, and owns or operates facilities in this state to generate, transmit, or distribute electricity, or a not-for-profit successor of such company.

(6) "Electric distribution utility" means an electric utility that supplies at least retail electric distribution service.

(7) "Electric light company" has the same meaning as in section 4905.03 of the Revised Code and includes an electric services company, but excludes any self-generator to the extent it consumes electricity it so produces or to the extent it sells for resale electricity it so produces.

(8) "Electric load center" has the same meaning as in section 4933.81 of the Revised Code.

(9) "Electric services company" means an electric light

company that is engaged on a for-profit or not-for-profit basis in 1435
the business of supplying or arranging for the supply of only a 1436
competitive retail electric service in this state. "Electric 1437
services company" includes a power marketer, power broker, 1438
aggregator, or independent power producer but excludes an electric 1439
cooperative, municipal electric utility, governmental aggregator, 1440
or billing and collection agent. 1441

(10) "Electric supplier" has the same meaning as in section 1442
4933.81 of the Revised Code. 1443

(11) "Electric utility" means an electric light company that 1444
is engaged on a for-profit basis in the business of supplying a 1445
noncompetitive retail electric service in this state or in the 1446
businesses of supplying both a noncompetitive and a competitive 1447
retail electric service in this state. "Electric utility" excludes 1448
a municipal electric utility or a billing and collection agent. 1449

(12) "Firm electric service" means electric service other 1450
than nonfirm electric service. 1451

(13) "Governmental aggregator" means a legislative authority 1452
of a municipal corporation, a board of township trustees, or a 1453
board of county commissioners acting as an aggregator for the 1454
provision of a competitive retail electric service under authority 1455
conferred under section 4928.20 of the Revised Code. 1456

(14) A person acts "knowingly," regardless of the person's 1457
purpose, when the person is aware that the person's conduct will 1458
probably cause a certain result or will probably be of a certain 1459
nature. A person has knowledge of circumstances when the person is 1460
aware that such circumstances probably exist. 1461

(15) "Level of funding for low-income customer energy 1462
efficiency programs provided through electric utility rates" means 1463
the level of funds specifically included in an electric utility's 1464
rates on October 5, 1999, pursuant to an order of the public 1465

utilities commission issued under Chapter 4905. or 4909. of the 1466
Revised Code and in effect on October 4, 1999, for the purpose of 1467
improving the energy efficiency of housing for the utility's 1468
low-income customers. The term excludes the level of any such 1469
funds committed to a specific nonprofit organization or 1470
organizations pursuant to a stipulation or contract. 1471

(16) "Low-income customer assistance programs" means the 1472
percentage of income payment plan program, the home energy 1473
assistance program, the home weatherization assistance program, 1474
and the targeted energy efficiency and weatherization program. 1475

~~(17) "Market development period" for an electric utility 1476
means the period of time beginning on the starting date of 1477
competitive retail electric service and ending on the applicable 1478
date for that utility as specified in section 4928.40 of the 1479
Revised Code, irrespective of whether the utility applies to 1480
receive transition revenues under this chapter. 1481~~

~~(18)~~ "Market power" means the ability to impose on customers 1482
a sustained price for a product or service above the price that 1483
would prevail in a competitive market. 1484

~~(19)~~(18) "Mercantile commercial customer" means a commercial 1485
or industrial customer if the electricity consumed is for 1486
nonresidential use and the customer consumes more than seven 1487
hundred thousand kilowatt hours per year or is part of a national 1488
account involving multiple facilities in one or more states. 1489

~~(20)~~(19) "Municipal electric utility" means a municipal 1490
corporation that owns or operates facilities to generate, 1491
transmit, or distribute electricity. 1492

~~(21)~~(20) "Noncompetitive retail electric service" means a 1493
component of retail electric service that is noncompetitive as 1494
provided under division (B) of this section. 1495

~~(22) "Nonfirm electric service" means electric service 1496~~

~~provided pursuant to a schedule filed under section 4905.30 of the~~ 1497
~~Revised Code or pursuant to an arrangement under section 4905.31~~ 1498
~~of the Revised Code, which schedule or arrangement includes~~ 1499
~~conditions that may require the customer to curtail or interrupt~~ 1500
~~electric usage during nonemergency circumstances upon notification~~ 1501
~~by an electric utility.~~ 1502

~~(23)~~(21) "Percentage of income payment plan arrears" means 1503
funds eligible for collection through the percentage of income 1504
payment plan rider, but uncollected as of July 1, 2000. 1505

~~(24)~~(22) "Person" has the same meaning as in section 1.59 of 1506
the Revised Code. 1507

~~(25)~~(23) "Advanced energy project" means any technologies, 1508
products, activities, or management practices or strategies that 1509
facilitate the generation or use of electricity and that reduce or 1510
support the reduction of energy consumption or support the 1511
production of clean, renewable energy for industrial, 1512
distribution, commercial, institutional, governmental, research, 1513
not-for-profit, or residential energy users. Such energy includes, 1514
but is not limited to, wind power; geothermal energy; solar 1515
thermal energy; and energy produced by micro turbines in 1516
distributed generation applications with high electric 1517
efficiencies, by combined heat and power applications, by fuel 1518
cells powered by hydrogen derived from wind, solar, biomass, 1519
hydroelectric, landfill gas, or geothermal sources, or by solar 1520
electric generation, landfill gas, or hydroelectric generation. 1521

~~(26)~~ "Regulatory assets" means the unamortized net regulatory 1522
assets that are capitalized or deferred on the regulatory books of 1523
the electric utility, pursuant to an order or practice of the 1524
public utilities commission or pursuant to generally accepted 1525
accounting principles as a result of a prior commission 1526
rate making decision, and that would otherwise have been charged 1527
to expense as incurred or would not have been capitalized or 1528

~~otherwise deferred for future regulatory consideration absent 1529
commission action. "Regulatory assets" includes, but is not 1530
limited to, all deferred demand side management costs; all 1531
deferred percentage of income payment plan arrears; 1532
post in service capitalized charges and assets recognized in 1533
connection with statement of financial accounting standards no. 1534
109 (receivables from customers for income taxes); future nuclear 1535
decommissioning costs and fuel disposal costs as those costs have 1536
been determined by the commission in the electric utility's most 1537
recent rate or accounting application proceeding addressing such 1538
costs; the undepreciated costs of safety and radiation control 1539
equipment on nuclear generating plants owned or leased by an 1540
electric utility; and fuel costs currently deferred pursuant to 1541
the terms of one or more settlement agreements approved by the 1542
commission. 1543~~

~~(27)~~(24) "Retail electric service" means any service involved 1544
in supplying or arranging for the supply of electricity to 1545
ultimate consumers in this state, from the point of generation to 1546
the point of consumption. For the purposes of this chapter, retail 1547
electric service includes one or more of the following "service 1548
components": generation service, aggregation service, power 1549
marketing service, power brokerage service, transmission service, 1550
distribution service, ancillary service, metering service, and 1551
billing and collection service. 1552

~~(28) "Small electric generation facility" means an electric 1553
generation plant and associated facilities designed for, or 1554
capable of, operation at a capacity of less than two megawatts. 1555~~

~~(29)~~(25) "Starting date of competitive retail electric 1556
service" means January 1, 2001, ~~except as provided in division (C)~~ 1557
~~of this section.~~ 1558

~~(30)~~(26) "Customer-generator" means a user of a net metering 1559
system. 1560

~~(31)~~(27) "Net metering" means measuring the difference in an applicable billing period between the electricity supplied by an electric service provider and the electricity generated by a customer-generator that is fed back to the electric service provider.

~~(32)~~(28) "Net metering system" means a facility for the production of electrical energy that does all of the following:

(a) Uses as its fuel either solar, wind, biomass, landfill gas, or hydropower, or uses a microturbine or a fuel cell;

(b) Is located on a customer-generator's premises;

(c) Operates in parallel with the electric utility's transmission and distribution facilities;

(d) Is intended primarily to offset part or all of the customer-generator's requirements for electricity.

~~(33)~~(29) "Self-generator" means an entity in this state that owns an electric generation facility that produces electricity primarily for the owner's consumption and that may provide any such excess electricity to retail electric service providers, whether the facility is installed or operated by the owner or by an agent under a contract.

(B) For the purposes of this chapter, a retail electric service component shall be deemed a competitive retail electric service if the service component is competitive pursuant to a declaration by a provision of the Revised Code or pursuant to an order of the public utilities commission authorized under division (A) of section 4928.04 of the Revised Code. Otherwise, the service component shall be deemed a noncompetitive retail electric service.

~~(C) Prior to January 1, 2001, and after application by an electric utility, notice, and an opportunity to be heard, the~~

~~public utilities commission may issue an order delaying the 1591
January 1, 2001, starting date of competitive retail electric 1592
service for the electric utility for a specified number of days 1593
not to exceed six months, but only for extreme technical 1594
conditions precluding the start of competitive retail electric 1595
service on January 1, 2001. 1596~~

Sec. 4928.02. It is the policy of this state to do the 1597
following throughout this state ~~beginning on the starting date of 1598
competitive retail electric service: 1599~~

(A) Ensure the availability to consumers of adequate, 1600
reliable, safe, efficient, nondiscriminatory, and reasonably 1601
priced retail electric service; 1602

(B) Ensure the availability of unbundled and comparable 1603
retail electric service that provides consumers with the supplier, 1604
price, terms, conditions, and quality options they elect to meet 1605
their respective needs; 1606

(C) Ensure diversity of electricity supplies and suppliers, 1607
by giving consumers effective choices over the selection of those 1608
supplies and suppliers and by encouraging the development of 1609
distributed and small generation facilities; 1610

(D) Encourage innovation and market access for cost-effective 1611
~~supply and demand side~~ retail electric service including, but not 1612
limited to, demand-side management, time-differentiated pricing, 1613
and implementation of advanced metering infrastructure; 1614

(E) Encourage cost-effective and efficient access to 1615
information regarding the operation of the transmission and 1616
distribution systems of electric utilities in order to promote 1617
both effective customer choice of retail electric service and the 1618
development of performance standards and targets for service 1619
quality for all consumers, including annual achievement reports 1620

written in plain language; 1621

(F) Ensure that an electric utility's transmission and distribution systems are available to a customer-generator or owner of distributed generation, so that the customer-generator or owner can market and deliver the electricity it produces; 1622
1623
1624
1625

(G) Recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment; 1626
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1628

~~(G)~~(H) Ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa; 1629
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1633

~~(H)~~(I) Ensure retail electric service consumers just and reasonable rates and protection against unreasonable sales practices, market deficiencies, and market power; 1634
1635
1636

~~(I)~~(J) Preclude imbalances in knowledge and expertise among parties in a proceeding under this chapter to eliminate any appearance of disproportionate influence by any of those parties; 1637
1638
1639

(K) Ensure that consumers and shareholders share the benefits of electric utility investment in facilities supplying retail electric generation service; 1640
1641
1642

(L) Provide coherent, transparent means of giving appropriate incentives to technologies that can adapt successfully to potential environmental mandates; 1643
1644
1645

(M) Protect at-risk populations when considering the implementation of any new advanced energy technology; 1646
1647

(N) Encourage implementation of distributed generation across customer classes through regular review and updating of rules governing critical issues such as, but not limited to, 1648
1649
1650

interconnection standards, standby charges, and net metering; 1651

(O) Encourage the education of small business owners in this 1652
state regarding the use of, and encourage the use of, energy 1653
efficiency programs and advanced energy technologies in their 1654
businesses; 1655

(P) Facilitate the state's effectiveness in the global 1656
economy. 1657

In carrying out this policy, the commission shall consider 1658
rules as they apply to the costs of distribution infrastructure, 1659
including, but not limited to, line extensions for the purpose of 1660
development in this state. 1661

Sec. 4928.05. (A)(1)(a) On and after the starting date of 1662
competitive retail electric service, a competitive retail electric 1663
service supplied by an electric utility or electric services 1664
company shall not be subject to supervision and regulation by a 1665
municipal corporation under Chapter 743. of the Revised Code or by 1666
the public utilities commission under Chapters 4901. to 4909., 1667
4933., 4935., and 4963. of the Revised Code, except ~~section~~ 1668
sections 4905.10 and 4905.31, division (B) of section 4905.33, and 1669
sections 4905.35 and 4933.81 to 4933.90; except sections 4905.06, 1670
4935.03, 4963.40, and 4963.41 of the Revised Code only to the 1671
extent related to service reliability and public safety; and 1672
except as otherwise provided in this chapter. The commission's 1673
authority to enforce those excepted provisions with respect to a 1674
competitive retail electric service shall be such authority as is 1675
provided for their enforcement under Chapters 4901. to 4909., 1676
4933., 4935., and 4963. of the Revised Code and this chapter. 1677

(b) Notwithstanding division (A)(1)(a) of this section, the 1678
commission may so supervise and regulate competitive retail 1679
electric service provided to consumers by an electric utility in 1680
this state if the commission determines the supervision and 1681

regulation is necessary to implement the state policy specified in 1682
section 4928.02 of the Revised Code. 1683

(c) On and after the starting date of competitive retail 1684
electric service, a competitive retail electric service supplied 1685
by an electric cooperative shall not be subject to supervision and 1686
regulation by the commission under Chapters 4901. to 4909., 4933., 1687
4935., and 4963. of the Revised Code, except as otherwise 1688
expressly provided in sections 4928.01 to 4928.10 and 4928.16 of 1689
the Revised Code. 1690

(2) On and after the starting date of competitive retail 1691
electric service, a noncompetitive retail electric service 1692
supplied by an electric utility shall be subject to supervision 1693
and regulation by the commission under Chapters 4901. to 4909., 1694
4933., 4935., and 4963. of the Revised Code and this chapter, to 1695
the extent that authority is not preempted by federal law. The 1696
commission's authority to enforce those provisions with respect to 1697
a noncompetitive retail electric service shall be the authority 1698
provided under those chapters and this chapter, to the extent the 1699
authority is not preempted by federal law. 1700

The commission shall exercise its jurisdiction with respect 1701
to the delivery of electricity by an electric utility in this 1702
state on or after the starting date of competitive retail electric 1703
service so as to ensure that no aspect of the delivery of 1704
electricity by the utility to consumers in this state that 1705
consists of a noncompetitive retail electric service is 1706
unregulated. 1707

On and after that starting date, a noncompetitive retail 1708
electric service supplied by an electric cooperative shall not be 1709
subject to supervision and regulation by the commission under 1710
Chapters 4901. to 4909., 4933., 4935., and 4963. of the Revised 1711
Code, except sections 4933.81 to 4933.90 and 4935.03 of the 1712
Revised Code. The commission's authority to enforce those excepted 1713

sections with respect to a noncompetitive retail electric service 1714
of an electric cooperative shall be such authority as is provided 1715
for their enforcement under Chapters 4933. and 4935. of the 1716
Revised Code. 1717

(B) Nothing in this chapter affects the authority of the 1718
commission under Title XLIX of the Revised Code to regulate an 1719
electric light company in this state or an electric service 1720
supplied in this state prior to the starting date of competitive 1721
retail electric service. 1722

Sec. 4928.06. (A) Beginning on the starting date of 1723
competitive retail electric service, the public utilities 1724
commission shall ensure that the policy specified in section 1725
4928.02 of the Revised Code is effectuated. To the extent 1726
necessary, the commission shall adopt rules to carry out this 1727
chapter. Initial rules necessary for the commencement of the 1728
competitive retail electric service under this chapter shall be 1729
adopted within one hundred eighty days after the effective date of 1730
this section. Except as otherwise provided in this chapter, the 1731
proceedings and orders of the commission under the chapter shall 1732
be subject to and governed by Chapter 4903. of the Revised Code. 1733

(B) If the commission determines, on or after the starting 1734
date of competitive retail electric service, that there is a 1735
decline or loss of effective competition with respect to a 1736
competitive retail electric service of an electric utility, which 1737
service was declared competitive by commission order issued 1738
pursuant to division (A) of section 4928.04 of the Revised Code, 1739
the commission shall ensure that that service is provided at 1740
compensatory, fair, and nondiscriminatory prices and terms and 1741
conditions. 1742

(C) In addition to its authority under section 4928.04 of the 1743
Revised Code and divisions (A) and (B) of this section, the 1744

commission, on an ongoing basis, shall monitor and evaluate the 1745
provision of retail electric service in this state for the purpose 1746
of discerning any noncompetitive retail electric service that 1747
should be available on a competitive basis on or after the 1748
starting date of competitive retail electric service pursuant to a 1749
declaration in the Revised Code, and for the purpose of discerning 1750
any competitive retail electric service that is no longer subject 1751
to effective competition on or after that date. Upon such 1752
evaluation, the commission periodically shall report its findings 1753
and any recommendations for legislation to the standing committees 1754
of both houses of the general assembly that have primary 1755
jurisdiction regarding public utility legislation. Until 2008, the 1756
commission and the consumer's counsel also shall provide biennial 1757
reports to those standing committees, regarding the effectiveness 1758
of competition in the supply of competitive retail electric 1759
services in this state. ~~In addition, until the end of all market 1760
development periods as determined by the commission under section 1761
4928.40 of the Revised Code, those standing committees shall meet 1762
at least biennially to consider the effect on this state of 1763
electric service restructuring and to receive reports from the 1764
commission, consumers' counsel, and director of development. 1765~~

(D) In determining, for purposes of division (B) or (C) of 1766
this section, whether there is effective competition in the 1767
provision of a retail electric service or reasonably available 1768
alternatives for that service, the commission shall consider 1769
factors including, but not limited to, all of the following: 1770

(1) The number and size of alternative providers of that 1771
service; 1772

(2) The extent to which the service is available from 1773
alternative suppliers in the relevant market; 1774

(3) The ability of alternative suppliers to make functionally 1775
equivalent or substitute services readily available at competitive 1776

prices, terms, and conditions; 1777

(4) Other indicators of market power, which may include 1778
market share, growth in market share, ease of entry, and the 1779
affiliation of suppliers of services. 1780

The burden of proof shall be on any entity requesting, under 1781
division (B) or (C) of this section, a determination by the 1782
commission of the existence of or a lack of effective competition 1783
or reasonably available alternatives. 1784

(E)(1) Beginning on the starting date of competitive retail 1785
electric service, the commission has authority under Chapters 1786
4901. to 4909. of the Revised Code, and shall exercise that 1787
authority, to resolve abuses of market power by any electric 1788
utility that interfere with effective competition in the provision 1789
of retail electric service. 1790

(2) In addition to the commission's authority under division 1791
(E)(1) of this section, the commission, ~~beginning the first year~~ 1792
~~after the market development period of a particular electric~~ 1793
~~utility and~~ after reasonable notice and opportunity for hearing, 1794
may take such measures within a transmission constrained area in 1795
the utility's certified territory as are necessary to ensure that 1796
retail electric generation service is provided at reasonable rates 1797
within that area. The commission may exercise this authority only 1798
upon findings that an electric utility is or has engaged in the 1799
abuse of market power and that that abuse is not adequately 1800
mitigated by rules and practices of any independent transmission 1801
entity controlling the transmission facilities. Any such measure 1802
shall be taken only to the extent necessary to protect customers 1803
in the area from the particular abuse of market power and to the 1804
extent the commission's authority is not preempted by federal law. 1805
The measure shall remain in effect until the commission, after 1806
reasonable notice and opportunity for hearing, determines that the 1807
particular abuse of market power has been mitigated. 1808

(F) An electric utility, electric services company, electric cooperative, or governmental aggregator subject to certification under section 4928.08 of the Revised Code shall provide the commission with such information, regarding a competitive retail electric service for which it is subject to certification, as the commission considers necessary to carry out this chapter. An electric utility shall provide the commission with such information as the commission considers necessary to carry out divisions (B) to (E) of this section. The commission shall take such measures as it considers necessary to protect the confidentiality of any such information.

The commission shall require each electric utility to file with the commission on and after the starting date of competitive retail electric service an annual report of its intrastate gross receipts and sales of kilowatt hours of electricity, and shall require each electric services company, electric cooperative, and governmental aggregator subject to certification to file an annual report on and after that starting date of such receipts and sales from the provision of those retail electric services for which it is subject to certification. For the purpose of the reports, sales of kilowatt hours of electricity are deemed to occur at the meter of the retail customer.

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 shall 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 1841
Code. 1842

Sec. 4928.12. (A) ~~Except as otherwise provided in sections~~ 1843
~~4928.31 to 4928.40 of the Revised Code, no~~ No entity shall own or 1844
control transmission facilities as defined under federal law and 1845
located in this state on or after the starting date of competitive 1846
retail electric service unless that entity is a member of, and 1847
transfers control of those facilities to, one or more qualifying 1848
transmission entities, as described in division (B) of this 1849
section, that are operational. 1850

(B) An entity that owns or controls transmission facilities 1851
located in this state complies with division (A) of this section 1852
if each transmission entity of which it is a member meets all of 1853
the following specifications: 1854

(1) The transmission entity is approved by the federal energy 1855
regulatory commission. 1856

(2) The transmission entity effects separate control of 1857
transmission facilities from control of generation facilities. 1858

(3) The transmission entity implements, to the extent 1859
reasonably possible, policies and procedures designed to minimize 1860
pancaked transmission rates within this state. 1861

(4) The transmission entity improves service reliability 1862
within this state. 1863

(5) The transmission entity achieves the objectives of an 1864
open and competitive electric generation marketplace, elimination 1865
of barriers to market entry, and preclusion of control of 1866
bottleneck electric transmission facilities in the provision of 1867
retail electric service. 1868

(6) The transmission entity is of sufficient scope or 1869

otherwise operates to substantially increase economical supply 1870
options for consumers. 1871

(7) The governance structure or control of the transmission 1872
entity is independent of the users of the transmission facilities, 1873
and no member of its board of directors has an affiliation, with 1874
such a user or with an affiliate of a user during the member's 1875
tenure on the board, such as to unduly affect the transmission 1876
entity's performance. For the purpose of division (B)(7) of this 1877
section, a "user" is any entity or affiliate of that entity that 1878
buys or sells electric energy in the transmission entity's region 1879
or in a neighboring region. 1880

(8) The transmission entity operates under policies that 1881
promote positive performance designed to satisfy the electricity 1882
requirements of customers. 1883

(9) The transmission entity is capable of maintaining 1884
real-time reliability of the electric transmission system, 1885
ensuring comparable and nondiscriminatory transmission access and 1886
necessary services, minimizing system congestion, and further 1887
addressing real or potential transmission constraints. 1888

(C) To the extent that a transmission entity under division 1889
(A) of this section is authorized to build transmission 1890
facilities, that transmission entity has the powers provided in 1891
and is subject to sections 1723.01 to 1723.08 of the Revised Code. 1892

(D) For the purpose of forming or participating in a regional 1893
regulatory oversight body or mechanism developed for any 1894
transmission entity under division (A) of this section that is of 1895
regional scope and operates within this state: 1896

(1) The commission shall make joint investigations, hold 1897
joint hearings, within or outside this state, and issue joint or 1898
concurrent orders in conjunction or concurrence with any official 1899
or agency of any state or of the United States, whether in the 1900

holding of those investigations or hearings, or in the making of 1901
those orders, the commission is functioning under agreements or 1902
compacts between states, under the concurrent power of states to 1903
regulate interstate commerce, as an agency of the United States, 1904
or otherwise. 1905

(2) The commission shall negotiate and enter into agreements 1906
or compacts with agencies of other states for cooperative 1907
regulatory efforts and for the enforcement of the respective state 1908
laws regarding the transmission entity. 1909

(E) If a qualifying transmission entity is not operational as 1910
contemplated in division (A) of this section, ~~division (A)(13) of~~ 1911
~~section 4928.34 of the Revised Code, or division (C) of section~~ 1912
~~4928.35 of the Revised Code,~~ the commission by rule or order shall 1913
take such measures or impose such requirements on all for-profit 1914
entities that own or control electric transmission facilities 1915
located in this state as the commission determines necessary and 1916
proper to achieve independent, nondiscriminatory operation of, and 1917
separate ownership and control of, such electric transmission 1918
facilities on or after the starting date of competitive retail 1919
electric service. 1920

Sec. 4928.14. (A) ~~After its market development period, an~~ An 1921
electric distribution utility in this state shall provide 1922
consumers, on a comparable and nondiscriminatory basis within its 1923
certified territory, a ~~market-based~~ standard service offer of all 1924
competitive retail electric services necessary to maintain 1925
essential electric service to consumers, including a firm supply 1926
of electric generation service. ~~Such offer shall be filed with the~~ 1927
~~public utilities commission under section 4909.18 of the Revised~~ 1928
~~Code.~~ 1929

~~(B) After that market development period, each electric~~ 1930
~~distribution utility also shall offer customers within its~~ 1931

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

~~(C) After the market development period, the (B) Beginning the first day of January of the calendar year that follows the scheduled expiration of an electric distribution utility's rate plan, the standard service offer of the utility, for the purpose of compliance with division (A) of this section, shall consist of all of the following:~~

~~(1) As to each customer class, the total charges to customers under that rate plan that are in effect, as filed with the commission, on the first day of February of that year of expiration, exclusive of any charges for transmission and distribution services;~~

~~(2) As to each customer class, any adjustments for costs that~~

are incurred by the utility, the recovery of which are pursuant to 1964
an application authorized by the commission under the rate plan, 1965
and that go into effect on or after that first day of February and 1966
before that first day of January; 1967

(3) As to each customer class, any adjustments for deferred 1968
costs authorized by commission order, to the extent not included 1969
under divisions (B)(1) and (2) of this section; 1970

(4) As to the specific customer, any price applicable to that 1971
customer that was approved by commission order under section 1972
4905.31 of the Revised Code issued prior to October 28, 2007, 1973
exclusive of the transmission and distribution service components 1974
of that price. As used in divisions (B) and (D)(2)(a) of this 1975
section, "rate plan" means the standard service offer order in 1976
effect on the effective date of the amendment of this section by 1977
S.B. 221 of the 127th general assembly. 1978

(C) For the purpose of complying with division (A) of this 1979
section, beginning on the effective date of the amendment of this 1980
section by S.B. 221 of the 127th general assembly and pursuant to 1981
filing requirements the commission shall prescribe by rule, a 1982
utility may file an application for commission approval of a 1983
modified standard service offer. Upon that filing, the commission 1984
shall set the date and time for hearing, send written notice of 1985
the hearing to the utility, and publish notice of the hearing one 1986
time in a newspaper of general circulation in each county in the 1987
service area affected by the application. 1988

(D)(1) Subject to division (D) of this section, a standard 1989
service offer proposed under division (C) of this section, and 1990
herein designated an electric security plan, shall adjust a 1991
utility's standard service offer relative to changes in one or 1992
more costs incurred by the utility to serve jurisdictional load in 1993
this state and specified in the application. An adjustment for a 1994
change in a capitalized cost shall also include a just and 1995

reasonable return on that cost. The amount of any adjustment under 1996
division (D) of this section shall be offset by any decrease in 1997
costs, excluding reductions in amortization relating to costs 1998
recovered through a regulatory transition charge authorized by the 1999
commission as of February 1, 2008, and by any change in 2000
kilowatt-hours sold that are associated with serving 2001
jurisdictional load in this state. Costs, as determined by the 2002
commission, may include, but are not limited to, any of the 2003
following: 2004

(a) Environmental compliance costs for one or more specified 2005
generating facilities, as determined by the commission, except 2006
those included under division (D)(1)(c) of this section; 2007

(b) The cost of fuel for one or more specified generating 2008
facilities or of purchased power; 2009

(c) The cost of construction of one or more new, specified 2010
generating facilities that, superseding Chapter 4906. of the 2011
Revised Code, the commission determines and certifies the need 2012
for as to the standard service offer on the basis of resource 2013
planning projections developed in accordance with policies and 2014
procedures the commission shall prescribe by rule; or the cost, in 2015
excess of two hundred fifty million dollars, of construction of an 2016
environmental retrofit to a specified, then-existing generating 2017
facility. A price adjustment for such a new facility or 2018
environmental retrofit shall be consistent with section 4909.15 of 2019
the Revised Code and consistent with section 4909.18 of the 2020
Revised Code as applicable; and, subject to such terms and 2021
conditions as the commission prescribes in an order issued under 2022
division (D)(6) of this section, shall be for the actual life of 2023
the facility. 2024

(d) Operating, maintenance, and other costs, including taxes; 2025

(e) Costs of investment in one or more specified generating 2026

facilities; 2027

(f) Costs of providing standby and default service pursuant 2028
to divisions (A) and (H) of this section. 2029

However, costs under division (D) of this section shall 2030
exclude forfeitures, administrative or civil penalties, fines, 2031
court costs, and attorney's fees associated with violations of or 2032
noncompliances with federal or any state's environmental laws or 2033
with facilities' permits. 2034

A standard service offer that includes costs under division 2035
(D)(1)(a), (b), (d), (e), or (f) of this section may provide for 2036
automatic increases or decreases in the standard service offer 2037
price, but, in the case of a cost under division (D)(1)(d) of this 2038
section, only if the cost was outside of the utility's control or 2039
responsibility. 2040

In the case of an advanced energy technology or facility 2041
under section 4928.142 of the Revised Code, the costs of which are 2042
included in a standard service offer as authorized under this 2043
division, the portion of the standard service offer price 2044
attributable to those costs shall be bypassable by a consumer that 2045
has exercised choice of supplier under section 4928.03 of the 2046
Revised Code, but bypassable only to the extent the commission 2047
determines that the advanced energy technology or facilities 2048
implemented by that supplier are comparable to that implemented by 2049
the utility, under section 4928.142 of the Revised Code as of the 2050
issuance of an order under division (D)(6) of this section, for 2051
the purpose of the utility's compliance with division (A) of 2052
section 4928.142 of the Revised Code. 2053

(2)(a) For the purpose of a utility's initial application 2054
under division (D)(1) of this section, the adjustment for a 2055
particular cost shall be determined using a baseline measure of 2056
that cost as of the first day of February of the calendar year in 2057

which the utility's rate plan is scheduled to expire. 2058

(b) If a utility continues to provide its standard service offer pursuant to an electric security plan, for any later such application by the utility, the baseline measure shall be the cost, and the associated kilowatt-hours sold, as determined under the utility's then-existing approved plan. With regard to a generating facility under division (D)(1)(c) of this section, associated decreases in cost and changes in kilowatt-hours sold shall include, but are not limited to, retirement of all or part of any other generating facility, the cost of which had been included in the utility's rate base prior to the effective date of the amendment of this section by Sub. S.B. 221 of the 127th general assembly or was included under division (D)(1)(c) or (e) of this section. 2059
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(3) A standard service offer under division (D)(1) of this section may specify the standard, factors, or methodology that the commission shall use for the purpose of division (E)(2)(c) of this section and within such timeframe as the commission specifies in its order under division (D)(6) of this section, if the utility later files an application pursuant to division (E) of this section. 2072
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(4) Regarding an application filed under division (D)(1) of this section by a utility that transferred all or part of its generating facilities to an affiliate of the utility and to the extent authorized by federal law, the commission may consider purchased power or other contracts or agreements between the utility and any of its affiliates or between the utility and the holding company owning or controlling the utility. 2079
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(5) For the purpose of division (D) of this section, if the utility has entered into a contract or agreement with an affiliate for the provision of a competitive retail electric service, the commission shall treat as a cost of the utility under the electric 2086
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security plan the affiliate's costs of providing that service. 2090

(6) The burden of proof under division (D)(6) of this section shall be on the utility. The commission by order may approve or modify and approve a standard service offer under division (D)(1) of this section if it finds both of the following: 2091
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(a) The offer and the prices it establishes are just and reasonable as to each customer class and are consistent with the policy specified in section 4928.02 of the Revised Code. 2095
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(b) The utility is in compliance with section 4928.141 of the Revised Code. In its order, the commission shall prescribe such requirements for the utility as the commission considers necessary for the utility to implement applicable objectives of the policy specified in section 4928.02 of the Revised Code. The order also may provide a schedule and the procedural and substantive terms and conditions for periodic commission review of the approved offer. 2098
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(E)(1) As authorized under this division, a standard service offer proposed under division (C) of this section, and herein designated a market rate option, shall require that the utility's standard service offer price be determined periodically through an open, competitive bidding process. Prior to the approval of such an offer under division (E)(2) of this section, the utility shall conduct such competitive bidding for the purpose of establishing the original price under the offer. 2106
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(2) The burden of proof under division (E)(2) of this section shall be on the utility. The commission by order shall approve or modify and approve the standard service offer under division (E)(1) of this section if the commission determines all of the following are met: 2114
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(a) The offer and the prices it establishes are just and reasonable as to each customer class and are consistent with the 2119
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policy specified in section 4928.02 of the Revised Code. 2121

(b) The utility is in compliance with section 4928.141 of the Revised Code. 2122
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(c) With respect to generation service, the relevant markets are subject to effective competition. For that purpose and except as otherwise provided under division (D)(3) of this section, the commission shall consider the factors prescribed in division (D) of section 4928.06 of the Revised Code and such other or additional factors as the commission may prescribe by rule. The commission shall prescribe by rule the methodology it will use to evaluate whether the effective competition standard under division (E)(2)(c) of this section is met. 2124
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(d) The standard service offer price for a customer class as determined under competitive bidding under division (E)(1) of this section is more favorable than, or at least comparable to, its price-to-compare for that class. That price-to-compare shall be the price that the commission shall determine for the comparable time period and in the manner of an electric security plan under division (D) of this section. 2133
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In its order, the commission shall prescribe such requirements for the utility as it considers necessary for the utility to implement applicable objectives of the policy specified in section 4928.02 of the Revised Code. The order also may provide the procedural and substantive terms and conditions for periodic commission review of the approved offer. That review shall provide for the reconciliation of the standard service offer price to ensure that the price is just and reasonable as to each customer class and consistent with the policy specified in section 4928.02 of the Revised Code. 2140
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(F) A utility's standard service offer approved under this section shall take effect on the date the commission shall specify 2150
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in the approval order and, on that date, the newly approved offer shall supersede the prior standard service offer of the utility. 2152
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(G)(1) Nothing in this section precludes a utility for which a standard service offer under division (D) of this section has been approved by the commission in accordance with this section from later filing an application under division (E) of this section, or vice versa. 2154
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(2) The commission has no authority to require a utility, for which it has ever approved a market rate option standard service offer under division (E) of this section, to file an application under division (D) of this section. 2159
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(H) The failure of a supplier to provide retail electric generation service to customers within the certified territory of the electric distribution utility shall result in the supplier's customers, after reasonable notice, defaulting to the utility's standard service offer filed under division (A) of this section until the customer chooses an alternative supplier. A supplier is deemed under this division to have failed to provide such service if the commission finds, after reasonable notice and opportunity for hearing, that any of the following conditions are met: 2163
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(1) The supplier has defaulted on its contracts with customers, is in receivership, or has filed for bankruptcy. 2172
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(2) The supplier is no longer capable of providing the service. 2174
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(3) The supplier is unable to provide delivery to transmission or distribution facilities for such period of time as may be reasonably specified by commission rule adopted under division (A) of section 4928.06 of the Revised Code. 2176
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(4) The supplier's certification has been suspended, conditionally rescinded, or rescinded under division (D) of section 4928.08 of the Revised Code. 2180
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(I) Nothing in this section limits an electric distribution utility providing competitive retail electric service to electric load centers within the certified territory of another such utility. 2183
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Sec. 4928.141. During a proceeding under section 4928.14 of the Revised Code and upon submission of an appropriate discovery request, an electric distribution utility shall make available to the requesting party every contract or agreement that is between the utility or any of its affiliates and a party to the proceeding, consumer, electric services company, or political subdivision and that is relevant to the proceeding, subject to such protection for proprietary or confidential information as is determined appropriate by the public utilities commission. 2187
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Sec. 4928.142. (A) Subject to division (B) of this section, an electric distribution utility by the end of 2025 shall provide a portion of the electricity supply required for its standard service offer under section 4928.14 of the Revised Code from advanced energy. That portion shall equal twenty-five per cent of the total number of kilowatt-hours of electricity supplied by the utility to any and all electric consumers whose electric load centers are located within the utility's certified territory. However, subject to division (B) of this section, nothing in this section precludes a utility from providing a greater percentage. The advanced energy supply shall be consistent with the following requirements: 2196
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(1) At least half of the advanced energy implemented by the utility by the end of 2025 shall be generated from sustainable resources as defined in section 3706.01 of the Revised Code and shall include solar power. The remainder shall be supplied from advanced energy facilities as defined in divisions (X)(1) to (4) of section 3706.01 of the Revised Code. 2208
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(2) At least half of the advanced energy implemented by the utility by the end of 2025 shall be met through facilities located in this state.

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

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

(2) Full compliance shall not be mandated under division (B)(1) of this section to the extent that the ratio between the blended advanced energy and nonadvanced energy price under this section in 2025 and the portion of that price attributable to nonadvanced energy exceeds one and three-hundredths.

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

(C)(1) The commission annually shall submit to the general

assembly in accordance with section 101.68 of the Revised Code a 2245
report describing the compliance of electric distribution 2246
utilities with divisions (A) and (B) of this section and any 2247
interim goals or strategy for utility compliance with those 2248
divisions or for encouraging the use of advanced energy in 2249
supplying this state's electricity needs in a manner that 2250
considers available technology, costs, job creation, and economic 2251
impacts. The commission shall allow and consider public comments 2252
on the report prior to its submission to the general assembly. 2253
Nothing in the report shall be binding on any person, including 2254
any utility for the purpose of its compliance with division (A) of 2255
this section, or the enforcement of that provision under division 2256
(B) of this section. 2257

(2) The governor, in consultation with the commission chair, 2258
shall appoint an advanced energy advisory committee. The committee 2259
shall examine available technology for and related timetables, 2260
goals, and costs of the advanced energy requirement under division 2261
(A) of this section and shall submit semiannually a report of its 2262
recommendations to the commission. 2263

Sec. 4928.15. (A) ~~Except as otherwise provided in sections~~ 2264
~~4928.31 to 4928.40 of the Revised Code, no~~ No electric utility 2265
shall supply noncompetitive retail electric distribution service 2266
in this state on or after the starting date of competitive retail 2267
electric service except pursuant to a schedule for that service 2268
that is consistent with the state policy specified in section 2269
4928.02 of the Revised Code and filed with the public utilities 2270
commission under section 4909.18 of the Revised Code. The schedule 2271
shall provide that electric distribution service under the 2272
schedule is available to all consumers within the utility's 2273
certified territory and to any supplier to those consumers on a 2274
nondiscriminatory and comparable basis. Distribution service rates 2275
and charges under the schedule shall be established in accordance 2276

with Chapters 4905. and 4909. of the Revised Code. The schedule 2277
shall include an obligation to build distribution facilities when 2278
necessary to provide adequate distribution service, provided that 2279
a customer requesting that service may be required to pay all or 2280
part of the reasonable incremental cost of the new facilities, in 2281
accordance with rules, policy, precedents, or orders of the 2282
commission. 2283

(B) ~~Except as otherwise provided in sections 4928.31 to 2284~~
~~4928.40 of the Revised Code and except~~ as preempted by federal 2285
law, no electric utility shall supply the transmission service or 2286
ancillary service component of noncompetitive retail electric 2287
service in this state on or after the starting date of competitive 2288
retail electric service except pursuant to a schedule for that 2289
service component that is consistent with the state policy 2290
specified in section 4928.02 of the Revised Code and filed with 2291
the commission under section 4909.18 of the Revised Code. The 2292
schedule shall provide that transmission or ancillary service 2293
under the schedule is available to all consumers and to any 2294
supplier to those consumers on a nondiscriminatory and comparable 2295
basis. Service rates and charges under the schedule shall be 2296
established in accordance with Chapters 4905. and 4909. of the 2297
Revised Code. 2298

(C) A self-generator shall have access to backup electricity 2299
supply from its competitive electric generation service provider 2300
at a rate to be determined by contract. 2301

Sec. 4928.16. (A)(1) The public utilities commission has 2302
jurisdiction under section 4905.26 of the Revised Code, upon 2303
complaint of any person or upon complaint or initiative of the 2304
commission on or after the starting date of competitive retail 2305
electric service, regarding the provision by an electric utility, 2306
electric services company, electric cooperative, or governmental 2307

aggregator subject to certification under section 4928.08 of the Revised Code of any service for which it is subject to certification.

(2) The commission also has jurisdiction under section 4905.26 of the Revised Code, upon complaint of any person or upon complaint or initiative of the commission on or after the starting date of competitive retail electric service, to determine whether an electric utility has violated or failed to comply with any provision of sections 4928.01 to 4928.15, ~~any provision of divisions (A) to (D) of section 4928.35 of the Revised Code,~~ or any rule or order adopted or issued under those sections; or whether an electric services company, electric cooperative, or governmental aggregator subject to certification under section 4928.08 of the Revised Code has violated or failed to comply with any provision of sections 4928.01 to 4928.10 of the Revised Code regarding a competitive retail electric service for which it is subject to certification or any rule or order adopted or issued under those sections.

(3) If a contract between a mercantile commercial customer and an electric services company states that the forum for a commercial dispute involving that company is through a certified commercial arbitration process, that process set forth in the contract and agreed to by the signatories shall be the exclusive forum unless all parties to the contract agree in writing to an amended process. The company shall notify the commission for informational purposes of all matters for which a contract remedy is invoked to resolve a dispute.

(4) The commission, by rule adopted pursuant to division (A) of section 4928.06 of the Revised Code, shall adopt alternative dispute resolution procedures for complaints by nonmercantile, nonresidential customers, including arbitration through a certified commercial arbitration process and at the commission.

The commission also by such rule may adopt alternative dispute resolution procedures for complaints by residential customers. 2340
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(B) In addition to its authority under division (C) of section 4928.08 of the Revised Code and to any other remedies provided by law, the commission, after reasonable notice and opportunity for hearing in accordance with section 4905.26 of the Revised Code, may do any of the following: 2342
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(1) Order rescission of a contract, or restitution to customers including damages due to electric power fluctuations, in any complaint brought pursuant to division (A)(1) or (2) of this section; 2347
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(2) Order any remedy or forfeiture provided under sections 4905.54 to 4905.60 and 4905.64 of the Revised Code upon a finding under division (A)(2) of this section that the electric utility has violated or failed to comply with any provision of sections 4928.01 to 4928.15, ~~any provision of divisions (A) to (D) of section 4928.35 of the Revised Code,~~ or any rule or order adopted or issued under those sections. in addition, the commission may order any remedy provided under section 4905.22, 4905.37, or 4905.38 of the Revised Code if the violation or failure to comply by an electric utility related to the provision of a noncompetitive retail electric service. 2351
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(3) Order any remedy or forfeiture provided under sections 4905.54 to 4905.60 and 4905.64 of the Revised Code upon a finding under division (A)(2) of this section that the electric services company, electric cooperative, or governmental aggregator subject to certification under section 4928.08 of the Revised Code has violated or failed to comply, regarding a competitive retail electric service for which it is subject to certification, with any provision of sections 4928.01 to 4928.10 of the Revised Code or any rule or order adopted or issued under those sections. 2362
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(C)(1) In addition to the authority conferred under section 2371
4911.15 of the Revised Code, the consumers' counsel may file a 2372
complaint under division (A)(1) or (2) of this section on behalf 2373
of residential consumers in this state or appear before the 2374
commission as a representative of those consumers pursuant to any 2375
complaint filed under division (A)(1) or (2) of this section. 2376

(2) In addition to the authority conferred under section 2377
4911.19 of the Revised Code, the consumers' counsel, upon 2378
reasonable grounds on and after the starting date of competitive 2379
retail electric service, may file with the commission under 2380
section 4905.26 of the Revised Code a complaint for discovery if 2381
the recipient of an inquiry under section 4911.19 of the Revised 2382
Code fails to provide a response within the time specified in that 2383
section. 2384

(D) Section 4905.61 of the Revised Code applies to a 2385
violation by an electric utility of, or to a failure of an 2386
electric utility to comply with, any provision of sections 4928.01 2387
to 4928.15, ~~any provision of divisions (A) to (D) of section~~ 2388
~~4928.35 of the Revised Code,~~ or any rule or order adopted or 2389
issued under those sections. 2390

Sec. 4928.17. (A) Except as otherwise provided in ~~sections~~ 2391
~~4928.31 to 4928.40~~ section 4928.14 of the Revised Code and 2392
beginning on the starting date of competitive retail electric 2393
service, no electric utility shall engage in this state, either 2394
directly or through an affiliate, in the businesses of supplying a 2395
noncompetitive retail electric service and supplying a competitive 2396
retail electric service, or in the businesses of supplying a 2397
noncompetitive retail electric service and supplying a product or 2398
service other than retail electric service, unless the utility 2399
implements and operates under a corporate separation plan that is 2400
approved by the public utilities commission under this section, is 2401

consistent with the policy specified in section 4928.02 of the Revised Code, and achieves all of the following:

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

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

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

(B) The commission may approve, modify and approve, or disapprove a corporate separation plan filed with the commission

under division (A) of this section. As part of the code of conduct 2434
required under division (A)(1) of this section, the commission 2435
shall adopt rules pursuant to division (A) of section 4928.06 of 2436
the Revised Code regarding corporate separation and procedures for 2437
plan filing and approval. The rules shall include limitations on 2438
affiliate practices solely for the purpose of maintaining a 2439
separation of the affiliate's business from the business of the 2440
utility to prevent unfair competitive advantage by virtue of that 2441
relationship. The rules also shall include an opportunity for any 2442
person having a real and substantial interest in the corporate 2443
separation plan to file specific objections to the plan and 2444
propose specific responses to issues raised in the objections, 2445
which objections and responses the commission shall address in its 2446
final order. Prior to commission approval of the plan, the 2447
commission shall afford a hearing upon those aspects of the plan 2448
that the commission determines reasonably require a hearing. The 2449
commission may reject and require refiling of a substantially 2450
inadequate plan under this section. 2451

(C) The commission shall issue an order approving or 2452
modifying and approving a corporate separation plan under this 2453
section, to be effective on the date specified in the order, only 2454
upon findings that the plan reasonably complies with the 2455
requirements of division (A) of this section and will provide for 2456
ongoing compliance with the policy specified in section 4928.02 of 2457
the Revised Code. However, for good cause shown, the commission 2458
may issue an order approving or modifying and approving a 2459
corporate separation plan under this section that does not comply 2460
with division (A)(1) of this section but complies with such 2461
functional separation requirements as the commission authorizes to 2462
apply for an interim period prescribed in the order, upon a 2463
finding that such alternative plan will provide for ongoing 2464
compliance with the policy specified in section 4928.02 of the 2465
Revised Code. 2466

(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. 4928.18. (A) Notwithstanding division (D)(2)(a) of section 4909.15 of the Revised Code, nothing in this chapter prevents the public utilities commission from exercising its authority under Title XLIX of the Revised Code to protect customers of retail electric service supplied by an electric utility from any adverse effect of the utility's provision of a product or service other than retail electric service.

(B) The commission has jurisdiction under section 4905.26 of the Revised Code, upon complaint of any person or upon complaint or initiative of the commission on or after the starting date of competitive retail electric service, to determine whether an electric utility or its affiliate has violated any provision of section 4928.17 of the Revised Code or an order issued or rule adopted under that section. For this purpose, the commission may examine such books, accounts, or other records kept by an electric utility or its affiliate as may relate to the businesses for which corporate separation is required under section 4928.17 of the Revised Code, and may investigate such utility or affiliate

operations as may relate to those businesses and investigate the 2498
interrelationship of those operations. Any such examination or 2499
investigation by the commission shall be governed by Chapter 4903. 2500
of the Revised Code. 2501

(C) In addition to any remedies otherwise provided by law, 2502
the commission, regarding a determination of a violation pursuant 2503
to division (B) of this section, may do any of the following: 2504

(1) Issue an order directing the utility or affiliate to 2505
comply; 2506

(2) Modify an order as the commission finds reasonable and 2507
appropriate and order the utility or affiliate to comply with the 2508
modified order; 2509

(3) Suspend or abrogate an order, in whole or in part; 2510

(4) Issue an order that the utility or affiliate pay 2511
restitution to any person injured by the violation or failure to 2512
comply; 2513

(D) In addition to any remedies otherwise provided by law, 2514
the commission, regarding a determination of a violation pursuant 2515
to division (B) of this section and commensurate with the severity 2516
of the violation, the source of the violation, any pattern of 2517
violations, or any monetary damages caused by the violation, may 2518
do either of the following: 2519

(1) Impose a forfeiture on the utility or affiliate of up to 2520
twenty-five thousand dollars per day per violation. The recovery 2521
and deposit of any such forfeiture shall be subject to sections 2522
4905.57 and 4905.59 of the Revised Code. 2523

(2) Regarding a violation by an electric utility relating to 2524
a corporate separation plan involving competitive retail electric 2525
service, suspend or abrogate all or part of an order, to the 2526
extent it is in effect, authorizing an opportunity for the utility 2527

to receive transition revenues under a transition plan approved by 2528
the commission under section 4928.33 of the Revised Code prior to 2529
its repeal by S.B. 221 of the 127th general assembly. 2530

Corporate separation under this section does not prohibit the 2531
common use of employee benefit plans, facilities, equipment, or 2532
employees, subject to proper accounting and the code of conduct 2533
ordered by the commission as provided in division (A)(1) of this 2534
section. 2535

(E) Section 4905.61 of the Revised Code applies in the case 2536
of any violation of section 4928.17 of the Revised Code or of any 2537
rule adopted or order issued under that section. 2538

Sec. 4928.20. (A) The legislative authority of a municipal 2539
corporation may adopt an ordinance, or the board of township 2540
trustees of a township or the board of county commissioners of a 2541
county may adopt a resolution, under which, on or after the 2542
starting date of competitive retail electric service, it may 2543
aggregate in accordance with this section the retail electrical 2544
loads located, respectively, within the municipal corporation, 2545
township, or unincorporated area of the county and, for that 2546
purpose, may enter into service agreements to facilitate for those 2547
loads the sale and purchase of electricity. The legislative 2548
authority or board also may exercise such authority jointly with 2549
any other such legislative authority or board. For customers that 2550
are not mercantile commercial customers, an ordinance or 2551
resolution under this division shall specify whether the 2552
aggregation will occur only with the prior, affirmative consent of 2553
each person owning, occupying, controlling, or using an electric 2554
load center proposed to be aggregated or will occur automatically 2555
for all such persons pursuant to the opt-out requirements of 2556
division (D) of this section. The aggregation of mercantile 2557
commercial customers shall occur only with the prior, affirmative 2558

consent of each such person owning, occupying, controlling, or 2559
using an electric load center proposed to be aggregated. Nothing 2560
in this division, however, authorizes the aggregation of the 2561
retail electric loads of an electric load center, as defined in 2562
section 4933.81 of the Revised Code, that is located in the 2563
certified territory of a nonprofit electric supplier under 2564
sections 4933.81 to 4933.90 of the Revised Code or an electric 2565
load center served by transmission or distribution facilities of a 2566
municipal electric utility. 2567

(B) If an ordinance or resolution adopted under division (A) 2568
of this section specifies that aggregation of customers that are 2569
not mercantile commercial customers will occur automatically as 2570
described in that division, the ordinance or resolution shall 2571
direct the board of elections to submit the question of the 2572
authority to aggregate to the electors of the respective municipal 2573
corporation, township, or unincorporated area of a county at a 2574
special election on the day of the next primary or general 2575
election in the municipal corporation, township, or county. The 2576
legislative authority or board shall certify a copy of the 2577
ordinance or resolution to the board of elections not less than 2578
seventy-five days before the day of the special election. No 2579
ordinance or resolution adopted under division (A) of this section 2580
that provides for an election under this division shall take 2581
effect unless approved by a majority of the electors voting upon 2582
the ordinance or resolution at the election held pursuant to this 2583
division. 2584

(C) Upon the applicable requisite authority under divisions 2585
(A) and (B) of this section, the legislative authority or board 2586
shall develop a plan of operation and governance for the 2587
aggregation program so authorized. Before adopting a plan under 2588
this division, the legislative authority or board shall hold at 2589
least two public hearings on the plan. Before the first hearing, 2590

the legislative authority or board shall publish notice of the 2591
hearings once a week for two consecutive weeks in a newspaper of 2592
general circulation in the jurisdiction. The notice shall 2593
summarize the plan and state the date, time, and location of each 2594
hearing. 2595

(D) No legislative authority or board, pursuant to an 2596
ordinance or resolution under divisions (A) and (B) of this 2597
section that provides for automatic aggregation of customers that 2598
are not mercantile commercial customers as described in division 2599
(A) of this section, shall aggregate the electrical load of any 2600
electric load center located within its jurisdiction unless it in 2601
advance clearly discloses to the person owning, occupying, 2602
controlling, or using the load center that the person will be 2603
enrolled automatically in the aggregation program and will remain 2604
so enrolled unless the person affirmatively elects by a stated 2605
procedure not to be so enrolled. The disclosure shall state 2606
prominently the rates, charges, and other terms and conditions of 2607
enrollment. The stated procedure shall allow any person enrolled 2608
in the aggregation program the opportunity to opt out of the 2609
program up to every ~~two~~ four years, without paying a switching 2610
fee. Any such person that opts out of the aggregation program 2611
pursuant to the stated procedure shall default to the standard 2612
service offer provided under division (A) of section 4928.14 ~~or~~ 2613
~~division (D) of section 4928.35~~ of the Revised Code until the 2614
person chooses an alternative supplier. 2615

(E)(1) With respect to a governmental aggregation for a 2616
municipal corporation that is authorized pursuant to divisions (A) 2617
to (D) of this section, resolutions may be proposed by initiative 2618
or referendum petitions in accordance with sections 731.28 to 2619
731.41 of the Revised Code. 2620

(2) With respect to a governmental aggregation for a township 2621
or the unincorporated area of a county, which aggregation is 2622

authorized pursuant to divisions (A) to (D) of this section, 2623
resolutions may be proposed by initiative or referendum petitions 2624
in accordance with sections 731.28 to 731.40 of the Revised Code, 2625
except that: 2626

(a) The petitions shall be filed, respectively, with the 2627
township fiscal officer or the board of county commissioners, who 2628
shall perform those duties imposed under those sections upon the 2629
city auditor or village clerk. 2630

(b) The petitions shall contain the signatures of not less 2631
than ten per cent of the total number of electors in, 2632
respectively, the township or the unincorporated area of the 2633
county who voted for the office of governor at the preceding 2634
general election for that office in that area. 2635

(F) A governmental aggregator under division (A) of this 2636
section is not a public utility engaging in the wholesale purchase 2637
and resale of electricity, and provision of the aggregated service 2638
is not a wholesale utility transaction. A governmental aggregator 2639
shall be subject to supervision and regulation by the public 2640
utilities commission only to the extent of any competitive retail 2641
electric service it provides and commission authority under this 2642
chapter. 2643

(G) This section does not apply in the case of a municipal 2644
corporation that supplies such aggregated service to electric load 2645
centers to which its municipal electric utility also supplies a 2646
noncompetitive retail electric service through transmission or 2647
distribution facilities the utility singly or jointly owns or 2648
operates. 2649

(H) A governmental aggregator shall not include in its 2650
aggregation the accounts of any of the following: 2651

(1) A customer that has opted out of the aggregation; 2652

(2) A customer in contract with a certified competitive 2653

retail electric services provider; 2654

(3) A customer that has a special contract with an electric 2655
distribution utility; 2656

(4) A customer that is not located within the governmental 2657
aggregator's governmental boundaries; 2658

(5) Subject to division (C) of section 4928.21 of the Revised 2659
Code, a customer who appears on the "do not aggregate" list 2660
maintained under that section. 2661

Sec. 4928.21. (A) A customer that desires to remove itself 2662
from the pool of customers eligible to participate in governmental 2663
aggregation under section 4928.20 of the Revised Code may register 2664
with the public utilities commission to appear on the "do not 2665
aggregate" list. 2666

(B) The commission, by rule, shall establish a "do not 2667
aggregate" list. The commission shall maintain the "do not 2668
aggregate" list and make it publicly available on the commission's 2669
web site. 2670

(C) If a customer is enrolled in a governmental aggregation 2671
program at the time the customer first appears on the "do not 2672
aggregate" list, the governmental aggregator shall remove the 2673
customer from the program at the next ~~two-year~~ opt out opportunity 2674
that is available to the customer under division (D) of section 2675
4928.20 of the Revised Code. 2676

Sec. 4928.64. The public utilities commission shall adopt 2677
rules to establish energy efficiency standards applicable to 2678
electric distribution utilities such that, by 2025, any such 2679
utility shall implement energy efficiency measures that will 2680
result in not less than twenty-five per cent of actual growth in 2681
electric load and not less than ten per cent of total peak demand 2682
being achieved through those measures. The rules shall include a 2683

requirement that an electric distribution utility provide a 2684
customer upon request with two years' consumption data in an 2685
accessible form. Additionally, the rules may provide for 2686
decoupling. 2687

Sec. 4928.68. The public utilities commission shall employ a 2688
federal energy advocate to monitor the activities of the federal 2689
energy regulatory commission and other federal agencies and 2690
advocate on behalf of the interests of retail electric service 2691
consumers in this state. The attorney general shall represent the 2692
advocate before the federal energy regulatory commission and other 2693
federal agencies. Among other duties assigned to the advocate by 2694
the commission, the advocate shall examine the value of the 2695
participation of this state's electric utilities in regional 2696
transmission organizations and submit a report to the public 2697
utilities commission on whether continued participation of those 2698
utilities is in the interest of those consumers. 2699

Sec. 4928.69. The public utilities commission shall adopt 2700
rules establishing greenhouse gas emission reporting requirements, 2701
including participation in the climate registry, and carbon 2702
control planning requirements for each electric generating 2703
facility located in this state that emits greenhouse gases, 2704
including facilities in operation on the effective date of this 2705
section. 2706

Section 2. That existing sections 122.41, 122.451, 3706.01, 2707
3706.02, 3706.03, 3706.04, 3706.041, 3706.05, 3706.06, 3706.07, 2708
3706.08, 3706.09, 3706.10, 3706.11, 3706.12, 3706.13, 3706.14, 2709
3706.15, 3706.16, 3706.17, 3706.18, 4905.31, 4905.40, 4909.161, 2710
4928.01, 4928.02, 4928.05, 4928.06, 4928.12, 4928.14, 4928.15, 2711
4928.16, 4928.17, 4928.18, 4928.20, and 4928.21 and sections 2712
4928.31, 4928.32, 4928.33, 4928.34, 4928.35, 4928.36, 4928.37, 2713

4928.38, 4928.39, 4928.40, 4928.41, 4928.42, 4928.431, and 4928.44 2714
of the Revised Code are hereby repealed. 2715