

**As Reported by the House Agriculture and Natural Resources
Committee**

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Sub. H. B. No. 382

Representative Sayre

Cosponsors: Representatives Dodd, Domenick, Balderson

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A B I L L

To amend section 4928.01 and to enact section	1
1513.372 of the Revised Code to provide immunity	2
from liability for eligible landowners who provide	3
access to abandoned mine land located on their	4
land for purposes of acid mine drainage abatement	5
and to provide immunity from liability for	6
nonprofit organizations that provide funding or	7
services for such acid mine drainage abatement,	8
and to designate that methane gas emitted from an	9
abandoned coal mine constitutes a renewable energy	10
resource rather than an advanced energy resource	11
for purposes of the law governing the promotion of	12
renewable energy usage, electricity supplied from	13
renewable energy sources, and renewable energy	14
credits.	15

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

Section 1. That section 4928.01 be amended and section	16
1513.372 of the Revised Code be enacted to read as follows:	17

<u>Sec. 1513.372. (A) As used in this section:</u>	18
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(1) "Abandoned mine land" means land or water resources 19
adversely affected by coal mining practices to which one of the 20
following applies: 21

(a) The coal mining practices occurred prior to August 3, 22
1977, and there is no continuing reclamation responsibility under 23
state or federal law. 24

(b) The coal mining practices occurred prior to April 10, 25
1972. 26

(c) The coal mining practices were conducted pursuant to a 27
license that was issued prior to April 10, 1972. 28

(2) "Eligible landowner" means a landowner who provides 29
access without charge or other consideration to abandoned mine 30
land that is located on the landowner's property for the purpose 31
of allowing the implementation of a reclamation project on the 32
abandoned mine land. "Eligible landowner" does not include a 33
person that is responsible under state or federal law to reclaim 34
the land or address acid mine drainage existing or emanating from 35
the abandoned mine land. 36

(3) "Landowner" means a person who holds a fee interest in 37
real property. 38

(4) "Nonprofit organization" means a corporation, 39
association, group, institution, society, or other organization 40
that is exempt from federal income taxation under section 41
501(c)(3) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 42
26 U.S.C. 501(c)(3), as amended, that provides funding or services 43
at no cost or at cost for a reclamation project. 44

(5) "Reclamation project" means an acid mine drainage 45
abatement project that is conducted in compliance with this 46
chapter and rules adopted under it on abandoned mine land that is 47
located on property owned by an eligible landowner. 48

(6) "Reclamation project work area" means the portion of a 49
parcel of real property on which a reclamation project is 50
conducted and the roads providing ingress to and egress from the 51
reclamation project. 52

(B) Except as provided in divisions (C) and (D) of this 53
section, an eligible landowner or nonprofit organization is immune 54
from liability as follows: 55

(1) For any injury to or damage suffered by a person working 56
under the direct supervision of the division of mineral resources 57
management while the person is within the reclamation project work 58
area; 59

(2) For any injury to or damage suffered by a third party 60
that arises out of or occurs as a result of an act or omission of 61
the division during the construction, operation, and maintenance 62
of the reclamation project; 63

(3) For any failure of an acid mine drainage abatement 64
facility constructed or installed during a reclamation project 65
that is supervised by the division; 66

(4) For the operation, maintenance, or repair of any acid 67
mine drainage abatement facility constructed or installed during a 68
reclamation project unless the eligible landowner negligently 69
damages or destroys the acid mine drainage abatement facility or 70
denies access to the division of mineral resources management that 71
is responsible for the operation, maintenance, or repair of the 72
acid mine drainage abatement facility. 73

(C) The eligible landowner shall notify the division of a 74
known, latent, dangerous condition located at a reclamation 75
project work area that is not the subject of the reclamation 76
project. The immunity established in division (B) of this section 77
does not apply to any injury, damage, or pollution resulting from 78
the eligible landowner's failure to notify the division of such a 79

known, latent, dangerous condition. 80

(D) The immunity established in division (B) of this section
does not apply in both of the following circumstances: 81
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(1) An injury to a person within the reclamation project work
area that results from an eligible landowner's or nonprofit
organization's acts or omissions that are reckless or constitute
gross negligence or willful or wanton misconduct; 83
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(2) An eligible landowner or nonprofit organization who
engages in any unlawful activities with respect to a reclamation
project. 87
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(E) The chief of the division of mineral resources management
shall adopt rules in accordance with Chapter 119. of the Revised
Code that are necessary to implement this section. 90
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Sec. 4928.01. (A) As used in this chapter: 93

(1) "Ancillary service" means any function necessary to the 94
provision of electric transmission or distribution service to a 95
retail customer and includes, but is not limited to, scheduling, 96
system control, and dispatch services; reactive supply from 97
generation resources and voltage control service; reactive supply 98
from transmission resources service; regulation service; frequency 99
response service; energy imbalance service; operating 100
reserve-spinning reserve service; operating reserve-supplemental 101
reserve service; load following; back-up supply service; 102
real-power loss replacement service; dynamic scheduling; system 103
black start capability; and network stability service. 104

(2) "Billing and collection agent" means a fully independent 105
agent, not affiliated with or otherwise controlled by an electric 106
utility, electric services company, electric cooperative, or 107
governmental aggregator subject to certification under section 108
4928.08 of the Revised Code, to the extent that the agent is under 109

contract with such utility, company, cooperative, or aggregator 110
solely to provide billing and collection for retail electric 111
service on behalf of the utility company, cooperative, or 112
aggregator. 113

(3) "Certified territory" means the certified territory 114
established for an electric supplier under sections 4933.81 to 115
4933.90 of the Revised Code. 116

(4) "Competitive retail electric service" means a component 117
of retail electric service that is competitive as provided under 118
division (B) of this section. 119

(5) "Electric cooperative" means a not-for-profit electric 120
light company that both is or has been financed in whole or in 121
part under the "Rural Electrification Act of 1936," 49 Stat. 1363, 122
7 U.S.C. 901, and owns or operates facilities in this state to 123
generate, transmit, or distribute electricity, or a not-for-profit 124
successor of such company. 125

(6) "Electric distribution utility" means an electric utility 126
that supplies at least retail electric distribution service. 127

(7) "Electric light company" has the same meaning as in 128
section 4905.03 of the Revised Code and includes an electric 129
services company, but excludes any self-generator to the extent 130
that it consumes electricity it so produces, sells that 131
electricity for resale, or obtains electricity from a generating 132
facility it hosts on its premises. 133

(8) "Electric load center" has the same meaning as in section 134
4933.81 of the Revised Code. 135

(9) "Electric services company" means an electric light 136
company that is engaged on a for-profit or not-for-profit basis in 137
the business of supplying or arranging for the supply of only a 138
competitive retail electric service in this state. "Electric 139
services company" includes a power marketer, power broker, 140

aggregator, or independent power producer but excludes an electric 141
cooperative, municipal electric utility, governmental aggregator, 142
or billing and collection agent. 143

(10) "Electric supplier" has the same meaning as in section 144
4933.81 of the Revised Code. 145

(11) "Electric utility" means an electric light company that 146
has a certified territory and is engaged on a for-profit basis 147
either in the business of supplying a noncompetitive retail 148
electric service in this state or in the businesses of supplying 149
both a noncompetitive and a competitive retail electric service in 150
this state. "Electric utility" excludes a municipal electric 151
utility or a billing and collection agent. 152

(12) "Firm electric service" means electric service other 153
than nonfirm electric service. 154

(13) "Governmental aggregator" means a legislative authority 155
of a municipal corporation, a board of township trustees, or a 156
board of county commissioners acting as an aggregator for the 157
provision of a competitive retail electric service under authority 158
conferred under section 4928.20 of the Revised Code. 159

(14) A person acts "knowingly," regardless of the person's 160
purpose, when the person is aware that the person's conduct will 161
probably cause a certain result or will probably be of a certain 162
nature. A person has knowledge of circumstances when the person is 163
aware that such circumstances probably exist. 164

(15) "Level of funding for low-income customer energy 165
efficiency programs provided through electric utility rates" means 166
the level of funds specifically included in an electric utility's 167
rates on October 5, 1999, pursuant to an order of the public 168
utilities commission issued under Chapter 4905. or 4909. of the 169
Revised Code and in effect on October 4, 1999, for the purpose of 170
improving the energy efficiency of housing for the utility's 171

low-income customers. The term excludes the level of any such 172
funds committed to a specific nonprofit organization or 173
organizations pursuant to a stipulation or contract. 174

(16) "Low-income customer assistance programs" means the 175
percentage of income payment plan program, the home energy 176
assistance program, the home weatherization assistance program, 177
and the targeted energy efficiency and weatherization program. 178

(17) "Market development period" for an electric utility 179
means the period of time beginning on the starting date of 180
competitive retail electric service and ending on the applicable 181
date for that utility as specified in section 4928.40 of the 182
Revised Code, irrespective of whether the utility applies to 183
receive transition revenues under this chapter. 184

(18) "Market power" means the ability to impose on customers 185
a sustained price for a product or service above the price that 186
would prevail in a competitive market. 187

(19) "Mercantile customer" means a commercial or industrial 188
customer if the electricity consumed is for nonresidential use and 189
the customer consumes more than seven hundred thousand kilowatt 190
hours per year or is part of a national account involving multiple 191
facilities in one or more states. 192

(20) "Municipal electric utility" means a municipal 193
corporation that owns or operates facilities to generate, 194
transmit, or distribute electricity. 195

(21) "Noncompetitive retail electric service" means a 196
component of retail electric service that is noncompetitive as 197
provided under division (B) of this section. 198

(22) "Nonfirm electric service" means electric service 199
provided pursuant to a schedule filed under section 4905.30 of the 200
Revised Code or pursuant to an arrangement under section 4905.31 201
of the Revised Code, which schedule or arrangement includes 202

conditions that may require the customer to curtail or interrupt 203
electric usage during nonemergency circumstances upon notification 204
by an electric utility. 205

(23) "Percentage of income payment plan arrears" means funds 206
eligible for collection through the percentage of income payment 207
plan rider, but uncollected as of July 1, 2000. 208

(24) "Person" has the same meaning as in section 1.59 of the 209
Revised Code. 210

(25) "Advanced energy project" means any technologies, 211
products, activities, or management practices or strategies that 212
facilitate the generation or use of electricity or energy and that 213
reduce or support the reduction of energy consumption or support 214
the production of clean, renewable energy for industrial, 215
distribution, commercial, institutional, governmental, research, 216
not-for-profit, or residential energy users, including, but not 217
limited to, advanced energy resources and renewable energy 218
resources. "Advanced energy project" also includes any project 219
described in division (A), (B), or (C) of section 4928.621 of the 220
Revised Code. 221

(26) "Regulatory assets" means the unamortized net regulatory 222
assets that are capitalized or deferred on the regulatory books of 223
the electric utility, pursuant to an order or practice of the 224
public utilities commission or pursuant to generally accepted 225
accounting principles as a result of a prior commission 226
rate-making decision, and that would otherwise have been charged 227
to expense as incurred or would not have been capitalized or 228
otherwise deferred for future regulatory consideration absent 229
commission action. "Regulatory assets" includes, but is not 230
limited to, all deferred demand-side management costs; all 231
deferred percentage of income payment plan arrears; 232
post-in-service capitalized charges and assets recognized in 233
connection with statement of financial accounting standards no. 234

109 (receivables from customers for income taxes); future nuclear 235
decommissioning costs and fuel disposal costs as those costs have 236
been determined by the commission in the electric utility's most 237
recent rate or accounting application proceeding addressing such 238
costs; the undepreciated costs of safety and radiation control 239
equipment on nuclear generating plants owned or leased by an 240
electric utility; and fuel costs currently deferred pursuant to 241
the terms of one or more settlement agreements approved by the 242
commission. 243

(27) "Retail electric service" means any service involved in 244
supplying or arranging for the supply of electricity to ultimate 245
consumers in this state, from the point of generation to the point 246
of consumption. For the purposes of this chapter, retail electric 247
service includes one or more of the following "service 248
components": generation service, aggregation service, power 249
marketing service, power brokerage service, transmission service, 250
distribution service, ancillary service, metering service, and 251
billing and collection service. 252

(28) "Starting date of competitive retail electric service" 253
means January 1, 2001. 254

(29) "Customer-generator" means a user of a net metering 255
system. 256

(30) "Net metering" means measuring the difference in an 257
applicable billing period between the electricity supplied by an 258
electric service provider and the electricity generated by a 259
customer-generator that is fed back to the electric service 260
provider. 261

(31) "Net metering system" means a facility for the 262
production of electrical energy that does all of the following: 263

(a) Uses as its fuel either solar, wind, biomass, landfill 264
gas, or hydropower, or uses a microturbine or a fuel cell; 265

(b) Is located on a customer-generator's premises;	266
(c) Operates in parallel with the electric utility's transmission and distribution facilities;	267 268
(d) Is intended primarily to offset part or all of the customer-generator's requirements for electricity.	269 270
(32) "Self-generator" means an entity in this state that owns or hosts on its premises an electric generation facility that produces electricity primarily for the owner's consumption and that may provide any such excess electricity to another entity, whether the facility is installed or operated by the owner or by an agent under a contract.	271 272 273 274 275 276
(33) "Rate plan" means the standard service offer in effect on the effective date of the amendment of this section by S.B. 221 of the 127th general assembly, July 31, 2008.	277 278 279
(34) "Advanced energy resource" means any of the following:	280
(a) Any method or any modification or replacement of any property, process, device, structure, or equipment that increases the generation output of an electric generating facility to the extent such efficiency is achieved without additional carbon dioxide emissions by that facility;	281 282 283 284 285
(b) Any distributed generation system consisting of customer cogeneration of electricity and thermal output simultaneously, primarily to meet the energy needs of the customer's facilities;	286 287 288
(c) Clean coal technology that includes a carbon-based product that is chemically altered before combustion to demonstrate a reduction, as expressed as ash, in emissions of nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or sulfur trioxide in accordance with the American society of testing and materials standard D1757A or a reduction of metal oxide emissions in accordance with standard D5142 of that society, or	289 290 291 292 293 294 295

clean coal technology that includes the design capability to 296
control or prevent the emission of carbon dioxide, which design 297
capability the commission shall adopt by rule and shall be based 298
on economically feasible best available technology or, in the 299
absence of a determined best available technology, shall be of the 300
highest level of economically feasible design capability for which 301
there exists generally accepted scientific opinion; 302

(d) Advanced nuclear energy technology consisting of 303
generation III technology as defined by the nuclear regulatory 304
commission; other, later technology; or significant improvements 305
to existing facilities; 306

(e) Any fuel cell used in the generation of electricity, 307
including, but not limited to, a proton exchange membrane fuel 308
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or 309
solid oxide fuel cell; 310

(f) Advanced solid waste or construction and demolition 311
debris conversion technology, including, but not limited to, 312
advanced stoker technology, and advanced fluidized bed 313
gasification technology, that results in measurable greenhouse gas 314
emissions reductions as calculated pursuant to the United States 315
environmental protection agency's waste reduction model (WARM); 316

(g) Demand-side management and any energy efficiency 317
improvement; 318

~~(h) Methane gas emitted from an operating or abandoned coal 319
mine. 320~~

(35) "Renewable energy resource" means solar photovoltaic or 321
solar thermal energy, wind energy, power produced by a 322
hydroelectric facility, geothermal energy, fuel derived from solid 323
wastes, as defined in section 3734.01 of the Revised Code, through 324
fractionation, biological decomposition, or other process that 325
does not principally involve combustion, biomass energy, 326

biologically derived methane gas, or energy derived from 327
nontreated by-products of the pulping process or wood 328
manufacturing process, including bark, wood chips, sawdust, and 329
lignin in spent pulping liquors. "Renewable energy resource" 330
includes, but is not limited to, any fuel cell used in the 331
generation of electricity, including, but not limited to, a proton 332
exchange membrane fuel cell, phosphoric acid fuel cell, molten 333
carbonate fuel cell, or solid oxide fuel cell; wind turbine 334
located in the state's territorial waters of Lake Erie; methane 335
gas emitted from an abandoned coal mine; storage facility that 336
will promote the better utilization of a renewable energy resource 337
that primarily generates off peak; or distributed generation 338
system used by a customer to generate electricity from any such 339
energy. As used in division (A)(35) of this section, 340
"hydroelectric facility" means a hydroelectric generating facility 341
that is located at a dam on a river, or on any water discharged to 342
a river, that is within or bordering this state or within or 343
bordering an adjoining state and meets all of the following 344
standards: 345

(a) The facility provides for river flows that are not 346
detrimental for fish, wildlife, and water quality, including 347
seasonal flow fluctuations as defined by the applicable licensing 348
agency for the facility. 349

(b) The facility demonstrates that it complies with the water 350
quality standards of this state, which compliance may consist of 351
certification under Section 401 of the "Clean Water Act of 1977," 352
91 Stat. 1598, 1599, 33 U.S.C. 1341, and demonstrates that it has 353
not contributed to a finding by this state that the river has 354
impaired water quality under Section 303(d) of the "Clean Water 355
Act of 1977," 114 Stat. 870, 33 U.S.C. 1313. 356

(c) The facility complies with mandatory prescriptions 357
regarding fish passage as required by the federal energy 358

regulatory commission license issued for the project, regarding 359
fish protection for riverine, anadromous, and ~~eatadromus~~ 360
catadromous fish. 361

(d) The facility complies with the recommendations of the 362
Ohio environmental protection agency and with the terms of its 363
federal energy regulatory commission license regarding watershed 364
protection, mitigation, or enhancement, to the extent of each 365
agency's respective jurisdiction over the facility. 366

(e) The facility complies with provisions of the "Endangered 367
Species Act of 1973," 87 Stat. 884, 16 U.S.C. 1531 to 1544, as 368
amended. 369

(f) The facility does not harm cultural resources of the 370
area. This can be shown through compliance with the terms of its 371
federal energy regulatory commission license or, if the facility 372
is not regulated by that commission, through development of a plan 373
approved by the Ohio historic preservation office, to the extent 374
it has jurisdiction over the facility. 375

(g) The facility complies with the terms of its federal 376
energy regulatory commission license or exemption that are related 377
to recreational access, accommodation, and facilities or, if the 378
facility is not regulated by that commission, the facility 379
complies with similar requirements as are recommended by resource 380
agencies, to the extent they have jurisdiction over the facility; 381
and the facility provides access to water to the public without 382
fee or charge. 383

(h) The facility is not recommended for removal by any 384
federal agency or agency of any state, to the extent the 385
particular agency has jurisdiction over the facility. 386

(B) For the purposes of this chapter, a retail electric 387
service component shall be deemed a competitive retail electric 388
service if the service component is competitive pursuant to a 389

declaration by a provision of the Revised Code or pursuant to an 390
order of the public utilities commission authorized under division 391
(A) of section 4928.04 of the Revised Code. Otherwise, the service 392
component shall be deemed a noncompetitive retail electric 393
service. 394

Section 2. That existing section 4928.01 of the Revised Code 395
is hereby repealed. 396