

As Passed by the Senate

128th General Assembly

Regular Session

2009-2010

Am. Sub. S. B. No. 181

Senator Stewart

**Cosponsors: Senators Goodman, Schaffer, Seitz, Niehaus, Faber, Gibbs,
Gillmor, Harris, Hughes, Patton, Wagoner, Wilson, Carey**

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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 for purposes of 4
reclamation or acid mine drainage abatement and to 5
provide immunity from liability for nonprofit 6
organizations that provide funding or service for 7
such reclamation or 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

Sec. 1513.372. (A) As used in this section: 18

(1) "Abandoned mine land" means land or water resources that 19
were previously degraded by adverse effects of coal mining 20
practices to which one of the 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 to abandoned mine land that is located on 30
the landowner's property for the purpose of allowing the 31
implementation of a reclamation project on the abandoned mine 32
land. "Eligible landowner" does not include a person that is 33
responsible under state or federal law to reclaim the land or 34
address water pollution existing or emanating from abandoned mine 35
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 service 43
for a reclamation project. 44

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

(6) "Reclamation project sponsor" means a person that provides funding or equipment, materials, or services at no cost or at cost for a reclamation project. "Reclamation project sponsor" does not include a person that is responsible under state or federal law to reclaim the land or address water pollution existing or emanating from abandoned mine land.

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

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

(1) For any injury to or damage suffered by a person working under the direct supervision of the reclamation project sponsor while the person is within the reclamation project work area;

(2) For any injury to or damage suffered by a third party that arises out of or occurs as a result of an act or omission of the reclamation project sponsor during the implementation of the reclamation project;

(3) For any injury to or damage suffered by a third party that arises out of or occurs as a result of the reclamation project;

(4) For any pollution resulting from a reclamation project;

(5) For the operation, maintenance, or repair of an acid mine drainage abatement facility constructed or installed during a reclamation project unless the eligible landowner negligently damages or destroys the acid mine drainage abatement facility or denies access to the reclamation project sponsor who is responsible for the operation, maintenance, or repair of the acid mine drainage abatement facility.

(C) The eligible landowner shall notify a project sponsor of a known, latent, dangerous condition located at a reclamation project work area that is not the subject of the reclamation project. The immunity established in division (B) of this section does not apply to any injury, damage, or pollution resulting from the eligible landowner's failure to notify the project sponsor of such a known, latent, dangerous condition. 80
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(D) The immunity established in division (B) of this section does not apply with regard to either of the following: 87
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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; 89
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(2) An eligible landowner or nonprofit organization who engages in any unlawful activities with respect to a reclamation project. 93
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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. 96
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(F) Nothing in this section eliminates the responsibilities of a reclamation project sponsor established in sections 1513.27, 1513.28, and 1513.37 of the Revised Code pertaining to water quality protection. 99
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Sec. 4928.01. (A) As used in this chapter: 103

(1) "Ancillary service" means any function necessary to the provision of electric transmission or distribution service to a retail customer and includes, but is not limited to, scheduling, system control, and dispatch services; reactive supply from generation resources and voltage control service; reactive supply from transmission resources service; regulation service; frequency 104
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response service; energy imbalance service; operating 110
reserve-spinning reserve service; operating reserve-supplemental 111
reserve service; load following; back-up supply service; 112
real-power loss replacement service; dynamic scheduling; system 113
black start capability; and network stability service. 114

(2) "Billing and collection agent" means a fully independent 115
agent, not affiliated with or otherwise controlled by an electric 116
utility, electric services company, electric cooperative, or 117
governmental aggregator subject to certification under section 118
4928.08 of the Revised Code, to the extent that the agent is under 119
contract with such utility, company, cooperative, or aggregator 120
solely to provide billing and collection for retail electric 121
service on behalf of the utility company, cooperative, or 122
aggregator. 123

(3) "Certified territory" means the certified territory 124
established for an electric supplier under sections 4933.81 to 125
4933.90 of the Revised Code. 126

(4) "Competitive retail electric service" means a component 127
of retail electric service that is competitive as provided under 128
division (B) of this section. 129

(5) "Electric cooperative" means a not-for-profit electric 130
light company that both is or has been financed in whole or in 131
part under the "Rural Electrification Act of 1936," 49 Stat. 1363, 132
7 U.S.C. 901, and owns or operates facilities in this state to 133
generate, transmit, or distribute electricity, or a not-for-profit 134
successor of such company. 135

(6) "Electric distribution utility" means an electric utility 136
that supplies at least retail electric distribution service. 137

(7) "Electric light company" has the same meaning as in 138
section 4905.03 of the Revised Code and includes an electric 139
services company, but excludes any self-generator to the extent 140

that it consumes electricity it so produces, sells that 141
electricity for resale, or obtains electricity from a generating 142
facility it hosts on its premises. 143

(8) "Electric load center" has the same meaning as in section 144
4933.81 of the Revised Code. 145

(9) "Electric services company" means an electric light 146
company that is engaged on a for-profit or not-for-profit basis in 147
the business of supplying or arranging for the supply of only a 148
competitive retail electric service in this state. "Electric 149
services company" includes a power marketer, power broker, 150
aggregator, or independent power producer but excludes an electric 151
cooperative, municipal electric utility, governmental aggregator, 152
or billing and collection agent. 153

(10) "Electric supplier" has the same meaning as in section 154
4933.81 of the Revised Code. 155

(11) "Electric utility" means an electric light company that 156
has a certified territory and is engaged on a for-profit basis 157
either in the business of supplying a noncompetitive retail 158
electric service in this state or in the businesses of supplying 159
both a noncompetitive and a competitive retail electric service in 160
this state. "Electric utility" excludes a municipal electric 161
utility or a billing and collection agent. 162

(12) "Firm electric service" means electric service other 163
than nonfirm electric service. 164

(13) "Governmental aggregator" means a legislative authority 165
of a municipal corporation, a board of township trustees, or a 166
board of county commissioners acting as an aggregator for the 167
provision of a competitive retail electric service under authority 168
conferred under section 4928.20 of the Revised Code. 169

(14) A person acts "knowingly," regardless of the person's 170
purpose, when the person is aware that the person's conduct will 171

probably cause a certain result or will probably be of a certain 172
nature. A person has knowledge of circumstances when the person is 173
aware that such circumstances probably exist. 174

(15) "Level of funding for low-income customer energy 175
efficiency programs provided through electric utility rates" means 176
the level of funds specifically included in an electric utility's 177
rates on October 5, 1999, pursuant to an order of the public 178
utilities commission issued under Chapter 4905. or 4909. of the 179
Revised Code and in effect on October 4, 1999, for the purpose of 180
improving the energy efficiency of housing for the utility's 181
low-income customers. The term excludes the level of any such 182
funds committed to a specific nonprofit organization or 183
organizations pursuant to a stipulation or contract. 184

(16) "Low-income customer assistance programs" means the 185
percentage of income payment plan program, the home energy 186
assistance program, the home weatherization assistance program, 187
and the targeted energy efficiency and weatherization program. 188

(17) "Market development period" for an electric utility 189
means the period of time beginning on the starting date of 190
competitive retail electric service and ending on the applicable 191
date for that utility as specified in section 4928.40 of the 192
Revised Code, irrespective of whether the utility applies to 193
receive transition revenues under this chapter. 194

(18) "Market power" means the ability to impose on customers 195
a sustained price for a product or service above the price that 196
would prevail in a competitive market. 197

(19) "Mercantile customer" means a commercial or industrial 198
customer if the electricity consumed is for nonresidential use and 199
the customer consumes more than seven hundred thousand kilowatt 200
hours per year or is part of a national account involving multiple 201
facilities in one or more states. 202

(20) "Municipal electric utility" means a municipal corporation that owns or operates facilities to generate, transmit, or distribute electricity.	203 204 205
(21) "Noncompetitive retail electric service" means a component of retail electric service that is noncompetitive as provided under division (B) of this section.	206 207 208
(22) "Nonfirm electric service" means electric service provided pursuant to a schedule filed under section 4905.30 of the Revised Code or pursuant to an arrangement under section 4905.31 of the Revised Code, which schedule or arrangement includes conditions that may require the customer to curtail or interrupt electric usage during nonemergency circumstances upon notification by an electric utility.	209 210 211 212 213 214 215
(23) "Percentage of income payment plan arrears" means funds eligible for collection through the percentage of income payment plan rider, but uncollected as of July 1, 2000.	216 217 218
(24) "Person" has the same meaning as in section 1.59 of the Revised Code.	219 220
(25) "Advanced energy project" means any technologies, products, activities, or management practices or strategies that facilitate the generation or use of electricity or energy and that reduce or support the reduction of energy consumption or support the production of clean, renewable energy for industrial, distribution, commercial, institutional, governmental, research, not-for-profit, or residential energy users, including, but not limited to, advanced energy resources and renewable energy resources. "Advanced energy project" also includes any project described in division (A), (B), or (C) of section 4928.621 of the Revised Code.	221 222 223 224 225 226 227 228 229 230 231
(26) "Regulatory assets" means the unamortized net regulatory assets that are capitalized or deferred on the regulatory books of	232 233

the electric utility, pursuant to an order or practice of the 234
public utilities commission or pursuant to generally accepted 235
accounting principles as a result of a prior commission 236
rate-making decision, and that would otherwise have been charged 237
to expense as incurred or would not have been capitalized or 238
otherwise deferred for future regulatory consideration absent 239
commission action. "Regulatory assets" includes, but is not 240
limited to, all deferred demand-side management costs; all 241
deferred percentage of income payment plan arrears; 242
post-in-service capitalized charges and assets recognized in 243
connection with statement of financial accounting standards no. 244
109 (receivables from customers for income taxes); future nuclear 245
decommissioning costs and fuel disposal costs as those costs have 246
been determined by the commission in the electric utility's most 247
recent rate or accounting application proceeding addressing such 248
costs; the undepreciated costs of safety and radiation control 249
equipment on nuclear generating plants owned or leased by an 250
electric utility; and fuel costs currently deferred pursuant to 251
the terms of one or more settlement agreements approved by the 252
commission. 253

(27) "Retail electric service" means any service involved in 254
supplying or arranging for the supply of electricity to ultimate 255
consumers in this state, from the point of generation to the point 256
of consumption. For the purposes of this chapter, retail electric 257
service includes one or more of the following "service 258
components": generation service, aggregation service, power 259
marketing service, power brokerage service, transmission service, 260
distribution service, ancillary service, metering service, and 261
billing and collection service. 262

(28) "Starting date of competitive retail electric service" 263
means January 1, 2001. 264

(29) "Customer-generator" means a user of a net metering 265

system.	266
(30) "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.	267 268 269 270 271
(31) "Net metering system" means a facility for the production of electrical energy that does all of the following:	272 273
(a) Uses as its fuel either solar, wind, biomass, landfill gas, or hydropower, or uses a microturbine or a fuel cell;	274 275
(b) Is located on a customer-generator's premises;	276
(c) Operates in parallel with the electric utility's transmission and distribution facilities;	277 278
(d) Is intended primarily to offset part or all of the customer-generator's requirements for electricity.	279 280
(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.	281 282 283 284 285 286
(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.	287 288 289
(34) "Advanced energy resource" means any of the following:	290
(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;	291 292 293 294 295

(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;

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

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

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

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

(g) Demand-side management and any energy efficiency improvement+	327 328
(h) Methane gas emitted from an operating or abandoned coal mine.	329 330
(35) "Renewable energy resource" means solar photovoltaic or solar thermal energy, wind energy, power produced by a hydroelectric facility, geothermal energy, fuel derived from solid wastes, as defined in section 3734.01 of the Revised Code, through fractionation, biological decomposition, or other process that does not principally involve combustion, biomass energy, biologically derived methane gas, or energy derived from nontreated by-products of the pulping process or wood manufacturing process, including bark, wood chips, sawdust, and lignin in spent pulping liquors. "Renewable energy resource" includes, but is not limited to, any fuel cell used in the generation of electricity, including, but not limited to, a proton exchange membrane fuel cell, phosphoric acid fuel cell, molten carbonate fuel cell, or solid oxide fuel cell; wind turbine located in the state's territorial waters of Lake Erie; <u>methane gas emitted from an abandoned coal mine</u> ; storage facility that will promote the better utilization of a renewable energy resource that primarily generates off peak; or distributed generation system used by a customer to generate electricity from any such energy. As used in division (A)(35) of this section, "hydroelectric facility" means a hydroelectric generating facility that is located at a dam on a river, or on any water discharged to a river, that is within or bordering this state or within or bordering an adjoining state and meets all of the following standards:	331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355
(a) The facility provides for river flows that are not detrimental for fish, wildlife, and water quality, including seasonal flow fluctuations as defined by the applicable licensing	356 357 358

agency for the facility. 359

(b) The facility demonstrates that it complies with the water 360
quality standards of this state, which compliance may consist of 361
certification under Section 401 of the "Clean Water Act of 1977," 362
91 Stat. 1598, 1599, 33 U.S.C. 1341, and demonstrates that it has 363
not contributed to a finding by this state that the river has 364
impaired water quality under Section 303(d) of the "Clean Water 365
Act of 1977," 114 Stat. 870, 33 U.S.C. 1313. 366

(c) The facility complies with mandatory prescriptions 367
regarding fish passage as required by the federal energy 368
regulatory commission license issued for the project, regarding 369
fish protection for riverine, anadromous, and catadromus fish. 370

(d) The facility complies with the recommendations of the 371
Ohio environmental protection agency and with the terms of its 372
federal energy regulatory commission license regarding watershed 373
protection, mitigation, or enhancement, to the extent of each 374
agency's respective jurisdiction over the facility. 375

(e) The facility complies with provisions of the "Endangered 376
Species Act of 1973," 87 Stat. 884, 16 U.S.C. 1531 to 1544, as 377
amended. 378

(f) The facility does not harm cultural resources of the 379
area. This can be shown through compliance with the terms of its 380
federal energy regulatory commission license or, if the facility 381
is not regulated by that commission, through development of a plan 382
approved by the Ohio historic preservation office, to the extent 383
it has jurisdiction over the facility. 384

(g) The facility complies with the terms of its federal 385
energy regulatory commission license or exemption that are related 386
to recreational access, accommodation, and facilities or, if the 387
facility is not regulated by that commission, the facility 388
complies with similar requirements as are recommended by resource 389

agencies, to the extent they have jurisdiction over the facility; 390
and the facility provides access to water to the public without 391
fee or charge. 392

(h) The facility is not recommended for removal by any 393
federal agency or agency of any state, to the extent the 394
particular agency has jurisdiction over the facility. 395

(B) For the purposes of this chapter, a retail electric 396
service component shall be deemed a competitive retail electric 397
service if the service component is competitive pursuant to a 398
declaration by a provision of the Revised Code or pursuant to an 399
order of the public utilities commission authorized under division 400
(A) of section 4928.04 of the Revised Code. Otherwise, the service 401
component shall be deemed a noncompetitive retail electric 402
service. 403

Section 2. That existing section 4928.01 of the Revised Code 404
is hereby repealed. 405