

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

**128th General Assembly  
Regular Session  
2009-2010**

**Sub. S. B. No. 181**

**Senator Stewart**

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

—

**A B I L L**

To amend sections 1501.04, 1517.23, 4928.01, 6109.22, 1  
and 6111.036 and to enact sections 1513.372, 2  
1517.03, and 1517.04 of the Revised Code to 3  
provide immunity from liability for eligible 4  
landowners who provide access to abandoned mine 5  
land located on their land for purposes of acid 6  
mine drainage abatement and to provide immunity 7  
from liability for nonprofit organizations that 8  
provide funding or services for such acid mine 9  
drainage abatement, to designate that methane gas 10  
emitted from an abandoned coal mine constitutes a 11  
renewable energy resource rather than an advanced 12  
energy resource for purposes of the law governing 13  
the promotion of renewable energy usage, 14  
electricity supplied from renewable energy 15  
sources, and renewable energy credits, to 16  
reestablish the Ohio Natural Areas Council, and to 17  
expand the purposes for which the Water Supply 18  
Revolving Loan Account in the Drinking Water 19  
Assistance Fund and the Water Pollution Control 20  
Loan Fund may be used; to require the Director of 21

Budget and Management, upon the request of the 22  
Director of Natural Resources and beginning July 23  
1, 2010, and ending January 1, 2012, to transfer 24  
an amount not to exceed \$1.2 million from the 25  
Natural Areas and Preserves Fund to the 26  
Departmental Projects Fund for the purpose of 27  
supporting permanent employees of the Division of 28  
Natural Areas and Preserves through January 1, 29  
2012; and to authorize the Administrator of the 30  
Bureau of Workers' Compensation, beginning July 1, 31  
2010, and ending June 30, 2011, to transfer a 32  
portion of the investment earnings of the 33  
Coal-Workers Pneumoconiosis Fund to the Strip 34  
Mining Administration Fund. 35

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

**Section 1.** That sections 1501.04, 1517.23, 4928.01, 6109.22, 36  
and 6111.036 be amended and sections 1513.372, 1517.03, and 37  
1517.04 of the Revised Code be enacted to read as follows: 38

**Sec. 1501.04.** There is hereby created in the department of 39  
natural resources a recreation and resources commission composed 40  
of the chairperson of the wildlife council created under section 41  
1531.03 of the Revised Code, the chairperson of the parks and 42  
recreation council created under section 1541.40 of the Revised 43  
Code, the chairperson of the waterways safety council created 44  
under section 1547.73 of the Revised Code, the chairperson of the 45  
technical advisory council on oil and gas created under section 46  
1509.38 of the Revised Code, the chairperson of the forestry 47  
advisory council created under section 1503.40 of the Revised 48  
Code, the chairperson of the Ohio soil and water conservation 49  
commission created under section 1515.02 of the Revised Code, the 50

chairperson of the Ohio natural areas council created under 51  
section 1517.03 of the Revised Code, the chairperson of the Ohio 52  
water advisory council created under section 1521.031 of the 53  
Revised Code, the chairperson of the recycling and litter 54  
prevention advisory council created under section 1502.04 of the 55  
Revised Code, the chairperson of the Ohio geology advisory council 56  
created under section 1505.11 of the Revised Code, and five 57  
members appointed by the governor with the advice and consent of 58  
the senate, not more than three of whom shall belong to the same 59  
political party. The director of natural resources shall be an ex 60  
officio member of the commission, with a voice in its 61  
deliberations, but without the power to vote. 62

Terms of office of members of the commission appointed by the 63  
governor shall be for five years, commencing on the second day of 64  
February and ending on the first day of February. Each member 65  
shall hold office from the date of appointment until the end of 66  
the term for which the member was appointed. 67

In the event of the death, removal, resignation, or 68  
incapacity of a member of the commission, the governor, with the 69  
advice and consent of the senate, shall appoint a successor who 70  
shall hold office for the remainder of the term for which the 71  
member's predecessor was appointed. Any member shall continue in 72  
office subsequent to the expiration date of the member's term 73  
until the member's successor takes office, or until a period of 74  
sixty days has elapsed, whichever occurs first. 75

The governor may remove any appointed member of the 76  
commission for misfeasance, nonfeasance, or malfeasance in office. 77

The commission shall exercise no administrative function, but 78  
may do any of the following: 79

(A) Advise with and recommend to the director as to plans and 80  
programs for the management, development, utilization, and 81

conservation of the natural resources of the state;	82
(B) Advise with and recommend to the director as to methods of coordinating the work of the divisions of the department;	83 84
(C) Consider and make recommendations upon any matter that the director may submit to it;	85 86
(D) Submit to the governor biennially recommendations for amendments to the conservation laws of the state.	87 88
Each member of the commission, before entering upon the discharge of the member's duties, shall take and subscribe to an oath of office, which oath, in writing, shall be filed in the office of the secretary of state.	89 90 91 92
The members of the commission shall serve without compensation, but shall be entitled to receive their actual and necessary expenses incurred in the performance of their official duties.	93 94 95 96
The commission, by a majority vote of all its members, shall adopt and amend bylaws.	97 98
To be eligible for appointment, a person shall be a citizen of the United States and an elector of the state and shall possess a knowledge of and have an interest in the natural resources of this state.	99 100 101 102
The commission shall hold at least four regular quarterly meetings each year. Special meetings shall be held at such times as the bylaws of the commission provide. Notices of all meetings shall be given in such manner as the bylaws provide. The commission shall choose annually from among its members a chairperson to preside over its meetings and a secretary to keep a record of its proceedings. A majority of the members of the commission constitutes a quorum. No advice shall be given or recommendation made without a majority of the members of the	103 104 105 106 107 108 109 110 111

commission concurring in it. 112

Sec. 1513.372. (A) As used in this section: 113

(1) "Abandoned mine land" means land or water resources 114  
adversely affected by coal mining practices to which one of the 115  
following applies: 116

(a) The coal mining practices occurred prior to August 3, 117  
1977, and there is no continuing reclamation responsibility under 118  
state or federal law. 119

(b) The coal mining practices occurred prior to April 10, 120  
1972. 121

(c) The coal mining practices were conducted pursuant to a 122  
license that was issued prior to April 10, 1972. 123

(2) "Eligible landowner" means a landowner who provides 124  
access without charge or other consideration to abandoned mine 125  
land that is located on the landowner's property for the purpose 126  
of allowing the implementation of a reclamation project on the 127  
abandoned mine land. "Eligible landowner" does not include a 128  
person that is responsible under state or federal law to reclaim 129  
the land or address acid mine drainage existing or emanating from 130  
the abandoned mine land. 131

(3) "Landowner" means a person who holds a fee interest in 132  
real property. 133

(4) "Nonprofit organization" means a corporation, 134  
association, group, institution, society, or other organization 135  
that is exempt from federal income taxation under section 136  
501(c)(3) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 137  
26 U.S.C. 501(c)(3), as amended, that provides funding or services 138  
at no cost or at cost for a reclamation project. 139

(5) "Reclamation project" means an acid mine drainage 140  
abatement project that is conducted in compliance with this 141

chapter and rules adopted under it on abandoned mine land that is 142  
located on property owned by an eligible landowner. 143

(6) "Reclamation project work area" means the portion of a 144  
parcel of real property on which a reclamation project is 145  
conducted and the roads providing ingress to and egress from the 146  
reclamation project. 147

(B) Except as provided in divisions (C) and (D) of this 148  
section, an eligible landowner or nonprofit organization is immune 149  
from liability as follows: 150

(1) For any injury to or damage suffered by a person working 151  
under the direct supervision of the division of mineral resources 152  
management while the person is within the reclamation project work 153  
area; 154

(2) For any injury to or damage suffered by a third party 155  
that arises out of or occurs as a result of an act or omission of 156  
the division during the construction, operation, and maintenance 157  
of the reclamation project; 158

(3) For any failure of an acid mine drainage abatement 159  
facility constructed or installed during a reclamation project 160  
that is supervised by the division; 161

(4) For the operation, maintenance, or repair of any acid 162  
mine drainage abatement facility constructed or installed during a 163  
reclamation project unless the eligible landowner negligently 164  
damages or destroys the acid mine drainage abatement facility or 165  
denies access to the division of mineral resources management that 166  
is responsible for the operation, maintenance, or repair of the 167  
acid mine drainage abatement facility. 168

(C) The eligible landowner shall notify the division of a 169  
known, latent, dangerous condition located at a reclamation 170  
project work area that is not the subject of the reclamation 171  
project. The immunity established in division (B) of this section 172

does not apply to any injury, damage, or pollution resulting from 173  
the eligible landowner's failure to notify the division of such a 174  
known, latent, dangerous condition. 175

(D) The immunity established in division (B) of this section 176  
does not apply in both of the following circumstances: 177

(1) An injury to a person within the reclamation project work 178  
area that results from an eligible landowner's or nonprofit 179  
organization's acts or omissions that are reckless or constitute 180  
gross negligence or willful or wanton misconduct; 181

(2) An eligible landowner or nonprofit organization who 182  
engages in any unlawful activities with respect to a reclamation 183  
project. 184

(E) The chief of the division of mineral resources management 185  
shall adopt rules in accordance with Chapter 119. of the Revised 186  
Code that are necessary to implement this section. 187

**Sec. 1517.03.** There is hereby created the Ohio natural areas 188  
council to advise the chief of the division of natural areas and 189  
preserves on the administration of nature preserves and the 190  
preservation of natural areas. 191

The council shall have no fewer than five members as 192  
determined by the director of natural resources. The members shall 193  
be appointed by the director. 194

Not later than thirty days after the effective date of this 195  
section, the director shall make initial appointments to the 196  
council. The director shall establish the terms of office of the 197  
members of the council. 198

The council annually shall select from among its members a 199  
chairperson and a secretary. Members of the council shall receive 200  
no compensation and shall not be reimbursed for expenses incurred 201  
as members of the council. 202

The council shall hold at least one regular meeting in each 203  
calendar year. Special meetings may be called by the chairperson 204  
and shall be called by the chairperson upon written request by two 205  
or more members of the council. A written notice of the time and 206  
place of each meeting shall be sent to each member and to the 207  
director. A majority of the members of the council constitutes a 208  
quorum. The council shall keep a record of its proceedings at each 209  
meeting and shall send a copy of the record to the director. The 210  
record shall be open to the public for inspection. 211

**Sec. 1517.04.** The Ohio natural areas council shall do all of 212  
the following: 213

(A) Review and make recommendations regarding criteria used 214  
by the department of natural resources for acquisition and 215  
dedication of nature preserves; 216

(B) Review and make recommendations regarding inventories and 217  
registries of natural areas and preserves; 218

(C) Review and make recommendations regarding departmental 219  
plans for the selection of particular natural areas for state 220  
acquisition; 221

(D) Advise the chief of the division of natural areas and 222  
preserves on policies and rules governing the management, 223  
protection, and use of nature preserves; 224

(E) Recommend the extent and type of visitation and use to be 225  
permitted within each nature preserve; 226

(F) Advise and consult with the chief and with employees of 227  
the division of natural areas and preserves on preservation 228  
matters; 229

(G) Advise the chief on the program to identify and protect 230  
the state's cave resources that is established under this chapter. 231



**Sec. 1517.23.** ~~The~~ With the advice of the Ohio natural areas council created in section 1517.03 of the Revised Code, the chief of the division of natural areas and preserves shall do both of the following:

(A) Formulate policies and plans and establish a program incorporating them for the identification and protection of the state's cave resources and adopt, amend, or rescind rules in accordance with Chapter 119. of the Revised Code to implement that program;

(B) Provide technical assistance and management advice to owners upon request concerning the protection of caves on their land.

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

(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 response service; energy imbalance service; operating reserve-spinning reserve service; operating reserve-supplemental reserve service; load following; back-up supply service; real-power loss replacement service; dynamic scheduling; system black start capability; and network stability service.

(2) "Billing and collection agent" means a fully independent 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 262  
service on behalf of the utility company, cooperative, or 263  
aggregator. 264

(3) "Certified territory" means the certified territory 265  
established for an electric supplier under sections 4933.81 to 266  
4933.90 of the Revised Code. 267

(4) "Competitive retail electric service" means a component 268  
of retail electric service that is competitive as provided under 269  
division (B) of this section. 270

(5) "Electric cooperative" means a not-for-profit electric 271  
light company that both is or has been financed in whole or in 272  
part under the "Rural Electrification Act of 1936," 49 Stat. 1363, 273  
7 U.S.C. 901, and owns or operates facilities in this state to 274  
generate, transmit, or distribute electricity, or a not-for-profit 275  
successor of such company. 276

(6) "Electric distribution utility" means an electric utility 277  
that supplies at least retail electric distribution service. 278

(7) "Electric light company" has the same meaning as in 279  
section 4905.03 of the Revised Code and includes an electric 280  
services company, but excludes any self-generator to the extent 281  
that it consumes electricity it so produces, sells that 282  
electricity for resale, or obtains electricity from a generating 283  
facility it hosts on its premises. 284

(8) "Electric load center" has the same meaning as in section 285  
4933.81 of the Revised Code. 286

(9) "Electric services company" means an electric light 287  
company that is engaged on a for-profit or not-for-profit basis in 288  
the business of supplying or arranging for the supply of only a 289  
competitive retail electric service in this state. "Electric 290  
services company" includes a power marketer, power broker, 291  
aggregator, or independent power producer but excludes an electric 292

cooperative, municipal electric utility, governmental aggregator, 293  
or billing and collection agent. 294

(10) "Electric supplier" has the same meaning as in section 295  
4933.81 of the Revised Code. 296

(11) "Electric utility" means an electric light company that 297  
has a certified territory and is engaged on a for-profit basis 298  
either in the business of supplying a noncompetitive retail 299  
electric service in this state or in the businesses of supplying 300  
both a noncompetitive and a competitive retail electric service in 301  
this state. "Electric utility" excludes a municipal electric 302  
utility or a billing and collection agent. 303

(12) "Firm electric service" means electric service other 304  
than nonfirm electric service. 305

(13) "Governmental aggregator" means a legislative authority 306  
of a municipal corporation, a board of township trustees, or a 307  
board of county commissioners acting as an aggregator for the 308  
provision of a competitive retail electric service under authority 309  
conferred under section 4928.20 of the Revised Code. 310

(14) A person acts "knowingly," regardless of the person's 311  
purpose, when the person is aware that the person's conduct will 312  
probably cause a certain result or will probably be of a certain 313  
nature. A person has knowledge of circumstances when the person is 314  
aware that such circumstances probably exist. 315

(15) "Level of funding for low-income customer energy 316  
efficiency programs provided through electric utility rates" means 317  
the level of funds specifically included in an electric utility's 318  
rates on October 5, 1999, pursuant to an order of the public 319  
utilities commission issued under Chapter 4905. or 4909. of the 320  
Revised Code and in effect on October 4, 1999, for the purpose of 321  
improving the energy efficiency of housing for the utility's 322  
low-income customers. The term excludes the level of any such 323

funds committed to a specific nonprofit organization or 324  
organizations pursuant to a stipulation or contract. 325

(16) "Low-income customer assistance programs" means the 326  
percentage of income payment plan program, the home energy 327  
assistance program, the home weatherization assistance program, 328  
and the targeted energy efficiency and weatherization program. 329

(17) "Market development period" for an electric utility 330  
means the period of time beginning on the starting date of 331  
competitive retail electric service and ending on the applicable 332  
date for that utility as specified in section 4928.40 of the 333  
Revised Code, irrespective of whether the utility applies to 334  
receive transition revenues under this chapter. 335

(18) "Market power" means the ability to impose on customers 336  
a sustained price for a product or service above the price that 337  
would prevail in a competitive market. 338

(19) "Mercantile customer" means a commercial or industrial 339  
customer if the electricity consumed is for nonresidential use and 340  
the customer consumes more than seven hundred thousand kilowatt 341  
hours per year or is part of a national account involving multiple 342  
facilities in one or more states. 343

(20) "Municipal electric utility" means a municipal 344  
corporation that owns or operates facilities to generate, 345  
transmit, or distribute electricity. 346

(21) "Noncompetitive retail electric service" means a 347  
component of retail electric service that is noncompetitive as 348  
provided under division (B) of this section. 349

(22) "Nonfirm electric service" means electric service 350  
provided pursuant to a schedule filed under section 4905.30 of the 351  
Revised Code or pursuant to an arrangement under section 4905.31 352  
of the Revised Code, which schedule or arrangement includes 353  
conditions that may require the customer to curtail or interrupt 354

electric usage during nonemergency circumstances upon notification 355  
by an electric utility. 356

(23) "Percentage of income payment plan arrears" means funds 357  
eligible for collection through the percentage of income payment 358  
plan rider, but uncollected as of July 1, 2000. 359

(24) "Person" has the same meaning as in section 1.59 of the 360  
Revised Code. 361

(25) "Advanced energy project" means any technologies, 362  
products, activities, or management practices or strategies that 363  
facilitate the generation or use of electricity or energy and that 364  
reduce or support the reduction of energy consumption or support 365  
the production of clean, renewable energy for industrial, 366  
distribution, commercial, institutional, governmental, research, 367  
not-for-profit, or residential energy users, including, but not 368  
limited to, advanced energy resources and renewable energy 369  
resources. "Advanced energy project" also includes any project 370  
described in division (A), (B), or (C) of section 4928.621 of the 371  
Revised Code. 372

(26) "Regulatory assets" means the unamortized net regulatory 373  
assets that are capitalized or deferred on the regulatory books of 374  
the electric utility, pursuant to an order or practice of the 375  
public utilities commission or pursuant to generally accepted 376  
accounting principles as a result of a prior commission 377  
rate-making decision, and that would otherwise have been charged 378  
to expense as incurred or would not have been capitalized or 379  
otherwise deferred for future regulatory consideration absent 380  
commission action. "Regulatory assets" includes, but is not 381  
limited to, all deferred demand-side management costs; all 382  
deferred percentage of income payment plan arrears; 383  
post-in-service capitalized charges and assets recognized in 384  
connection with statement of financial accounting standards no. 385  
109 (receivables from customers for income taxes); future nuclear 386

decommissioning costs and fuel disposal costs as those costs have 387  
been determined by the commission in the electric utility's most 388  
recent rate or accounting application proceeding addressing such 389  
costs; the undepreciated costs of safety and radiation control 390  
equipment on nuclear generating plants owned or leased by an 391  
electric utility; and fuel costs currently deferred pursuant to 392  
the terms of one or more settlement agreements approved by the 393  
commission. 394

(27) "Retail electric service" means any service involved in 395  
supplying or arranging for the supply of electricity to ultimate 396  
consumers in this state, from the point of generation to the point 397  
of consumption. For the purposes of this chapter, retail electric 398  
service includes one or more of the following "service 399  
components": generation service, aggregation service, power 400  
marketing service, power brokerage service, transmission service, 401  
distribution service, ancillary service, metering service, and 402  
billing and collection service. 403

(28) "Starting date of competitive retail electric service" 404  
means January 1, 2001. 405

(29) "Customer-generator" means a user of a net metering 406  
system. 407

(30) "Net metering" means measuring the difference in an 408  
applicable billing period between the electricity supplied by an 409  
electric service provider and the electricity generated by a 410  
customer-generator that is fed back to the electric service 411  
provider. 412

(31) "Net metering system" means a facility for the 413  
production of electrical energy that does all of the following: 414

(a) Uses as its fuel either solar, wind, biomass, landfill 415  
gas, or hydropower, or uses a microturbine or a fuel cell; 416

(b) Is located on a customer-generator's premises; 417

(c) Operates in parallel with the electric utility's 418  
transmission and distribution facilities; 419

(d) Is intended primarily to offset part or all of the 420  
customer-generator's requirements for electricity. 421

(32) "Self-generator" means an entity in this state that owns 422  
or hosts on its premises an electric generation facility that 423  
produces electricity primarily for the owner's consumption and 424  
that may provide any such excess electricity to another entity, 425  
whether the facility is installed or operated by the owner or by 426  
an agent under a contract. 427

(33) "Rate plan" means the standard service offer in effect 428  
on the effective date of the amendment of this section by S.B. 221 429  
of the 127th general assembly, July 31, 2008. 430

(34) "Advanced energy resource" means any of the following: 431

(a) Any method or any modification or replacement of any 432  
property, process, device, structure, or equipment that increases 433  
the generation output of an electric generating facility to the 434  
extent such efficiency is achieved without additional carbon 435  
dioxide emissions by that facility; 436

(b) Any distributed generation system consisting of customer 437  
cogeneration of electricity and thermal output simultaneously, 438  
primarily to meet the energy needs of the customer's facilities; 439

(c) Clean coal technology that includes a carbon-based 440  
product that is chemically altered before combustion to 441  
demonstrate a reduction, as expressed as ash, in emissions of 442  
nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or 443  
sulfur trioxide in accordance with the American society of testing 444  
and materials standard D1757A or a reduction of metal oxide 445  
emissions in accordance with standard D5142 of that society, or 446  
clean coal technology that includes the design capability to 447  
control or prevent the emission of carbon dioxide, which design 448

capability the commission shall adopt by rule and shall be based 449  
on economically feasible best available technology or, in the 450  
absence of a determined best available technology, shall be of the 451  
highest level of economically feasible design capability for which 452  
there exists generally accepted scientific opinion; 453

(d) Advanced nuclear energy technology consisting of 454  
generation III technology as defined by the nuclear regulatory 455  
commission; other, later technology; or significant improvements 456  
to existing facilities; 457

(e) Any fuel cell used in the generation of electricity, 458  
including, but not limited to, a proton exchange membrane fuel 459  
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or 460  
solid oxide fuel cell; 461

(f) Advanced solid waste or construction and demolition 462  
debris conversion technology, including, but not limited to, 463  
advanced stoker technology, and advanced fluidized bed 464  
gasification technology, that results in measurable greenhouse gas 465  
emissions reductions as calculated pursuant to the United States 466  
environmental protection agency's waste reduction model (WARM). 467

(g) Demand-side management and any energy efficiency 468  
improvement; 469

~~(h) Methane gas emitted from an operating or abandoned coal 470  
mine. 471~~

(35) "Renewable energy resource" means solar photovoltaic or 472  
solar thermal energy, wind energy, power produced by a 473  
hydroelectric facility, geothermal energy, fuel derived from solid 474  
wastes, as defined in section 3734.01 of the Revised Code, through 475  
fractionation, biological decomposition, or other process that 476  
does not principally involve combustion, biomass energy, 477  
biologically derived methane gas, or energy derived from 478  
nontreated by-products of the pulping process or wood 479



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; methane gas emitted from an abandoned coal mine; 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:

(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 agency for the facility.

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

(c) The facility complies with mandatory prescriptions regarding fish passage as required by the federal energy regulatory commission license issued for the project, regarding fish protection for riverine, anadromous, and ~~catadromous~~

catadromous fish. 512

(d) The facility complies with the recommendations of the 513  
Ohio environmental protection agency and with the terms of its 514  
federal energy regulatory commission license regarding watershed 515  
protection, mitigation, or enhancement, to the extent of each 516  
agency's respective jurisdiction over the facility. 517

(e) The facility complies with provisions of the "Endangered 518  
Species Act of 1973," 87 Stat. 884, 16 U.S.C. 1531 to 1544, as 519  
amended. 520

(f) The facility does not harm cultural resources of the 521  
area. This can be shown through compliance with the terms of its 522  
federal energy regulatory commission license or, if the facility 523  
is not regulated by that commission, through development of a plan 524  
approved by the Ohio historic preservation office, to the extent 525  
it has jurisdiction over the facility. 526

(g) The facility complies with the terms of its federal 527  
energy regulatory commission license or exemption that are related 528  
to recreational access, accommodation, and facilities or, if the 529  
facility is not regulated by that commission, the facility 530  
complies with similar requirements as are recommended by resource 531  
agencies, to the extent they have jurisdiction over the facility; 532  
and the facility provides access to water to the public without 533  
fee or charge. 534

(h) The facility is not recommended for removal by any 535  
federal agency or agency of any state, to the extent the 536  
particular agency has jurisdiction over the facility. 537

(B) For the purposes of this chapter, a retail electric 538  
service component shall be deemed a competitive retail electric 539  
service if the service component is competitive pursuant to a 540  
declaration by a provision of the Revised Code or pursuant to an 541  
order of the public utilities commission authorized under division 542

(A) of section 4928.04 of the Revised Code. Otherwise, the service 543  
component shall be deemed a noncompetitive retail electric 544  
service. 545

**Sec. 6109.22.** (A) There is hereby created the drinking water 546  
assistance fund to provide financial and technical assistance for 547  
the purposes of protecting public health and achieving and 548  
maintaining compliance with the Safe Drinking Water Act and this 549  
chapter. In addition to the accounts created under divisions (G) 550  
and (H) of this section, the drinking water assistance fund may 551  
include any other accounts established by the director of 552  
environmental protection. The fund shall be administered by the 553  
director consistent with the Safe Drinking Water Act, this 554  
section, and rules adopted under division (M) of this section. 555

(B) The drinking water assistance fund shall consist of the 556  
moneys credited to it from all capitalization grants received 557  
under the Safe Drinking Water Act except for moneys reserved by 558  
the governor pursuant to ~~title~~ Title III, section 302 of that act, 559  
all moneys credited to the fund from nonfederal sources, 560  
including, without limitation, the proceeds of state bonds or 561  
notes issued for the benefit of the fund, all payments of 562  
principal and interest on loans made from the fund, and all 563  
investment earnings on moneys held in the fund. On or before the 564  
date that a capitalization grant payment made under the authority 565  
of the Safe Drinking Water Act is credited to the fund, required 566  
matching moneys shall be credited to the fund. Any moneys 567  
transferred to or reserved from the drinking water assistance fund 568  
pursuant to ~~title~~ Title III, section 302 of the Safe Drinking 569  
Water Act shall be accounted for separately. 570

(C) In a manner consistent with the Safe Drinking Water Act 571  
and the applicable drinking water assistance management plan 572  
prepared in accordance with this section, the director may reserve 573

and award for assistance moneys allotted to the state under 574  
section 1452 of the Safe Drinking Water Act, provided that the 575  
director makes a determination that the use of the moneys will 576  
accomplish the state's objectives and the objectives established 577  
for capitalization grants under the Safe Drinking Water Act. The 578  
director may use a portion of the reserved moneys to enter into 579  
contracts with qualified organizations, including private 580  
nonprofit organizations, to provide statewide on-site technical 581  
assistance to small public water systems. 582

(D) Subject to the terms of the agreements provided for in 583  
division (E) of this section, moneys in the drinking water 584  
assistance fund shall be held in trust by the Ohio water 585  
development authority for the purposes of this section, shall be 586  
kept in the same manner that funds of the authority are kept under 587  
section 6121.11 of the Revised Code, and may be invested in the 588  
same manner that funds of the authority are invested under section 589  
6121.12 of the Revised Code. Moneys in the drinking water 590  
assistance fund shall be separate and apart from and not a part of 591  
the state treasury or of the other funds of the authority. No 592  
withdrawals or disbursements shall be made from the drinking water 593  
assistance fund without the written authorization of the director. 594

(E) The director shall adopt written criteria to ensure that 595  
fiscal controls are established for prudent administration of the 596  
drinking water assistance fund. For that purpose, the director and 597  
the authority shall enter into any necessary and appropriate 598  
agreements under which the authority may perform or provide any of 599  
the following: 600

(1) Fiscal controls and accounting procedures governing fund 601  
balances, receipts, and disbursements; 602

(2) Administration of loan accounts; 603

(3) Maintenance, management, and investment of moneys in the 604

fund. 605

Any agreement entered into under division (E) of this section 606  
shall provide for the payment of reasonable fees to the authority 607  
for any services it performs under the agreement and may provide 608  
for reasonable fees for the assistance of financial or accounting 609  
advisors. Payment of any of the fees to the authority may be made 610  
from the drinking water assistance administrative account 611  
established under division (G) of this section. 612

(F) The authority may make moneys available to the director 613  
for the purpose of providing matching moneys required to be 614  
credited to the drinking water assistance fund under division (B) 615  
of this section, subject to any terms that the director and the 616  
authority consider appropriate, and may pledge moneys that are 617  
held by the authority to secure the payment of bonds or notes 618  
issued by the authority to provide those matching moneys. 619

The director and the authority may enter into trust 620  
agreements to enable the authority to issue and refund bonds or 621  
notes for the sole benefit of the drinking water assistance fund, 622  
including, without limitation, the raising of matching moneys 623  
required to be credited to the fund in accordance with division 624  
(B) of this section. The agreements may authorize the pledge of 625  
moneys accruing to the fund from payments of principal or interest 626  
or both on loans made from the fund to secure bonds or notes, the 627  
proceeds of which bonds or notes shall be for the sole benefit of 628  
the drinking water assistance fund. The agreements may contain any 629  
terms that the director and the authority consider reasonable and 630  
proper for the payment and security of the bondholders or 631  
noteholders. 632

(G) There is hereby established within the drinking water 633  
assistance fund the drinking water assistance administrative 634  
account. No state matching moneys deposited into the fund under 635  
this section shall be used for the purpose of paying for or 636

defraying the costs of administering this section. The director 637  
may establish and collect fees from applicants for assistance 638  
provided under this section. The total fees charged to an 639  
applicant under this division for assistance under this section 640  
shall not exceed the following: 641

(1) For the environmental protection agency, one per cent of 642  
the principal amount of the assistance awarded to the applicant; 643

(2) For the authority, thirty-five one-hundredths of one per 644  
cent of the principal amount of the assistance awarded to the 645  
applicant. 646

All moneys from the fees shall be credited to the drinking 647  
water assistance administrative account in the fund. The moneys 648  
shall be used solely to defray the costs of administering this 649  
section. 650

(H) There is hereby established within the drinking water 651  
assistance fund the water supply revolving loan account. The 652  
director may provide financial assistance from the water supply 653  
revolving loan account for improvements to community water systems 654  
and to nonprofit noncommunity public water systems. 655

(I) All moneys from the fund credited to the water supply 656  
revolving loan account, all interest earned on moneys credited to 657  
the account, and all payments of principal and interest on loans 658  
made from the account shall be dedicated in perpetuity and used 659  
and reused solely for the following purposes, except as otherwise 660  
provided in this section: 661

(1) To make loans to community water systems and nonprofit 662  
noncommunity public water systems, subject to all of the following 663  
conditions: 664

(a) The loans are made at or below market rates of interest, 665  
including, without limitation, interest-free loans; 666

(b) Each recipient of a loan shall establish a dedicated 667  
source of security or revenue for repayment of the loan; 668

(c) All payments of principal and interest on the loans shall 669  
be credited to the water supply revolving loan account. 670

(2) To purchase or refinance at or below market rates 671  
interest debt obligations incurred after July 1, 1993, by 672  
municipal corporations, other political subdivisions, and 673  
interstate agencies having territory in the state; 674

(3) To guarantee or purchase insurance for debt obligations 675  
when the guarantee or insurance would improve the borrower's 676  
access to credit markets or would reduce the interest paid on 677  
those obligations; 678

(4) As a source of revenue or security for the payment of 679  
principal and interest on general obligation or revenue bonds or 680  
notes issued by this state if the proceeds of the sale of the 681  
bonds or notes are or will be deposited into the account; 682

(5) To provide subsidies in addition to any other financial 683  
assistance afforded disadvantaged communities under this section; 684

(6) To earn interest on moneys credited to the account; 685

(7) To provide any other assistance authorized by the Safe 686  
Drinking Water Act or any other federal law related to the use of 687  
federal funds administered under the Safe Drinking Water Act. 688

(J) The director may provide financial assistance from the 689  
water supply revolving loan account after determining all of the 690  
following: 691

(1) The applicant for financial assistance has the legal, 692  
institutional, managerial, and financial capability to construct, 693  
operate, and maintain its public water system and the proposed 694  
improvements to it; 695

(2) The applicant will implement a financial management plan 696

that includes, without limitation, provisions for satisfactory 697  
repayment of the financial assistance; 698

(3) The public water system of which the project for which 699  
assistance is proposed is a part is economically and nonmonetarily 700  
cost-effective, based on an evaluation of feasible alternatives 701  
that meet the drinking water treatment needs of the planning area 702  
in which the proposed project is located; 703

(4) Based on a comprehensive environmental review approved by 704  
the director, there are no significant adverse environmental 705  
effects resulting from all necessary improvements to the public 706  
water system of which the project proposed for assistance is a 707  
part; 708

(5) Public participation has occurred during the process of 709  
planning the project in compliance with applicable requirements 710  
under the Safe Drinking Water Act; 711

(6) The application meets the requirements of this section 712  
and rules adopted under division (M) of this section and is 713  
consistent with section 1452 of the Safe Drinking Water Act and 714  
regulations adopted under it; 715

(7) If the applicant for assistance is a water district 716  
formed under Chapter 6119. of the Revised Code that operates a 717  
public water system and that water district seeks to extend the 718  
distribution facilities, increase the number of service 719  
connections to its system, or provide for any other expansion of 720  
its system, the water district has consulted with the board of 721  
county commissioners from each county in which is located the 722  
proposed extension of distribution facilities, increase in the 723  
number of service connections, or other expansion of the public 724  
water system; 725

(8) The application meets any other requirements that the 726  
director considers necessary or appropriate to protect public 727



health and the environment and to ensure the financial integrity 728  
of the water supply revolving loan account. 729

Upon approval by the director of an application for financial 730  
assistance, the Ohio water development authority shall disburse 731  
the appropriate financial assistance from the water supply 732  
revolving loan account. If the proposed financial assistance is a 733  
loan, and if the payments of the principal or interest on the loan 734  
are or are expected to be pledged to secure payment of bonds 735  
issued or expected to be issued by the authority, the director 736  
shall submit the application for the loan to the authority for 737  
review and approval with respect to any matters pertaining to 738  
security for and the marketability of authority bonds. Review and 739  
approval by the authority shall be required prior to the making of 740  
such a loan. 741

(K) In accordance with rules adopted under division (M) of 742  
this section, the director periodically shall prepare a drinking 743  
water assistance management plan establishing the short-term and 744  
long-term goals for the assistance provided under this section, 745  
the allocation of available resources for the purposes of this 746  
section, the environmental, financial, and administrative terms, 747  
conditions, and criteria for the award of financial and technical 748  
assistance under this section, and the intended uses of 749  
capitalization grants and available moneys from the drinking water 750  
assistance fund. Criteria for awarding financial or technical 751  
assistance under this section shall not favor or disfavor any 752  
otherwise qualified nonprofit noncommunity public water system 753  
because it is owned by, operated by, or services a religious 754  
organization or a facility used for religious purposes. Prior to 755  
its adoption, the director shall make the drinking water 756  
assistance management plan available for public review and comment 757  
at a minimum of two public meetings and shall take adequate steps 758  
to ensure that reasonable public notice of each public meeting is 759

given at least thirty days prior to the meeting. 760

The plan shall include, without limitation, a system that 761  
prioritizes projects funded by the water supply revolving loan 762  
account based on the relative risk to human health being 763  
addressed, their necessity for ensuring compliance with 764  
requirements of the Safe Drinking Water Act, and their 765  
affordability to the applicants, as determined by the director. 766  
Financial assistance for projects from the water supply revolving 767  
loan account shall be limited to projects that are included in 768  
that prioritization and shall be awarded based upon their priority 769  
position and the applicants' readiness to proceed with their 770  
proposed activities as determined by the director. The drinking 771  
water assistance management plan shall include terms, conditions, 772  
amounts of moneys, and qualifying criteria, in addition to any 773  
other criteria established under this section, governing the 774  
financial assistance to be awarded to applicants from the water 775  
supply revolving loan account. The director shall determine the 776  
most effective use of the moneys in that account to achieve the 777  
state's drinking water assistance goals and objectives. 778

(L) The director, consistent with this section and applicable 779  
rules adopted under division (M) of this section, may enter into 780  
an agreement with an applicant for assistance from the drinking 781  
water assistance fund. Based on the director's review and approval 782  
of the project plans submitted under section 6109.07 of the 783  
Revised Code, any determinations made under division (J) of this 784  
section if an applicant seeks funding from the water supply 785  
revolving loan account, and any other requirements of this section 786  
and rules adopted under it, the director may establish in the 787  
agreement environmental and financial terms and conditions of the 788  
financial assistance to be offered to the applicant. If the 789  
recipient of financial assistance under this section defaults on 790  
any payment required in the agreement for financial assistance or 791

otherwise violates a term or condition of the agreement or of the 792  
plan approval for the project under section 6109.07 of the Revised 793  
Code, the director, in addition to any other available remedies, 794  
may terminate, suspend, or require immediate repayment of the 795  
financial assistance. The director also may take any enforcement 796  
action available under this chapter. 797

(M) The director may adopt rules in accordance with Chapter 798  
119. of the Revised Code for the implementation and administration 799  
of this section. The rules shall be consistent with section 1452 800  
of the Safe Drinking Water Act. 801

(N)(1) For the purposes of this section, appealable actions 802  
of the director pursuant to section 3745.04 of the Revised Code 803  
are limited to the following: 804

(a) Adoption of the drinking water assistance management plan 805  
prepared under division (K) of this section; 806

(b) Approval of priority systems, priority lists, and written 807  
program administration policies; 808

(c) Approval or disapproval under this section of applicants' 809  
project plans submitted under section 6109.07 of the Revised Code; 810

(d) Approval or disapproval of an application for assistance. 811

(2) Notwithstanding section 119.06 of the Revised Code, the 812  
director may take the final actions described in divisions 813  
(N)(1)(a) to (d) of this section without holding an adjudication 814  
hearing in connection with the action and without first issuing a 815  
proposed action under section 3745.07 of the Revised Code. 816

(3) Each action described in divisions (N)(1)(a) to (d) of 817  
this section and each approval of a plan under section 6109.07 of 818  
the Revised Code is a separate and discrete action of the 819  
director. Appeals are limited to the issues concerning the 820  
specific action appealed. Any appeal shall not include issues 821

determined under the scope of any prior action. 822

(O) The failure or inability of a public water system to 823  
obtain assistance under this section does not alter the obligation 824  
of the public water system to comply with all applicable 825  
requirements of this chapter and rules adopted under it. 826

**Sec. 6111.036.** (A) There is hereby created the water 827  
pollution control loan fund to provide financial, technical, and 828  
administrative assistance for the following purposes: 829

(1) Construction of publicly owned wastewater treatment 830  
works, as "construction" and "treatment works" are defined in 831  
section 212 of the "Federal Water Pollution Control Act," by 832  
municipal corporations, other political subdivisions, and 833  
interstate agencies having territory in this state; 834

(2) Implementation of nonpoint source pollution management 835  
programs under section 319 of that act; 836

(3) Development and implementation of estuary conservation 837  
and management programs under section 320 of that act. 838

To the extent they are otherwise allowable as determined by 839  
the director of environmental protection, the purposes identified 840  
under division (A) of this section are intended to include 841  
activities benefiting the waters of the state that are authorized 842  
under Chapter 3746. of the Revised Code. 843

The fund shall be administered by the director consistent 844  
with the "Federal Water Pollution Control Act"; regulations 845  
adopted under it, including, without limitation, regulations 846  
establishing public participation requirements applicable to the 847  
providing of financial assistance; this section; and rules adopted 848  
under division (O) of this section. 849

Moneys in the water pollution control loan fund shall be 850  
separate and apart from and not a part of the state treasury or of 851

the other funds of the Ohio water development authority. Subject 852  
to the terms of the agreements provided for in divisions (B), (C), 853  
(D), and (F) of this section, moneys in the fund shall be held in 854  
trust by the Ohio water development authority for the purposes of 855  
this section, shall be kept in the same manner that funds of the 856  
authority are kept under section 6121.11 of the Revised Code, and 857  
may be invested in the same manner that funds of the authority are 858  
invested under section 6121.12 of the Revised Code. No withdrawals 859  
or disbursements shall be made from the water pollution control 860  
loan fund without the written authorization of the director or ~~his~~ 861  
the director's designated representative. The manner of 862  
authorization for any withdrawals or disbursements from the fund 863  
to be made by the authority shall be established in the agreements 864  
authorized under division (C) of this section. 865

(B) The director may enter into agreements to receive and 866  
assign moneys credited or to be credited to the water pollution 867  
control loan fund. The director may reserve capitalization grant 868  
moneys allotted to the state under sections 601 and 604(c)(2) of 869  
the "Federal Water Pollution Control Act" for the other purposes 870  
authorized for the use of capitalization grant moneys under 871  
sections 603(d)(7) and 604(b) of that act. 872

(C) The director shall ensure that fiscal controls are 873  
established for prudent administration of the water pollution 874  
control loan fund. For that purpose, the director and the Ohio 875  
water development authority shall enter into any necessary and 876  
appropriate agreements under which the authority may perform or 877  
provide any of the following: 878

(1) Fiscal controls and accounting procedures governing fund 879  
balances, receipts, and disbursements; 880

(2) Administration of loan accounts; 881

(3) Maintaining, managing, and investing moneys in the fund. 882

Any agreement entered into under this division shall provide 883  
for the payment of reasonable fees to the Ohio water development 884  
authority for any services it performs under the agreement and may 885  
provide for reasonable fees for the assistance of financial or 886  
accounting advisors. Payments of any such fees to the authority 887  
may be made from the water pollution control loan fund to the 888  
extent authorized by division (H)(7) of this section or from the 889  
water pollution control loan administrative fund created in 890  
division (E) of this section. The authority may enter into loan 891  
agreements with the director and recipients of financial 892  
assistance from the fund as provided in this section. 893

(D) The water pollution control loan fund shall consist of 894  
the moneys credited to it from all capitalization grants received 895  
under sections 601 and 604(c)(2) of the "Federal Water Pollution 896  
Control Act," all moneys received as capitalization grants under 897  
section 205(m) of that act, all matching moneys credited to the 898  
fund arising from nonfederal sources, all payments of principal 899  
and interest for loans made from the fund, and all investment 900  
earnings on moneys held in the fund. On or before the date on 901  
which a quarterly capitalization grant payment will be received 902  
under that act, matching moneys equal to at least twenty per cent 903  
of the quarterly capitalization grant payment shall be credited to 904  
the fund. The Ohio water development authority may make moneys 905  
available to the director for the purpose of providing the 906  
matching moneys required by this division, subject to such terms 907  
as the director and the authority consider appropriate, and may 908  
pledge moneys that are held by the authority to secure the payment 909  
of bonds or notes issued by the authority to provide those 910  
matching moneys. The authority may make moneys available to the 911  
director for that purpose from any funds now or hereafter 912  
available to the authority from any source, including, without 913  
limitation, the proceeds of bonds or notes heretofore or hereafter 914  
issued by the authority under Chapter 6121. of the Revised Code. 915

Matching moneys made available to the director by the authority 916  
from the proceeds of any such bonds or notes shall be made 917  
available subject to the terms of the trust agreements relating to 918  
the bonds or notes. Any such matching moneys shall be made 919  
available to the director pursuant to a written agreement between 920  
the director and the authority that contains such terms as the 921  
director and the authority consider appropriate, including, 922  
without limitation, a provision providing for repayment to the 923  
authority of those matching moneys from moneys deposited in the 924  
water pollution control loan fund, including, without limitation, 925  
the proceeds of bonds or notes issued by the authority for the 926  
benefit of the fund and payments of principal and interest on 927  
loans made from the fund, or from any other sources now or 928  
hereafter available to the director for the repayment of those 929  
matching moneys. 930

(E) All moneys credited to the water pollution control loan 931  
fund, all interest earned on moneys in the fund, and all payments 932  
of principal and interest for loans made from the fund shall be 933  
dedicated in perpetuity and used and reused solely for the 934  
purposes set forth in division (A) of this section, except as 935  
otherwise provided in division (D) or (F) of this section. The 936  
director may establish and collect fees to be paid by recipients 937  
of financial assistance under this section, and all moneys arising 938  
from the fees shall be credited to the water pollution control 939  
loan administrative fund, which is hereby created in the state 940  
treasury, and shall be used to defray the costs of administering 941  
this section. 942

(F) The director and the Ohio water development authority 943  
shall enter into trust agreements to enable the authority to issue 944  
and refund bonds or notes for the sole benefit of the water 945  
pollution control loan fund, including, without limitation, the 946  
raising of the matching moneys required by division (D) of this 947

section. These agreements may authorize the pledge of moneys 948  
accruing to the fund from payments of principal and interest on 949  
loans made from the fund adequate to secure bonds or notes, the 950  
proceeds of which bonds or notes shall be for the sole benefit of 951  
the water pollution control loan fund. The agreements may contain 952  
such terms as the director and the authority consider reasonable 953  
and proper for the security of the bondholders or noteholders. 954

(G) The director shall enter into binding commitments to 955  
provide financial assistance from the water pollution control loan 956  
fund in an amount equal to one hundred twenty per cent of the 957  
amount of each capitalization grant payment received, within one 958  
year after receiving each such grant payment. The director shall 959  
provide the financial assistance in compliance with this section 960  
and rules adopted under division (O) of this section. The director 961  
shall ensure that all moneys credited to the fund are disbursed in 962  
an expeditious and timely manner. During the second year of 963  
operation of the water pollution control loan program, the 964  
director also shall ensure that not less than twenty-five per cent 965  
of the financial assistance provided under this section during 966  
that year is provided for the purpose of division (H)(2) of this 967  
section for the purchase or refinancing of debt obligations 968  
incurred after March 7, 1985, but not later than July 1, 1988, 969  
except that if the amount of money reserved during the second year 970  
of operation of the program for the purchase or refinancing of 971  
those debt obligations exceeds the amount required for the 972  
projects that are eligible to receive financial assistance for 973  
that purpose, the director shall distribute the excess moneys in 974  
accordance with the current priority system and list prepared 975  
under division (I) of this section to provide financial assistance 976  
for projects that otherwise would not receive assistance in that 977  
year. 978

(H) Moneys credited to the water pollution control loan fund 979



shall be used only for the following purposes:	980
(1) To make loans, subject to all of the following conditions:	981
(a) The loans are made at or below market rates of interest, including, without limitation, interest free loans;	982
(b) Periodic payments of principal and interest shall commence not later than one year after completion of the project, and all loans shall be fully amortized not later than twenty years after project completion;	983
(c) Each recipient of a loan shall establish a dedicated source of revenue for repayment of the loan;	984
(d) All payments of principal and interest on the loans shall be credited to the fund, except as otherwise provided in division (D) or (F) of this section.	985
(2) To purchase or refinance at or below market rates of interest debt obligations incurred after March 7, 1985, by municipal corporations, other political subdivisions, and interstate agencies having territory in the state;	986
(3) To guarantee or purchase insurance for debt obligations of municipal corporations, other political subdivisions, and interstate agencies having territory within the state when the guarantee or insurance would improve the borrower's access to credit markets or would reduce the interest rate paid on those obligations;	987
(4) As a source of revenue or security for the payment of principal and interest on general obligation or revenue bonds or notes issued by this state if the proceeds of the sale of the bonds or notes will be deposited in the fund;	988
(5) To provide loan guarantees for revolving loan funds established by municipal corporations and other political	989
	990
	991
	992
	993
	994
	995
	996
	997
	998
	999
	1000
	1001
	1002
	1003
	1004
	1005
	1006
	1007
	1008
	1009

subdivisions that are similar to the water pollution control loan fund; 1010  
1011

(6) To earn interest on moneys credited to the fund; 1012

(7) To pay the reasonable costs of administering the fund and this section, except that cumulative expenditures from the fund for administrative costs shall not at any time exceed four per cent of the total amount of the capitalization grants received; 1013  
1014  
1015  
1016

(8) To provide assistance in any manner or for any purpose that is consistent with Title VI of the Federal Water Pollution Control Act or with any other federal law related to the use of federal funds administered under Title VI of the Federal Water Pollution Control Act. 1017  
1018  
1019  
1020  
1021

(I) The director periodically shall prepare in accordance with rules adopted under division (O) of this section a state priority system and list ranking assistance proposals principally on the basis of their relative water quality and public health benefits and the financial need of the applicants for assistance. Assistance for proposed activities from the water pollution control loan fund shall be limited to those activities appearing on that priority list and shall be awarded based upon their priority sequence on the list and the applicants' readiness to proceed with their proposed activities. The director annually shall prepare and circulate for public review and comment a plan that defines the goals and intended uses of the fund, as required by section 606(c) of the "Federal Water Pollution Control Act." 1022  
1023  
1024  
1025  
1026  
1027  
1028  
1029  
1030  
1031  
1032  
1033  
1034

(J) Financial assistance from the water pollution control loan fund first shall be used to ensure maintenance of progress, as determined by the governor, toward compliance with enforceable deadlines, goals, and requirements under the "Federal Water Pollution Control Act" that are pertinent to the purposes of the fund set forth in divisions (A)(1) to (3) of this section, 1035  
1036  
1037  
1038  
1039  
1040

including, without limitation, the municipal compliance deadline 1041  
under that act. 1042

(K) The director may provide financial assistance from the 1043  
water pollution control loan fund for a publicly owned treatment 1044  
works project only after determining that: 1045

(1) Sewerage systems tributary to the treatment works are not 1046  
subject to excessive infiltration and inflow; 1047

(2) The applicant for financial assistance has the legal, 1048  
institutional, managerial, and financial capability to construct, 1049  
operate, and maintain its publicly owned treatment works; 1050

(3) The applicant will implement a financial management plan 1051  
that includes, without limitation, provisions for satisfactory 1052  
repayment of the financial assistance, a proportional user charge 1053  
system to pay the operation, maintenance, and replacement expenses 1054  
of the project, and, if appropriate in the director's judgment, an 1055  
adequate capital improvements fund; 1056

(4) The proposed disposal system of which the project is a 1057  
part is economically and nonmonetarily cost-effective, based upon 1058  
an evaluation of feasible alternatives that meet the waste water 1059  
treatment needs of the planning area in which the proposed project 1060  
is located; 1061

(5) Based upon the environmental review conducted by the 1062  
director under division (L) of this section, there are no 1063  
significant adverse environmental effects resulting from the 1064  
proposed disposal system and the system has been selected from 1065  
among environmentally sound alternatives; 1066

(6) Public participation has occurred during the process of 1067  
planning the project in compliance with applicable requirements 1068  
under the "Federal Water Pollution Control Act"; 1069

(7) The applicant has submitted a facilities plan for the 1070

project that meets the applicable program requirements and that 1071  
has been approved by the director; 1072

(8) The application meets the requirements of this section 1073  
and rules adopted under division (O) of this section and is 1074  
consistent with the intent of Title VI of the "Federal Water 1075  
Pollution Control Act" and regulations adopted under it; 1076

(9) The application meets such other requirements as the 1077  
director considers necessary or appropriate to protect the 1078  
environment or ensure the financial integrity of the fund while 1079  
implementing this section. 1080

(L) The director shall perform and document for public review 1081  
an independent, comprehensive environmental review of the 1082  
assistance proposal for each activity receiving financial 1083  
assistance under this section. The review shall serve as the basis 1084  
for the determinations to be made under division (K)(5) or (Q)(4) 1085  
of this section, as applicable, and may include, without 1086  
limitation, an environmental assessment, any necessary 1087  
supplemental studies, and an enforceable mitigation plan. The 1088  
director may establish environmental impact mitigation terms or 1089  
conditions for the implementation of an assistance proposal, 1090  
including, without limitation, the installation or modification of 1091  
a disposal system, in ~~his~~ the director's approval of the plans for 1092  
the installation or modification as authorized by section 6111.44 1093  
of the Revised Code or through other legally enforceable means. 1094  
The review shall be conducted in accordance with applicable rules 1095  
adopted under division (O) of this section. 1096

(M) The director, consistent with this section and applicable 1097  
rules adopted under division (O) of this section, may enter into 1098  
any agreement with an applicant that is necessary or appropriate 1099  
to provide assistance from the water pollution control loan fund. 1100  
Based upon ~~his~~ the director's review of an assistance proposal, 1101  
including, without limitation, approval for the project under 1102

section 6111.44 of the Revised Code, the environmental review 1103  
conducted under division (L) of this section, and the other 1104  
requirements of this section and rules adopted under it, the 1105  
director may establish in the agreement terms and conditions of 1106  
the assistance to be offered to an applicant. In addition to any 1107  
other available remedies, the director may terminate, suspend, or 1108  
require immediate repayment of financial assistance provided under 1109  
this section to, or take any other enforcement action available 1110  
under this chapter against, a recipient of financial assistance 1111  
under this section who defaults on any payment required in the 1112  
agreement for financial assistance or otherwise violates a term or 1113  
condition of the agreement or of the plan approval for the project 1114  
under section 6111.44 of the Revised Code. 1115

(N) Based upon the director's judgment as to the financial 1116  
need of the applicant and as to what constitutes the most 1117  
effective allocation of funds to achieve statewide water pollution 1118  
control objectives, the director may establish the terms, 1119  
conditions, and amount of financial assistance to be offered to an 1120  
applicant from the water pollution control loan fund. The 1121  
director, to the extent consistent with the water quality 1122  
improvement priorities reflected in the current priority system 1123  
and list prepared under division (I) of this section and with the 1124  
long-term financial integrity of the fund, shall ensure each year 1125  
that financial assistance in an amount equal to the cost of the 1126  
assistance proposals of applicants having a high level of economic 1127  
need that are on the current priority list and for which funding 1128  
is available in that year is made available from the fund to those 1129  
applicants at an interest rate that is lower than that offered to 1130  
other applicants for financial assistance from the fund for 1131  
assistance proposals that are on the current priority list and for 1132  
which funding is available in that year. 1133

The director shall determine the economic need of applicants 1134

for financial assistance in accordance with uniform criteria 1135  
established in rules adopted under division (O) of this section. 1136

(O) The director may adopt rules in accordance with Chapter 1137  
119. of the Revised Code for the implementation and administration 1138  
of this section and section 6111.037 of the Revised Code. Any such 1139  
rules governing the planning, design, and construction of water 1140  
pollution control projects, establishing an environmental review 1141  
process, establishing requirements for the preparation of 1142  
environmental impact reports and mitigation plans, governing the 1143  
establishment of priority systems for providing financial 1144  
assistance under this section and section 6111.037 of the Revised 1145  
Code, and governing the terms and conditions of assistance, shall 1146  
be consistent with the intent of Titles II and VI and sections 319 1147  
and 320 of the "Federal Water Pollution Control Act." The rules 1148  
governing the establishment of priority systems for financial 1149  
assistance and governing terms and conditions of assistance shall 1150  
provide for the most effective allocation of moneys from the water 1151  
pollution control loan fund to achieve water quality and public 1152  
health objectives throughout the state as determined by the 1153  
director. 1154

(P)(1) For the purpose of this section, appealable actions of 1155  
the director pursuant to section 3745.04 of the Revised Code are 1156  
limited to the following: 1157

(a) Approval of draft priority systems, draft priority lists, 1158  
and draft written program administration policies; 1159

(b) Approval or disapproval of project facility plans under 1160  
division (K)(7) of this section; 1161

(c) Approval or disapproval of plans and specifications for a 1162  
project under section 6111.44 of the Revised Code and issuance of 1163  
a permit to install in connection with a project pursuant to rules 1164  
adopted under section 6111.03 of the Revised Code; 1165

(d) Approval or disapproval of an application for assistance.	1166
(2) Notwithstanding section 119.06 of the Revised Code, the director may take final action described in division (P)(1)(a), (b), (c), or (d) of this section without holding an adjudication hearing in connection with the action and without first issuing a proposed action under section 3745.07 of the Revised Code.	1167 1168 1169 1170 1171
(3) Each action described in divisions (P)(1)(a), (b), (c), and (d) of this section is a separate and discrete action of the director. Appeals of any such action are limited to the issues concerning the specific action appealed, and the appeal shall not include issues determined under the scope of any prior action.	1172 1173 1174 1175 1176
(Q) The director may provide financial assistance for the implementation of a nonpoint source management program activity only after determining all of the following:	1177 1178 1179
(1) The activity is consistent with the state's nonpoint source management program;	1180 1181
(2) The applicant has the legal, institutional, managerial, and financial capability to implement, operate, and maintain the activity;	1182 1183 1184
(3) The cost of the activity is reasonable considering monetary and nonmonetary factors;	1185 1186
(4) Based on the environmental review conducted by the director under division (L) of this section, the activity will not result in significant adverse environmental impacts;	1187 1188 1189
(5) The application meets the requirements of this section and rules adopted under division (O) of this section and is consistent with the intent of Title VI of the "Federal Water Pollution Control Act" and regulations adopted under it;	1190 1191 1192 1193
(6) The applicant will implement a financial management plan, including, without limitation, provisions for satisfactory	1194 1195

repayment of the financial assistance; 1196

(7) The application meets such other requirements as the 1197  
director considers necessary or appropriate to protect the 1198  
environment and ensure the financial integrity of the fund while 1199  
implementing this section. 1200

(R) As used in this section, "Federal Water Pollution Control 1201  
Act" means the "Federal Water Pollution Control Act Amendments of 1202  
1972," 86 Stat. 886, 33 U.S.C.A. 1251, as amended by the "Clean 1203  
Water Act of 1977," 91 Stat. 1566, 33 U.S.C.A. 1251, the "Act of 1204  
October 21, 1980," 94 Stat. 2360, 33 U.S.C.A. 1254, the "Municipal 1205  
Wastewater Treatment Construction Grant Amendments of 1981," 95 1206  
Stat. 1623, 33 U.S.C.A. 1281, and the "Water Quality Act of 1987," 1207  
101 Stat. 7, 33 U.S.C.A. 1251. 1208

**Section 2.** That existing sections 1501.04, 1517.23, 4928.01, 1209  
6109.22, and 6111.036 of the Revised Code are hereby repealed. 1210

**Section 3.** (A) Beginning July 1, 2010, and ending January 1, 1211  
2012, the Director of Budget and Management, upon the request of 1212  
the Director of Natural Resources, shall transfer an amount not to 1213  
exceed \$1.2 million from the Natural Areas and Preserves Fund 1214  
created in section 1517.11 of the Revised Code (Fund 5220) to the 1215  
Departmental Projects Fund (Fund 1550) for the purpose of paying 1216  
the salaries of permanent employees of the Division of Natural 1217  
Areas and Preserves through January 1, 2012. If such an amount is 1218  
so transferred, the Director of Natural Resources, not later than 1219  
March 1, 2011, shall submit to the Speaker of the House of 1220  
Representatives and the President of the Senate a detailed report 1221  
of expenditures from the Departmental Projects Fund (Fund 1550) 1222  
for payment of salaries of permanent employees of the Division of 1223  
Natural Areas and Preserves. 1224

(B) If an amount is transferred pursuant to division (A) of 1225



this section and if the main operating appropriations act of the 1226  
129th General Assembly does not contain an appropriation for the 1227  
Division of Natural Areas and Preserves, it is the intent of the 1228  
128th General Assembly that a portion of the amount transferred 1229  
pursuant to division (A) of this section may be used by the 1230  
Department of Natural Resources to pay unemployment compensation 1231  
costs of former permanent employees of the Division of Natural 1232  
Areas and Preserves. 1233

**Section 4.** Beginning July 1, 2010, and ending June 30, 2011, 1234  
the Administrator of the Bureau of Workers' Compensation may 1235  
transfer a portion of the investment earnings credited to the 1236  
Coal-Workers Pneumoconiosis Fund created in section 4131.03 of the 1237  
Revised Code in an amount not to exceed \$2.28 million to the Strip 1238  
Mining Administration Fund (Fund 5260) for the purposes specified 1239  
in section 1513.181 of the Revised Code. No transfer from the 1240  
Coal-Workers Pneumoconiosis Fund to the Strip Mining 1241  
Administration Fund (Fund 5260) shall be made after June 30, 2011. 1242