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Committee**

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Sub. S. B. No. 181

Senator Stewart

Cosponsors: Senators Goodman, Schaffer, Seitz, Niehaus

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A B I L L

To amend sections 1541.083 and 4928.01 and to enact 1
section 1513.372 of the Revised Code to provide 2
immunity from liability for eligible landowners 3
who provide access to abandoned mine land for 4
purposes of reclamation or acid mine drainage 5
abatement and to provide immunity from liability 6
for nonprofit organizations that provide funding 7
or service for such reclamation or acid mine 8
drainage abatement; to designate that methane gas 9
emitted from an abandoned coal mine constitutes a 10
renewable energy resource rather than an advanced 11
energy resource for purposes of the law governing 12
the promotion of renewable energy usage, 13
electricity supplied from renewable energy 14
sources, and renewable energy credits; and to 15
authorize the Chief of the Division of Mineral 16
Resources Management in the Department of Natural 17
Resources to make leases to remove coal by 18
underground mining methods at Burr Oak State Park 19
pursuant to lease agreements and real estate 20
transactions that have been entered into not later 21
than January 1, 2011. 22

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

Section 1. That sections 1541.083 and 4928.01 be amended and 23
section 1513.372 of the Revised Code be enacted to read as 24
follows: 25

Sec. 1513.372. (A) As used in this section: 26

(1) "Abandoned mine land" means land or water resources that 27
were previously degraded by adverse effects of coal mining 28
practices to which one of the following applies: 29

(a) The coal mining practices occurred prior to August 3, 30
1977, and there is no continuing reclamation responsibility under 31
state or federal law. 32

(b) The coal mining practices occurred prior to April 10, 33
1972. 34

(c) The coal mining practices were conducted pursuant to a 35
license that was issued prior to April 10, 1972. 36

(2) "Eligible landowner" means a landowner who provides 37
access without charge to abandoned mine land that is located on 38
the landowner's property for the purpose of allowing the 39
implementation of a reclamation project on the abandoned mine 40
land. "Eligible landowner" does not include a person that is 41
responsible under state or federal law to reclaim the land or 42
address water pollution existing or emanating from abandoned mine 43
land. 44

(3) "Landowner" means a person who holds a fee interest in 45
real property. 46

(4) "Nonprofit organization" means a corporation, 47
association, group, institution, society, or other organization 48
that is exempt from federal income taxation under section 49

501(c)(3) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 50
26 U.S.C. 501(c)(3), as amended, that provides funding or service 51
for a reclamation project. 52

(5) "Reclamation project" means reclamation or an acid mine 53
drainage abatement project that is conducted in compliance with 54
this chapter and rules adopted under it on abandoned mine land 55
that is located on property owned by an eligible landowner. 56

(6) "Reclamation project sponsor" means a person that 57
provides funding or equipment, materials, or services at no cost 58
or at cost for a reclamation project. "Reclamation project 59
sponsor" does not include a person that is responsible under state 60
or federal law to reclaim the land or address water pollution 61
existing or emanating from abandoned mine land. 62

(7) "Reclamation project work area" means the portion of a 63
parcel of real property on which a reclamation project is 64
conducted and the roads providing ingress to and egress from the 65
reclamation project. 66

(B) Except as provided in divisions (C) and (D) of this 67
section, an eligible landowner or nonprofit organization is immune 68
from liability as follows: 69

(1) For any injury to or damage suffered by a person working 70
under the direct supervision of the reclamation project sponsor 71
while the person is within the reclamation project work area; 72

(2) For any injury to or damage suffered by a third party 73
that arises out of or occurs as a result of an act or omission of 74
the reclamation project sponsor during the implementation of the 75
reclamation project; 76

(3) For any injury to or damage suffered by a third party 77
that arises out of or occurs as a result of the reclamation 78
project; 79

<u>(4) For any pollution resulting from a reclamation project;</u>	80
<u>(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.</u>	81 82 83 84 85 86 87
<u>(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.</u>	88 89 90 91 92 93 94
<u>(D) The immunity established in division (B) of this section does not apply with regard to either of the following:</u>	95 96
<u>(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;</u>	97 98 99 100
<u>(2) An eligible landowner or nonprofit organization who engages in any unlawful activities with respect to a reclamation project.</u>	101 102 103
<u>(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.</u>	104 105 106
<u>(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.</u>	107 108 109 110

Sec. 1541.083. The chief of the division of parks and recreation, with the approval of the director of natural resources, the attorney general, and the governor, may make leases to parties making application therefor granting permission to take and remove halite from beneath the surface of Headlands state park in Lake county, and coal by underground mining methods from beneath the surface of Jefferson state park in Jefferson county and from beneath the surface of Burr Oak state park in Athens and Morgan counties pursuant to lease agreements and real estate transactions that have been entered into not later than January 1, 2011, if ~~he~~ the chief finds that such taking and removal will in no way affect the surface of the land or the use thereof as a public park. As the chief deems in the best interest of the state, such leases may be made either upon a royalty or rental basis, and may be either for a term of years or until the economic extraction of the mineral covered thereby has been completed. Upon request from the lessee of any such lease, the chief may consent to its cancellation, but any equipment or improvement thereon owned by the lessee may be held as security by the chief for payment of all rentals, royalties, and damages due the state at the time of cancellation.

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 142
black start capability; and network stability service. 143

(2) "Billing and collection agent" means a fully independent 144
agent, not affiliated with or otherwise controlled by an electric 145
utility, electric services company, electric cooperative, or 146
governmental aggregator subject to certification under section 147
4928.08 of the Revised Code, to the extent that the agent is under 148
contract with such utility, company, cooperative, or aggregator 149
solely to provide billing and collection for retail electric 150
service on behalf of the utility company, cooperative, or 151
aggregator. 152

(3) "Certified territory" means the certified territory 153
established for an electric supplier under sections 4933.81 to 154
4933.90 of the Revised Code. 155

(4) "Competitive retail electric service" means a component 156
of retail electric service that is competitive as provided under 157
division (B) of this section. 158

(5) "Electric cooperative" means a not-for-profit electric 159
light company that both is or has been financed in whole or in 160
part under the "Rural Electrification Act of 1936," 49 Stat. 1363, 161
7 U.S.C. 901, and owns or operates facilities in this state to 162
generate, transmit, or distribute electricity, or a not-for-profit 163
successor of such company. 164

(6) "Electric distribution utility" means an electric utility 165
that supplies at least retail electric distribution service. 166

(7) "Electric light company" has the same meaning as in 167
section 4905.03 of the Revised Code and includes an electric 168
services company, but excludes any self-generator to the extent 169
that it consumes electricity it so produces, sells that 170
electricity for resale, or obtains electricity from a generating 171
facility it hosts on its premises. 172

(8) "Electric load center" has the same meaning as in section	173
4933.81 of the Revised Code.	174
(9) "Electric services company" means an electric light	175
company that is engaged on a for-profit or not-for-profit basis in	176
the business of supplying or arranging for the supply of only a	177
competitive retail electric service in this state. "Electric	178
services company" includes a power marketer, power broker,	179
aggregator, or independent power producer but excludes an electric	180
cooperative, municipal electric utility, governmental aggregator,	181
or billing and collection agent.	182
(10) "Electric supplier" has the same meaning as in section	183
4933.81 of the Revised Code.	184
(11) "Electric utility" means an electric light company that	185
has a certified territory and is engaged on a for-profit basis	186
either in the business of supplying a noncompetitive retail	187
electric service in this state or in the businesses of supplying	188
both a noncompetitive and a competitive retail electric service in	189
this state. "Electric utility" excludes a municipal electric	190
utility or a billing and collection agent.	191
(12) "Firm electric service" means electric service other	192
than nonfirm electric service.	193
(13) "Governmental aggregator" means a legislative authority	194
of a municipal corporation, a board of township trustees, or a	195
board of county commissioners acting as an aggregator for the	196
provision of a competitive retail electric service under authority	197
conferred under section 4928.20 of the Revised Code.	198
(14) A person acts "knowingly," regardless of the person's	199
purpose, when the person is aware that the person's conduct will	200
probably cause a certain result or will probably be of a certain	201
nature. A person has knowledge of circumstances when the person is	202
aware that such circumstances probably exist.	203

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

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

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

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

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

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

(21) "Noncompetitive retail electric service" means a 235
component of retail electric service that is noncompetitive as 236
provided under division (B) of this section. 237

(22) "Nonfirm electric service" means electric service 238
provided pursuant to a schedule filed under section 4905.30 of the 239
Revised Code or pursuant to an arrangement under section 4905.31 240
of the Revised Code, which schedule or arrangement includes 241
conditions that may require the customer to curtail or interrupt 242
electric usage during nonemergency circumstances upon notification 243
by an electric utility. 244

(23) "Percentage of income payment plan arrears" means funds 245
eligible for collection through the percentage of income payment 246
plan rider, but uncollected as of July 1, 2000. 247

(24) "Person" has the same meaning as in section 1.59 of the 248
Revised Code. 249

(25) "Advanced energy project" means any technologies, 250
products, activities, or management practices or strategies that 251
facilitate the generation or use of electricity or energy and that 252
reduce or support the reduction of energy consumption or support 253
the production of clean, renewable energy for industrial, 254
distribution, commercial, institutional, governmental, research, 255
not-for-profit, or residential energy users, including, but not 256
limited to, advanced energy resources and renewable energy 257
resources. "Advanced energy project" also includes any project 258
described in division (A), (B), or (C) of section 4928.621 of the 259
Revised Code. 260

(26) "Regulatory assets" means the unamortized net regulatory 261
assets that are capitalized or deferred on the regulatory books of 262
the electric utility, pursuant to an order or practice of the 263
public utilities commission or pursuant to generally accepted 264
accounting principles as a result of a prior commission 265

rate-making decision, and that would otherwise have been charged 266
to expense as incurred or would not have been capitalized or 267
otherwise deferred for future regulatory consideration absent 268
commission action. "Regulatory assets" includes, but is not 269
limited to, all deferred demand-side management costs; all 270
deferred percentage of income payment plan arrears; 271
post-in-service capitalized charges and assets recognized in 272
connection with statement of financial accounting standards no. 273
109 (receivables from customers for income taxes); future nuclear 274
decommissioning costs and fuel disposal costs as those costs have 275
been determined by the commission in the electric utility's most 276
recent rate or accounting application proceeding addressing such 277
costs; the undepreciated costs of safety and radiation control 278
equipment on nuclear generating plants owned or leased by an 279
electric utility; and fuel costs currently deferred pursuant to 280
the terms of one or more settlement agreements approved by the 281
commission. 282

(27) "Retail electric service" means any service involved in 283
supplying or arranging for the supply of electricity to ultimate 284
consumers in this state, from the point of generation to the point 285
of consumption. For the purposes of this chapter, retail electric 286
service includes one or more of the following "service 287
components": generation service, aggregation service, power 288
marketing service, power brokerage service, transmission service, 289
distribution service, ancillary service, metering service, and 290
billing and collection service. 291

(28) "Starting date of competitive retail electric service" 292
means January 1, 2001. 293

(29) "Customer-generator" means a user of a net metering 294
system. 295

(30) "Net metering" means measuring the difference in an 296
applicable billing period between the electricity supplied by an 297

electric service provider and the electricity generated by a 298
customer-generator that is fed back to the electric service 299
provider. 300

(31) "Net metering system" means a facility for the 301
production of electrical energy that does all of the following: 302

(a) Uses as its fuel either solar, wind, biomass, landfill 303
gas, or hydropower, or uses a microturbine or a fuel cell; 304

(b) Is located on a customer-generator's premises; 305

(c) Operates in parallel with the electric utility's 306
transmission and distribution facilities; 307

(d) Is intended primarily to offset part or all of the 308
customer-generator's requirements for electricity. 309

(32) "Self-generator" means an entity in this state that owns 310
or hosts on its premises an electric generation facility that 311
produces electricity primarily for the owner's consumption and 312
that may provide any such excess electricity to another entity, 313
whether the facility is installed or operated by the owner or by 314
an agent under a contract. 315

(33) "Rate plan" means the standard service offer in effect 316
on the effective date of the amendment of this section by S.B. 221 317
of the 127th general assembly, July 31, 2008. 318

(34) "Advanced energy resource" means any of the following: 319

(a) Any method or any modification or replacement of any 320
property, process, device, structure, or equipment that increases 321
the generation output of an electric generating facility to the 322
extent such efficiency is achieved without additional carbon 323
dioxide emissions by that facility; 324

(b) Any distributed generation system consisting of customer 325
cogeneration of electricity and thermal output simultaneously, 326
primarily to meet the energy needs of the customer's facilities; 327

(c) Clean coal technology that includes a carbon-based 328
product that is chemically altered before combustion to 329
demonstrate a reduction, as expressed as ash, in emissions of 330
nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or 331
sulfur trioxide in accordance with the American society of testing 332
and materials standard D1757A or a reduction of metal oxide 333
emissions in accordance with standard D5142 of that society, or 334
clean coal technology that includes the design capability to 335
control or prevent the emission of carbon dioxide, which design 336
capability the commission shall adopt by rule and shall be based 337
on economically feasible best available technology or, in the 338
absence of a determined best available technology, shall be of the 339
highest level of economically feasible design capability for which 340
there exists generally accepted scientific opinion; 341

(d) Advanced nuclear energy technology consisting of 342
generation III technology as defined by the nuclear regulatory 343
commission; other, later technology; or significant improvements 344
to existing facilities; 345

(e) Any fuel cell used in the generation of electricity, 346
including, but not limited to, a proton exchange membrane fuel 347
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or 348
solid oxide fuel cell; 349

(f) Advanced solid waste or construction and demolition 350
debris conversion technology, including, but not limited to, 351
advanced stoker technology, and advanced fluidized bed 352
gasification technology, that results in measurable greenhouse gas 353
emissions reductions as calculated pursuant to the United States 354
environmental protection agency's waste reduction model (WARM). 355

(g) Demand-side management and any energy efficiency 356
improvement; 357

~~(h) Methane gas emitted from an operating or abandoned coal 358~~

mine. 359

(35) "Renewable energy resource" means solar photovoltaic or 360
solar thermal energy, wind energy, power produced by a 361
hydroelectric facility, geothermal energy, fuel derived from solid 362
wastes, as defined in section 3734.01 of the Revised Code, through 363
fractionation, biological decomposition, or other process that 364
does not principally involve combustion, biomass energy, 365
biologically derived methane gas, or energy derived from 366
nontreated by-products of the pulping process or wood 367
manufacturing process, including bark, wood chips, sawdust, and 368
lignin in spent pulping liquors. "Renewable energy resource" 369
includes, but is not limited to, any fuel cell used in the 370
generation of electricity, including, but not limited to, a proton 371
exchange membrane fuel cell, phosphoric acid fuel cell, molten 372
carbonate fuel cell, or solid oxide fuel cell; wind turbine 373
located in the state's territorial waters of Lake Erie; methane 374
gas emitted from an abandoned coal mine; storage facility that 375
will promote the better utilization of a renewable energy resource 376
that primarily generates off peak; or distributed generation 377
system used by a customer to generate electricity from any such 378
energy. As used in division (A)(35) of this section, 379
"hydroelectric facility" means a hydroelectric generating facility 380
that is located at a dam on a river, or on any water discharged to 381
a river, that is within or bordering this state or within or 382
bordering an adjoining state and meets all of the following 383
standards: 384

(a) The facility provides for river flows that are not 385
detrimental for fish, wildlife, and water quality, including 386
seasonal flow fluctuations as defined by the applicable licensing 387
agency for the facility. 388

(b) The facility demonstrates that it complies with the water 389
quality standards of this state, which compliance may consist of 390

certification under Section 401 of the "Clean Water Act of 1977," 391
91 Stat. 1598, 1599, 33 U.S.C. 1341, and demonstrates that it has 392
not contributed to a finding by this state that the river has 393
impaired water quality under Section 303(d) of the "Clean Water 394
Act of 1977," 114 Stat. 870, 33 U.S.C. 1313. 395

(c) The facility complies with mandatory prescriptions 396
regarding fish passage as required by the federal energy 397
regulatory commission license issued for the project, regarding 398
fish protection for riverine, anadromous, and catadromus fish. 399

(d) The facility complies with the recommendations of the 400
Ohio environmental protection agency and with the terms of its 401
federal energy regulatory commission license regarding watershed 402
protection, mitigation, or enhancement, to the extent of each 403
agency's respective jurisdiction over the facility. 404

(e) The facility complies with provisions of the "Endangered 405
Species Act of 1973," 87 Stat. 884, 16 U.S.C. 1531 to 1544, as 406
amended. 407

(f) The facility does not harm cultural resources of the 408
area. This can be shown through compliance with the terms of its 409
federal energy regulatory commission license or, if the facility 410
is not regulated by that commission, through development of a plan 411
approved by the Ohio historic preservation office, to the extent 412
it has jurisdiction over the facility. 413

(g) The facility complies with the terms of its federal 414
energy regulatory commission license or exemption that are related 415
to recreational access, accommodation, and facilities or, if the 416
facility is not regulated by that commission, the facility 417
complies with similar requirements as are recommended by resource 418
agencies, to the extent they have jurisdiction over the facility; 419
and the facility provides access to water to the public without 420
fee or charge. 421

(h) The facility is not recommended for removal by any 422
federal agency or agency of any state, to the extent the 423
particular agency has jurisdiction over the facility. 424

(B) For the purposes of this chapter, a retail electric 425
service component shall be deemed a competitive retail electric 426
service if the service component is competitive pursuant to a 427
declaration by a provision of the Revised Code or pursuant to an 428
order of the public utilities commission authorized under division 429
(A) of section 4928.04 of the Revised Code. Otherwise, the service 430
component shall be deemed a noncompetitive retail electric 431
service. 432

Section 2. That existing sections 1541.083 and 4928.01 of the 433
Revised Code are hereby repealed. 434