

As Introduced

129th General Assembly

Regular Session
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H. B. No. 364

Representatives Roegner, Duffey

**Cosponsors: Representatives Blessing, Hill, Stebelton, Thompson,
Stautberg**

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A B I L L

To amend section 4928.20 and to enact sections	1
4928.23, 4928.231, 4928.232, 4928.233, 4928.234,	2
4928.235, 4928.236, 4928.237, 4928.238, 4928.239,	3
4928.2310, 4928.2311, 4928.2312, 4928.2313,	4
4928.2314, 4928.2315, 4928.2316, 4928.2317, and	5
4928.2318 of the Revised Code to establish	6
standards for the securitization of costs for	7
electric distribution utilities.	8

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

Section 1. That section 4928.20 be amended and sections	9
4928.23, 4928.231, 4928.232, 4928.233, 4928.234, 4928.235,	10
4928.236, 4928.237, 4928.238, 4928.239, 4928.2310, 4928.2311,	11
4928.2312, 4928.2313, 4928.2314, 4928.2315, 4928.2316, 4928.2317,	12
and 4928.2318 of the Revised Code be enacted to read as follows:	13

Sec. 4928.20. (A) The legislative authority of a municipal corporation may adopt an ordinance, or the board of township trustees of a township or the board of county commissioners of a county may adopt a resolution, under which, on or after the starting date of competitive retail electric service, it may	14
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aggregate in accordance with this section the retail electrical 19
loads located, respectively, within the municipal corporation, 20
township, or unincorporated area of the county and, for that 21
purpose, may enter into service agreements to facilitate for those 22
loads the sale and purchase of electricity. The legislative 23
authority or board also may exercise such authority jointly with 24
any other such legislative authority or board. For customers that 25
are not mercantile customers, an ordinance or resolution under 26
this division shall specify whether the aggregation will occur 27
only with the prior, affirmative consent of each person owning, 28
occupying, controlling, or using an electric load center proposed 29
to be aggregated or will occur automatically for all such persons 30
pursuant to the opt-out requirements of division (D) of this 31
section. The aggregation of mercantile customers shall occur only 32
with the prior, affirmative consent of each such person owning, 33
occupying, controlling, or using an electric load center proposed 34
to be aggregated. Nothing in this division, however, authorizes 35
the aggregation of the retail electric loads of an electric load 36
center, as defined in section 4933.81 of the Revised Code, that is 37
located in the certified territory of a nonprofit electric 38
supplier under sections 4933.81 to 4933.90 of the Revised Code or 39
an electric load center served by transmission or distribution 40
facilities of a municipal electric utility. 41

(B) If an ordinance or resolution adopted under division (A) 42
of this section specifies that aggregation of customers that are 43
not mercantile customers will occur automatically as described in 44
that division, the ordinance or resolution shall direct the board 45
of elections to submit the question of the authority to aggregate 46
to the electors of the respective municipal corporation, township, 47
or unincorporated area of a county at a special election on the 48
day of the next primary or general election in the municipal 49
corporation, township, or county. The legislative authority or 50
board shall certify a copy of the ordinance or resolution to the 51

board of elections not less than ninety days before the day of the	52
special election. No ordinance or resolution adopted under	53
division (A) of this section that provides for an election under	54
this division shall take effect unless approved by a majority of	55
the electors voting upon the ordinance or resolution at the	56
election held pursuant to this division.	57
(C) Upon the applicable requisite authority under divisions	58
(A) and (B) of this section, the legislative authority or board	59
shall develop a plan of operation and governance for the	60
aggregation program so authorized. Before adopting a plan under	61
this division, the legislative authority or board shall hold at	62
least two public hearings on the plan. Before the first hearing,	63
the legislative authority or board shall publish notice of the	64
hearings once a week for two consecutive weeks in a newspaper of	65
general circulation in the jurisdiction or as provided in section	66
7.16 of the Revised Code. The notice shall summarize the plan and	67
state the date, time, and location of each hearing.	68
(D) No legislative authority or board, pursuant to an	69
ordinance or resolution under divisions (A) and (B) of this	70
section that provides for automatic aggregation of customers that	71
are not mercantile customers as described in division (A) of this	72
section, shall aggregate the electrical load of any electric load	73
center located within its jurisdiction unless it in advance	74
clearly discloses to the person owning, occupying, controlling, or	75
using the load center that the person will be enrolled	76
automatically in the aggregation program and will remain so	77
enrolled unless the person affirmatively elects by a stated	78
procedure not to be so enrolled. The disclosure shall state	79
prominently the rates, charges, and other terms and conditions of	80
enrollment. The stated procedure shall allow any person enrolled	81
in the aggregation program the opportunity to opt out of the	82
program every three years, without paying a switching fee. Any	83

such person that opts out before the commencement of the aggregation program pursuant to the stated procedure shall default to the standard service offer provided under section 4928.14 or division (D) of section 4928.35 of the Revised Code until the person chooses an alternative supplier.	84 85 86 87 88
(E)(1) With respect to a governmental aggregation for a municipal corporation that is authorized pursuant to divisions (A) to (D) of this section, resolutions may be proposed by initiative or referendum petitions in accordance with sections 731.28 to 731.41 of the Revised Code.	89 90 91 92 93
(2) With respect to a governmental aggregation for a township or the unincorporated area of a county, which aggregation is authorized pursuant to divisions (A) to (D) of this section, resolutions may be proposed by initiative or referendum petitions in accordance with sections 731.28 to 731.40 of the Revised Code, except that:	94 95 96 97 98 99
(a) The petitions shall be filed, respectively, with the township fiscal officer or the board of county commissioners, who shall perform those duties imposed under those sections upon the city auditor or village clerk.	100 101 102 103
(b) The petitions shall contain the signatures of not less than ten per cent of the total number of electors in, respectively, the township or the unincorporated area of the county who voted for the office of governor at the preceding general election for that office in that area.	104 105 106 107 108
(F) A governmental aggregator under division (A) of this section is not a public utility engaging in the wholesale purchase and resale of electricity, and provision of the aggregated service is not a wholesale utility transaction. A governmental aggregator shall be subject to supervision and regulation by the public utilities commission only to the extent of any competitive retail	109 110 111 112 113 114

electric service it provides and commission authority under this chapter.	115 116
(G) This section does not apply in the case of a municipal corporation that supplies such aggregated service to electric load centers to which its municipal electric utility also supplies a noncompetitive retail electric service through transmission or distribution facilities the utility singly or jointly owns or operates.	117 118 119 120 121 122
(H) A governmental aggregator shall not include in its aggregation the accounts of any of the following:	123 124
(1) A customer that has opted out of the aggregation;	125
(2) A customer in contract with a certified electric services company;	126 127
(3) A customer that has a special contract with an electric distribution utility;	128 129
(4) A customer that is not located within the governmental aggregator's governmental boundaries;	130 131
(5) Subject to division (C) of section 4928.21 of the Revised Code, a customer who appears on the "do not aggregate" list maintained under that section.	132 133 134
(I) Customers that are part of a governmental aggregation under this section shall be responsible only for such portion of a surcharge under section 4928.144 of the Revised Code that is proportionate to the benefits, as determined by the commission, that electric load centers within the jurisdiction of the governmental aggregation as a group receive. The proportionate surcharge so established shall apply to each customer of the governmental aggregation while the customer is part of that aggregation. If a customer ceases being such a customer, the otherwise applicable surcharge shall apply. Nothing in this	135 136 137 138 139 140 141 142 143 144

section shall result in less than full recovery by an electric distribution utility of any surcharge authorized under section 4928.144 of the Revised Code. Nothing in this section shall result in less than the full and timely imposition, charging, collection, and adjustment by an electric distribution utility, its assignee, or any collection agent, of the phase-in-recovery charges authorized pursuant to a final financing order issued pursuant to sections 4928.23 to 4928.2318 of the Revised Code. 145
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(J) On behalf of the customers that are part of a governmental aggregation under this section and by filing written notice with the public utilities commission, the legislative authority that formed or is forming that governmental aggregation may elect not to receive standby service within the meaning of division (B)(2)(d) of section 4928.143 of the Revised Code from an electric distribution utility in whose certified territory the governmental aggregation is located and that operates under an approved electric security plan under that section. Upon the filing of that notice, the electric distribution utility shall not charge any such customer to whom competitive retail electric generation service is provided by another supplier under the governmental aggregation for the standby service. Any such consumer that returns to the utility for competitive retail electric service shall pay the market price of power incurred by the utility to serve that consumer plus any amount attributable to the utility's cost of compliance with the alternative energy resource provisions of section 4928.64 of the Revised Code to serve the consumer. Such market price shall include, but not be limited to, capacity and energy charges; all charges associated with the provision of that power supply through the regional transmission organization, including, but not limited to, transmission, ancillary services, congestion, and settlement and administrative charges; and all other costs incurred by the utility that are associated with the procurement, provision, and 153
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administration of that power supply, as such costs may be approved 178
by the commission. The period of time during which the market 179
price and alternative energy resource amount shall be so assessed 180
on the consumer shall be from the time the consumer so returns to 181
the electric distribution utility until the expiration of the 182
electric security plan. However, if that period of time is 183
expected to be more than two years, the commission may reduce the 184
time period to a period of not less than two years. 185

(K) The commission shall adopt rules to encourage and promote 186
large-scale governmental aggregation in this state. For that 187
purpose, the commission shall conduct an immediate review of any 188
rules it has adopted for the purpose of this section that are in 189
effect on the effective date of the amendment of this section by 190
S.B. 221 of the 127th general assembly, July 31, 2008. Further, 191
within the context of an electric security plan under section 192
4928.143 of the Revised Code, the commission shall consider the 193
effect on large-scale governmental aggregation of any 194
nonbypassable generation charges, however collected, that would be 195
established under that plan, except any nonbypassable generation 196
charges that relate to any cost incurred by the electric 197
distribution utility, the deferral of which has been authorized by 198
the commission prior to the effective date of the amendment of 199
this section by S.B. 221 of the 127th general assembly, July 31, 200
2008. 201

Sec. 4928.23. As used in sections 4928.23 to 4928.2318 of the 202
Revised Code: 203

(A) "Ancillary agreement" means any bond insurance policy, 204
letter of credit, reserve account, surety bond, swap arrangement, 205
hedging arrangement, liquidity or credit support arrangement, or 206
other similar agreement or arrangement entered into in connection 207
with the issuance of phase-in-recovery bonds that is designed to 208

<u>promote the credit quality and marketability of the bonds or to mitigate the risk of an increase in interest rates.</u>	209
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(B) "Assignee" means any person or entity to which an interest in phase-in-recovery property is sold, assigned, transferred, or conveyed, other than as security, and any successor to or subsequent assignee of such a person or entity.	211
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(C) "Bond" includes debentures, notes, certificates of participation, certificates of beneficial interest, certificates of ownership or other evidences of indebtedness or ownership that are issued by an electric distribution utility or an assignee under a final financing order, the proceeds of which are used directly or indirectly to recover, finance, or refinance phase-in costs and financing costs, and that are secured by or payable from revenues from phase-in-recovery charges.	215
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(D) "Bondholder" means any holder or owner of a phase-in-recovery bond.	223
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(E) "Financing costs" means any of the following:	225
(1) Principal, interest, and redemption premiums that are payable on phase-in-recovery bonds;	226
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(2) Any payment required under an ancillary agreement;	228
(3) Any amount required to fund or replenish a reserve account or another account established under any indenture, ancillary agreement, or other financing document relating to phase-in-recovery bonds;	229
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(4) Any costs of retiring or refunding any existing debt and equity securities of an electric distribution utility in connection with the issuance of phase-in-recovery bonds;	233
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(5) Any costs incurred by an electric distribution utility to obtain modifications of or amendments to any indenture, financing agreement, security agreement, or similar agreement or instrument	236
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<u>relating to any existing secured or unsecured obligation of the electric distribution utility in connection with the issuance of phase-in-recovery bonds;</u>	239 240 241
<u>(6) Any costs incurred by an electric distribution utility to obtain any consent, release, waiver, or approval from any holder of an obligation described in division (E)(5) of this section that are necessary to be incurred for the electric distribution utility to issue or cause the issuance of phase-in-recovery bonds;</u>	242 243 244 245 246
<u>(7) Any taxes, franchise fees, or license fees imposed on phase-in-recovery revenues;</u>	247 248
<u>(8) Any costs related to issuing or servicing phase-in-recovery bonds or related to obtaining a financing order, including servicing fees and expenses, trustee fees and expenses, legal fees and expenses, administrative fees, placement fees, underwriting fees, capitalized interest and equity, and rating-agency fees;</u>	249 250 251 252 253 254
<u>(9) Any other similar costs that the public utilities commission finds appropriate.</u>	255 256
<u>(F) "Financing order" means an order issued by the public utilities commission under section 4928.232 of the Revised Code that authorizes an electric distribution utility to issue phase-in-recovery bonds and recover phase-in-recovery charges.</u>	257 258 259 260
<u>(G) "Final financing order" means a financing order that has become final and has taken effect as provided in section 4928.233 of the Revised Code.</u>	261 262 263
<u>(H) "Financing party" means either of the following:</u>	264
<u>(1) Any trustee, collateral agent, or other person acting for the benefit of any bondholder;</u>	265 266
<u>(2) Any party to an ancillary agreement, the rights and obligations of which relate to or depend upon the existence of</u>	267 268

<u>phase-in-recovery property, the enforcement and priority of a security interest in phase-in-recovery property, the timely collection and payment of phase-in-recovery revenues, or a combination of these factors.</u>	269
<u>(I) "Financing statement" has the same meaning as in section 1309.102 of the Revised Code.</u>	270
<u>(J) "Phase-in costs" means costs, inclusive of carrying charges, that have been authorized by the commission prior to the effective date of this section to be securitized or deferred as regulatory assets in proceedings under section 4909.18, 4928.143, or 4928.144 of the Revised Code or section 4928.14 of the Revised Code as it existed prior to July 31, 2008, pursuant to a final order for which appeals have been exhausted.</u>	271
<u>(K) "Phase-in-recovery property" means the property, rights, and interests of an electric distribution utility or an assignee under a final financing order, including the right to impose, charge, and collect the phase-in-recovery charges that shall be used to pay and secure the payment of phase-in-recovery bonds and financing costs, and including the right to obtain adjustments to those charges, and any revenues, receipts, collections, rights to payment, payments, moneys, claims, or other proceeds arising from the rights and interests created under the final financing order.</u>	272
<u>(L) "Phase-in-recovery revenues" means all revenues, receipts, collections, payments, moneys, claims, or other proceeds arising from phase-in-recovery property.</u>	273
<u>(M) "Successor" means, with respect to any entity, another entity that succeeds by operation of law to the rights and obligations of the first legal entity pursuant to any bankruptcy, reorganization, restructuring, or other insolvency proceeding, any merger, acquisition, or consolidation, or any sale or transfer of assets, regardless of whether any of these occur as a result of a</u>	274
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<u>restructuring of the electric power industry or otherwise.</u>	300
<u>Sec. 4928.231. (A) An electric distribution utility may apply to the public utilities commission for a financing order that authorizes the following:</u>	301
<u>(1) The issuance of phase-in-recovery bonds, in one or more series, to recover uncollected phase-in costs;</u>	304
<u>(2) The imposition, charging, and collection of phase-in-recovery charges, in accordance with the adjustment mechanism approved by the commission under section 4928.232 of the Revised Code, and consistent with the commission's authority regarding governmental aggregation as provided in division (I) of section 4928.20 of the Revised Code, to recover both of the following:</u>	306
<u>(a) Uncollected phase-in costs;</u>	312
<u>(b) Financing costs, approved by the commission under section 4928.232 of the Revised Code, to issue, service, repay, or refinance the phase-in-recovery bonds, incurred or paid upon issuance of the bonds or over the life of the bonds.</u>	313
<u>(3) The creation of phase-in-recovery property under the financing order.</u>	317
<u>(B) The application shall include all of the following:</u>	319
<u>(1) A description of the uncollected phase-in costs that the electric distribution utility seeks to recover through the issuance of phase-in-recovery bonds;</u>	320
<u>(2) An estimate of the date each series of phase-in-recovery bonds are expected to be issued;</u>	323
<u>(3) The expected term during which the phase-in costs associated with the issuance of each series of phase-in-recovery bonds are expected to be recovered;</u>	325
<u>(4) An estimate of the financing costs, as described in</u>	328

<u>section 4928.232 of the Revised Code, associated with the issuance</u>	329
<u>of each series of phase-in-recovery bonds;</u>	330
<u>(5) An estimate of the amount of phase-in-recovery charges</u>	331
<u>necessary to recover the phase-in costs and financing costs set</u>	332
<u>forth in the application and the calculation for that estimate,</u>	333
<u>which calculation shall take into account the estimated date or</u>	334
<u>dates of issuance and the estimated principal amount of each</u>	335
<u>series of phase-in-recovery bonds;</u>	336
<u>(6) For phase-in-recovery charges not subject to allocation</u>	337
<u>according to an existing order, a proposed methodology for</u>	338
<u>allocating phase-in-recovery charges among customer classes,</u>	339
<u>including a proposed methodology for allocating such charges to</u>	340
<u>governmental aggregation customers based upon the proportionate</u>	341
<u>benefit determination made under division (I) of section 4928.20</u>	342
<u>of the Revised Code;</u>	343
<u>(7) A description of a proposed adjustment mechanism for use</u>	344
<u>as described in division (A)(2) of this section;</u>	345
<u>(8) A description and valuation of how the issuance of the</u>	346
<u>phase-in-recovery bonds, including financing costs, will both</u>	347
<u>result in cost savings to customers and mitigate rate impacts to</u>	348
<u>customers when compared to the use of other financing mechanisms</u>	349
<u>or cost-recovery methods available to the electric distribution</u>	350
<u>utility;</u>	351
<u>(9) Any other information required by the commission.</u>	352
<u>(C) The electric distribution utility may restate or</u>	353
<u>incorporate by reference in the application any information</u>	354
<u>required under division (B)(9) of this section that the electric</u>	355
<u>distribution utility previously filed with the commission under</u>	356
<u>sections 4928.141 to 4928.143 of the Revised Code.</u>	357
<u>Sec. 4928.232. (A) Proceedings on an application submitted by</u>	358

<u>an electric distribution utility under section 4928.231 of the Revised Code shall be governed by Chapter 4903. of the Revised Code, but only to the extent that chapter is not inconsistent with this section. Any party that participated in the proceeding in which phase-in costs were approved under section 4928.144 of the Revised Code shall have standing to participate in proceedings under sections 4928.23 to 4928.2318 of the Revised Code.</u>	359
<u>(B) Within thirty days after the filing of an application under section 4928.231 of the Revised Code, the public utilities commission shall publish a schedule of the proceeding.</u>	366
<u>(C)(1) Not later than one hundred thirty-five days after the date the application is filed, the commission shall issue either a financing order, granting the application in whole or with modifications, or an order suspending or rejecting the application.</u>	369
<u>(2) If the commission suspends an application for a financing order, the commission shall notify the electric distribution utility of the suspension and may direct the electric distribution utility to provide additional information as the commission considers necessary to evaluate the application. Not later than ninety days after the suspension, the commission shall issue either a financing order, granting the application in whole or with modifications, or an order rejecting the application.</u>	374
<u>(D)(1) The commission shall not issue a financing order under division (C) of this section unless the commission determines that the financing order is consistent with section 4928.02 of the Revised Code.</u>	382
<u>(2) Except as provided in division (D)(1) of this section, the commission shall issue a financing order under division (C) of this section if the commission finds that the issuance of the phase-in-recovery bonds and the phase-in-recovery charges</u>	386

<u>authorized by the order are both reasonably expected to result in cost savings to customers and reasonably expected to mitigate rate impacts to customers as compared with traditional financing mechanisms or traditional cost-recovery methods available to the electric distribution utility.</u>	390 391 392 393 394
<u>(E) The commission shall include all of the following in a financing order issued under division (C) of this section:</u>	395 396
<u>(1) A determination of the maximum amount and a description of the phase-in costs that may be recovered through phase-in-recovery bonds issued under the financing order;</u>	397 398 399
<u>(2) A description of phase-in-recovery property, the creation of which is authorized by the financing order;</u>	400 401
<u>(3) A description of the financing costs that may be recovered through phase-in-recovery charges and the period over which those costs may be recovered;</u>	402 403 404
<u>(4) For phase-in-recovery charges not subject to allocation according to an existing order, a description of the methodology and calculation for allocating phase-in-recovery charges among customer classes, including the allocation of such charges, if any, to governmental aggregation customers based upon the proportionate benefit determination made under division (I) of section 4928.20 of the Revised Code;</u>	405 406 407 408 409 410 411
<u>(5) A description of the adjustment mechanism for use in the imposition, charging, and collection of the phase-in-recovery charges;</u>	412 413 414
<u>(6) The maximum term of the phase-in-recovery bonds;</u>	415
<u>(7) Any other provision the commission considers appropriate to ensure the full and timely imposition, charging, collection, and adjustment, pursuant to an approved adjustment mechanism, of the phase-in-recovery charges described in divisions (E)(3) to (5)</u>	416 417 418 419

<u>of this section.</u>	420
<u>(F) The commission shall, in a financing order, afford the electric distribution utility flexibility in establishing the terms and conditions for the phase-in-recovery bonds to accommodate changes in market conditions, including repayment schedules, interest rates, financing costs, collateral requirements, required debt service and other reserves, and the ability of the electric distribution utility, at its option, to effect a series of issuances of phase-in-recovery bonds and correlated assignments, sales, pledges, or other transfers of phase-in-recovery property. Any changes made under this section to terms and conditions for the phase-in-recovery bonds shall be in conformance with the financing order.</u>	421 422 423 424 425 426 427 428 429 430 431 432
<u>(G) A financing order may provide that the creation of phase-in-recovery property shall be simultaneous with the sale of that property to an assignee as provided in the application and the pledge of the property to secure phase-in-recovery bonds.</u>	433 434 435 436
<u>(H) The commission shall, in a financing order, require that after the final terms of each issuance of phase-in-recovery bonds have been established, and prior to the issuance of those bonds, the electric distribution utility shall determine the resulting phase-in-recovery charges in accordance with the adjustment mechanism described in the financing order. These phase-in-recovery charges shall be final and effective upon the issuance of the phase-in-recovery bonds, without further commission action.</u>	437 438 439 440 441 442 443 444 445
<u>Sec. 4928.233. (A) Any party to a proceeding under section 4928.232 of the Revised Code may petition the public utilities commission for rehearing of an order within thirty days after the date of the issuance of the order.</u>	446 447 448 449
<u>(B) Within sixty days after the issuance of an order after</u>	450

<u>rehearing or a decision denying a petition for rehearing, any party aggrieved by the issuance of any such order or decision may petition for review by the supreme court. Any such petition for review shall be served upon the chairperson of the commission personally or by service at the commission's office.</u>	451
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<u>Because delay in the determination of the appeal will delay the issuance of phase-in-recovery bonds, thereby diminishing savings to customers that might be achieved if the bonds were issued under a financing order, the supreme court shall proceed to hear and determine the action as expeditiously as practicable and shall give the action precedence over other matters not accorded similar precedence by law.</u>	456
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<u>(C) Any rehearing or review on appeal for a financing order issued under section 4928.232 of the Revised Code shall be governed by Chapter 4903. of the Revised Code.</u>	463
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<u>(D) If any phase-in costs are, or if any financing order is, subject to review by the commission or the supreme court, the electric distribution utility may not issue any phase-in-recovery bonds based on those costs or that financing order until all appellate reviews, including any appellate review following a commission decision on remand, have been exhausted.</u>	466
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<u>(E) A financing order shall become final and take effect as follows:</u>	472
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<u>(1) On the expiration of the thirty-day period after the date the commission issues the financing order, if no petition for rehearing is filed with the commission within that period;</u>	474
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<u>(2) On the expiration of the sixty-day period after the denial of the petition for rehearing, if no petition for review is filed with the supreme court within that period;</u>	477
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<u>(3) On the expiration of the sixty-day period after the commission issues an order after rehearing that approves or</u>	480
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<u>modifies and approves the financing order, if no petition for review is filed with the supreme court within that period;</u>	482
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<u>(4) On the expiration of the ten-day period after the date that the supreme court judgment entry or order that approves or modifies and approves a financing order is filed with the clerk, including any such order issued by the court following a commission decision on remand, if no motion for reconsideration is filed within that period;</u>	484
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<u>(5) On the date the supreme court order denying a motion for reconsideration of a judgment entry or order that approved or modified and approved a financing order is filed with the clerk;</u>	490
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<u>(6) On the date the supreme court judgment entry or order issued after reconsideration of a judgment entry or order that approved or modified and approved a financing order is filed with the clerk;</u>	493
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<u>(7) On the applicable effective date under division (E)(1), (2), or (3) of this section regarding a financing order remanded to the commission.</u>	497
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 Sec. 4928.234. (A) <u>The phase-in-recovery property created in a final financing order may be transferred, sold, conveyed, or assigned to any person or entity not affiliated with the electric distribution utility subject to the final financing order or to any affiliate of the electric distribution utility created for the limited purpose of acquiring, owning, or administering that property, issuing phase-in-recovery bonds under the final financing order, or a combination of these purposes.</u>	500
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<u>(B) All or any portion of the phase-in-recovery property may be pledged to secure the payment of phase-in-recovery bonds, amounts payable to financing parties and bondholders, amounts payable under any ancillary agreement, and other financing costs.</u>	508
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(C) The phase-in-recovery property shall constitute an existing, present property right, notwithstanding any requirement that the imposition, charging, and collection of phase-in-recovery charges depend on the electric distribution utility continuing to deliver retail electric distribution service or continuing to perform its servicing functions relating to the collection of phase-in-recovery charges or on the level of future energy consumption. That property shall exist regardless of whether the phase-in-recovery charges have been billed, have accrued, or have been collected, and notwithstanding any requirement that the value or amount of the property is dependent on the future provision of service to customers by the electric distribution utility.	512 513 514 515 516 517 518 519 520 521 522 523
(D) All such phase-in-recovery property shall continue to exist until the phase-in-recovery bonds issued under the final financing order are paid in full and all financing costs relating to the bonds have been paid in full.	524 525 526 527
Sec. 4928.235. (A)(1) A final financing order shall remain in effect until the phase-in-recovery bonds issued under the final financing order and all financing costs related to the bonds have been paid in full.	528 529 530 531
(2) A final financing order shall remain in effect and unabated notwithstanding the bankruptcy, reorganization, or insolvency of the electric distribution utility or any affiliate of the electric distribution utility or the commencement of any judicial or nonjudicial proceeding on the final financing order.	532 533 534 535 536
(B) A final financing order is irrevocable and the public utilities commission may not reduce, impair, postpone, or terminate the phase-in-recovery charges authorized in the final financing order or impair the property or the collection or recovery of phase-in costs.	537 538 539 540 541
Under a final financing order, the electric distribution	542

<u>utility retains sole discretion regarding whether to assign, sell, or otherwise transfer phase-in-recovery property, or to cause phase-in-recovery bonds to be issued, including the right to defer or postpone such assignment, sale, transfer, or issuance.</u>	543
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 <u>Sec. 4928.236. At the request of the electric distribution utility subject to a final financing order, the public utilities commission may commence a proceeding and issue a subsequent financing order that provides for retiring and refunding phase-in-recovery bonds issued under the final financing order if the commission finds that the subsequent financing order satisfies all of the requirements of section 4928.232 of the Revised Code. Effective on retirement of the refunded phase-in-recovery bonds and the issuance of new phase-in-recovery bonds, the commission shall adjust the related phase-in-recovery charges accordingly.</u>	547
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 <u>Sec. 4928.237. (A) The public utilities commission, in exercising the commission's powers and carrying out the commission's duties regarding regulation and ratemaking, may not do any of the following:</u>	557
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 <u>(1) Consider phase-in-recovery bonds issued under a final financing order to be the debt of the electric distribution utility subject to the final financing order;</u>	561
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 <u>(2) Consider the phase-in-recovery charges imposed, charged, or collected under the final financing order to be revenue of the electric distribution utility;</u>	564
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 <u>(3) Consider the phase-in costs or financing costs authorized under the final financing order to be the costs of the electric distribution utility.</u>	567
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 <u>(B) The commission may not order or otherwise require, directly or indirectly, any electric distribution utility to use phase-in-recovery bonds to finance the recovery of phase-in costs</u>	570
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<u>or related carrying charges.</u>	573
<u>(C) The commission may not refuse to allow the recovery of phase-in costs or related carrying charges solely because the electric distribution utility has elected or may elect to finance those costs and charges through a financing mechanism other than the issuance of phase-in-recovery bonds.</u>	574
<u>If the electric distribution utility elects not to finance those costs and charges through the issuance of phase-in-recovery bonds as authorized in the final financing order, those costs and charges shall be recovered as previously authorized by the commission.</u>	579
<u>Sec. 4928.238. (A) An electric distribution utility subject to a final financing order shall file with the public utilities commission, at least annually, or more frequently as provided in the final financing order, a schedule applying the approved adjustment mechanism to the phase-in-recovery charges authorized under the final financing order, based on estimates of consumption for each customer class and other mathematical factors. The electric distribution utility shall submit with the schedule a request for approval to make the adjustments to the phase-in-recovery charges in accordance with the schedule.</u>	584
<u>(B) The commission's review of the request shall be limited to a determination of whether there is any mathematical error in the application of the adjustment mechanism to the phase-in-recovery charges, including the calculation of any proportionate charges allocated to governmental aggregation customers as directed in the final financing order.</u>	594
<u>(C) A request submitted under division (A) of this section shall be deemed approved, and the adjustments shall go into immediate effect, if not approved by the commission within sixty days after the request is submitted.</u>	600

<u>(D) No adjustment approved or deemed approved under this section shall in any way affect the irrevocability of the final financing order as specified in section 4928.235 of the Revised Code.</u>	604
<u>Sec. 4928.239. (A) As used in this section, "nonbypassable," with respect to phase-in-recovery charges, means that such charges cannot be avoided by any customer or other person obligated to pay the charges.</u>	608
<u>(B) As long as phase-in-recovery bonds issued under a final financing order are outstanding and the related phase-in costs and financing costs have not been recovered in full, the phase-in-recovery charges authorized under the final financing order shall be nonbypassable and shall apply to both of the following, subject to the methodology approved in the final financing order pursuant to division (E)(4) of section 4928.232 of the Revised Code:</u>	612
<u>(1) All customers of the electric distribution utility located within the electric distribution utility's service area, regardless of whether the customers are or may become entitled to purchase electric generation service from a provider of electric generation service other than an electric distribution utility;</u>	620
<u>(2) Any person or entity located within the electric distribution utility's service area that may subsequently receive retail electric distribution service from another electric distribution utility operating in the same service area.</u>	625
<u>(C) In the event that customers are or become entitled to purchase electric generation service from a provider of electric generation service other than an electric distribution utility, the electric distribution utility subject to the final financing order shall collect the phase-in-recovery charges directly from those customers.</u>	629

(D) The phase-in-recovery charges shall be collected by the electric distribution utility or the electric distribution utility's successors or assignees, or a collection agent, in full through a charge that is separate and apart from the electric distribution utility's base rates.	635 636 637 638 639
Sec. 4928.2310. (A)(1) If an electric distribution utility subject to a final financing order defaults on any required payment of phase-in-recovery revenues, a court, upon application by an interested party and without limiting any other remedies available to the applicant, shall order the sequestration and payment of the revenues for the benefit of bondholders, any assignee, and any financing parties. The order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the electric distribution utility or any affiliate.	640 641 642 643 644 645 646 647 648 649
(2) Notwithstanding division (A)(1) of this section, customers of an electric distribution utility shall be held harmless for the electric distribution utility's failure to remit any required payment of phase-in-recovery revenues, and such failure shall in no way affect the phase-in-recovery property or the rights to impose, collect, and adjust the phase-in-recovery charges under section 4928.23 to 4928.2318 of the Revised Code.	650 651 652 653 654 655 656
(B) Phase-in-recovery property under a final financing order and the interests of an assignee, bondholder, or financing party in that property under a financing agreement are not subject to setoff, counterclaim, surcharge, or defense by the electric distribution utility subject to the final financing order or any other person, including as a result of the electric distribution utility's failure to provide past, present, or future services, or in connection with the bankruptcy, reorganization, or other insolvency proceeding of the electric distribution utility, any	657 658 659 660 661 662 663 664 665

<u>affiliate, or any other entity.</u>	666
 <u>Sec. 4928.2311. Any successor to an electric distribution utility subject to a final financing order shall be bound by the requirements of sections 4928.23 to 4928.2317 of the Revised Code. The successor shall perform and satisfy all obligations of the electric distribution utility under the final financing order, in the same manner and to the same extent as the electric distribution utility, including the obligation to collect and pay phase-in-recovery revenues to the person entitled to receive those revenues. The successor shall have the same rights of the electric distribution utility under the final financing order, in the same manner and to the same extent as the electric distribution utility.</u>	667 668 669 670 671 672 673 674 675 676 677 678
 <u>Sec. 4928.2312. (A) Except as provided in division (C) of this section, the creation, perfection, and enforcement of any security interest in phase-in-recovery property under a final financing order to secure the repayment of the principal of and interest on phase-in-recovery bonds, amounts payable under any ancillary agreement, and other financing costs are governed by this section and not Chapters 1301. to 1309. of the Revised Code.</u>	679 680 681 682 683 684 685
 <u>(B) The description of the phase-in-recovery property in a transfer or security agreement and a financing statement is sufficient only if the description refers to this section and the final financing order creating the property. This section applies to all purported transfers of, and all purported grants of, liens on or security interests in that property, regardless of whether the related transfer or security agreement was entered into, or the related financing statement was filed, before or after the effective date of this section.</u>	686 687 688 689 690 691 692 693 694
 <u>(C)(1) A security interest in phase-in-recovery property</u>	695

<u>under a final financing order is created, valid, and binding at</u>	696
<u>the latest of the date that the security agreement is executed and</u>	697
<u>delivered or the date that value is received for the</u>	698
<u>phase-in-recovery bonds.</u>	699
<u>(2)(a) The security interest shall attach without any</u>	700
<u>physical delivery of collateral or other act, and, upon the filing</u>	701
<u>of the financing statement with the office of the secretary of</u>	702
<u>state, the lien of the security interest shall be valid, binding,</u>	703
<u>and perfected against all parties having claims of any kind in</u>	704
<u>tort, contract, or otherwise against the person granting the</u>	705
<u>security interest, regardless of whether the parties have notice</u>	706
<u>of the lien. Also upon this filing, a transfer of an interest in</u>	707
<u>the phase-in-recovery property shall be perfected against all</u>	708
<u>parties having claims of any kind, including any judicial lien or</u>	709
<u>other lien creditors or any claims of the seller or creditors of</u>	710
<u>the seller, other than creditors holding a prior security</u>	711
<u>interest, ownership interest, or assignment in the property</u>	712
<u>previously perfected in accordance with this division.</u>	713
<u>(b) The secretary of state shall maintain any financing</u>	714
<u>statement filed under division (C)(2) of this section in the same</u>	715
<u>manner that the secretary maintains financing statements filed by</u>	716
<u>transmitting utilities under division (B) of section 1309.501 of</u>	717
<u>the Revised Code. The filing of any financing statement under</u>	718
<u>division (C)(2) of this section shall be governed by the</u>	719
<u>provisions regarding the filing of financing statements in Chapter</u>	720
<u>1309. of the Revised Code.</u>	721
<u>(D)(1) A security interest in phase-in-recovery property</u>	722
<u>under a final financing order is a continuously perfected security</u>	723
<u>interest and has priority over any other lien, created by</u>	724
<u>operation of law or otherwise, that may subsequently attach to</u>	725
<u>that property or those rights or interests unless the holder of</u>	726
<u>any such lien has agreed in writing otherwise.</u>	727

(2) The priority of a security interest in phase-in-recovery property is not affected by the commingling of phase-in-recovery revenues with other amounts. Any pledgee or secured party shall have a perfected security interest in the amount of all phase-in-recovery revenues that are deposited in any cash or deposit account of the electric distribution utility in which phase-in-recovery revenues have been commingled with other funds.	728
Any other security interest that may apply to those funds shall be terminated when the funds are transferred to a segregated account for an assignee or a financing party.	729
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(3) No application of the adjustment mechanism as described in section 4928.238 of the Revised Code shall affect the validity, perfection, or priority of a security interest in or the transfer of phase-in-recovery property under the final financing order.	738
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 Sec. 4928.2313. (A) Any sale, assignment, or transfer of phase-in-recovery property under a final financing order shall be an absolute transfer and true sale of, and not a pledge of or secured transaction relating to, the seller's right, title, and interest in, to, and under the property, if the documents governing the transaction expressly state that the transaction is a sale or other absolute transfer. A transfer of an interest in that property may be created only when all of the following have occurred:	742
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(1) The financing order has become final and taken effect.	751
(2) The documents evidencing the transfer of the property have been executed and delivered to the assignee.	752
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(3) Value has been received for the property.	754
(B) The characterization of the sale, assignment, or transfer as an absolute transfer and true sale and the corresponding characterization of the property interest of the purchaser shall	755
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<u>be effective and perfected against all third parties and shall not be affected or impaired by, among other things, the occurrence of any of the following:</u>	758
<u>(1) Commingling of phase-in-recovery revenues with other amounts;</u>	761
<u>(2) The retention by the seller of either of the following:</u>	762
<u>(a) A partial or residual interest, including an equity interest, in the phase-in-recovery property, whether direct or indirect, or whether subordinate or otherwise;</u>	763
<u>(b) The right to recover costs associated with taxes, franchise fees, or license fees imposed on the collection of phase-in-recovery revenues.</u>	764
<u>(3) Any recourse that the purchaser or any assignee may have against the seller;</u>	765
<u>(4) Any indemnification rights, obligations, or repurchase rights made or provided by the seller;</u>	766
<u>(5) The obligation of the seller to collect phase-in-recovery revenues on behalf of an assignee;</u>	767
<u>(6) The treatment of the sale, assignment, or transfer for tax, financial reporting, or other purposes;</u>	768
<u>(7) Any application of the adjustment mechanism under the final financing order.</u>	769
 Sec. 4928.2314. (A) <u>The imposition, charging, collection, and receipt of phase-in-recovery revenues under sections 4928.231 to 4928.2317 of the Revised Code are not subject to taxation by any municipality of this state under the authority granted to municipalities.</u>	770
<u>(B) Phase-in-recovery bonds issued under a final financing order shall not constitute a debt or a pledge of the faith and</u>	781
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credit or taxing power of this state or of any county, 787
municipality, or any other political subdivision of this state. 788
Bondholders shall have no right to have taxes levied by this state 789
or the taxing authority of any county, municipality, or any other 790
political subdivision of this state for the payment of the 791
principal of or interest on the bonds. The issuance of 792
phase-in-recovery bonds does not, directly, indirectly, or 793
contingently, obligate this state or any county, municipality, or 794
political subdivision of this state to levy any tax or make any 795
appropriation for payment of the principal of or interest on the 796
bonds. 797

Sec. 4928.2315. (A) The state pledges to and agrees with the 798
bondholders, any assignee, and any financing parties under a final 799
financing order that the state will not take or permit any action 800
that impairs the value of phase-in-recovery property under the 801
final financing order or revises the phase-in costs for which 802
recovery is authorized under the final financing order or, except 803
as allowed under section 4928.238 of the Revised Code, reduce, 804
alter, or impair phase-in-recovery charges that are imposed, 805
charged, collected, or remitted for the benefit of the 806
bondholders, any assignee, and any financing parties, until any 807
principal, interest, and redemption premium in respect of 808
phase-in-recovery bonds, all financing costs, and all amounts to 809
be paid to an assignee or financing party under an ancillary 810
agreement are paid or performed in full. 811

(B) Any person who issues phase-in-recovery bonds is 812
permitted to include the pledge specified in division (A) of this 813
section in the phase-in-recovery bonds, ancillary agreements, and 814
documentation related to the issuance and marketing of the 815
phase-in-recovery bonds. 816

Sec. 4928.2316. (A) The law governing the validity, 817

<u>enforceability, attachment, perfection, priority, and exercise of remedies with respect to the transfer of phase-in-recovery property under a final financing order, or creation of a security interest in any such property, phase-in-recovery charges, or final financing order shall be the laws of this state as set forth in sections 4928.23 to 4928.2318 of the Revised Code.</u>	818
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<u>(B) This section shall control in the event of a conflict between sections 4928.23 to 4928.2317 of the Revised Code and any other law regarding the attachment, assignment, or perfection, the effect of perfection, or priority of any security interest in or transfer of phase-in-recovery property under a final financing order.</u>	824
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<u>Sec. 4928.2317. If any provision of sections 4928.23 to 4928.2318 of the Revised Code is held to be invalid or is superseded, replaced, repealed, or expires for any reason, that occurrence shall not affect any action allowed under those sections that is taken prior to that occurrence by the public utilities commission, an electric distribution utility, an assignee, a collection agent, a financing party, a bondholder, or a party to an ancillary agreement. Any such action shall remain in full force and effect.</u>	830
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<u>Sec. 4928.2318. An assignee or financing party shall not be considered an electric distribution utility or person providing electric service by virtue of engaging in the transactions described in sections 4928.23 to 4928.2313 of the Revised Code.</u>	839
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Section 2. That existing section 4928.20 of the Revised Code is hereby repealed.	843
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