

**As Reported by the House Public Utilities Committee**

**129th General Assembly**

**Regular Session**

**2011-2012**

**Sub. H. B. No. 364**

**Representatives Roegner, Duffey**

**Cosponsors: Representatives Blessing, Hill, Stebelton, Thompson,  
Stautberg, Martin, Hagan, C.**

—

**A B I L L**

To amend sections 4928.143 and 4928.20 and to enact 1  
sections 4928.23, 4928.231, 4928.232, 4928.233, 2  
4928.234, 4928.235, 4928.236, 4928.237, 4928.238, 3  
4928.239, 4928.2310, 4928.2311, 4928.2312, 4  
4928.2313, 4928.2314, 4928.2315, 4928.2316, 5  
4928.2317, and 4928.2318 of the Revised Code to 6  
establish standards for the securitization of 7  
costs for electric distribution utilities. 8

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

**Section 1.** That sections 4928.143 and 4928.20 be amended and 9  
sections 4928.23, 4928.231, 4928.232, 4928.233, 4928.234, 10  
4928.235, 4928.236, 4928.237, 4928.238, 4928.239, 4928.2310, 11  
4928.2311, 4928.2312, 4928.2313, 4928.2314, 4928.2315, 4928.2316, 12  
4928.2317, and 4928.2318 of the Revised Code be enacted to read as 13  
follows: 14

**Sec. 4928.143.** (A) For the purpose of complying with section 15  
4928.141 of the Revised Code, an electric distribution utility may 16  
file an application for public utilities commission approval of an 17  
electric security plan as prescribed under division (B) of this 18

section. The utility may file that application prior to the 19  
effective date of any rules the commission may adopt for the 20  
purpose of this section, and, as the commission determines 21  
necessary, the utility immediately shall conform its filing to 22  
those rules upon their taking effect. 23

(B) Notwithstanding any other provision of Title XLIX of the 24  
Revised Code to the contrary except division (D) of this section, 25  
divisions (I), (J), and (K) of section 4928.20, division (E) of 26  
section 4928.64, and section 4928.69 of the Revised Code: 27

(1) An electric security plan shall include provisions 28  
relating to the supply and pricing of electric generation service. 29  
In addition, if the proposed electric security plan has a term 30  
longer than three years, it may include provisions in the plan to 31  
permit the commission to test the plan pursuant to division (E) of 32  
this section and any transitional conditions that should be 33  
adopted by the commission if the commission terminates the plan as 34  
authorized under that division. 35

(2) The plan may provide for or include, without limitation, 36  
any of the following: 37

(a) Automatic recovery of any of the following costs of the 38  
electric distribution utility, provided the cost is prudently 39  
incurred: the cost of fuel used to generate the electricity 40  
supplied under the offer; the cost of purchased power supplied 41  
under the offer, including the cost of energy and capacity, and 42  
including purchased power acquired from an affiliate; the cost of 43  
emission allowances; and the cost of federally mandated carbon or 44  
energy taxes; 45

(b) A reasonable allowance for construction work in progress 46  
for any of the electric distribution utility's cost of 47  
constructing an electric generating facility or for an 48  
environmental expenditure for any electric generating facility of 49

the electric distribution utility, provided the cost is incurred 50  
or the expenditure occurs on or after January 1, 2009. Any such 51  
allowance shall be subject to the construction work in progress 52  
allowance limitations of division (A) of section 4909.15 of the 53  
Revised Code, except that the commission may authorize such an 54  
allowance upon the incurrence of the cost or occurrence of the 55  
expenditure. No such allowance for generating facility 56  
construction shall be authorized, however, unless the commission 57  
first determines in the proceeding that there is need for the 58  
facility based on resource planning projections submitted by the 59  
electric distribution utility. Further, no such allowance shall be 60  
authorized unless the facility's construction was sourced through 61  
a competitive bid process, regarding which process the commission 62  
may adopt rules. An allowance approved under division (B)(2)(b) of 63  
this section shall be established as a nonbypassable surcharge for 64  
the life of the facility. 65

(c) The establishment of a nonbypassable surcharge for the 66  
life of an electric generating facility that is owned or operated 67  
by the electric distribution utility, was sourced through a 68  
competitive bid process subject to any such rules as the 69  
commission adopts under division (B)(2)(b) of this section, and is 70  
newly used and useful on or after January 1, 2009, which surcharge 71  
shall cover all costs of the utility specified in the application, 72  
excluding costs recovered through a surcharge under division 73  
(B)(2)(b) of this section. However, no surcharge shall be 74  
authorized unless the commission first determines in the 75  
proceeding that there is need for the facility based on resource 76  
planning projections submitted by the electric distribution 77  
utility. Additionally, if a surcharge is authorized for a facility 78  
pursuant to plan approval under division (C) of this section and 79  
as a condition of the continuation of the surcharge, the electric 80  
distribution utility shall dedicate to Ohio consumers the capacity 81  
and energy and the rate associated with the cost of that facility. 82

Before the commission authorizes any surcharge pursuant to this 83  
division, it may consider, as applicable, the effects of any 84  
decommissioning, deratings, and retirements. 85

(d) Terms, conditions, or charges relating to limitations on 86  
customer shopping for retail electric generation service, 87  
bypassability, standby, back-up, or supplemental power service, 88  
default service, carrying costs, amortization periods, and 89  
accounting or deferrals, including future recovery of such 90  
deferrals, as would have the effect of stabilizing or providing 91  
certainty regarding retail electric service; 92

(e) Automatic increases or decreases in any component of the 93  
standard service offer price; 94

(f) Consistent with sections 4928.23 to 4928.2318 of the 95  
Revised Code, both of the following: 96

(i) Provisions for the electric distribution utility to 97  
securitize any phase-in, inclusive of carrying charges, of the 98  
utility's standard service offer price, which phase-in is 99  
authorized in accordance with section 4928.144 of the Revised 100  
Code; ~~and provisions~~ 101

(ii) Provisions for the recovery of the utility's cost of 102  
securitization. 103

(g) Provisions relating to transmission, ancillary, 104  
congestion, or any related service required for the standard 105  
service offer, including provisions for the recovery of any cost 106  
of such service that the electric distribution utility incurs on 107  
or after that date pursuant to the standard service offer; 108

(h) Provisions regarding the utility's distribution service, 109  
including, without limitation and notwithstanding any provision of 110  
Title XLIX of the Revised Code to the contrary, provisions 111  
regarding single issue ratemaking, a revenue decoupling mechanism 112  
or any other incentive ratemaking, and provisions regarding 113

distribution infrastructure and modernization incentives for the electric distribution utility. The latter may include a long-term energy delivery infrastructure modernization plan for that utility or any plan providing for the utility's recovery of costs, including lost revenue, shared savings, and avoided costs, and a just and reasonable rate of return on such infrastructure modernization. As part of its determination as to whether to allow in an electric distribution utility's electric security plan inclusion of any provision described in division (B)(2)(h) of this section, the commission shall examine the reliability of the electric distribution utility's distribution system and ensure that customers' and the electric distribution utility's expectations are aligned and that the electric distribution utility is placing sufficient emphasis on and dedicating sufficient resources to the reliability of its distribution system.

(i) Provisions under which the electric distribution utility may implement economic development, job retention, and energy efficiency programs, which provisions may allocate program costs across all classes of customers of the utility and those of electric distribution utilities in the same holding company system.

(C)(1) The burden of proof in the proceeding shall be on the electric distribution utility. The commission shall issue an order under this division for an initial application under this section not later than one hundred fifty days after the application's filing date and, for any subsequent application by the utility under this section, not later than two hundred seventy-five days after the application's filing date. Subject to division (D) of this section, the commission by order shall approve or modify and approve an application filed under division (A) of this section if it finds that the electric security plan so approved, including

its pricing and all other terms and conditions, including any 146  
deferrals and any future recovery of deferrals, is more favorable 147  
in the aggregate as compared to the expected results that would 148  
otherwise apply under section 4928.142 of the Revised Code. 149  
Additionally, if the commission so approves an application that 150  
contains a surcharge under division (B)(2)(b) or (c) of this 151  
section, the commission shall ensure that the benefits derived for 152  
any purpose for which the surcharge is established are reserved 153  
and made available to those that bear the surcharge. Otherwise, 154  
the commission by order shall disapprove the application. 155

(2)(a) If the commission modifies and approves an application 156  
under division (C)(1) of this section, the electric distribution 157  
utility may withdraw the application, thereby terminating it, and 158  
may file a new standard service offer under this section or a 159  
standard service offer under section 4928.142 of the Revised Code. 160

(b) If the utility terminates an application pursuant to 161  
division (C)(2)(a) of this section or if the commission 162  
disapproves an application under division (C)(1) of this section, 163  
the commission shall issue such order as is necessary to continue 164  
the provisions, terms, and conditions of the utility's most recent 165  
standard service offer, along with any expected increases or 166  
decreases in fuel costs from those contained in that offer, until 167  
a subsequent offer is authorized pursuant to this section or 168  
section 4928.142 of the Revised Code, respectively. 169

(D) Regarding the rate plan requirement of division (A) of 170  
section 4928.141 of the Revised Code, if an electric distribution 171  
utility that has a rate plan that extends beyond December 31, 172  
2008, files an application under this section for the purpose of 173  
its compliance with division (A) of section 4928.141 of the 174  
Revised Code, that rate plan and its terms and conditions are 175  
hereby incorporated into its proposed electric security plan and 176  
shall continue in effect until the date scheduled under the rate 177

plan for its expiration, and that portion of the electric security 178  
plan shall not be subject to commission approval or disapproval 179  
under division (C) of this section, and the earnings test provided 180  
for in division (F) of this section shall not apply until after 181  
the expiration of the rate plan. However, that utility may include 182  
in its electric security plan under this section, and the 183  
commission may approve, modify and approve, or disapprove subject 184  
to division (C) of this section, provisions for the incremental 185  
recovery or the deferral of any costs that are not being recovered 186  
under the rate plan and that the utility incurs during that 187  
continuation period to comply with section 4928.141, division (B) 188  
of section 4928.64, or division (A) of section 4928.66 of the 189  
Revised Code. 190

(E) If an electric security plan approved under division (C) 191  
of this section, except one withdrawn by the utility as authorized 192  
under that division, has a term, exclusive of phase-ins or 193  
deferrals, that exceeds three years from the effective date of the 194  
plan, the commission shall test the plan in the fourth year, and 195  
if applicable, every fourth year thereafter, to determine whether 196  
the plan, including its then-existing pricing and all other terms 197  
and conditions, including any deferrals and any future recovery of 198  
deferrals, continues to be more favorable in the aggregate and 199  
during the remaining term of the plan as compared to the expected 200  
results that would otherwise apply under section 4928.142 of the 201  
Revised Code. The commission shall also determine the prospective 202  
effect of the electric security plan to determine if that effect 203  
is substantially likely to provide the electric distribution 204  
utility with a return on common equity that is significantly in 205  
excess of the return on common equity that is likely to be earned 206  
by publicly traded companies, including utilities, that face 207  
comparable business and financial risk, with such adjustments for 208  
capital structure as may be appropriate. The burden of proof for 209  
demonstrating that significantly excessive earnings will not occur 210

shall be on the electric distribution utility. If the test results 211  
are in the negative or the commission finds that continuation of 212  
the electric security plan will result in a return on equity that 213  
is significantly in excess of the return on common equity that is 214  
likely to be earned by publicly traded companies, including 215  
utilities, that will face comparable business and financial risk, 216  
with such adjustments for capital structure as may be appropriate, 217  
during the balance of the plan, the commission may terminate the 218  
electric security plan, but not until it shall have provided 219  
interested parties with notice and an opportunity to be heard. The 220  
commission may impose such conditions on the plan's termination as 221  
it considers reasonable and necessary to accommodate the 222  
transition from an approved plan to the more advantageous 223  
alternative. In the event of an electric security plan's 224  
termination pursuant to this division, the commission shall permit 225  
the continued deferral and phase-in of any amounts that occurred 226  
prior to that termination and the recovery of those amounts as 227  
contemplated under that electric security plan. 228

(F) With regard to the provisions that are included in an 229  
electric security plan under this section, the commission shall 230  
consider, following the end of each annual period of the plan, if 231  
any such adjustments resulted in excessive earnings as measured by 232  
whether the earned return on common equity of the electric 233  
distribution utility is significantly in excess of the return on 234  
common equity that was earned during the same period by publicly 235  
traded companies, including utilities, that face comparable 236  
business and financial risk, with such adjustments for capital 237  
structure as may be appropriate. Consideration also shall be given 238  
to the capital requirements of future committed investments in 239  
this state. The burden of proof for demonstrating that 240  
significantly excessive earnings did not occur shall be on the 241  
electric distribution utility. If the commission finds that such 242  
adjustments, in the aggregate, did result in significantly 243

excessive earnings, it shall require the electric distribution 244  
utility to return to consumers the amount of the excess by 245  
prospective adjustments; provided that, upon making such 246  
prospective adjustments, the electric distribution utility shall 247  
have the right to terminate the plan and immediately file an 248  
application pursuant to section 4928.142 of the Revised Code. Upon 249  
termination of a plan under this division, rates shall be set on 250  
the same basis as specified in division (C)(2)(b) of this section, 251  
and the commission shall permit the continued deferral and 252  
phase-in of any amounts that occurred prior to that termination 253  
and the recovery of those amounts as contemplated under that 254  
electric security plan. In making its determination of 255  
significantly excessive earnings under this division, the 256  
commission shall not consider, directly or indirectly, the 257  
revenue, expenses, or earnings of any affiliate or parent company. 258

**Sec. 4928.20.** (A) The legislative authority of a municipal 259  
corporation may adopt an ordinance, or the board of township 260  
trustees of a township or the board of county commissioners of a 261  
county may adopt a resolution, under which, on or after the 262  
starting date of competitive retail electric service, it may 263  
aggregate in accordance with this section the retail electrical 264  
loads located, respectively, within the municipal corporation, 265  
township, or unincorporated area of the county and, for that 266  
purpose, may enter into service agreements to facilitate for those 267  
loads the sale and purchase of electricity. The legislative 268  
authority or board also may exercise such authority jointly with 269  
any other such legislative authority or board. For customers that 270  
are not mercantile customers, an ordinance or resolution under 271  
this division shall specify whether the aggregation will occur 272  
only with the prior, affirmative consent of each person owning, 273  
occupying, controlling, or using an electric load center proposed 274  
to be aggregated or will occur automatically for all such persons 275

pursuant to the opt-out requirements of division (D) of this 276  
section. The aggregation of mercantile customers shall occur only 277  
with the prior, affirmative consent of each such person owning, 278  
occupying, controlling, or using an electric load center proposed 279  
to be aggregated. Nothing in this division, however, authorizes 280  
the aggregation of the retail electric loads of an electric load 281  
center, as defined in section 4933.81 of the Revised Code, that is 282  
located in the certified territory of a nonprofit electric 283  
supplier under sections 4933.81 to 4933.90 of the Revised Code or 284  
an electric load center served by transmission or distribution 285  
facilities of a municipal electric utility. 286

(B) If an ordinance or resolution adopted under division (A) 287  
of this section specifies that aggregation of customers that are 288  
not mercantile customers will occur automatically as described in 289  
that division, the ordinance or resolution shall direct the board 290  
of elections to submit the question of the authority to aggregate 291  
to the electors of the respective municipal corporation, township, 292  
or unincorporated area of a county at a special election on the 293  
day of the next primary or general election in the municipal 294  
corporation, township, or county. The legislative authority or 295  
board shall certify a copy of the ordinance or resolution to the 296  
board of elections not less than ninety days before the day of the 297  
special election. No ordinance or resolution adopted under 298  
division (A) of this section that provides for an election under 299  
this division shall take effect unless approved by a majority of 300  
the electors voting upon the ordinance or resolution at the 301  
election held pursuant to this division. 302

(C) Upon the applicable requisite authority under divisions 303  
(A) and (B) of this section, the legislative authority or board 304  
shall develop a plan of operation and governance for the 305  
aggregation program so authorized. Before adopting a plan under 306  
this division, the legislative authority or board shall hold at 307

least two public hearings on the plan. Before the first hearing, 308  
the legislative authority or board shall publish notice of the 309  
hearings once a week for two consecutive weeks in a newspaper of 310  
general circulation in the jurisdiction or as provided in section 311  
7.16 of the Revised Code. The notice shall summarize the plan and 312  
state the date, time, and location of each hearing. 313

(D) No legislative authority or board, pursuant to an 314  
ordinance or resolution under divisions (A) and (B) of this 315  
section that provides for automatic aggregation of customers that 316  
are not mercantile customers as described in division (A) of this 317  
section, shall aggregate the electrical load of any electric load 318  
center located within its jurisdiction unless it in advance 319  
clearly discloses to the person owning, occupying, controlling, or 320  
using the load center that the person will be enrolled 321  
automatically in the aggregation program and will remain so 322  
enrolled unless the person affirmatively elects by a stated 323  
procedure not to be so enrolled. The disclosure shall state 324  
prominently the rates, charges, and other terms and conditions of 325  
enrollment. The stated procedure shall allow any person enrolled 326  
in the aggregation program the opportunity to opt out of the 327  
program every three years, without paying a switching fee. Any 328  
such person that opts out before the commencement of the 329  
aggregation program pursuant to the stated procedure shall default 330  
to the standard service offer provided under section 4928.14 or 331  
division (D) of section 4928.35 of the Revised Code until the 332  
person chooses an alternative supplier. 333

(E)(1) With respect to a governmental aggregation for a 334  
municipal corporation that is authorized pursuant to divisions (A) 335  
to (D) of this section, resolutions may be proposed by initiative 336  
or referendum petitions in accordance with sections 731.28 to 337  
731.41 of the Revised Code. 338

(2) With respect to a governmental aggregation for a township 339

or the unincorporated area of a county, which aggregation is 340  
authorized pursuant to divisions (A) to (D) of this section, 341  
resolutions may be proposed by initiative or referendum petitions 342  
in accordance with sections 731.28 to 731.40 of the Revised Code, 343  
except that: 344

(a) The petitions shall be filed, respectively, with the 345  
township fiscal officer or the board of county commissioners, who 346  
shall perform those duties imposed under those sections upon the 347  
city auditor or village clerk. 348

(b) The petitions shall contain the signatures of not less 349  
than ten per cent of the total number of electors in, 350  
respectively, the township or the unincorporated area of the 351  
county who voted for the office of governor at the preceding 352  
general election for that office in that area. 353

(F) A governmental aggregator under division (A) of this 354  
section is not a public utility engaging in the wholesale purchase 355  
and resale of electricity, and provision of the aggregated service 356  
is not a wholesale utility transaction. A governmental aggregator 357  
shall be subject to supervision and regulation by the public 358  
utilities commission only to the extent of any competitive retail 359  
electric service it provides and commission authority under this 360  
chapter. 361

(G) This section does not apply in the case of a municipal 362  
corporation that supplies such aggregated service to electric load 363  
centers to which its municipal electric utility also supplies a 364  
noncompetitive retail electric service through transmission or 365  
distribution facilities the utility singly or jointly owns or 366  
operates. 367

(H) A governmental aggregator shall not include in its 368  
aggregation the accounts of any of the following: 369

(1) A customer that has opted out of the aggregation; 370

(2) A customer in contract with a certified electric services company;	371 372
(3) A customer that has a special contract with an electric distribution utility;	373 374
(4) A customer that is not located within the governmental aggregator's governmental boundaries;	375 376
(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.	377 378 379
(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 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. <u>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.</u>	380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397
(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	398 399 400 401

may elect not to receive standby service within the meaning of 402  
division (B)(2)(d) of section 4928.143 of the Revised Code from an 403  
electric distribution utility in whose certified territory the 404  
governmental aggregation is located and that operates under an 405  
approved electric security plan under that section. Upon the 406  
filing of that notice, the electric distribution utility shall not 407  
charge any such customer to whom competitive retail electric 408  
generation service is provided by another supplier under the 409  
governmental aggregation for the standby service. Any such 410  
consumer that returns to the utility for competitive retail 411  
electric service shall pay the market price of power incurred by 412  
the utility to serve that consumer plus any amount attributable to 413  
the utility's cost of compliance with the alternative energy 414  
resource provisions of section 4928.64 of the Revised Code to 415  
serve the consumer. Such market price shall include, but not be 416  
limited to, capacity and energy charges; all charges associated 417  
with the provision of that power supply through the regional 418  
transmission organization, including, but not limited to, 419  
transmission, ancillary services, congestion, and settlement and 420  
administrative charges; and all other costs incurred by the 421  
utility that are associated with the procurement, provision, and 422  
administration of that power supply, as such costs may be approved 423  
by the commission. The period of time during which the market 424  
price and alternative energy resource amount shall be so assessed 425  
on the consumer shall be from the time the consumer so returns to 426  
the electric distribution utility until the expiration of the 427  
electric security plan. However, if that period of time is 428  
expected to be more than two years, the commission may reduce the 429  
time period to a period of not less than two years. 430

(K) The commission shall adopt rules to encourage and promote 431  
large-scale governmental aggregation in this state. For that 432  
purpose, the commission shall conduct an immediate review of any 433  
rules it has adopted for the purpose of this section that are in 434

effect on the effective date of the amendment of this section by 435  
S.B. 221 of the 127th general assembly, July 31, 2008. Further, 436  
within the context of an electric security plan under section 437  
4928.143 of the Revised Code, the commission shall consider the 438  
effect on large-scale governmental aggregation of any 439  
nonbypassable generation charges, however collected, that would be 440  
established under that plan, except any nonbypassable generation 441  
charges that relate to any cost incurred by the electric 442  
distribution utility, the deferral of which has been authorized by 443  
the commission prior to the effective date of the amendment of 444  
this section by S.B. 221 of the 127th general assembly, July 31, 445  
2008. 446

Sec. 4928.23. As used in sections 4928.23 to 4928.2318 of the 447  
Revised Code: 448

(A) "Ancillary agreement" means any bond insurance policy, 449  
letter of credit, reserve account, surety bond, swap arrangement, 450  
hedging arrangement, liquidity or credit support arrangement, or 451  
other similar agreement or arrangement entered into in connection 452  
with the issuance of phase-in-recovery bonds that is designed to 453  
promote the credit quality and marketability of the bonds or to 454  
mitigate the risk of an increase in interest rates. 455

(B) "Assignee" means any person or entity to which an 456  
interest in phase-in-recovery property is sold, assigned, 457  
transferred, or conveyed, other than as security, and any 458  
successor to or subsequent assignee of such a person or entity. 459

(C) "Bond" includes debentures, notes, certificates of 460  
participation, certificates of beneficial interest, certificates 461  
of ownership or other evidences of indebtedness or ownership that 462  
are issued by an electric distribution utility or an assignee 463  
under a final financing order, the proceeds of which are used 464  
directly or indirectly to recover, finance, or refinance phase-in 465

costs and financing costs, and that are secured by or payable from 466  
revenues from phase-in-recovery charges. 467

(D) "Bondholder" means any holder or owner of a 468  
phase-in-recovery bond. 469

(E) "Financing costs" means any of the following: 470

(1) Principal, interest, and redemption premiums that are 471  
payable on phase-in-recovery bonds; 472

(2) Any payment required under an ancillary agreement; 473

(3) Any amount required to fund or replenish a reserve 474  
account or another account established under any indenture, 475  
ancillary agreement, or other financing document relating to 476  
phase-in-recovery bonds; 477

(4) Any costs of retiring or refunding any existing debt and 478  
equity securities of an electric distribution utility in 479  
connection with either the issuance of, or the use of proceeds 480  
from, phase-in-recovery bonds; 481

(5) Any costs incurred by an electric distribution utility to 482  
obtain modifications of or amendments to any indenture, financing 483  
agreement, security agreement, or similar agreement or instrument 484  
relating to any existing secured or unsecured obligation of the 485  
electric distribution utility in connection with the issuance of 486  
phase-in-recovery bonds; 487

(6) Any costs incurred by an electric distribution utility to 488  
obtain any consent, release, waiver, or approval from any holder 489  
of an obligation described in division (E)(5) of this section that 490  
are necessary to be incurred for the electric distribution utility 491  
to issue or cause the issuance of phase-in-recovery bonds; 492

(7) Any taxes, franchise fees, or license fees imposed on 493  
phase-in-recovery revenues; 494

(8) Any costs related to issuing or servicing 495

phase-in-recovery bonds or related to obtaining a financing order, 496  
including servicing fees and expenses, trustee fees and expenses, 497  
legal, accounting, or other professional fees and expenses, 498  
administrative fees, placement fees, underwriting fees, 499  
capitalized interest and equity, and rating-agency fees; 500

(9) Any other similar costs that the public utilities 501  
commission finds appropriate. 502

(F) "Financing order" means an order issued by the public 503  
utilities commission under section 4928.232 of the Revised Code 504  
that authorizes an electric distribution utility or an assignee to 505  
issue phase-in-recovery bonds and recover phase-in-recovery 506  
charges. 507

(G) "Final financing order" means a financing order that has 508  
become final and has taken effect as provided in section 4928.233 509  
of the Revised Code. 510

(H) "Financing party" means either of the following: 511

(1) Any trustee, collateral agent, or other person acting for 512  
the benefit of any bondholder; 513

(2) Any party to an ancillary agreement, the rights and 514  
obligations of which relate to or depend upon the existence of 515  
phase-in-recovery property, the enforcement and priority of a 516  
security interest in phase-in-recovery property, the timely 517  
collection and payment of phase-in-recovery revenues, or a 518  
combination of these factors. 519

(I) "Financing statement" has the same meaning as in section 520  
1309.102 of the Revised Code. 521

(J) "Phase-in costs" means costs, inclusive of carrying 522  
charges incurred before, on, or after the effective date of this 523  
section, authorized by the commission before, on, or after the 524  
effective date of this section to be securitized or deferred as 525

regulatory assets in proceedings under section 4909.18 of the 526  
Revised Code, sections 4928.141 to 4928.144 of the Revised Code, 527  
or section 4928.14 of the Revised Code as it existed prior to July 528  
31, 2008, pursuant to a final order for which appeals have been 529  
exhausted. "Phase-in costs" excludes the following: 530

(1) With respect to any electric generating facility that, on 531  
and after the effective date of this section, is owned, in whole 532  
or in part, by an electric distribution utility applying for a 533  
financing order under section 4928.231 of the Revised Code, costs 534  
that are authorized under division (B)(2)(b) or (c) of section 535  
4928.143 of the Revised Code; 536

(2) Costs incurred after the effective date of this section 537  
related to the ongoing operation of an electric generating 538  
facility, but not environmental clean-up or remediation costs 539  
incurred by an electric distribution utility because of its 540  
ownership or operation of an electric generating facility prior to 541  
the effective date of this section, which such clean-up or 542  
remediation costs are imposed or incurred pursuant to federal or 543  
state rules or regulations. 544

(K) "Phase-in-recovery property" means the property, rights, 545  
and interests of an electric distribution utility or an assignee 546  
under a final financing order, including the right to impose, 547  
charge, and collect the phase-in-recovery charges that shall be 548  
used to pay and secure the payment of phase-in-recovery bonds and 549  
financing costs, and including the right to obtain adjustments to 550  
those charges, and any revenues, receipts, collections, rights to 551  
payment, payments, moneys, claims, or other proceeds arising from 552  
the rights and interests created under the final financing order. 553

(L) "Phase-in-recovery revenues" means all revenues, 554  
receipts, collections, payments, moneys, claims, or other proceeds 555  
arising from phase-in-recovery property. 556

(M) "Successor" means, with respect to any entity, another 557  
entity that succeeds by operation of law to the rights and 558  
obligations of the first legal entity pursuant to any bankruptcy, 559  
reorganization, restructuring, or other insolvency proceeding, any 560  
merger, acquisition, or consolidation, or any sale or transfer of 561  
assets, regardless of whether any of these occur as a result of a 562  
restructuring of the electric power industry or otherwise. 563

Sec. 4928.231. (A) An electric distribution utility may apply 564  
to the public utilities commission for a financing order that 565  
authorizes the following: 566

(1) The issuance of phase-in-recovery bonds, in one or more 567  
series, to recover uncollected phase-in costs; 568

(2) The imposition, charging, and collection of phase-in- 569  
recovery charges, in accordance with the adjustment mechanism 570  
approved by the commission under section 4928.232 of the Revised 571  
Code, and consistent with the commission's authority regarding 572  
governmental aggregation as provided in division (I) of section 573  
4928.20 of the Revised Code, to recover both of the following: 574

(a) Uncollected phase-in costs; 575

(b) Financing costs. 576

(3) The creation of phase-in-recovery property under the 577  
financing order. 578

(B) The application shall include all of the following: 579

(1) A description of the uncollected phase-in costs that the 580  
electric distribution utility seeks to recover through the 581  
issuance of phase-in-recovery bonds; 582

(2) An estimate of the date each series of phase-in-recovery 583  
bonds are expected to be issued; 584

(3) The expected term during which the phase-in costs 585

associated with the issuance of each series of phase-in-recovery 586  
bonds are expected to be recovered; 587

(4) An estimate of the financing costs, as described in 588  
section 4928.23 of the Revised Code, associated with the issuance 589  
of each series of phase-in-recovery bonds; 590

(5) An estimate of the amount of phase-in-recovery charges 591  
necessary to recover the phase-in costs and financing costs set 592  
forth in the application and the calculation for that estimate, 593  
which calculation shall take into account the estimated date or 594  
dates of issuance and the estimated principal amount of each 595  
series of phase-in-recovery bonds; 596

(6) For phase-in-recovery charges not subject to allocation 597  
according to an existing order, a proposed methodology for 598  
allocating phase-in-recovery charges among customer classes, 599  
including a proposed methodology for allocating such charges to 600  
governmental aggregation customers based upon the proportionate 601  
benefit determination made under division (I) of section 4928.20 602  
of the Revised Code; 603

(7) A description of a proposed adjustment mechanism for use 604  
as described in division (A)(2) of this section; 605

(8) A description and valuation of how the issuance of the 606  
phase-in-recovery bonds, including financing costs, will both 607  
result in cost savings to customers and mitigate rate impacts to 608  
customers when compared to the use of other financing mechanisms 609  
or cost-recovery methods available to the electric distribution 610  
utility; 611

(9) Any other information required by the commission. 612

(C) The electric distribution utility may restate or 613  
incorporate by reference in the application any information 614  
required under division (B)(9) of this section that the electric 615  
distribution utility filed with the commission under section 616

4909.18 or sections 4928.141 to 4928.144 of the Revised Code or 617  
section 4928.14 of the Revised Code as it existed prior to July 618  
31, 2008. 619

Sec. 4928.232. (A) Proceedings before the public utilities 620  
commission on an application submitted by an electric distribution 621  
utility under section 4928.231 of the Revised Code shall be 622  
governed by Chapter 4903. of the Revised Code, but only to the 623  
extent that chapter is not inconsistent with this section or 624  
section 4928.233 of the Revised Code. Any party that participated 625  
in the proceeding in which phase-in costs were approved under 626  
section 4909.18 or sections 4928.141 to 4928.144 of the Revised 627  
Code or section 4928.14 of the Revised Code as it existed prior to 628  
July 31, 2008, shall have standing to participate in proceedings 629  
under sections 4928.23 to 4928.2318 of the Revised Code. 630

(B) Within thirty days after the filing of an application 631  
under section 4928.231 of the Revised Code, the commission shall 632  
publish a schedule of the proceeding. 633

(C)(1) Not later than one hundred thirty-five days after the 634  
date the application is filed, the commission shall issue either a 635  
financing order, granting the application in whole or with 636  
modifications, or an order suspending or rejecting the 637  
application. 638

(2) If the commission suspends an application for a financing 639  
order, the commission shall notify the electric distribution 640  
utility of the suspension and may direct the electric distribution 641  
utility to provide additional information as the commission 642  
considers necessary to evaluate the application. Not later than 643  
ninety days after the suspension, the commission shall issue 644  
either a financing order, granting the application in whole or 645  
with modifications, or an order rejecting the application. 646

(D)(1) The commission shall not issue a financing order under 647

division (C) of this section unless the commission determines that 648  
the financing order is consistent with section 4928.02 of the 649  
Revised Code. 650

(2) Except as provided in division (D)(1) of this section, 651  
the commission shall issue a financing order under division (C) of 652  
this section if, at the time the financing order is issued, the 653  
commission finds that the issuance of the phase-in-recovery bonds 654  
and the phase-in-recovery charges authorized by the order will 655  
result in measurable cost savings to customers and will mitigate 656  
rate impacts to customers as compared with traditional financing 657  
mechanisms or traditional cost-recovery methods available to the 658  
electric distribution utility. 659

(E) The commission shall include all of the following in a 660  
financing order issued under division (C) of this section: 661

(1) A determination of the maximum amount and a description 662  
of the phase-in costs that may be recovered through 663  
phase-in-recovery bonds issued under the financing order; 664

(2) A description of phase-in-recovery property, the creation 665  
of which is authorized by the financing order; 666

(3) A description of the financing costs that may be 667  
recovered through phase-in-recovery charges and the period over 668  
which those costs may be recovered; 669

(4) For phase-in-recovery charges not subject to allocation 670  
according to an existing order, a description of the methodology 671  
and calculation for allocating phase-in-recovery charges among 672  
customer classes, including the allocation of such charges, if 673  
any, to governmental aggregation customers based upon the 674  
proportionate benefit determination made under division (I) of 675  
section 4928.20 of the Revised Code; 676

(5) A description of the adjustment mechanism for use in the 677  
imposition, charging, and collection of the phase-in-recovery 678

<u>charges;</u>	679
<u>(6) The maximum term of the phase-in-recovery bonds;</u>	680
<u>(7) Any other provision the commission considers appropriate</u>	681
<u>to ensure the full and timely imposition, charging, collection,</u>	682
<u>and adjustment, pursuant to an approved adjustment mechanism, of</u>	683
<u>the phase-in-recovery charges described in divisions (E)(3) to (5)</u>	684
<u>of this section.</u>	685
<u>(F) The commission may, in a financing order, afford the</u>	686
<u>electric distribution utility flexibility in establishing the</u>	687
<u>terms and conditions for the phase-in-recovery bonds to</u>	688
<u>accommodate changes in market conditions, including repayment</u>	689
<u>schedules, interest rates, financing costs, collateral</u>	690
<u>requirements, required debt service and other reserves, and the</u>	691
<u>ability of the electric distribution utility, at its option, to</u>	692
<u>effect a series of issuances of phase-in-recovery bonds and</u>	693
<u>correlated assignments, sales, pledges, or other transfers of</u>	694
<u>phase-in-recovery property. Any changes made under this section to</u>	695
<u>terms and conditions for the phase-in-recovery bonds shall be in</u>	696
<u>conformance with the financing order.</u>	697
<u>(G) A financing order may provide that the creation of</u>	698
<u>phase-in-recovery property shall be simultaneous with the sale of</u>	699
<u>that property to an assignee as provided in the application and</u>	700
<u>the pledge of the property to secure phase-in-recovery bonds.</u>	701
<u>(H) The commission shall, in a financing order, require that</u>	702
<u>after the final terms of each issuance of phase-in-recovery bonds</u>	703
<u>have been established, and prior to the issuance of those bonds,</u>	704
<u>the electric distribution utility shall determine the resulting</u>	705
<u>phase-in-recovery charges in accordance with the adjustment</u>	706
<u>mechanism described in the financing order. These</u>	707
<u>phase-in-recovery charges shall be final and effective upon the</u>	708
<u>issuance of the phase-in-recovery bonds, without further</u>	709

commission action. 710

Sec. 4928.233. (A) Any party to a proceeding under section 4928.232 of the Revised Code may apply to the public utilities commission for rehearing of an order within thirty days after the date of the issuance of the order. 711  
712  
713  
714

(B) Within sixty days after the issuance of an order after rehearing or a decision denying an application for rehearing, any party to the proceeding may file a notice of appeal with the supreme court. Any such notice of appeal shall be served as provided for in section 4903.13 of the Revised Code. 715  
716  
717  
718  
719

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 final 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. 720  
721  
722  
723  
724  
725  
726

(C) Any 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. 727  
728  
729

(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. 730  
731  
732  
733  
734  
735

(E) A financing order shall become final and take effect as follows: 736  
737

(1) On the expiration of the thirty-day period after the date the commission issues the financing order, if no application for 738  
739

rehearing is filed with the commission within that period; 740

(2) On the expiration of the sixty-day period after the 741  
denial of the application for rehearing, if no notice of appeal is 742  
filed with the supreme court within that period; 743

(3) On the expiration of the sixty-day period after the 744  
commission issues an order after rehearing that approves or 745  
modifies and approves the financing order, if no notice of appeal 746  
is filed with the supreme court within that period; 747

(4) On the expiration of the ten-day period after the date 748  
that the supreme court judgment entry or order that affirms or 749  
modifies and affirms a financing order is filed with the clerk, 750  
including any such order issued by the court following a 751  
commission decision on remand, if no motion for reconsideration is 752  
filed within that period; 753

(5) On the date the supreme court order denying a motion for 754  
reconsideration of a judgment entry or order that affirmed or 755  
modified and affirmed a financing order is filed with the clerk; 756

(6) On the date the supreme court judgment entry or order 757  
issued after reconsideration of a judgment entry or order that 758  
affirmed or modified and affirmed a financing order is filed with 759  
the clerk; 760

(7) On the applicable effective date under division (E)(1), 761  
(2), or (3) of this section regarding a financing order remanded 762  
to the commission. 763

**Sec. 4928.234.** (A) The phase-in-recovery property created in 764  
a final financing order may be transferred, sold, conveyed, or 765  
assigned to any person or entity not affiliated with the electric 766  
distribution utility subject to the final financing order or to 767  
any affiliate of the electric distribution utility created for the 768  
limited purpose of acquiring, owning, or administering that 769

property, issuing phase-in-recovery bonds under the final 770  
financing order, or a combination of these purposes. 771

(B) All or any portion of the phase-in-recovery property may 772  
be pledged to secure the payment of phase-in-recovery bonds, 773  
amounts payable to financing parties and bondholders, amounts 774  
payable under any ancillary agreement, and other financing costs. 775

(C) The phase-in-recovery property shall constitute an 776  
existing, present property right, notwithstanding any requirement 777  
that the imposition, charging, and collection of phase-in-recovery 778  
charges depend on the electric distribution utility continuing to 779  
deliver retail electric distribution service or continuing to 780  
perform its servicing functions relating to the collection of 781  
phase-in-recovery charges or on the level of future energy 782  
consumption. That property shall exist regardless of whether the 783  
phase-in-recovery charges have been billed, have accrued, or have 784  
been collected, and notwithstanding any requirement that the value 785  
or amount of the property is dependent on the future provision of 786  
service to customers by the electric distribution utility. 787

(D) All such phase-in-recovery property shall continue to 788  
exist until the phase-in-recovery bonds issued under the final 789  
financing order are paid in full and all financing costs relating 790  
to the bonds have been paid in full. 791

**Sec. 4928.235.** (A)(1) A final financing order shall remain in 792  
effect until the phase-in-recovery bonds issued under the final 793  
financing order and all financing costs related to the bonds have 794  
been paid in full. 795

(2) A final financing order shall remain in effect and 796  
unabated notwithstanding the bankruptcy, reorganization, or 797  
insolvency of the electric distribution utility or any affiliate 798  
of the electric distribution utility or the commencement of any 799

judicial or nonjudicial proceeding on the final financing order. 800

(B) A final financing order is irrevocable and the public 801  
utilities commission may not reduce, impair, postpone, or 802  
terminate the phase-in-recovery charges authorized in the final 803  
financing order or impair the property or the collection or 804  
recovery of phase-in costs. 805

(C)(1) Except as provided in division (C)(2) of this section, 806  
under a final financing order, the electric distribution utility 807  
retains sole discretion regarding whether to assign, sell, or 808  
otherwise transfer phase-in-recovery property, or to cause 809  
phase-in-recovery bonds to be issued, including the right to defer 810  
or postpone such assignment, sale, transfer, or issuance. 811

(2) Subsequent to a financing order being issued or becoming 812  
final and taking effect, but before phase-in-recovery bonds have 813  
been issued, if market conditions are such that customers will not 814  
realize cost savings from the issuance of the phase-in-recovery 815  
bonds, the electric distribution utility shall not proceed with 816  
the securitization under the issued or final financing order. 817

**Sec. 4928.236.** At the request of the electric distribution 818  
utility subject to a final financing order, the public utilities 819  
commission may commence a proceeding and issue a subsequent 820  
financing order that provides for retiring and refunding 821  
phase-in-recovery bonds issued under the final financing order if 822  
the commission finds that the subsequent financing order satisfies 823  
all of the requirements of section 4928.232 of the Revised Code. 824  
Effective on retirement of the refunded phase-in-recovery bonds 825  
and the issuance of new phase-in-recovery bonds, the commission 826  
shall adjust the related phase-in-recovery charges accordingly. 827

**Sec. 4928.237.** (A) The public utilities commission, in 828  
exercising the commission's powers and carrying out the 829

commission's duties regarding regulation and ratemaking, may not 830  
do any of the following: 831

(1) Consider phase-in-recovery bonds issued under a final 832  
financing order to be the debt of the electric distribution 833  
utility subject to the final financing order; 834

(2) Consider the phase-in-recovery charges imposed, charged, 835  
or collected under the final financing order to be revenue of the 836  
electric distribution utility; 837

(3) Consider the phase-in costs or financing costs authorized 838  
under the final financing order to be the costs of the electric 839  
distribution utility. 840

(B) The commission may not order or otherwise require, 841  
directly or indirectly, any electric distribution utility to use 842  
phase-in-recovery bonds to finance the recovery of phase-in costs. 843

(C) The commission may not refuse to allow the recovery of 844  
phase-in costs solely because the electric distribution utility 845  
has elected or may elect to finance those costs through a 846  
financing mechanism other than the issuance of phase-in-recovery 847  
bonds. 848

If the electric distribution utility elects not to finance 849  
those costs through the issuance of phase-in-recovery bonds as 850  
authorized in the final financing order, those costs shall be 851  
recovered as authorized by the commission prior to the application 852  
for the financing order. 853

**Sec. 4928.238.** (A) An electric distribution utility subject 854  
to a final financing order shall file with the public utilities 855  
commission, at least annually, or more frequently as provided in 856  
the final financing order, a schedule applying the approved 857  
adjustment mechanism to the phase-in-recovery charges authorized 858  
under the final financing order, based on estimates of consumption 859

for each customer class and other mathematical factors. The 860  
electric distribution utility shall submit with the schedule a 861  
request for approval to make the adjustments to the 862  
phase-in-recovery charges in accordance with the schedule. 863

(B) The commission's review of the request shall be limited 864  
to a determination of whether there is any mathematical error in 865  
the application of the adjustment mechanism to the 866  
phase-in-recovery charges, including the calculation of any 867  
proportionate charges allocated to governmental aggregation 868  
customers as directed in the final financing order. 869

(C) A request submitted under division (A) of this section 870  
shall be deemed approved, and the adjustments shall go into 871  
immediate effect, if not approved by the commission within sixty 872  
days after the request is submitted. 873

(D) No adjustment approved or deemed approved under this 874  
section shall in any way affect the irrevocability of the final 875  
financing order as specified in section 4928.235 of the Revised 876  
Code. 877

**Sec. 4928.239.** (A) As used in this section, "nonbypassable," 878  
with respect to phase-in-recovery charges, means that such charges 879  
cannot be avoided by any customer or other person obligated to pay 880  
the charges. 881

(B)(1) As long as phase-in-recovery bonds issued under a 882  
final financing order are outstanding and the related phase-in 883  
costs and financing costs have not been recovered in full, the 884  
phase-in-recovery charges authorized under the final financing 885  
order shall be nonbypassable. Subject to the methodology approved 886  
in the final financing order pursuant to division (E)(4) of 887  
section 4928.232 of the Revised Code, phase-in-recovery charges 888  
shall apply to all customers of the electric distribution utility 889

for as long as they remain customers of the electric distribution utility, except as provided in division (B)(2) of this section. If a customer of the electric distribution utility purchases electric generation service from a competitive retail electric service provider, the electric distribution utility shall collect the phase-in-recovery charges directly from that customer. 890  
891  
892  
893  
894  
895

(2) If a customer of the electric distribution utility subsequently receives retail electric distribution service from another electric distribution utility operating in the same service area, including by succession, assignment, transfer, or merger, the phase-in-recovery charges shall continue to apply to that customer. 896  
897  
898  
899  
900  
901

(C) 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. 902  
903  
904  
905  
906

**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 court 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. 907  
908  
909  
910  
911  
912  
913  
914  
915  
916

(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 917  
918  
919  
920

failure shall in no way affect the phase-in-recovery property or 921  
the rights to impose, collect, and adjust the phase-in-recovery 922  
charges under sections 4928.23 to 4928.2318 of the Revised Code. 923

(B) Phase-in-recovery property under a final financing order 924  
and the interests of an assignee, bondholder, or financing party 925  
in that property under a financing agreement are not subject to 926  
setoff, counterclaim, surcharge, or defense by the electric 927  
distribution utility subject to the final financing order or any 928  
other person, including as a result of the electric distribution 929  
utility's failure to provide past, present, or future services, or 930  
in connection with the bankruptcy, reorganization, or other 931  
insolvency proceeding of the electric distribution utility, any 932  
affiliate, or any other entity. 933

Sec. 4928.2311. Any successor to an electric distribution 934  
utility subject to a final financing order shall be bound by the 935  
requirements of sections 4928.23 to 4928.2317 of the Revised Code. 936  
The successor shall perform and satisfy all obligations of the 937  
electric distribution utility under the final financing order, in 938  
the same manner and to the same extent as the electric 939  
distribution utility, including the obligation to collect and pay 940  
phase-in-recovery revenues to the person entitled to receive those 941  
revenues. The successor shall have the same rights of the electric 942  
distribution utility under the final financing order, in the same 943  
manner and to the same extent as the electric distribution 944  
utility. 945

Sec. 4928.2312. (A) Except as provided in division (C) of 946  
this section, the creation, perfection, and enforcement of any 947  
security interest in phase-in-recovery property under a final 948  
financing order to secure the repayment of the principal of and 949  
interest on phase-in-recovery bonds, amounts payable under any 950  
ancillary agreement, and other financing costs are governed by 951

this section and not Chapters 1301. to 1309. of the Revised Code. 952

(B) The description of the phase-in-recovery property in a 953  
transfer or security agreement and a financing statement is 954  
sufficient only if the description refers to this section and the 955  
final financing order creating the property. This section applies 956  
to all purported transfers of, and all purported grants of, liens 957  
on or security interests in that property, regardless of whether 958  
the related transfer or security agreement was entered into, or 959  
the related financing statement was filed, before or after the 960  
effective date of this section. 961

(C)(1) A security interest in phase-in-recovery property 962  
under a final financing order is created, valid, and binding at 963  
the latest of the date that the security agreement is executed and 964  
delivered or the date that value is received for the 965  
phase-in-recovery bonds. 966

(2)(a) The security interest shall attach without any 967  
physical delivery of collateral or other act, and, upon the filing 968  
of the financing statement with the office of the secretary of 969  
state, the lien of the security interest shall be valid, binding, 970  
and perfected against all parties having claims of any kind in 971  
tort, contract, or otherwise against the person granting the 972  
security interest, regardless of whether the parties have notice 973  
of the lien. Also upon this filing, a transfer of an interest in 974  
the phase-in-recovery property shall be perfected against all 975  
parties having claims of any kind, including any judicial lien or 976  
other lien creditors or any claims of the seller or creditors of 977  
the seller, other than creditors holding a prior security 978  
interest, ownership interest, or assignment in the property 979  
previously perfected in accordance with this division. 980

(b) The secretary of state shall maintain any financing 981  
statement filed under division (C)(2) of this section in the same 982

manner that the secretary maintains financing statements filed by 983  
transmitting utilities under division (B) of section 1309.501 of 984  
the Revised Code. The filing of any financing statement under 985  
division (C)(2) of this section shall be governed by the 986  
provisions regarding the filing of financing statements in Chapter 987  
1309. of the Revised Code. 988

(D)(1) A security interest in phase-in-recovery property 989  
under a final financing order is a continuously perfected security 990  
interest and has priority over any other lien, created by 991  
operation of law or otherwise, that may subsequently attach to 992  
that property or those rights or interests unless the holder of 993  
any such lien has agreed in writing otherwise. 994

(2) The priority of a security interest in phase-in-recovery 995  
property is not affected by the commingling of phase-in-recovery 996  
revenues with other amounts. Any pledgee or secured party shall 997  
have a perfected security interest in the amount of all 998  
phase-in-recovery revenues that are deposited in any cash or 999  
deposit account of the electric distribution utility in which 1000  
phase-in-recovery revenues have been commingled with other funds. 1001  
Any other security interest that may apply to those funds shall be 1002  
terminated when the funds are transferred to a segregated account 1003  
for an assignee or a financing party. 1004

(3) No application of the adjustment mechanism as described 1005  
in section 4928.238 of the Revised Code shall affect the validity, 1006  
perfection, or priority of a security interest in or the transfer 1007  
of phase-in-recovery property under the final financing order. 1008

**Sec. 4928.2313.** (A) Any sale, assignment, or transfer of 1009  
phase-in-recovery property under a final financing order shall be 1010  
an absolute transfer and true sale of, and not a pledge of or 1011  
secured transaction relating to, the seller's right, title, and 1012  
interest in, to, and under the property, if the documents 1013

governing the transaction expressly state that the transaction is 1014  
a sale or other absolute transfer. A transfer of an interest in 1015  
that property may be created only when all of the following have 1016  
occurred: 1017

(1) The financing order has become final and taken effect. 1018

(2) The documents evidencing the transfer of the property 1019  
have been executed and delivered to the assignee. 1020

(3) Value has been received for the property. 1021

(B) The characterization of the sale, assignment, or transfer 1022  
as an absolute transfer and true sale and the corresponding 1023  
characterization of the property interest of the purchaser shall 1024  
be effective and perfected against all third parties and shall not 1025  
be affected or impaired by, among other things, the occurrence of 1026  
any of the following: 1027

(1) Commingling of phase-in-recovery revenues with other 1028  
amounts; 1029

(2) The retention by the seller of either of the following: 1030

(a) A partial or residual interest, including an equity 1031  
interest, in the phase-in-recovery property, whether direct or 1032  
indirect, or whether subordinate or otherwise; 1033

(b) The right to recover costs associated with taxes, 1034  
franchise fees, or license fees imposed on the collection of 1035  
phase-in-recovery revenues. 1036

(3) Any recourse that the purchaser or any assignee may have 1037  
against the seller; 1038

(4) Any indemnification rights, obligations, or repurchase 1039  
rights made or provided by the seller; 1040

(5) The obligation of the seller to collect phase-in-recovery 1041  
revenues on behalf of an assignee; 1042

(6) The treatment of the sale, assignment, or transfer for 1043  
tax, financial reporting, or other purposes; 1044

(7) Any application of the adjustment mechanism under the 1045  
final financing order. 1046

**Sec. 4928.2314.** (A) The transfer and ownership of 1047  
phase-in-recovery property and the imposition, charging, 1048  
collection, and receipt of phase-in-recovery revenues under 1049  
sections 4928.231 to 4928.2317 of the Revised Code are exempt from 1050  
all taxes and similar charges imposed by the state or any county, 1051  
municipal corporation, school district, local authority, or other 1052  
subdivision. 1053

(B) Phase-in-recovery bonds issued under a final financing 1054  
order shall not constitute a debt or a pledge of the faith and 1055  
credit or taxing power of this state or of any county, municipal 1056  
corporation, or any other political subdivision of this state. 1057  
Bondholders shall have no right to have taxes levied by this state 1058  
or the taxing authority of any county, municipal corporation, or 1059  
any other political subdivision of this state for the payment of 1060  
the principal of or interest on the bonds. The issuance of 1061  
phase-in-recovery bonds does not, directly, indirectly, or 1062  
contingently, obligate this state or any county, municipal 1063  
corporation, or political subdivision of this state to levy any 1064  
tax or make any appropriation for payment of the principal of or 1065  
interest on the bonds. 1066

**Sec. 4928.2315.** (A) The state pledges to and agrees with the 1067  
bondholders, any assignee, and any financing parties under a final 1068  
financing order that the state will not take or permit any action 1069  
that impairs the value of phase-in-recovery property under the 1070  
final financing order or revises the phase-in costs for which 1071  
recovery is authorized under the final financing order or, except 1072

as allowed under section 4928.238 of the Revised Code, reduce, 1073  
alter, or impair phase-in-recovery charges that are imposed, 1074  
charged, collected, or remitted for the benefit of the 1075  
bondholders, any assignee, and any financing parties, until any 1076  
principal, interest, and redemption premium in respect of 1077  
phase-in-recovery bonds, all financing costs, and all amounts to 1078  
be paid to an assignee or financing party under an ancillary 1079  
agreement are paid or performed in full. 1080

(B) Any person who issues phase-in-recovery bonds is 1081  
permitted to include the pledge specified in division (A) of this 1082  
section in the phase-in-recovery bonds, ancillary agreements, and 1083  
documentation related to the issuance and marketing of the 1084  
phase-in-recovery bonds. 1085

**Sec. 4928.2316.** (A) The law governing the validity, 1086  
enforceability, attachment, perfection, priority, and exercise of 1087  
remedies with respect to the transfer of phase-in-recovery 1088  
property under a final financing order, or creation of a security 1089  
interest in any such property, phase-in-recovery charges, or final 1090  
financing order shall be the laws of this state as set forth in 1091  
sections 4928.23 to 4928.2318 of the Revised Code. 1092

(B) This section shall control in the event of a conflict 1093  
between sections 4928.23 to 4928.2317 of the Revised Code and any 1094  
other law regarding the attachment, assignment, or perfection, the 1095  
effect of perfection, or priority of any security interest in or 1096  
transfer of phase-in-recovery property under a final financing 1097  
order. 1098

**Sec. 4928.2317.** If any provision of sections 4928.23 to 1099  
4928.2318 of the Revised Code is held to be invalid or is 1100  
superseded, replaced, repealed, or expires for any reason, that 1101  
occurrence shall not affect any action allowed under those 1102

sections that is taken prior to that occurrence by the public 1103  
utilities commission, an electric distribution utility, an 1104  
assignee, a collection agent, a financing party, a bondholder, or 1105  
a party to an ancillary agreement. Any such action shall remain in 1106  
full force and effect. 1107

**Sec. 4928.2318.** An assignee or financing party shall not be 1108  
considered an electric distribution utility or person providing 1109  
electric service by virtue of engaging in the transactions 1110  
described in sections 4928.23 to 4928.2313 of the Revised Code. 1111

**Section 2.** That existing sections 4928.143 and 4928.20 of the 1112  
Revised Code are hereby repealed. 1113