

**As Introduced**

**129th General Assembly  
Regular Session  
2011-2012**

**S. B. No. 248**

**Senator Balderson**

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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 14  
corporation may adopt an ordinance, or the board of township 15  
trustees of a township or the board of county commissioners of a 16  
county may adopt a resolution, under which, on or after the 17  
starting date of competitive retail electric service, it may 18  
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 84  
aggregation program pursuant to the stated procedure shall default 85

to the standard service offer provided under section 4928.14 or 86  
division (D) of section 4928.35 of the Revised Code until the 87  
person chooses an alternative supplier. 88

(E)(1) With respect to a governmental aggregation for a 89  
municipal corporation that is authorized pursuant to divisions (A) 90  
to (D) of this section, resolutions may be proposed by initiative 91  
or referendum petitions in accordance with sections 731.28 to 92  
731.41 of the Revised Code. 93

(2) With respect to a governmental aggregation for a township 94  
or the unincorporated area of a county, which aggregation is 95  
authorized pursuant to divisions (A) to (D) of this section, 96  
resolutions may be proposed by initiative or referendum petitions 97  
in accordance with sections 731.28 to 731.40 of the Revised Code, 98  
except that: 99

(a) The petitions shall be filed, respectively, with the 100  
township fiscal officer or the board of county commissioners, who 101  
shall perform those duties imposed under those sections upon the 102  
city auditor or village clerk. 103

(b) The petitions shall contain the signatures of not less 104  
than ten per cent of the total number of electors in, 105  
respectively, the township or the unincorporated area of the 106  
county who voted for the office of governor at the preceding 107  
general election for that office in that area. 108

(F) A governmental aggregator under division (A) of this 109  
section is not a public utility engaging in the wholesale purchase 110  
and resale of electricity, and provision of the aggregated service 111  
is not a wholesale utility transaction. A governmental aggregator 112  
shall be subject to supervision and regulation by the public 113  
utilities commission only to the extent of any competitive retail 114  
electric service it provides and commission authority under this 115  
chapter. 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.

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

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

(2) A customer in contract with a certified electric services company;

(3) A customer that has a special contract with an electric distribution utility;

(4) A customer that is not located within the governmental aggregator's governmental boundaries;

(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.

(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. Nothing in this section shall result

in less than the full and timely imposition, charging, collection, 148  
and adjustment by an electric distribution utility, its assignee, 149  
or any collection agent, of the phase-in-recovery charges 150  
authorized pursuant to a final financing order issued pursuant to 151  
sections 4928.23 to 4928.2318 of the Revised Code. 152

(J) On behalf of the customers that are part of a 153  
governmental aggregation under this section and by filing written 154  
notice with the public utilities commission, the legislative 155  
authority that formed or is forming that governmental aggregation 156  
may elect not to receive standby service within the meaning of 157  
division (B)(2)(d) of section 4928.143 of the Revised Code from an 158  
electric distribution utility in whose certified territory the 159  
governmental aggregation is located and that operates under an 160  
approved electric security plan under that section. Upon the 161  
filing of that notice, the electric distribution utility shall not 162  
charge any such customer to whom competitive retail electric 163  
generation service is provided by another supplier under the 164  
governmental aggregation for the standby service. Any such 165  
consumer that returns to the utility for competitive retail 166  
electric service shall pay the market price of power incurred by 167  
the utility to serve that consumer plus any amount attributable to 168  
the utility's cost of compliance with the alternative energy 169  
resource provisions of section 4928.64 of the Revised Code to 170  
serve the consumer. Such market price shall include, but not be 171  
limited to, capacity and energy charges; all charges associated 172  
with the provision of that power supply through the regional 173  
transmission organization, including, but not limited to, 174  
transmission, ancillary services, congestion, and settlement and 175  
administrative charges; and all other costs incurred by the 176  
utility that are associated with the procurement, provision, and 177  
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  
promote the credit quality and marketability of the bonds or to 209  
mitigate the risk of an increase in interest rates. 210

(B) "Assignee" means any person or entity to which an 211

interest in phase-in-recovery property is sold, assigned, 212  
transferred, or conveyed, other than as security, and any 213  
successor to or subsequent assignee of such a person or entity. 214

(C) "Bond" includes debentures, notes, certificates of 215  
participation, certificates of beneficial interest, certificates 216  
of ownership or other evidences of indebtedness or ownership that 217  
are issued by an electric distribution utility or an assignee 218  
under a final financing order, the proceeds of which are used 219  
directly or indirectly to recover, finance, or refinance phase-in 220  
costs and financing costs, and that are secured by or payable from 221  
revenues from phase-in-recovery charges. 222

(D) "Bondholder" means any holder or owner of a 223  
phase-in-recovery bond. 224

(E) "Financing costs" means any of the following: 225

(1) Principal, interest, and redemption premiums that are 226  
payable on phase-in-recovery bonds; 227

(2) Any payment required under an ancillary agreement; 228

(3) Any amount required to fund or replenish a reserve 229  
account or another account established under any indenture, 230  
ancillary agreement, or other financing document relating to 231  
phase-in-recovery bonds; 232

(4) Any costs of retiring or refunding any existing debt and 233  
equity securities of an electric distribution utility in 234  
connection with the issuance of phase-in-recovery bonds; 235

(5) Any costs incurred by an electric distribution utility to 236  
obtain modifications of or amendments to any indenture, financing 237  
agreement, security agreement, or similar agreement or instrument 238  
relating to any existing secured or unsecured obligation of the 239  
electric distribution utility in connection with the issuance of 240  
phase-in-recovery bonds; 241



(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; 242  
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(7) Any taxes, franchise fees, or license fees imposed on phase-in-recovery revenues; 247  
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(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; 249  
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(9) Any other similar costs that the public utilities commission finds appropriate. 255  
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(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. 257  
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(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. 261  
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(H) "Financing party" means either of the following: 264

(1) Any trustee, collateral agent, or other person acting for the benefit of any bondholder; 265  
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(2) Any party to an ancillary agreement, the rights and obligations of which relate to or depend upon the existence of 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 267  
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<u>combination of these factors.</u>	272
<u>(I) "Financing statement" has the same meaning as in section 1309.102 of the Revised Code.</u>	273 274
<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>	275 276 277 278 279 280 281
<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>	282 283 284 285 286 287 288 289 290
<u>(L) "Phase-in-recovery revenues" means all revenues, receipts, collections, payments, moneys, claims, or other proceeds arising from phase-in-recovery property.</u>	291 292 293
<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 restructuring of the electric power industry or otherwise.</u>	294 295 296 297 298 299 300
<u>Sec. 4928.231. (A) An electric distribution utility may apply</u>	301

to the public utilities commission for a financing order that 302  
authorizes the following: 303

(1) The issuance of phase-in-recovery bonds, in one or more 304  
series, to recover uncollected phase-in costs; 305

(2) The imposition, charging, and collection of phase-in- 306  
recovery charges, in accordance with the adjustment mechanism 307  
approved by the commission under section 4928.232 of the Revised 308  
Code, and consistent with the commission's authority regarding 309  
governmental aggregation as provided in division (I) of section 310  
4928.20 of the Revised Code, to recover both of the following: 311

(a) Uncollected phase-in costs; 312

(b) Financing costs, approved by the commission under section 313  
4928.232 of the Revised Code, to issue, service, repay, or 314  
refinance the phase-in-recovery bonds, incurred or paid upon 315  
issuance of the bonds or over the life of the bonds. 316

(3) The creation of phase-in-recovery property under the 317  
financing order. 318

(B) The application shall include all of the following: 319

(1) A description of the uncollected phase-in costs that the 320  
electric distribution utility seeks to recover through the 321  
issuance of phase-in-recovery bonds; 322

(2) An estimate of the date each series of phase-in-recovery 323  
bonds are expected to be issued; 324

(3) The expected term during which the phase-in costs 325  
associated with the issuance of each series of phase-in-recovery 326  
bonds are expected to be recovered; 327

(4) An estimate of the financing costs, as described in 328  
section 4928.232 of the Revised Code, associated with the issuance 329  
of each series of phase-in-recovery bonds; 330

(5) An estimate of the amount of phase-in-recovery charges necessary to recover the phase-in costs and financing costs set forth in the application and the calculation for that estimate, which calculation shall take into account the estimated date or dates of issuance and the estimated principal amount of each series of phase-in-recovery bonds; 331  
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(6) For phase-in-recovery charges not subject to allocation according to an existing order, a proposed methodology for allocating phase-in-recovery charges among customer classes, including a proposed methodology for allocating such charges to governmental aggregation customers based upon the proportionate benefit determination made under division (I) of section 4928.20 of the Revised Code; 337  
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(7) A description of a proposed adjustment mechanism for use as described in division (A)(2) of this section; 344  
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(8) A description and valuation of how the issuance of the phase-in-recovery bonds, including financing costs, will both result in cost savings to customers and mitigate rate impacts to customers when compared to the use of other financing mechanisms or cost-recovery methods available to the electric distribution utility; 346  
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(9) Any other information required by the commission. 352

(C) The electric distribution utility may restate or incorporate by reference in the application any information required under division (B)(9) of this section that the electric distribution utility previously filed with the commission under sections 4928.141 to 4928.143 of the Revised Code. 353  
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**Sec. 4928.232.** (A) Proceedings on an application submitted by an electric distribution utility under section 4928.231 of the Revised Code shall be governed by Chapter 4903. of the Revised 358  
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Code, but only to the extent that chapter is not inconsistent with 361  
this section. Any party that participated in the proceeding in 362  
which phase-in costs were approved under section 4928.144 of the 363  
Revised Code shall have standing to participate in proceedings 364  
under sections 4928.23 to 4928.2318 of the Revised Code. 365

(B) Within thirty days after the filing of an application 366  
under section 4928.231 of the Revised Code, the public utilities 367  
commission shall publish a schedule of the proceeding. 368

(C)(1) Not later than one hundred thirty-five days after the 369  
date the application is filed, the commission shall issue either a 370  
financing order, granting the application in whole or with 371  
modifications, or an order suspending or rejecting the 372  
application. 373

(2) If the commission suspends an application for a financing 374  
order, the commission shall notify the electric distribution 375  
utility of the suspension and may direct the electric distribution 376  
utility to provide additional information as the commission 377  
considers necessary to evaluate the application. Not later than 378  
ninety days after the suspension, the commission shall issue 379  
either a financing order, granting the application in whole or 380  
with modifications, or an order rejecting the application. 381

(D)(1) The commission shall not issue a financing order under 382  
division (C) of this section unless the commission determines that 383  
the financing order is consistent with section 4928.02 of the 384  
Revised Code. 385

(2) Except as provided in division (D)(1) of this section, 386  
the commission shall issue a financing order under division (C) of 387  
this section if the commission finds that the issuance of the 388  
phase-in-recovery bonds and the phase-in-recovery charges 389  
authorized by the order are both reasonably expected to result in 390  
cost savings to customers and reasonably expected to mitigate rate 391

impacts to customers as compared with traditional financing mechanisms or traditional cost-recovery methods available to the electric distribution utility. 392  
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(E) The commission shall include all of the following in a financing order issued under division (C) of this section: 395  
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(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; 397  
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(2) A description of phase-in-recovery property, the creation of which is authorized by the financing order; 400  
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(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; 402  
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(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; 405  
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(5) A description of the adjustment mechanism for use in the imposition, charging, and collection of the phase-in-recovery charges; 412  
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(6) The maximum term of the phase-in-recovery bonds; 415

(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) of this section. 416  
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(F) The commission shall, in a financing order, afford the 421

electric distribution utility flexibility in establishing the 422  
terms and conditions for the phase-in-recovery bonds to 423  
accommodate changes in market conditions, including repayment 424  
schedules, interest rates, financing costs, collateral 425  
requirements, required debt service and other reserves, and the 426  
ability of the electric distribution utility, at its option, to 427  
effect a series of issuances of phase-in-recovery bonds and 428  
correlated assignments, sales, pledges, or other transfers of 429  
phase-in-recovery property. Any changes made under this section to 430  
terms and conditions for the phase-in-recovery bonds shall be in 431  
conformance with the financing order. 432

(G) A financing order may provide that the creation of 433  
phase-in-recovery property shall be simultaneous with the sale of 434  
that property to an assignee as provided in the application and 435  
the pledge of the property to secure phase-in-recovery bonds. 436

(H) The commission shall, in a financing order, require that 437  
after the final terms of each issuance of phase-in-recovery bonds 438  
have been established, and prior to the issuance of those bonds, 439  
the electric distribution utility shall determine the resulting 440  
phase-in-recovery charges in accordance with the adjustment 441  
mechanism described in the financing order. These 442  
phase-in-recovery charges shall be final and effective upon the 443  
issuance of the phase-in-recovery bonds, without further 444  
commission action. 445

**Sec. 4928.233.** (A) Any party to a proceeding under section 446  
4928.232 of the Revised Code may petition the public utilities 447  
commission for rehearing of an order within thirty days after the 448  
date of the issuance of the order. 449

(B) Within sixty days after the issuance of an order after 450  
rehearing or a decision denying a petition for rehearing, any 451  
party aggrieved by the issuance of any such order or decision may 452

petition for review by the supreme court. Any such petition for 453  
review shall be served upon the chairperson of the commission 454  
personally or by service at the commission's office. 455

Because delay in the determination of the appeal will delay 456  
the issuance of phase-in-recovery bonds, thereby diminishing 457  
savings to customers that might be achieved if the bonds were 458  
issued under a financing order, the supreme court shall proceed to 459  
hear and determine the action as expeditiously as practicable and 460  
shall give the action precedence over other matters not accorded 461  
similar precedence by law. 462

(C) Any rehearing or review on appeal for a financing order 463  
issued under section 4928.232 of the Revised Code shall be 464  
governed by Chapter 4903. of the Revised Code. 465

(D) If any phase-in costs are, or if any financing order is, 466  
subject to review by the commission or the supreme court, the 467  
electric distribution utility may not issue any phase-in-recovery 468  
bonds based on those costs or that financing order until all 469  
appellate reviews, including any appellate review following a 470  
commission decision on remand, have been exhausted. 471

(E) A financing order shall become final and take effect as 472  
follows: 473

(1) On the expiration of the thirty-day period after the date 474  
the commission issues the financing order, if no petition for 475  
rehearing is filed with the commission within that period; 476

(2) On the expiration of the sixty-day period after the 477  
denial of the petition for rehearing, if no petition for review is 478  
filed with the supreme court within that period; 479

(3) On the expiration of the sixty-day period after the 480  
commission issues an order after rehearing that approves or 481  
modifies and approves the financing order, if no petition for 482  
review is filed with the supreme court within that period; 483



(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; 484  
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(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; 490  
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(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; 493  
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(7) On the applicable effective date under division (E)(1), (2), or (3) of this section regarding a financing order remanded to the commission. 497  
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**Sec. 4928.234.** (A) 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. 500  
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(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. 508  
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(C) The phase-in-recovery property shall constitute an existing, present property right, notwithstanding any requirement 512  
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that the imposition, charging, and collection of phase-in-recovery 514  
charges depend on the electric distribution utility continuing to 515  
deliver retail electric distribution service or continuing to 516  
perform its servicing functions relating to the collection of 517  
phase-in-recovery charges or on the level of future energy 518  
consumption. That property shall exist regardless of whether the 519  
phase-in-recovery charges have been billed, have accrued, or have 520  
been collected, and notwithstanding any requirement that the value 521  
or amount of the property is dependent on the future provision of 522  
service to customers by the electric distribution utility. 523

(D) All such phase-in-recovery property shall continue to 524  
exist until the phase-in-recovery bonds issued under the final 525  
financing order are paid in full and all financing costs relating 526  
to the bonds have been paid in full. 527

**Sec. 4928.235. (A)(1) A final financing order shall remain in** 528  
**effect until the phase-in-recovery bonds issued under the final** 529  
**financing order and all financing costs related to the bonds have** 530  
**been paid in full.** 531

(2) A final financing order shall remain in effect and 532  
unabated notwithstanding the bankruptcy, reorganization, or 533  
insolvency of the electric distribution utility or any affiliate 534  
of the electric distribution utility or the commencement of any 535  
judicial or nonjudicial proceeding on the final financing order. 536

(B) A final financing order is irrevocable and the public 537  
utilities commission may not reduce, impair, postpone, or 538  
terminate the phase-in-recovery charges authorized in the final 539  
financing order or impair the property or the collection or 540  
recovery of phase-in costs. 541

Under a final financing order, the electric distribution 542  
utility retains sole discretion regarding whether to assign, sell, 543  
or otherwise transfer phase-in-recovery property, or to cause 544

phase-in-recovery bonds to be issued, including the right to defer 545  
or postpone such assignment, sale, transfer, or issuance. 546

Sec. 4928.236. At the request of the electric distribution 547  
utility subject to a final financing order, the public utilities 548  
commission may commence a proceeding and issue a subsequent 549  
financing order that provides for retiring and refunding 550  
phase-in-recovery bonds issued under the final financing order if 551  
the commission finds that the subsequent financing order satisfies 552  
all of the requirements of section 4928.232 of the Revised Code. 553  
Effective on retirement of the refunded phase-in-recovery bonds 554  
and the issuance of new phase-in-recovery bonds, the commission 555  
shall adjust the related phase-in-recovery charges accordingly. 556

Sec. 4928.237. (A) The public utilities commission, in 557  
exercising the commission's powers and carrying out the 558  
commission's duties regarding regulation and ratemaking, may not 559  
do any of the following: 560

(1) Consider phase-in-recovery bonds issued under a final 561  
financing order to be the debt of the electric distribution 562  
utility subject to the final financing order; 563

(2) Consider the phase-in-recovery charges imposed, charged, 564  
or collected under the final financing order to be revenue of the 565  
electric distribution utility; 566

(3) Consider the phase-in costs or financing costs authorized 567  
under the final financing order to be the costs of the electric 568  
distribution utility. 569

(B) The commission may not order or otherwise require, 570  
directly or indirectly, any electric distribution utility to use 571  
phase-in-recovery bonds to finance the recovery of phase-in costs 572  
or related carrying charges. 573

(C) The commission may not refuse to allow the recovery of 574

phase-in costs or related carrying charges solely because the 575  
electric distribution utility has elected or may elect to finance 576  
those costs and charges through a financing mechanism other than 577  
the issuance of phase-in-recovery bonds. 578

If the electric distribution utility elects not to finance 579  
those costs and charges through the issuance of phase-in-recovery 580  
bonds as authorized in the final financing order, those costs and 581  
charges shall be recovered as previously authorized by the 582  
commission. 583

**Sec. 4928.238.** (A) An electric distribution utility subject 584  
to a final financing order shall file with the public utilities 585  
commission, at least annually, or more frequently as provided in 586  
the final financing order, a schedule applying the approved 587  
adjustment mechanism to the phase-in-recovery charges authorized 588  
under the final financing order, based on estimates of consumption 589  
for each customer class and other mathematical factors. The 590  
electric distribution utility shall submit with the schedule a 591  
request for approval to make the adjustments to the 592  
phase-in-recovery charges in accordance with the schedule. 593

(B) The commission's review of the request shall be limited 594  
to a determination of whether there is any mathematical error in 595  
the application of the adjustment mechanism to the 596  
phase-in-recovery charges, including the calculation of any 597  
proportionate charges allocated to governmental aggregation 598  
customers as directed in the final financing order. 599

(C) A request submitted under division (A) of this section 600  
shall be deemed approved, and the adjustments shall go into 601  
immediate effect, if not approved by the commission within sixty 602  
days after the request is submitted. 603

(D) No adjustment approved or deemed approved under this 604  
section shall in any way affect the irrevocability of the final 605

financing order as specified in section 4928.235 of the Revised Code. 606  
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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. 608  
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(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: 612  
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(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; 620  
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(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. 625  
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(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. 629  
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(D) The phase-in-recovery charges shall be collected by the 635

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. 636  
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**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  
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(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  
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(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 affiliate, or any other entity. 657  
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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.

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.

(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.

(C)(1) A security interest in phase-in-recovery property under a final financing order is created, valid, and binding at the latest of the date that the security agreement is executed and

delivered or the date that value is received for the 698  
phase-in-recovery bonds. 699

(2)(a) The security interest shall attach without any 700  
physical delivery of collateral or other act, and, upon the filing 701  
of the financing statement with the office of the secretary of 702  
state, the lien of the security interest shall be valid, binding, 703  
and perfected against all parties having claims of any kind in 704  
tort, contract, or otherwise against the person granting the 705  
security interest, regardless of whether the parties have notice 706  
of the lien. Also upon this filing, a transfer of an interest in 707  
the phase-in-recovery property shall be perfected against all 708  
parties having claims of any kind, including any judicial lien or 709  
other lien creditors or any claims of the seller or creditors of 710  
the seller, other than creditors holding a prior security 711  
interest, ownership interest, or assignment in the property 712  
previously perfected in accordance with this division. 713

(b) The secretary of state shall maintain any financing 714  
statement filed under division (C)(2) of this section in the same 715  
manner that the secretary maintains financing statements filed by 716  
transmitting utilities under division (B) of section 1309.501 of 717  
the Revised Code. The filing of any financing statement under 718  
division (C)(2) of this section shall be governed by the 719  
provisions regarding the filing of financing statements in Chapter 720  
1309. of the Revised Code. 721

(D)(1) A security interest in phase-in-recovery property 722  
under a final financing order is a continuously perfected security 723  
interest and has priority over any other lien, created by 724  
operation of law or otherwise, that may subsequently attach to 725  
that property or those rights or interests unless the holder of 726  
any such lien has agreed in writing otherwise. 727

(2) The priority of a security interest in phase-in-recovery 728  
property is not affected by the commingling of phase-in-recovery 729



revenues with other amounts. Any pledgee or secured party shall 730  
have a perfected security interest in the amount of all 731  
phase-in-recovery revenues that are deposited in any cash or 732  
deposit account of the electric distribution utility in which 733  
phase-in-recovery revenues have been commingled with other funds. 734  
Any other security interest that may apply to those funds shall be 735  
terminated when the funds are transferred to a segregated account 736  
for an assignee or a financing party. 737

(3) No application of the adjustment mechanism as described 738  
in section 4928.238 of the Revised Code shall affect the validity, 739  
perfection, or priority of a security interest in or the transfer 740  
of phase-in-recovery property under the final financing order. 741

**Sec. 4928.2313.** (A) Any sale, assignment, or transfer of 742  
phase-in-recovery property under a final financing order shall be 743  
an absolute transfer and true sale of, and not a pledge of or 744  
secured transaction relating to, the seller's right, title, and 745  
interest in, to, and under the property, if the documents 746  
governing the transaction expressly state that the transaction is 747  
a sale or other absolute transfer. A transfer of an interest in 748  
that property may be created only when all of the following have 749  
occurred: 750

(1) The financing order has become final and taken effect. 751

(2) The documents evidencing the transfer of the property 752  
have been executed and delivered to the assignee. 753

(3) Value has been received for the property. 754

(B) The characterization of the sale, assignment, or transfer 755  
as an absolute transfer and true sale and the corresponding 756  
characterization of the property interest of the purchaser shall 757  
be effective and perfected against all third parties and shall not 758  
be affected or impaired by, among other things, the occurrence of 759

<u>any of the following:</u>	760
<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
<u>Sec. 4928.2314. (A) 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 credit or taxing power of this state or of any county, municipality, or any other political subdivision of this state.</u>	771
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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  
enforceability, attachment, perfection, priority, and exercise of 818  
remedies with respect to the transfer of phase-in-recovery 819

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. 820  
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(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. 824  
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**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. 830  
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**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. 839  
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**Section 2.** That existing section 4928.20 of the Revised Code is hereby repealed. 843  
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