

As Passed by the Senate

129th General Assembly

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Am. Sub. S. B. No. 248

Senator Balderson

**Cosponsors: Senators Coley, Sawyer, Daniels, Bacon, Beagle, Burke,
Eklund, Faber, Gentile, Hite, Hughes, Jones, Kearney, LaRose, Lehner,
Niehaus, Obhof, Seitz, Smith, Wagoner**

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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 114
electric distribution utility. The latter may include a long-term 115
energy delivery infrastructure modernization plan for that utility 116
or any plan providing for the utility's recovery of costs, 117
including lost revenue, shared savings, and avoided costs, and a 118
just and reasonable rate of return on such infrastructure 119
modernization. As part of its determination as to whether to allow 120
in an electric distribution utility's electric security plan 121
inclusion of any provision described in division (B)(2)(h) of this 122
section, the commission shall examine the reliability of the 123
electric distribution utility's distribution system and ensure 124
that customers' and the electric distribution utility's 125
expectations are aligned and that the electric distribution 126
utility is placing sufficient emphasis on and dedicating 127
sufficient resources to the reliability of its distribution 128
system. 129

(i) Provisions under which the electric distribution utility 130
may implement economic development, job retention, and energy 131
efficiency programs, which provisions may allocate program costs 132
across all classes of customers of the utility and those of 133
electric distribution utilities in the same holding company 134
system. 135

(C)(1) The burden of proof in the proceeding shall be on the 136
electric distribution utility. The commission shall issue an order 137
under this division for an initial application under this section 138
not later than one hundred fifty days after the application's 139
filing date and, for any subsequent application by the utility 140
under this section, not later than two hundred seventy-five days 141
after the application's filing date. Subject to division (D) of 142
this section, the commission by order shall approve or modify and 143
approve an application filed under division (A) of this section if 144

it finds that the electric security plan so approved, including 145
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	398 399 400

authority that formed or is forming that governmental aggregation 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 related bond document or other similar agreement or 452
arrangement entered into in connection with the issuance of 453
phase-in-recovery bonds that is designed to promote the credit 454
quality and marketability of the bonds or to mitigate the risk of 455
an increase in interest rates. 456

(B) "Assignee" means any person or entity to which an 457
interest in phase-in-recovery property is sold, assigned, 458
transferred, or conveyed, other than as security, and any 459
successor to or subsequent assignee of such a person or entity. 460

(C) "Bond" includes debentures, notes, certificates of 461
participation, certificates of beneficial interest, certificates 462
of ownership or other evidences of indebtedness or ownership that 463
are issued by an electric distribution utility or an assignee 464

under a final financing order, the proceeds of which are used 465
directly or indirectly to recover, finance, or refinance phase-in 466
costs and financing costs, and that are secured by or payable from 467
revenues from phase-in-recovery charges. 468

(D) "Bondholder" means any holder or owner of a 469
phase-in-recovery bond. 470

(E) "Financing costs" means any of the following: 471

(1) Principal, interest, and redemption premiums that are 472
payable on phase-in-recovery bonds; 473

(2) Any payment required under an ancillary agreement; 474

(3) Any amount required to fund or replenish a reserve 475
account or another account established under any indenture, 476
ancillary agreement, or other financing document relating to 477
phase-in-recovery bonds; 478

(4) Any costs of retiring or refunding any existing debt and 479
equity securities of an electric distribution utility in 480
connection with either the issuance of, or the use of proceeds 481
from, phase-in-recovery bonds; 482

(5) Any costs incurred by an electric distribution utility to 483
obtain modifications of or amendments to any indenture, financing 484
agreement, security agreement, or similar agreement or instrument 485
relating to any existing secured or unsecured obligation of the 486
electric distribution utility in connection with the issuance of 487
phase-in-recovery bonds; 488

(6) Any costs incurred by an electric distribution utility to 489
obtain any consent, release, waiver, or approval from any holder 490
of an obligation described in division (E)(5) of this section that 491
are necessary to be incurred for the electric distribution utility 492
to issue or cause the issuance of phase-in-recovery bonds; 493

(7) Any taxes, franchise fees, or license fees imposed on 494

<u>phase-in-recovery revenues;</u>	495
<u>(8) Any costs related to issuing or servicing</u>	496
<u>phase-in-recovery bonds or related to obtaining a financing order,</u>	497
<u>including servicing fees and expenses, trustee fees and expenses,</u>	498
<u>legal, accounting, or other professional fees and expenses,</u>	499
<u>administrative fees, placement fees, underwriting fees,</u>	500
<u>capitalized interest and equity, and rating-agency fees;</u>	501
<u>(9) Any other similar costs that the public utilities</u>	502
<u>commission finds appropriate.</u>	503
<u>(F) "Financing order" means an order issued by the public</u>	504
<u>utilities commission under section 4928.232 of the Revised Code</u>	505
<u>that authorizes an electric distribution utility or an assignee,</u>	506
<u>or the Ohio air quality development authority on behalf of an</u>	507
<u>electric distribution utility or an assignee, to issue</u>	508
<u>phase-in-recovery bonds and recover phase-in-recovery charges.</u>	509
<u>(G) "Final financing order" means a financing order that has</u>	510
<u>become final and has taken effect as provided in section 4928.233</u>	511
<u>of the Revised Code.</u>	512
<u>(H) "Financing party" means either of the following:</u>	513
<u>(1) Any trustee, collateral agent, or other person acting for</u>	514
<u>the benefit of any bondholder;</u>	515
<u>(2) Any party to an ancillary agreement, the rights and</u>	516
<u>obligations of which relate to or depend upon the existence of</u>	517
<u>phase-in-recovery property, the enforcement and priority of a</u>	518
<u>security interest in phase-in-recovery property, the timely</u>	519
<u>collection and payment of phase-in-recovery revenues, or a</u>	520
<u>combination of these factors.</u>	521
<u>(I) "Financing statement" has the same meaning as in section</u>	522
<u>1309.102 of the Revised Code.</u>	523
<u>(J) "Phase-in costs" means costs, inclusive of carrying</u>	524

charges incurred before, on, or after the effective date of this 525
section, authorized by the commission before, on, or after the 526
effective date of this section to be securitized or deferred as 527
regulatory assets in proceedings under section 4909.18 of the 528
Revised Code, sections 4928.141 to 4928.143 or section 4928.144 of 529
the Revised Code, or section 4928.14 of the Revised Code as it 530
existed prior to July 31, 2008, pursuant to a final order for 531
which appeals have been exhausted. "Phase-in costs" excludes the 532
following: 533

(1) With respect to any electric generating facility that, on 534
and after the effective date of this section, is owned, in whole 535
or in part, by an electric distribution utility applying for a 536
financing order under section 4928.231 of the Revised Code, costs 537
that are authorized under division (B)(2)(b) or (c) of section 538
4928.143 of the Revised Code; 539

(2) Costs incurred after the effective date of this section 540
related to the ongoing operation of an electric generating 541
facility, but not environmental clean-up or remediation costs 542
incurred by an electric distribution utility because of its 543
ownership or operation of an electric generating facility prior to 544
the effective date of this section, which such clean-up or 545
remediation costs are imposed or incurred pursuant to federal or 546
state laws, rules, or regulations and for which the commission 547
approves recovery in accordance with section 4909.18 of the 548
Revised Code, sections 4928.141 to 4928.143, or 4928.144 of the 549
Revised Code, or section 4928.14 of the Revised Code as it existed 550
prior to July 31, 2008. 551

(K) "Phase-in-recovery property" means the property, rights, 552
and interests of an electric distribution utility or an assignee 553
under a final financing order, including the right to impose, 554
charge, and collect the phase-in-recovery charges that shall be 555
used to pay and secure the payment of phase-in-recovery bonds and 556

financing costs, and including the right to obtain adjustments to 557
those charges, and any revenues, receipts, collections, rights to 558
payment, payments, moneys, claims, or other proceeds arising from 559
the rights and interests created under the final financing order. 560

(L) "Phase-in-recovery revenues" means all revenues, 561
receipts, collections, payments, moneys, claims, or other proceeds 562
arising from phase-in-recovery property. 563

(M) "Successor" means, with respect to any entity, another 564
entity that succeeds by operation of law to the rights and 565
obligations of the first legal entity pursuant to any bankruptcy, 566
reorganization, restructuring, or other insolvency proceeding, any 567
merger, acquisition, or consolidation, or any sale or transfer of 568
assets, regardless of whether any of these occur as a result of a 569
restructuring of the electric power industry or otherwise. 570

Sec. 4928.231. (A) An electric distribution utility may apply 571
to the public utilities commission for a financing order that 572
authorizes the following: 573

(1) The issuance of phase-in-recovery bonds, in one or more 574
series, to recover uncollected phase-in costs; 575

(2) The imposition, charging, and collection of phase-in- 576
recovery charges, in accordance with the adjustment mechanism 577
approved by the commission under section 4928.232 of the Revised 578
Code, and consistent with the commission's authority regarding 579
governmental aggregation as provided in division (I) of section 580
4928.20 of the Revised Code, to recover both of the following: 581

(a) Uncollected phase-in costs; 582

(b) Financing costs. 583

(3) The creation of phase-in-recovery property under the 584
financing order. 585

(B) The application shall include all of the following: 586

- (1) A description of the uncollected phase-in costs that the electric distribution utility seeks to recover through the issuance of phase-in-recovery bonds; 587
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- (2) An estimate of the date each series of phase-in-recovery bonds are expected to be issued; 590
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- (3) The expected term during which the phase-in costs associated with the issuance of each series of phase-in-recovery bonds are expected to be recovered; 592
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- (4) An estimate of the financing costs, as described in section 4928.23 of the Revised Code, associated with the issuance of each series of phase-in-recovery bonds; 595
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- (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; 598
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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; 604
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- (7) A description of a proposed adjustment mechanism for use as described in division (A)(2) of this section; 611
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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 613
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utility; 618

(9) Any other information required by the commission. 619

(C) The electric distribution utility may restate or 620
incorporate by reference in the application any information 621
required under division (B)(9) of this section that the electric 622
distribution utility filed with the commission under section 623
4909.18 or sections 4928.141 to 4928.144 of the Revised Code or 624
section 4928.14 of the Revised Code as it existed prior to July 625
31, 2008. 626

Sec. 4928.232. (A) Proceedings before the public utilities 627
commission on an application submitted by an electric distribution 628
utility under section 4928.231 of the Revised Code shall be 629
governed by Chapter 4903. of the Revised Code, but only to the 630
extent that chapter is not inconsistent with this section or 631
section 4928.233 of the Revised Code. Any party that participated 632
in the proceeding in which phase-in costs were approved under 633
section 4909.18 or sections 4928.141 to 4928.144 of the Revised 634
Code or section 4928.14 of the Revised Code as it existed prior to 635
July 31, 2008, shall have standing to participate in proceedings 636
under sections 4928.23 to 4928.2318 of the Revised Code. 637

(B) When reviewing an application for a financing order 638
pursuant to sections 4928.23 to 4928.2318 of the Revised Code, the 639
commission may hold such hearings, make such inquiries or 640
investigations, and examine such witnesses, books, papers, 641
documents, and contracts as the commission considers proper to 642
carry out these sections. Within thirty days after the filing of 643
an application under section 4928.231 of the Revised Code, the 644
commission shall publish a schedule of the proceeding. 645

(C)(1) Not later than one hundred thirty-five days after the 646
date the application is filed, the commission shall issue either a 647
financing order, granting the application in whole or with 648

modifications, or an order suspending or rejecting the 649
application. 650

(2) If the commission suspends an application for a financing 651
order, the commission shall notify the electric distribution 652
utility of the suspension and may direct the electric distribution 653
utility to provide additional information as the commission 654
considers necessary to evaluate the application. Not later than 655
ninety days after the suspension, the commission shall issue 656
either a financing order, granting the application in whole or 657
with modifications, or an order rejecting the application. 658

(D)(1) The commission shall not issue a financing order under 659
division (C) of this section unless the commission determines that 660
the financing order is consistent with section 4928.02 of the 661
Revised Code. 662

(2) Except as provided in division (D)(1) of this section, 663
the commission shall issue a financing order under division (C) of 664
this section if, at the time the financing order is issued, the 665
commission finds that the issuance of the phase-in-recovery bonds 666
and the phase-in-recovery charges authorized by the order results 667
in, consistent with market conditions, both measurably enhancing 668
cost savings to customers and mitigating rate impacts to customers 669
as compared with traditional financing mechanisms or traditional 670
cost-recovery methods available to the electric distribution 671
utility or, if the commission previously approved a recovery 672
method, as compared with that recovery method. 673

(E) The commission shall include all of the following in a 674
financing order issued under division (C) of this section: 675

(1) A determination of the maximum amount and a description 676
of the phase-in costs that may be recovered through 677
phase-in-recovery bonds issued under the financing order; 678

(2) A description of phase-in-recovery property, the creation 679

of which is authorized by the financing order; 680

(3) A description of the financing costs that may be 681
recovered through phase-in-recovery charges and the period over 682
which those costs may be recovered; 683

(4) For phase-in-recovery charges not subject to allocation 684
according to an existing order, a description of the methodology 685
and calculation for allocating phase-in-recovery charges among 686
customer classes, including the allocation of such charges, if 687
any, to governmental aggregation customers based upon the 688
proportionate benefit determination made under division (I) of 689
section 4928.20 of the Revised Code; 690

(5) A description of the adjustment mechanism for use in the 691
imposition, charging, and collection of the phase-in-recovery 692
charges; 693

(6) The maximum term of the phase-in-recovery bonds; 694

(7) Any other provision the commission considers appropriate 695
to ensure the full and timely imposition, charging, collection, 696
and adjustment, pursuant to an approved adjustment mechanism, of 697
the phase-in-recovery charges described in divisions (E)(3) to (5) 698
of this section. 699

(F) The commission may, in a financing order, afford the 700
electric distribution utility flexibility in establishing the 701
terms and conditions for the phase-in-recovery bonds to 702
accommodate changes in market conditions, including repayment 703
schedules, interest rates, financing costs, collateral 704
requirements, required debt service and other reserves, and the 705
ability of the electric distribution utility, at its option, to 706
effect a series of issuances of phase-in-recovery bonds and 707
correlated assignments, sales, pledges, or other transfers of 708
phase-in-recovery property. Any changes made under this section to 709
terms and conditions for the phase-in-recovery bonds shall be in 710

conformance with the financing order. 711

(G) A financing order may provide that the creation of 712
phase-in-recovery property shall be simultaneous with the sale of 713
that property to an assignee as provided in the application and 714
the pledge of the property to secure phase-in-recovery bonds. 715

(H) An electric distribution utility or an assignee may 716
authorize the Ohio air quality development authority, subject to 717
Chapter 3706. of the Revised Code, to issue phase-in-recovery 718
bonds on behalf of the electric distribution utility or the 719
assignee. 720

(I) The commission shall, in a financing order, require that 721
after the final terms of each issuance of phase-in-recovery bonds 722
have been established, and prior to the issuance of those bonds, 723
the electric distribution utility shall determine the resulting 724
phase-in-recovery charges in accordance with the adjustment 725
mechanism described in the financing order. These 726
phase-in-recovery charges shall be final and effective upon the 727
issuance of the phase-in-recovery bonds, without further 728
commission action. 729

Sec. 4928.233. (A) Any party to a proceeding under section 730
4928.232 of the Revised Code may apply to the public utilities 731
commission for rehearing of a financing order within thirty days 732
after the date of the issuance of the order. 733

(B) Within sixty days after the issuance of an order after 734
rehearing or a decision denying an application for rehearing, any 735
party to the proceeding may file a notice of appeal with the 736
supreme court. Any such notice of appeal shall be served as 737
provided in section 4903.13 of the Revised Code. 738

Because delay in the determination of the appeal will delay 739
the issuance of phase-in-recovery bonds, thereby diminishing 740

savings to customers that might be achieved if the bonds were 741
issued under a final financing order, the supreme court shall 742
proceed to hear and determine the action as expeditiously as 743
practicable and shall give the action precedence over other 744
matters not accorded similar precedence by law. 745

(C) Any review on appeal for a financing order issued under 746
section 4928.232 of the Revised Code shall be governed by Chapter 747
4903. of the Revised Code. 748

(D) If any phase-in costs are, or if any financing order is, 749
subject to review by the commission or the supreme court, the 750
electric distribution utility may not issue, or cause the issuance 751
of, any phase-in-recovery bonds based on those costs or that 752
financing order until all commission and appellate reviews, 753
including any appellate review following a commission decision on 754
remand, have been exhausted. 755

(E) A financing order shall become final and take effect as 756
follows: 757

(1) On the expiration of the thirty-day period after the date 758
the commission issues the financing order, if no application for 759
rehearing is filed with the commission within that period; 760

(2) On the expiration of the sixty-day period after the 761
denial of the application for rehearing, if no notice of appeal is 762
filed with the supreme court within that period; 763

(3) On the expiration of the sixty-day period after the 764
commission issues an order after rehearing that approves or 765
modifies and approves the financing order, if no notice of appeal 766
is filed with the supreme court within that period; 767

(4) On the expiration of the ten-day period after the date 768
that the supreme court judgment entry or order that affirms or 769
modifies and affirms a financing order is filed with the clerk, 770
including any such order issued by the court following a 771

commission decision on remand, if no motion for reconsideration is 772
filed within that period; 773

(5) On the date the supreme court order denying a motion for 774
reconsideration of a judgment entry or order that affirmed or 775
modified and affirmed a financing order is filed with the clerk; 776

(6) On the date the supreme court judgment entry or order 777
issued after reconsideration of a judgment entry or order that 778
affirmed or modified and affirmed a financing order is filed with 779
the clerk; 780

(7) On the applicable effective date under division (E)(1), 781
(2), or (3) of this section regarding a financing order remanded 782
to the commission. 783

Sec. 4928.234. (A) The phase-in-recovery property created in 784
a final financing order may be transferred, sold, conveyed, or 785
assigned to any person or entity not affiliated with the electric 786
distribution utility subject to the final financing order or to 787
any affiliate of the electric distribution utility created for the 788
limited purpose of acquiring, owning, or administering that 789
property, issuing phase-in-recovery bonds under the final 790
financing order, or a combination of these purposes. 791

(B) All or any portion of the phase-in-recovery property may 792
be pledged to secure the payment of phase-in-recovery bonds, 793
amounts payable to financing parties and bondholders, amounts 794
payable under any ancillary agreement, and other financing costs. 795

(C) The phase-in-recovery property shall constitute an 796
existing, present property right, notwithstanding any requirement 797
that the imposition, charging, and collection of phase-in-recovery 798
charges depend on the electric distribution utility continuing to 799
deliver retail electric distribution service or continuing to 800
perform its servicing functions relating to the collection of 801

phase-in-recovery charges or on the level of future energy 802
consumption. That property shall exist regardless of whether the 803
phase-in-recovery charges have been billed, have accrued, or have 804
been collected, and notwithstanding any requirement that the value 805
or amount of the property is dependent on the future provision of 806
service to customers by the electric distribution utility. 807

(D) All such phase-in-recovery property shall continue to 808
exist until the phase-in-recovery bonds issued under the final 809
financing order are paid in full and all financing costs relating 810
to the bonds have been paid in full. 811

Sec. 4928.235. (A)(1) A final financing order shall remain in 812
effect until the phase-in-recovery bonds issued under the final 813
financing order and all financing costs related to the bonds have 814
been paid in full. 815

(2) A final financing order shall remain in effect and 816
unabated notwithstanding the bankruptcy, reorganization, or 817
insolvency of the electric distribution utility or any affiliate 818
of the electric distribution utility or the commencement of any 819
judicial or nonjudicial proceeding on the final financing order. 820

(B) A final financing order is irrevocable and the public 821
utilities commission may not reduce, impair, postpone, or 822
terminate the phase-in-recovery charges authorized in the final 823
financing order or impair the property or the collection or 824
recovery of phase-in costs. 825

Under a final financing order, the electric distribution 826
utility retains sole discretion regarding whether to assign, sell, 827
or otherwise transfer phase-in-recovery property, or to cause 828
phase-in-recovery bonds to be issued, including the right to defer 829
or postpone such assignment, sale, transfer, or issuance. 830

Sec. 4928.236. At the request of the electric distribution 831

utility subject to a final financing order, the public utilities 832
commission may commence a proceeding and issue a subsequent 833
financing order that provides for retiring and refunding 834
phase-in-recovery bonds issued under the final financing order if 835
the commission finds that the subsequent financing order satisfies 836
all of the requirements of section 4928.232 of the Revised Code. 837
Effective on retirement of the refunded phase-in-recovery bonds 838
and the issuance of new phase-in-recovery bonds, the commission 839
shall adjust the related phase-in-recovery charges accordingly. 840

Sec. 4928.237. (A) The public utilities commission, in 841
exercising the commission's powers and carrying out the 842
commission's duties regarding regulation and ratemaking, may not 843
do any of the following: 844

(1) Consider phase-in-recovery bonds issued under a final 845
financing order to be the debt of the electric distribution 846
utility subject to the final financing order; 847

(2) Consider the phase-in-recovery charges imposed, charged, 848
or collected under the final financing order to be revenue of the 849
electric distribution utility; 850

(3) Consider the phase-in costs or financing costs authorized 851
under the final financing order to be the costs of the electric 852
distribution utility. 853

(B) The commission may not order or otherwise require, 854
directly or indirectly, any electric distribution utility to use 855
phase-in-recovery bonds to finance the recovery of phase-in costs. 856

(C) The commission may not refuse to allow the recovery of 857
phase-in costs solely because the electric distribution utility 858
has elected or may elect to finance those costs through a 859
financing mechanism other than the issuance of phase-in-recovery 860
bonds. 861

If the electric distribution utility elects not to finance those costs through the issuance of phase-in-recovery bonds as authorized in the final financing order, those costs shall be recovered as authorized by the commission prior to the application for the financing order. 862
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Sec. 4928.238. (A) An electric distribution utility subject to a final financing order shall file with the public utilities commission, at least annually, or more frequently as provided in the final financing order, a schedule applying the approved adjustment mechanism to the phase-in-recovery charges authorized under the final financing order, based on estimates of consumption for each customer class and other mathematical factors. The electric distribution utility shall submit with the schedule a request for approval to make the adjustments to the phase-in-recovery charges in accordance with the schedule. 867
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(B) The commission's review of the request shall be limited to a determination of whether there is any mathematical error in the application of the adjustment mechanism to the phase-in-recovery charges, including the calculation of any proportionate charges allocated to governmental aggregation customers as directed in the final financing order. 877
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(C) A request submitted under division (A) of this section shall be deemed approved, and the adjustments shall go into immediate effect, if not approved by the commission within sixty days after the request is submitted. 883
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(D) No adjustment approved or deemed approved under this section shall in any way affect the irrevocability of the final financing order as specified in section 4928.235 of the Revised Code. 887
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Sec. 4928.239. (A) As used in this section, "nonbypassable," 891

with respect to phase-in-recovery charges, means that such charges 892
cannot be avoided by any customer or other person obligated to pay 893
the charges. 894

(B)(1) As long as phase-in-recovery bonds issued under a 895
final financing order are outstanding and the related phase-in 896
costs and financing costs have not been recovered in full, the 897
phase-in-recovery charges authorized under the final financing 898
order shall be nonbypassable. Subject to the methodology approved 899
in the final financing order pursuant to division (E)(4) of 900
section 4928.232 of the Revised Code, phase-in-recovery charges 901
shall apply to all customers of the electric distribution utility 902
for as long as they remain customers of the electric distribution 903
utility, except as provided in division (B)(2) of this section. If 904
a customer of the electric distribution utility purchases electric 905
generation service from a competitive retail electric service 906
provider, the electric distribution utility shall collect the 907
phase-in-recovery charges directly from that customer. 908

(2) If a customer of the electric distribution utility 909
subsequently receives retail electric distribution service from 910
another electric distribution utility operating in the same 911
service area, including by succession, assignment, transfer, or 912
merger, the phase-in-recovery charges shall continue to apply to 913
that customer. 914

(C) The phase-in-recovery charges shall be collected by the 915
electric distribution utility or the electric distribution 916
utility's successors or assignees, or a collection agent , in full 917
through a charge that is separate and apart from the electric 918
distribution utility's base rates. 919

Sec. 4928.2310. (A)(1) If an electric distribution utility 920
subject to a final financing order defaults on any required 921

payment of phase-in-recovery revenues, a court, upon application 922
by an interested party and without limiting any other remedies 923
available to the applicant, shall order the sequestration and 924
payment of the revenues for the benefit of bondholders, any 925
assignee, and any financing parties. The court order shall remain 926
in full force and effect notwithstanding any bankruptcy, 927
reorganization, or other insolvency proceedings with respect to 928
the electric distribution utility or any affiliate. 929

(2) Notwithstanding division (A)(1) of this section, 930
customers of an electric distribution utility shall be held 931
harmless for the electric distribution utility's failure to remit 932
any required payment of phase-in-recovery revenues, and such 933
failure shall in no way affect the phase-in-recovery property or 934
the rights to impose, collect, and adjust the phase-in-recovery 935
charges under sections 4928.23 to 4928.2318 of the Revised Code. 936

(B) Phase-in-recovery property under a final financing order 937
and the interests of an assignee, bondholder, or financing party 938
in that property under a financing agreement are not subject to 939
setoff, counterclaim, surcharge, or defense by the electric 940
distribution utility subject to the final financing order or any 941
other person, including as a result of the electric distribution 942
utility's failure to provide past, present, or future services, or 943
in connection with the bankruptcy, reorganization, or other 944
insolvency proceeding of the electric distribution utility, any 945
affiliate, or any other entity. 946

Sec. 4928.2311. Any successor to an electric distribution 947
utility subject to a final financing order shall be bound by the 948
requirements of sections 4928.23 to 4928.2317 of the Revised Code. 949
The successor shall perform and satisfy all obligations of the 950
electric distribution utility under the final financing order, in 951
the same manner and to the same extent as the electric 952

distribution utility, including the obligation to collect and pay 953
phase-in-recovery revenues to the person entitled to receive those 954
revenues. The successor shall have the same rights of the electric 955
distribution utility under the final financing order, in the same 956
manner and to the same extent as the electric distribution 957
utility. 958

Sec. 4928.2312. (A) Except as provided in division (C) of 959
this section, the creation, perfection, and enforcement of any 960
security interest in phase-in-recovery property under a final 961
financing order to secure the repayment of the principal of and 962
interest on phase-in-recovery bonds, amounts payable under any 963
ancillary agreement, and other financing costs are governed by 964
this section and not Chapters 1301. to 1309. of the Revised Code. 965

(B) The description of the phase-in-recovery property in a 966
transfer or security agreement and a financing statement is 967
sufficient only if the description refers to this section and the 968
final financing order creating the property. This section applies 969
to all purported transfers of, and all purported grants of, liens 970
on or security interests in that property, regardless of whether 971
the related transfer or security agreement was entered into, or 972
the related financing statement was filed, before or after the 973
effective date of this section. 974

(C)(1) A security interest in phase-in-recovery property 975
under a final financing order is created, valid, and binding at 976
the latest of the date that the security agreement is executed and 977
delivered or the date that value is received for the 978
phase-in-recovery bonds. 979

(2)(a) The security interest shall attach without any 980
physical delivery of collateral or other act, and, upon the filing 981
of the financing statement with the office of the secretary of 982

state, the lien of the security interest shall be valid, binding, and perfected against all parties having claims of any kind in tort, contract, or otherwise against the person granting the security interest, regardless of whether the parties have notice of the lien. Also upon this filing, a transfer of an interest in the phase-in-recovery property shall be perfected against all parties having claims of any kind, including any judicial lien or other lien creditors or any claims of the seller or creditors of the seller, other than creditors holding a prior security interest, ownership interest, or assignment in the property previously perfected in accordance with this division.

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

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

(2) The priority of a security interest in phase-in-recovery property is not affected by the commingling of phase-in-recovery revenues with other amounts. Any pledgee or secured party shall have a perfected security interest in the amount of all phase-in-recovery revenues that are deposited in any cash or deposit account of the electric distribution utility in which phase-in-recovery revenues have been commingled with other funds.

Any other security interest that may apply to those funds shall be 1015
terminated when the funds are transferred to a segregated account 1016
for an assignee or a financing party. 1017

(3) No application of the adjustment mechanism as described 1018
in section 4928.238 of the Revised Code shall affect the validity, 1019
perfection, or priority of a security interest in or the transfer 1020
of phase-in-recovery property under the final financing order. 1021

Sec. 4928.2313. (A) Any sale, assignment, or transfer of 1022
phase-in-recovery property under a final financing order shall be 1023
an absolute transfer and true sale of, and not a pledge of or 1024
secured transaction relating to, the seller's right, title, and 1025
interest in, to, and under the property, if the documents 1026
governing the transaction expressly state that the transaction is 1027
a sale or other absolute transfer. A transfer of an interest in 1028
that property may be created only when all of the following have 1029
occurred: 1030

(1) The financing order has become final and taken effect. 1031

(2) The documents evidencing the transfer of the property 1032
have been executed and delivered to the assignee. 1033

(3) Value has been received for the property. 1034

(B) The characterization of the sale, assignment, or transfer 1035
as an absolute transfer and true sale and the corresponding 1036
characterization of the property interest of the purchaser shall 1037
be effective and perfected against all third parties and shall not 1038
be affected or impaired by, among other things, the occurrence of 1039
any of the following: 1040

(1) Commingling of phase-in-recovery revenues with other 1041
amounts; 1042

(2) The retention by the seller of either of the following: 1043

(a) A partial or residual interest, including an equity 1044

interest, in the phase-in-recovery property, whether direct or 1045
indirect, or whether subordinate or otherwise; 1046

(b) The right to recover costs associated with taxes, 1047
franchise fees, or license fees imposed on the collection of 1048
phase-in-recovery revenues. 1049

(3) Any recourse that the purchaser or any assignee may have 1050
against the seller; 1051

(4) Any indemnification rights, obligations, or repurchase 1052
rights made or provided by the seller; 1053

(5) The obligation of the seller to collect phase-in-recovery 1054
revenues on behalf of an assignee; 1055

(6) The treatment of the sale, assignment, or transfer for 1056
tax, financial reporting, or other purposes; 1057

(7) Any application of the adjustment mechanism under the 1058
final financing order. 1059

Sec. 4928.2314. (A) The transfer and ownership of 1060
phase-in-recovery property and the imposition, charging, 1061
collection, and receipt of phase-in-recovery revenues under 1062
sections 4928.231 to 4928.2317 of the Revised Code are exempt from 1063
all taxes and similar charges imposed by the state or any county, 1064
municipal corporation, school district, local authority, or other 1065
subdivision. 1066

(B) Phase-in-recovery bonds issued under a final financing 1067
order shall not constitute a debt or a pledge of the faith and 1068
credit or taxing power of this state or of any county, municipal 1069
corporation, or any other political subdivision of this state. 1070
Bondholders shall have no right to have taxes levied by this state 1071
or the taxing authority of any county, municipal corporation, or 1072
any other political subdivision of this state for the payment of 1073
the principal of or interest on the bonds. The issuance of 1074

phase-in-recovery bonds does not, directly, indirectly, or 1075
contingently, obligate this state or any county, municipal 1076
corporation, or political subdivision of this state to levy any 1077
tax or make any appropriation for payment of the principal of or 1078
interest on the bonds. 1079

Sec. 4928.2315. (A) The state pledges to and agrees with the 1080
bondholders, any assignee, and any financing parties under a final 1081
financing order that the state will not take or permit any action 1082
that impairs the value of phase-in-recovery property under the 1083
final financing order or revises the phase-in costs for which 1084
recovery is authorized under the final financing order or, except 1085
as allowed under section 4928.238 of the Revised Code, reduce, 1086
alter, or impair phase-in-recovery charges that are imposed, 1087
charged, collected, or remitted for the benefit of the 1088
bondholders, any assignee, and any financing parties, until any 1089
principal, interest, and redemption premium in respect of 1090
phase-in-recovery bonds, all financing costs, and all amounts to 1091
be paid to an assignee or financing party under an ancillary 1092
agreement are paid or performed in full. 1093

(B) Any person who issues phase-in-recovery bonds is 1094
permitted to include the pledge specified in division (A) of this 1095
section in the phase-in-recovery bonds, ancillary agreements, and 1096
documentation related to the issuance and marketing of the 1097
phase-in-recovery bonds. 1098

Sec. 4928.2316. (A) The law governing the validity, 1099
enforceability, attachment, perfection, priority, and exercise of 1100
remedies with respect to the transfer of phase-in-recovery 1101
property under a final financing order, or creation of a security 1102
interest in any such property, phase-in-recovery charges, or final 1103
financing order shall be the laws of this state as set forth in 1104
sections 4928.23 to 4928.2318 of the Revised Code. 1105

(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. 1106
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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. 1112
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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. 1121
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Section 2. That existing sections 4928.143 and 4928.20 of the Revised Code are hereby repealed. 1125
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