

As Reported by the Senate Energy and Public Utilities Committee

129th General Assembly

Regular Session

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Sub. S. B. No. 248

Senator Balderson

Cosponsors: Senators Coley, Sawyer, Daniels

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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 allowance shall be subject to the construction work in progress allowance limitations of division (A) of section 4909.15 of the Revised Code, except that the commission may authorize such an allowance upon the incurrence of the cost or occurrence of the expenditure. No such allowance for generating facility construction shall be authorized, however, unless the commission first determines in the proceeding that there is need for the facility based on resource planning projections submitted by the electric distribution utility. Further, no such allowance shall be authorized unless the facility's construction was sourced through a competitive bid process, regarding which process the commission may adopt rules. An allowance approved under division (B)(2)(b) of this section shall be established as a nonbypassable surcharge for the life of the facility.

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

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 371

company;	372
(3) A customer that has a special contract with an electric distribution utility;	373 374
(4) A customer that is not located within the governmental aggregator's governmental boundaries;	375 376
(5) Subject to division (C) of section 4928.21 of the Revised Code, a customer who appears on the "do not aggregate" list maintained under that section.	377 378 379
(I) Customers that are part of a governmental aggregation under this section shall be responsible only for such portion of a surcharge under section 4928.144 of the Revised Code that is proportionate to the benefits, as determined by the commission, that electric load centers within the jurisdiction of the governmental aggregation as a group receive. The proportionate surcharge so established shall apply to each customer of the governmental aggregation while the customer is part of that aggregation. If a customer ceases being such a customer, the otherwise applicable surcharge shall apply. Nothing in this section shall result in less than full recovery by an electric distribution utility of any surcharge authorized under section 4928.144 of the Revised Code. <u>Nothing in this section shall result in less than the full and timely imposition, charging, collection, and adjustment by an electric distribution utility, its assignee, or any collection agent, of the phase-in-recovery charges authorized pursuant to a final financing order issued pursuant to sections 4928.23 to 4928.2318 of the Revised Code.</u>	380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397
(J) On behalf of the customers that are part of a governmental aggregation under this section and by filing written notice with the public utilities commission, the legislative authority that formed or is forming that governmental aggregation may elect not to receive standby service within the meaning of	398 399 400 401 402

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
phase-in-recovery revenues; 495

(8) Any costs related to issuing or servicing 496

phase-in-recovery bonds or related to obtaining a financing order, 497
including servicing fees and expenses, trustee fees and expenses, 498
legal, accounting, or other professional fees and expenses, 499
administrative fees, placement fees, underwriting fees, 500
capitalized interest and equity, and rating-agency fees; 501

(9) Any other similar costs that the public utilities 502
commission finds appropriate. 503

(F) "Financing order" means an order issued by the public 504
utilities commission under section 4928.232 of the Revised Code 505
that authorizes an electric distribution utility or an assignee, 506
or the Ohio air quality development authority on behalf of an 507
electric distribution utility or an assignee, to issue 508
phase-in-recovery bonds and recover phase-in-recovery charges. 509

(G) "Final financing order" means a financing order that has 510
become final and has taken effect as provided in section 4928.233 511
of the Revised Code. 512

(H) "Financing party" means either of the following: 513

(1) Any trustee, collateral agent, or other person acting for 514
the benefit of any bondholder; 515

(2) Any party to an ancillary agreement, the rights and 516
obligations of which relate to or depend upon the existence of 517
phase-in-recovery property, the enforcement and priority of a 518
security interest in phase-in-recovery property, the timely 519
collection and payment of phase-in-recovery revenues, or a 520
combination of these factors. 521

(I) "Financing statement" has the same meaning as in section 522
1309.102 of the Revised Code. 523

(J) "Phase-in costs" means costs, inclusive of carrying 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 rules or regulations. 547

(K) "Phase-in-recovery property" means the property, rights, 548
and interests of an electric distribution utility or an assignee 549
under a final financing order, including the right to impose, 550
charge, and collect the phase-in-recovery charges that shall be 551
used to pay and secure the payment of phase-in-recovery bonds and 552
financing costs, and including the right to obtain adjustments to 553
those charges, and any revenues, receipts, collections, rights to 554
payment, payments, moneys, claims, or other proceeds arising from 555
the rights and interests created under the final financing order. 556

(L) "Phase-in-recovery revenues" means all revenues, 557
receipts, collections, payments, moneys, claims, or other proceeds 558

arising from phase-in-recovery property. 559

(M) "Successor" means, with respect to any entity, another 560
entity that succeeds by operation of law to the rights and 561
obligations of the first legal entity pursuant to any bankruptcy, 562
reorganization, restructuring, or other insolvency proceeding, any 563
merger, acquisition, or consolidation, or any sale or transfer of 564
assets, regardless of whether any of these occur as a result of a 565
restructuring of the electric power industry or otherwise. 566

Sec. 4928.231. (A) An electric distribution utility may apply 567
to the public utilities commission for a financing order that 568
authorizes the following: 569

(1) The issuance of phase-in-recovery bonds, in one or more 570
series, to recover uncollected phase-in costs; 571

(2) The imposition, charging, and collection of phase-in- 572
recovery charges, in accordance with the adjustment mechanism 573
approved by the commission under section 4928.232 of the Revised 574
Code, and consistent with the commission's authority regarding 575
governmental aggregation as provided in division (I) of section 576
4928.20 of the Revised Code, to recover both of the following: 577

(a) Uncollected phase-in costs; 578

(b) Financing costs. 579

(3) The creation of phase-in-recovery property under the 580
financing order. 581

(B) The application shall include all of the following: 582

(1) A description of the uncollected phase-in costs that the 583
electric distribution utility seeks to recover through the 584
issuance of phase-in-recovery bonds; 585

(2) An estimate of the date each series of phase-in-recovery 586
bonds are expected to be issued; 587

(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; 588
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590

(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; 591
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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; 594
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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; 600
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(7) A description of a proposed adjustment mechanism for use as described in division (A)(2) of this section; 607
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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; 609
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(9) Any other information required by the commission. 615

(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 616
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distribution utility filed with the commission under section 619
4909.18 or sections 4928.141 to 4928.144 of the Revised Code or 620
section 4928.14 of the Revised Code as it existed prior to July 621
31, 2008. 622

Sec. 4928.232. (A) Proceedings before the public utilities 623
commission on an application submitted by an electric distribution 624
utility under section 4928.231 of the Revised Code shall be 625
governed by Chapter 4903. of the Revised Code, but only to the 626
extent that chapter is not inconsistent with this section or 627
section 4928.233 of the Revised Code. Any party that participated 628
in the proceeding in which phase-in costs were approved under 629
section 4909.18 or sections 4928.141 to 4928.144 of the Revised 630
Code or section 4928.14 of the Revised Code as it existed prior to 631
July 31, 2008, shall have standing to participate in proceedings 632
under sections 4928.23 to 4928.2318 of the Revised Code. 633

(B) When reviewing an application for a financing order 634
pursuant to sections 4928.23 to 4928.2318 of the Revised Code, the 635
commission may hold such hearings, make such inquiries or 636
investigations, and examine such witnesses, books, papers, 637
documents, and contracts as the commission considers proper to 638
carry out these sections. Within thirty days after the filing of 639
an application under section 4928.231 of the Revised Code, the 640
commission shall publish a schedule of the proceeding. 641

(C)(1) Not later than one hundred thirty-five days after the 642
date the application is filed, the commission shall issue either a 643
financing order, granting the application in whole or with 644
modifications, or an order suspending or rejecting the 645
application. 646

(2) If the commission suspends an application for a financing 647
order, the commission shall notify the electric distribution 648
utility of the suspension and may direct the electric distribution 649

utility to provide additional information as the commission 650
considers necessary to evaluate the application. Not later than 651
ninety days after the suspension, the commission shall issue 652
either a financing order, granting the application in whole or 653
with modifications, or an order rejecting the application. 654

(D)(1) The commission shall not issue a financing order under 655
division (C) of this section unless the commission determines that 656
the financing order is consistent with section 4928.02 of the 657
Revised Code. 658

(2) Except as provided in division (D)(1) of this section, 659
the commission shall issue a financing order under division (C) of 660
this section if, at the time the financing order is issued, the 661
commission finds that the issuance of the phase-in-recovery bonds 662
and the phase-in-recovery charges authorized by the order results 663
in, consistent with market conditions, both measurably enhancing 664
cost savings to customers and mitigating rate impacts to customers 665
as compared with traditional financing mechanisms or traditional 666
cost-recovery methods available to the electric distribution 667
utility or, if the commission previously approved a recovery 668
method, as compared with that recovery method. 669

(E) The commission shall include all of the following in a 670
financing order issued under division (C) of this section: 671

(1) A determination of the maximum amount and a description 672
of the phase-in costs that may be recovered through 673
phase-in-recovery bonds issued under the financing order; 674

(2) A description of phase-in-recovery property, the creation 675
of which is authorized by the financing order; 676

(3) A description of the financing costs that may be 677
recovered through phase-in-recovery charges and the period over 678
which those costs may be recovered; 679

(4) For phase-in-recovery charges not subject to allocation 680

according to an existing order, a description of the methodology 681
and calculation for allocating phase-in-recovery charges among 682
customer classes, including the allocation of such charges, if 683
any, to governmental aggregation customers based upon the 684
proportionate benefit determination made under division (I) of 685
section 4928.20 of the Revised Code; 686

(5) A description of the adjustment mechanism for use in the 687
imposition, charging, and collection of the phase-in-recovery 688
charges; 689

(6) The maximum term of the phase-in-recovery bonds; 690

(7) Any other provision the commission considers appropriate 691
to ensure the full and timely imposition, charging, collection, 692
and adjustment, pursuant to an approved adjustment mechanism, of 693
the phase-in-recovery charges described in divisions (E)(3) to (5) 694
of this section. 695

(F) The commission may, in a financing order, afford the 696
electric distribution utility flexibility in establishing the 697
terms and conditions for the phase-in-recovery bonds to 698
accommodate changes in market conditions, including repayment 699
schedules, interest rates, financing costs, collateral 700
requirements, required debt service and other reserves, and the 701
ability of the electric distribution utility, at its option, to 702
effect a series of issuances of phase-in-recovery bonds and 703
correlated assignments, sales, pledges, or other transfers of 704
phase-in-recovery property. Any changes made under this section to 705
terms and conditions for the phase-in-recovery bonds shall be in 706
conformance with the financing order. 707

(G) A financing order may provide that the creation of 708
phase-in-recovery property shall be simultaneous with the sale of 709
that property to an assignee as provided in the application and 710
the pledge of the property to secure phase-in-recovery bonds. 711

(H) An electric distribution utility or an assignee may 712
authorize the Ohio air quality development authority, subject to 713
Chapter 3706. of the Revised Code, to issue phase-in-recovery 714
bonds on behalf of the electric distribution utility or the 715
assignee. 716

(I) The commission shall, in a financing order, require that 717
after the final terms of each issuance of phase-in-recovery bonds 718
have been established, and prior to the issuance of those bonds, 719
the electric distribution utility shall determine the resulting 720
phase-in-recovery charges in accordance with the adjustment 721
mechanism described in the financing order. These 722
phase-in-recovery charges shall be final and effective upon the 723
issuance of the phase-in-recovery bonds, without further 724
commission action. 725

Sec. 4928.233. (A) Any party to a proceeding under section 726
4928.232 of the Revised Code may apply to the public utilities 727
commission for rehearing of a financing order within thirty days 728
after the date of the issuance of the order. 729

(B) Within sixty days after the issuance of an order after 730
rehearing or a decision denying an application for rehearing, any 731
party to the proceeding may file a notice of appeal with the 732
supreme court. Any such notice of appeal shall be served as 733
provided in section 4903.13 of the Revised Code. 734

Because delay in the determination of the appeal will delay 735
the issuance of phase-in-recovery bonds, thereby diminishing 736
savings to customers that might be achieved if the bonds were 737
issued under a final financing order, the supreme court shall 738
proceed to hear and determine the action as expeditiously as 739
practicable and shall give the action precedence over other 740
matters not accorded similar precedence by law. 741

(C) Any review on appeal for a financing order issued under 742

section 4928.232 of the Revised Code shall be governed by Chapter 743
4903. of the Revised Code. 744

(D) If any phase-in costs are, or if any financing order is, 745
subject to review by the commission or the supreme court, the 746
electric distribution utility may not issue, or cause the issuance 747
of, any phase-in-recovery bonds based on those costs or that 748
financing order until all commission and appellate reviews, 749
including any appellate review following a commission decision on 750
remand, have been exhausted. 751

(E) A financing order shall become final and take effect as 752
follows: 753

(1) On the expiration of the thirty-day period after the date 754
the commission issues the financing order, if no application for 755
rehearing is filed with the commission within that period; 756

(2) On the expiration of the sixty-day period after the 757
denial of the application for rehearing, if no notice of appeal is 758
filed with the supreme court within that period; 759

(3) On the expiration of the sixty-day period after the 760
commission issues an order after rehearing that approves or 761
modifies and approves the financing order, if no notice of appeal 762
is filed with the supreme court within that period; 763

(4) On the expiration of the ten-day period after the date 764
that the supreme court judgment entry or order that affirms or 765
modifies and affirms a financing order is filed with the clerk, 766
including any such order issued by the court following a 767
commission decision on remand, if no motion for reconsideration is 768
filed within that period; 769

(5) On the date the supreme court order denying a motion for 770
reconsideration of a judgment entry or order that affirmed or 771
modified and affirmed a financing order is filed with the clerk; 772

(6) On the date the supreme court judgment entry or order 773
issued after reconsideration of a judgment entry or order that 774
affirmed or modified and affirmed a financing order is filed with 775
the clerk; 776

(7) On the applicable effective date under division (E)(1), 777
(2), or (3) of this section regarding a financing order remanded 778
to the commission. 779

Sec. 4928.234. (A) The phase-in-recovery property created in 780
a final financing order may be transferred, sold, conveyed, or 781
assigned to any person or entity not affiliated with the electric 782
distribution utility subject to the final financing order or to 783
any affiliate of the electric distribution utility created for the 784
limited purpose of acquiring, owning, or administering that 785
property, issuing phase-in-recovery bonds under the final 786
financing order, or a combination of these purposes. 787

(B) All or any portion of the phase-in-recovery property may 788
be pledged to secure the payment of phase-in-recovery bonds, 789
amounts payable to financing parties and bondholders, amounts 790
payable under any ancillary agreement, and other financing costs. 791

(C) The phase-in-recovery property shall constitute an 792
existing, present property right, notwithstanding any requirement 793
that the imposition, charging, and collection of phase-in-recovery 794
charges depend on the electric distribution utility continuing to 795
deliver retail electric distribution service or continuing to 796
perform its servicing functions relating to the collection of 797
phase-in-recovery charges or on the level of future energy 798
consumption. That property shall exist regardless of whether the 799
phase-in-recovery charges have been billed, have accrued, or have 800
been collected, and notwithstanding any requirement that the value 801
or amount of the property is dependent on the future provision of 802
service to customers by the electric distribution utility. 803

(D) All such phase-in-recovery property shall continue to 804
exist until the phase-in-recovery bonds issued under the final 805
financing order are paid in full and all financing costs relating 806
to the bonds have been paid in full. 807

Sec. 4928.235. (A)(1) A final financing order shall remain in 808
effect until the phase-in-recovery bonds issued under the final 809
financing order and all financing costs related to the bonds have 810
been paid in full. 811

(2) A final financing order shall remain in effect and 812
unabated notwithstanding the bankruptcy, reorganization, or 813
insolvency of the electric distribution utility or any affiliate 814
of the electric distribution utility or the commencement of any 815
judicial or nonjudicial proceeding on the final financing order. 816

(B) A final financing order is irrevocable and the public 817
utilities commission may not reduce, impair, postpone, or 818
terminate the phase-in-recovery charges authorized in the final 819
financing order or impair the property or the collection or 820
recovery of phase-in costs. 821

Under a final financing order, the electric distribution 822
utility retains sole discretion regarding whether to assign, sell, 823
or otherwise transfer phase-in-recovery property, or to cause 824
phase-in-recovery bonds to be issued, including the right to defer 825
or postpone such assignment, sale, transfer, or issuance. 826

Sec. 4928.236. At the request of the electric distribution 827
utility subject to a final financing order, the public utilities 828
commission may commence a proceeding and issue a subsequent 829
financing order that provides for retiring and refunding 830
phase-in-recovery bonds issued under the final financing order if 831
the commission finds that the subsequent financing order satisfies 832
all of the requirements of section 4928.232 of the Revised Code. 833

Effective on retirement of the refunded phase-in-recovery bonds 834
and the issuance of new phase-in-recovery bonds, the commission 835
shall adjust the related phase-in-recovery charges accordingly. 836

Sec. 4928.237. (A) The public utilities commission, in 837
exercising the commission's powers and carrying out the 838
commission's duties regarding regulation and ratemaking, may not 839
do any of the following: 840

(1) Consider phase-in-recovery bonds issued under a final 841
financing order to be the debt of the electric distribution 842
utility subject to the final financing order; 843

(2) Consider the phase-in-recovery charges imposed, charged, 844
or collected under the final financing order to be revenue of the 845
electric distribution utility; 846

(3) Consider the phase-in costs or financing costs authorized 847
under the final financing order to be the costs of the electric 848
distribution utility. 849

(B) The commission may not order or otherwise require, 850
directly or indirectly, any electric distribution utility to use 851
phase-in-recovery bonds to finance the recovery of phase-in costs. 852

(C) The commission may not refuse to allow the recovery of 853
phase-in costs solely because the electric distribution utility 854
has elected or may elect to finance those costs through a 855
financing mechanism other than the issuance of phase-in-recovery 856
bonds. 857

If the electric distribution utility elects not to finance 858
those costs through the issuance of phase-in-recovery bonds as 859
authorized in the final financing order, those costs shall be 860
recovered as authorized by the commission prior to the application 861
for the financing order. 862

Sec. 4928.238. (A) An electric distribution utility subject 863
to a final financing order shall file with the public utilities 864
commission, at least annually, or more frequently as provided in 865
the final financing order, a schedule applying the approved 866
adjustment mechanism to the phase-in-recovery charges authorized 867
under the final financing order, based on estimates of consumption 868
for each customer class and other mathematical factors. The 869
electric distribution utility shall submit with the schedule a 870
request for approval to make the adjustments to the 871
phase-in-recovery charges in accordance with the schedule. 872

(B) The commission's review of the request shall be limited 873
to a determination of whether there is any mathematical error in 874
the application of the adjustment mechanism to the 875
phase-in-recovery charges, including the calculation of any 876
proportionate charges allocated to governmental aggregation 877
customers as directed in the final financing order. 878

(C) A request submitted under division (A) of this section 879
shall be deemed approved, and the adjustments shall go into 880
immediate effect, if not approved by the commission within sixty 881
days after the request is submitted. 882

(D) No adjustment approved or deemed approved under this 883
section shall in any way affect the irrevocability of the final 884
financing order as specified in section 4928.235 of the Revised 885
Code. 886

Sec. 4928.239. (A) As used in this section, "nonbypassable," 887
with respect to phase-in-recovery charges, means that such charges 888
cannot be avoided by any customer or other person obligated to pay 889
the charges. 890

(B)(1) As long as phase-in-recovery bonds issued under a 891
final financing order are outstanding and the related phase-in 892

costs and financing costs have not been recovered in full, the 893
phase-in-recovery charges authorized under the final financing 894
order shall be nonbypassable. Subject to the methodology approved 895
in the final financing order pursuant to division (E)(4) of 896
section 4928.232 of the Revised Code, phase-in-recovery charges 897
shall apply to all customers of the electric distribution utility 898
for as long as they remain customers of the electric distribution 899
utility, except as provided in division (B)(2) of this section. If 900
a customer of the electric distribution utility purchases electric 901
generation service from a competitive retail electric service 902
provider, the electric distribution utility shall collect the 903
phase-in-recovery charges directly from that customer. 904

(2) If a customer of the electric distribution utility 905
subsequently receives retail electric distribution service from 906
another electric distribution utility operating in the same 907
service area, including by succession, assignment, transfer, or 908
merger, or the customer becomes a customer of an electric 909
cooperative in the same service area, the phase-in-recovery 910
charges shall continue to apply to that customer. 911

(C)(1) The phase-in-recovery charges shall be collected and 912
remitted by the electric distribution utility or the electric 913
distribution utility's successors or assignees, or a collection 914
agent. If the customer otherwise becomes a customer of an electric 915
cooperative in the same service area, the charges shall be 916
collected and remitted by the electric cooperative. The 917
phase-in-recovery charges shall be collected and remitted in full 918
through a charge that is separate and apart from the electric 919
distribution utility's or electric cooperative's base rates. 920

(2)(a) If an electric distribution utility assigns, 921
transfers, or requests reallocation to an electric supplier of its 922
rights and authority relating to its certified territory under 923
sections 4933.81 to 4933.84 of the Revised Code, the assignment, 924

transfer, or request for reallocation may include an alternative 925
arrangement regarding collection and remittance obligations under 926
this section. The assignment, transfer, or request for 927
reallocation, including any such alternative arrangement, shall be 928
approved by the public utilities commission pursuant to division 929
(E) of section 4933.83 or section 4933.85 of the Revised Code, as 930
applicable. 931

(b) As used in division (C)(2)(a) of this section, "electric 932
supplier" has the same meaning as in section 4933.81 of the 933
Revised Code, except that electric supplier shall not include an 934
electric distribution utility. 935

Sec. 4928.2310. (A)(1) If an electric distribution utility 936
subject to a final financing order defaults on any required 937
payment of phase-in-recovery revenues, a court, upon application 938
by an interested party and without limiting any other remedies 939
available to the applicant, shall order the sequestration and 940
payment of the revenues for the benefit of bondholders, any 941
assignee, and any financing parties. The court order shall remain 942
in full force and effect notwithstanding any bankruptcy, 943
reorganization, or other insolvency proceedings with respect to 944
the electric distribution utility or any affiliate. 945

(2) Notwithstanding division (A)(1) of this section, 946
customers of an electric distribution utility shall be held 947
harmless for the electric distribution utility's failure to remit 948
any required payment of phase-in-recovery revenues, and such 949
failure shall in no way affect the phase-in-recovery property or 950
the rights to impose, collect, and adjust the phase-in-recovery 951
charges under sections 4928.23 to 4928.2318 of the Revised Code. 952

(B) Phase-in-recovery property under a final financing order 953
and the interests of an assignee, bondholder, or financing party 954
in that property under a financing agreement are not subject to 955

setoff, counterclaim, surcharge, or defense by the electric 956
distribution utility subject to the final financing order or any 957
other person, including as a result of the electric distribution 958
utility's failure to provide past, present, or future services, or 959
in connection with the bankruptcy, reorganization, or other 960
insolvency proceeding of the electric distribution utility, any 961
affiliate, or any other entity. 962

Sec. 4928.2311. Any successor to an electric distribution 963
utility subject to a final financing order shall be bound by the 964
requirements of sections 4928.23 to 4928.2317 of the Revised Code. 965
The successor shall perform and satisfy all obligations of the 966
electric distribution utility under the final financing order, in 967
the same manner and to the same extent as the electric 968
distribution utility, including the obligation to collect and pay 969
phase-in-recovery revenues to the person entitled to receive those 970
revenues. The successor shall have the same rights of the electric 971
distribution utility under the final financing order, in the same 972
manner and to the same extent as the electric distribution 973
utility. 974

Sec. 4928.2312. (A) Except as provided in division (C) of 975
this section, the creation, perfection, and enforcement of any 976
security interest in phase-in-recovery property under a final 977
financing order to secure the repayment of the principal of and 978
interest on phase-in-recovery bonds, amounts payable under any 979
ancillary agreement, and other financing costs are governed by 980
this section and not Chapters 1301. to 1309. of the Revised Code. 981

(B) The description of the phase-in-recovery property in a 982
transfer or security agreement and a financing statement is 983
sufficient only if the description refers to this section and the 984
final financing order creating the property. This section applies 985
to all purported transfers of, and all purported grants of, liens 986

on or security interests in that property, regardless of whether 987
the related transfer or security agreement was entered into, or 988
the related financing statement was filed, before or after the 989
effective date of this section. 990

(C)(1) A security interest in phase-in-recovery property 991
under a final financing order is created, valid, and binding at 992
the latest of the date that the security agreement is executed and 993
delivered or the date that value is received for the 994
phase-in-recovery bonds. 995

(2)(a) The security interest shall attach without any 996
physical delivery of collateral or other act, and, upon the filing 997
of the financing statement with the office of the secretary of 998
state, the lien of the security interest shall be valid, binding, 999
and perfected against all parties having claims of any kind in 1000
tort, contract, or otherwise against the person granting the 1001
security interest, regardless of whether the parties have notice 1002
of the lien. Also upon this filing, a transfer of an interest in 1003
the phase-in-recovery property shall be perfected against all 1004
parties having claims of any kind, including any judicial lien or 1005
other lien creditors or any claims of the seller or creditors of 1006
the seller, other than creditors holding a prior security 1007
interest, ownership interest, or assignment in the property 1008
previously perfected in accordance with this division. 1009

(b) The secretary of state shall maintain any financing 1010
statement filed under division (C)(2) of this section in the same 1011
manner that the secretary maintains financing statements filed by 1012
transmitting utilities under division (B) of section 1309.501 of 1013
the Revised Code. The filing of any financing statement under 1014
division (C)(2) of this section shall be governed by the 1015
provisions regarding the filing of financing statements in Chapter 1016
1309. of the Revised Code. 1017

(D)(1) A security interest in phase-in-recovery property 1018

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. 1019
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(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 terminated when the funds are transferred to a segregated account for an assignee or a financing party. 1024
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(3) No application of the adjustment mechanism as described in section 4928.238 of the Revised Code shall affect the validity, perfection, or priority of a security interest in or the transfer of phase-in-recovery property under the final financing order. 1034
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Sec. 4928.2313. (A) Any sale, assignment, or transfer of phase-in-recovery property under a final financing order shall be an absolute transfer and true sale of, and not a pledge of or secured transaction relating to, the seller's right, title, and interest in, to, and under the property, if the documents governing the transaction expressly state that the transaction is a sale or other absolute transfer. A transfer of an interest in that property may be created only when all of the following have occurred: 1038
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(1) The financing order has become final and taken effect. 1047

(2) The documents evidencing the transfer of the property have been executed and delivered to the assignee. 1048
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<u>(3) Value has been received for the property.</u>	1050
<u>(B) The characterization of the sale, assignment, or transfer as an absolute transfer and true sale and the corresponding characterization of the property interest of the purchaser shall be effective and perfected against all third parties and shall not be affected or impaired by, among other things, the occurrence of any of the following:</u>	1051 1052 1053 1054 1055 1056
<u>(1) Commingling of phase-in-recovery revenues with other amounts;</u>	1057 1058
<u>(2) The retention by the seller of either of the following:</u>	1059
<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>	1060 1061 1062
<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>	1063 1064 1065
<u>(3) Any recourse that the purchaser or any assignee may have against the seller;</u>	1066 1067
<u>(4) Any indemnification rights, obligations, or repurchase rights made or provided by the seller;</u>	1068 1069
<u>(5) The obligation of the seller to collect phase-in-recovery revenues on behalf of an assignee;</u>	1070 1071
<u>(6) The treatment of the sale, assignment, or transfer for tax, financial reporting, or other purposes;</u>	1072 1073
<u>(7) Any application of the adjustment mechanism under the final financing order.</u>	1074 1075
Sec. 4928.2314. <u>(A) The transfer and ownership of phase-in-recovery property and the imposition, charging, collection, and receipt of phase-in-recovery revenues under</u>	1076 1077 1078

sections 4928.231 to 4928.2317 of the Revised Code are exempt from 1079
all taxes and similar charges imposed by the state or any county, 1080
municipal corporation, school district, local authority, or other 1081
subdivision. 1082

(B) Phase-in-recovery bonds issued under a final financing 1083
order shall not constitute a debt or a pledge of the faith and 1084
credit or taxing power of this state or of any county, municipal 1085
corporation, or any other political subdivision of this state. 1086
Bondholders shall have no right to have taxes levied by this state 1087
or the taxing authority of any county, municipal corporation, or 1088
any other political subdivision of this state for the payment of 1089
the principal of or interest on the bonds. The issuance of 1090
phase-in-recovery bonds does not, directly, indirectly, or 1091
contingently, obligate this state or any county, municipal 1092
corporation, or political subdivision of this state to levy any 1093
tax or make any appropriation for payment of the principal of or 1094
interest on the bonds. 1095

Sec. 4928.2315. (A) The state pledges to and agrees with the 1096
bondholders, any assignee, and any financing parties under a final 1097
financing order that the state will not take or permit any action 1098
that impairs the value of phase-in-recovery property under the 1099
final financing order or revises the phase-in costs for which 1100
recovery is authorized under the final financing order or, except 1101
as allowed under section 4928.238 of the Revised Code, reduce, 1102
alter, or impair phase-in-recovery charges that are imposed, 1103
charged, collected, or remitted for the benefit of the 1104
bondholders, any assignee, and any financing parties, until any 1105
principal, interest, and redemption premium in respect of 1106
phase-in-recovery bonds, all financing costs, and all amounts to 1107
be paid to an assignee or financing party under an ancillary 1108
agreement are paid or performed in full. 1109

(B) Any person who issues phase-in-recovery bonds is 1110
permitted to include the pledge specified in division (A) of this 1111
section in the phase-in-recovery bonds, ancillary agreements, and 1112
documentation related to the issuance and marketing of the 1113
phase-in-recovery bonds. 1114

Sec. 4928.2316. (A) The law governing the validity, 1115
enforceability, attachment, perfection, priority, and exercise of 1116
remedies with respect to the transfer of phase-in-recovery 1117
property under a final financing order, or creation of a security 1118
interest in any such property, phase-in-recovery charges, or final 1119
financing order shall be the laws of this state as set forth in 1120
sections 4928.23 to 4928.2318 of the Revised Code. 1121

(B) This section shall control in the event of a conflict 1122
between sections 4928.23 to 4928.2317 of the Revised Code and any 1123
other law regarding the attachment, assignment, or perfection, the 1124
effect of perfection, or priority of any security interest in or 1125
transfer of phase-in-recovery property under a final financing 1126
order. 1127

Sec. 4928.2317. If any provision of sections 4928.23 to 1128
4928.2318 of the Revised Code is held to be invalid or is 1129
superseded, replaced, repealed, or expires for any reason, that 1130
occurrence shall not affect any action allowed under those 1131
sections that is taken prior to that occurrence by the public 1132
utilities commission, an electric distribution utility, an 1133
assignee, a collection agent, a financing party, a bondholder, or 1134
a party to an ancillary agreement. Any such action shall remain in 1135
full force and effect. 1136

Sec. 4928.2318. An assignee or financing party shall not be 1137
considered an electric distribution utility or person providing 1138
electric service by virtue of engaging in the transactions 1139

described in sections 4928.23 to 4928.2313 of the Revised Code. 1140

Section 2. That existing sections 4928.143 and 4928.20 of the 1141
Revised Code are hereby repealed. 1142