

# AN ACT

To amend sections 122.075, 123.011, 125.836, 131.50, 133.06, 156.01, 156.02, 156.03, 156.04, 303.213, 905.40, 1509.01, 1509.02, 1509.03, 1509.04, 1509.06, 1509.07, 1509.10, 1509.11, 1509.22, 1509.221, 1509.222, 1509.223, 1509.23, 1509.28, 1509.33, 1509.99, 1514.01, 1514.02, 1514.021, 1514.03, 1514.05, 3706.27, 4905.03, 4905.90, 4905.91, 4905.95, 4906.01, 4906.03, 4906.05, 4906.06, 4906.07, 4906.10, 4906.20, 4928.01, 4928.02, 4928.2314, 4928.61, 4928.62, 4928.64, 4928.66, 4935.04, 5703.21, and 5751.01; to amend, for the purpose of adopting a new section number as indicated in parentheses, section 905.461 (905.411); and to enact sections 905.41, 3737.832, 4905.911, 4928.111, 4928.70, 4928.71, 4928.72, and 6301.12 of the Revised Code to make changes to the energy and natural resources laws and related programs of the state.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 101.01. That sections 122.075, 123.011, 125.836, 131.50, 133.06, 156.01, 156.02, 156.03, 156.04, 303.213, 905.40, 1509.01, 1509.02, 1509.03, 1509.04, 1509.06, 1509.07, 1509.10, 1509.11, 1509.22, 1509.221, 1509.222, 1509.223, 1509.23, 1509.28, 1509.33, 1509.99, 1514.01, 1514.02, 1514.021, 1514.03, 1514.05, 3706.27, 4905.03, 4905.90, 4905.91, 4905.95, 4906.01, 4906.03, 4906.05, 4906.06, 4906.07, 4906.10, 4906.20, 4928.01, 4928.02, 4928.2314, 4928.61, 4928.62, 4928.64, 4928.66, 4935.04, 5703.21, and 5751.01 be amended; section 905.461 (905.411) be amended for the purpose of adopting a new section number as indicated in parentheses; and sections 905.41, 3737.832, 4905.911, 4928.111, 4928.70, 4928.71, 4928.72, and 6301.12 of the Revised Code be enacted to read as follows:

Sec. 122.075. (A) As used in this section:

(1) "Alternative fuel" has the same meaning as in section 125.831 of the Revised Code.

(2) "Biodiesel" means a mono-alkyl ester combustible liquid fuel that is derived from vegetable oils or animal fats, or any combination of those reagents, and that meets American society for testing and materials specification D6751-03a for biodiesel fuel (B100) blend stock distillate fuels.

(3) "Diesel fuel" and "gasoline" have the same meanings as in section 5735.01 of the Revised Code.

(4) "Ethanol" has the same meaning as in section 5733.46 of the Revised Code.

(5) "Blended biodiesel" means diesel fuel containing at least twenty per cent biodiesel by volume.

(6) "Blended gasoline" means gasoline containing at least eighty-five per cent ethanol by volume.

(7) "Incremental cost" means either of the following:

(a) The difference in cost between blended gasoline and gasoline containing ten per cent or less ethanol at the time that the blended gasoline is purchased;

(b) The difference in cost between blended biodiesel and diesel fuel containing two per cent or less biodiesel at the time that the blended biodiesel is purchased.

(B) For the purpose of improving the air quality in this state, the director of development shall establish an alternative fuel transportation ~~grant~~ program under which the director may make grants and loans to businesses, nonprofit organizations, public school systems, or local governments for the purchase and installation of alternative fuel refueling or distribution facilities and terminals, for the purchase and use of alternative fuel, and to pay the costs of educational and promotional materials and activities intended for prospective alternative fuel consumers, fuel marketers, and others in order to increase the availability and use of alternative fuel.

(C) The director, in consultation with the director of agriculture, shall adopt rules in accordance with Chapter 119. of the Revised Code that are necessary for the administration of the alternative fuel transportation ~~grant~~ program. The rules shall establish at least all of the following:

(1) An application form and procedures governing the application process for ~~a grant~~ receiving funds under the program;

(2) A procedure for prioritizing the award of grants and loans under the program. The procedures shall give preference to all of the following:

(a) Publicly accessible refueling facilities;

(b) Entities ~~seeking grants~~ applying to the program that have secured funding from other sources, including, but not limited to, private or federal ~~grants~~ incentives;

(c) Entities that have presented compelling evidence of demand in the market in which the facilities or terminals will be located;

(d) Entities that have committed to utilizing purchased or installed facilities or terminals for the greatest number of years;

(e) Entities that will be purchasing or installing facilities or terminals for any type of alternative fuel.

(3) A requirement that the maximum ~~grant~~ incentive for the purchase and installation of an alternative fuel refueling or distribution facility or terminal be eighty per cent of the cost of the facility or terminal, except that at least twenty per cent of the total net cost of the facility or terminal shall be incurred by the ~~grant~~ recipient and not compensated for by any other source;

(4) A requirement that the maximum ~~grant~~ incentive for the purchase of alternative fuel be eighty per cent of the cost of the fuel or, in the case of blended biodiesel or blended gasoline, eighty per cent of the incremental cost of the blended biodiesel or blended gasoline;

(5) Any other criteria, procedures, or guidelines that the director determines are necessary to administer the program, including fees, charges, interest rates, and payment schedules.

(D) An applicant for a grant or loan under this section that sells motor vehicle fuel at retail shall agree that if the applicant receives ~~a grant~~ funding, the applicant will report to the director the gallon or gallon equivalent amounts of alternative fuel the applicant sells at retail in this state for a period of three years after the ~~grant is awarded~~ project is completed.

The director shall enter into a written confidentiality agreement with the applicant regarding the gallon or gallon equivalent amounts sold as described in this division, and upon execution of the agreement this information is not a public record.

(E) There is hereby created in the state treasury the alternative fuel transportation ~~grant~~ fund. The fund shall consist of money transferred to the fund under division (C) of section 125.836 and under division (B)(2) of section 3706.27 of the Revised Code, money that is appropriated to it by the general assembly, and money as may be specified by the general assembly from the advanced energy fund created by section 4928.61 of the Revised Code. Money in the fund shall be used to make grants and loans under the alternative fuel transportation ~~grant~~ program and by the director in the administration of that program.

Sec. 123.011. (A) As used in this section:

(1) "Construct" includes reconstruct, improve, renovate, enlarge, or otherwise alter.

(2) "Energy consumption analysis" means the evaluation of all energy consuming systems, components, and equipment by demand and type of energy, including the internal energy load imposed on a facility by its occupants and the external energy load imposed by climatic conditions.

(3) "Energy performance index" means a number describing the energy requirements of a facility per square foot of floor space or per cubic foot of occupied volume as appropriate under defined internal and external ambient conditions over an entire seasonal cycle.

(4) "Facility" means a building or other structure, or part of a building or other structure, that includes provision for a heating, refrigeration, ventilation, cooling, lighting, hot water, or other major energy consuming system, component, or equipment.

(5) "Life-cycle cost analysis" means a general approach to economic evaluation that takes into account all dollar costs related to owning, operating, maintaining, and ultimately disposing of a project over the appropriate study period.

(6) "Political subdivision" means a county, township, municipal corporation, board of education of any school district, or any other body corporate and politic that is responsible for government activities in a geographic area smaller than that of the state.

(7) "State funded" means funded in whole or in part through appropriation by the general assembly or through the use of any guarantee provided by this state.

(8) "State institution of higher education" has the same meaning as in section 3345.011 of the Revised Code.

(9) "Cogeneration" means the simultaneous production of thermal energy and electricity for use primarily within a building or complex of buildings.

(B) There is hereby created within the department of administrative services the office of energy services. The office shall be under the supervision of a manager, who shall be appointed by the director of administrative services. The director shall assign to the office such number of employees and furnish such equipment and supplies as are necessary for the performance of the office's duties.

The office shall develop energy efficiency and conservation programs in each of the following areas:

(1) New construction design and review;

- (2) Existing building audit and retrofit;
- (3) Energy efficient procurement;
- (4) Alternative fuel vehicles.

The office may accept and administer grants from public and private sources for carrying out any of its duties under this section.

(C) No state agency, department, division, bureau, office, unit, board, commission, authority, quasi-governmental entity, or institution, including those agencies otherwise excluded from the jurisdiction of the department under division (A)(3) of section 123.01 of the Revised Code, shall lease, construct, or cause to be leased or constructed, within the limits prescribed in this section, a state-funded facility, without a proper life-cycle cost analysis or, in the case of a lease, an energy consumption analysis, as computed or prepared by a qualified architect or engineer in accordance with the rules required by division (D) of this section.

Construction shall proceed only upon the disclosure to the office, for the facility chosen, of the life-cycle costs as determined in this section and the capitalization of the initial construction costs of the building. The results of life-cycle cost analysis shall be a primary consideration in the selection of a building design. That analysis shall be required only for construction of buildings with an area of five thousand square feet or greater. For projects with an estimated construction cost exceeding fifty million dollars, the analysis shall include a review of cogeneration as an energy source. An energy consumption analysis for the term of a proposed lease shall be required only for the leasing of an area of twenty thousand square feet or greater within a given building boundary. That analysis shall be a primary consideration in the selection of a facility to be leased.

Nothing in this section shall deprive or limit any state agency that has review authority over design, construction, or leasing plans from requiring a life-cycle cost analysis or energy consumption analysis.

(D) For the purposes of assisting the department in its responsibility for state-funded facilities pursuant to section 123.01 of the Revised Code and of cost-effectively reducing the energy consumption of those and any other state-funded facilities, thereby promoting fiscal, economic, and environmental benefits to this state, the office shall promulgate rules specifying cost-effective, energy efficiency and conservation standards that may govern the lease, design, construction, operation, and maintenance of all state-funded facilities, except facilities of state institutions of higher education or facilities operated by a political subdivision. The office of energy efficiency in the department of development shall cooperate in providing information and technical expertise to the office of energy

services to ensure promulgation of rules of maximum effectiveness. The standards prescribed by rules promulgated under this division may draw from or incorporate, by reference or otherwise and in whole or in part, standards already developed or implemented by any competent, public or private standards organization or program. The rules also may include any of the following:

(1) Specifications for a life-cycle cost analysis that shall determine, for the economic life of such state-funded facility, the reasonably expected costs of facility ownership, operation, and maintenance including labor and materials. Life-cycle cost may be expressed as an annual cost for each year of the facility's use.

A life-cycle cost analysis additionally may include an energy consumption analysis that conforms to division (D)(2) of this section.

(2) Specifications for an energy consumption analysis of the facility's heating, refrigeration, ventilation, cooling, lighting, hot water, and other major energy consuming systems, components, and equipment.

A life-cycle cost analysis and energy consumption analysis shall be based on the best currently available methods of analysis, such as those of the national institute of standards and technology, the United States department of energy or other federal agencies, professional societies, and directions developed by the department.

(3) Specifications for energy performance indices, to be used to audit and evaluate competing design proposals submitted to the state.

(4) A requirement that, not later than two years after April 6, 2007, each state-funded facility, except a facility of a state institution of higher education or a facility operated by a political subdivision, is managed by at least one building operator certified under the building operator certification program or any equivalent program or standards as shall be prescribed in the rules and considered reasonably equivalent.

(5) An application process by which a manager of a specified state-funded facility, except a facility of a state institution of higher education or a facility operated by a political subdivision, may apply for a waiver of compliance with any provision of the rules required by divisions (D)(1) to (4) of this section.

(E) The office of energy services shall promulgate rules to ensure that energy efficiency and conservation will be considered in the purchase of products and equipment, except motor vehicles, by any state agency, department, division, bureau, office, unit, board, commission, authority, quasi-governmental entity, or institution. Minimum energy efficiency standards for purchased products and equipment may be required, based on

federal testing and labeling where available or on standards developed by the office. The rules shall apply to the competitive selection of energy consuming systems, components, and equipment under Chapter 125. of the Revised Code where possible.

The office also shall ensure energy efficient and energy conserving purchasing practices by doing all of the following:

(1) Cooperatively with the office of energy efficiency, identifying available energy efficiency and conservation opportunities;

(2) Providing for interchange of information among purchasing agencies;

(3) Identifying laws, policies, rules, and procedures that need modification;

(4) Monitoring experience with and the cost-effectiveness of this state's purchase and use of motor vehicles and of major energy-consuming systems, components, equipment, and products having a significant impact on energy consumption by government;

(5) Cooperatively with the office of energy efficiency, providing technical assistance and training to state employees involved in the purchasing process.

The department of development shall make recommendations to the office regarding planning and implementation of purchasing policies and procedures supportive of energy efficiency and conservation.

(F)(1) The office of energy services shall require all state agencies, departments, divisions, bureaus, offices, units, commissions, boards, authorities, quasi-governmental entities, institutions, and state institutions of higher education to implement procedures ensuring that all their passenger automobiles acquired in each fiscal year, except for those passenger automobiles acquired for use in law enforcement or emergency rescue work, achieve a fleet average fuel economy of not less than the fleet average fuel economy for that fiscal year as shall be prescribed by the office by rule. The office shall promulgate the rule prior to the beginning of the fiscal year in accordance with the average fuel economy standards established pursuant to federal law for passenger automobiles manufactured during the model year that begins during the fiscal year.

(2) Each state agency, department, division, bureau, office, unit, commission, board, authority, quasi-governmental entity, institution, and state institution of higher education shall determine its fleet average fuel economy by dividing:

(a) The total number of passenger vehicles acquired during the fiscal year, except for those passenger vehicles acquired for use in law

enforcement or emergency rescue work, by

(b) A sum of terms, each of which is a fraction created by dividing:

(i) The number of passenger vehicles of a given make, model, and year, except for passenger vehicles acquired for use in law enforcement or emergency rescue work, acquired during the fiscal year, by

(ii) The fuel economy measured by the administrator of the United States environmental protection agency, for the given make, model, and year of vehicle, that constitutes an average fuel economy for combined city and highway driving.

As used in division (F)(2) of this section, "acquired" means leased for a period of sixty continuous days or more, or purchased.

(G) Each state agency, department, division, bureau, office, unit, board, commission, authority, quasi-governmental entity, institution, and state institution of higher education shall comply with any applicable provision of this section or of a rule promulgated pursuant to division (D) or (F) of this section.

Sec. 125.836. (A) As used in this section:

(1) "Biodiesel," "blended biodiesel," and "diesel fuel" have the same meanings as in section 125.831 of the Revised Code.

(2) "Credit" means a credit generated by the acquisition of alternative fueled vehicles in accordance with the "Energy Policy Act of 1992," 106 Stat. 2897, 42 U.S.C. 13257.

(3) "Incremental cost" means the difference in cost between blended biodiesel and conventional petroleum-based diesel fuel at the time the blended biodiesel is purchased.

(B) The department of administrative services shall establish and administer a credit banking and selling program. The department may sell or trade credits in accordance with procedures established pursuant to the "Energy Policy Act of 1992," 106 Stat. 2897, 42 U.S.C. 13258.

(C) There is hereby created in the state treasury the "biodiesel revolving fund," to which shall be credited moneys received from the sale of credits under this section, any moneys appropriated to the fund by the general assembly, and any other moneys obtained or accepted by the department for crediting to the fund. Moneys credited to the fund shall be used to pay for the incremental cost of biodiesel for use in vehicles owned or leased by the state that use diesel fuel. The director of administrative services, after consultation with the director of development, may direct the director of budget and management to transfer available moneys in the biodiesel revolving fund to the alternative fuel transportation ~~grant~~ fund created in section 122.075 of the Revised Code to be used by the department of



development for the purposes specified in that section.

(D) The director of administrative services shall adopt rules under Chapter 119. of the Revised Code that are necessary for the administration of the credit banking and selling program.

Sec. 131.50. (A) There is hereby created in the state treasury the state land royalty fund consisting of money credited to it under section 1509.73 of the Revised Code. Any investment proceeds earned on money in the fund shall be credited to the fund and used as required in division (B) or (C) of this section.

(B) ~~Money~~ Except as provided in division (C) of this section, money in the state land royalty fund shall be used by state agencies to acquire land and to pay capital costs of state agencies, including equipment and renovations and repairs of facilities, that have contributed to the fund under section 1509.73 of the Revised Code. Such a state agency is entitled to receive from the fund the amount that the state agency contributed and a share of the investment earnings of the fund in an amount that is equivalent to the proportionate share of contributions made by the state agency to the fund.

(C) Money in the fund that is allocated to a state college or university may be used to pay for operating expenses associated with any property that is owned by the college or university and that is at least partially used for the exploration, development, and production of oil or gas if both of the following apply:

(1) The state college or university is engaged in research at the property or in education or outreach regarding the property.

(2) The research, education, or outreach is associated with furthering the public understanding of how oil and gas exploration, development, or production potentially benefits the public and impacts the use of the state's natural resources.

(D) As used in this section, "state agency" has the same meaning as in section 1509.70 of the Revised Code.

Sec. 133.06. (A) A school district shall not incur, without a vote of the electors, net indebtedness that exceeds an amount equal to one-tenth of one per cent of its tax valuation, except as provided in divisions (G) and (H) of this section and in division (C) of section 3313.372 of the Revised Code, or as prescribed in section 3318.052 or 3318.44 of the Revised Code, or as provided in division (J) of this section.

(B) Except as provided in divisions (E), (F), and (I) of this section, a school district shall not incur net indebtedness that exceeds an amount equal to nine per cent of its tax valuation.

(C) A school district shall not submit to a vote of the electors the question of the issuance of securities in an amount that will make the district's net indebtedness after the issuance of the securities exceed an amount equal to four per cent of its tax valuation, unless the superintendent of public instruction, acting under policies adopted by the state board of education, and the tax commissioner, acting under written policies of the commissioner, consent to the submission. A request for the consents shall be made at least one hundred twenty days prior to the election at which the question is to be submitted.

The superintendent of public instruction shall certify to the district the superintendent's and the tax commissioner's decisions within thirty days after receipt of the request for consents.

If the electors do not approve the issuance of securities at the election for which the superintendent of public instruction and tax commissioner consented to the submission of the question, the school district may submit the same question to the electors on the date that the next special election may be held under section 3501.01 of the Revised Code without submitting a new request for consent. If the school district seeks to submit the same question at any other subsequent election, the district shall first submit a new request for consent in accordance with this division.

(D) In calculating the net indebtedness of a school district, none of the following shall be considered:

(1) Securities issued to acquire school buses and other equipment used in transporting pupils or issued pursuant to division (D) of section 133.10 of the Revised Code;

(2) Securities issued under division (F) of this section, under section 133.301 of the Revised Code, and, to the extent in excess of the limitation stated in division (B) of this section, under division (E) of this section;

(3) Indebtedness resulting from the dissolution of a joint vocational school district under section 3311.217 of the Revised Code, evidenced by outstanding securities of that joint vocational school district;

(4) Loans, evidenced by any securities, received under sections 3313.483, 3317.0210, 3317.0211, and 3317.64 of the Revised Code;

(5) Debt incurred under section 3313.374 of the Revised Code;

(6) Debt incurred pursuant to division (B)(5) of section 3313.37 of the Revised Code to acquire computers and related hardware;

(7) Debt incurred under section 3318.042 of the Revised Code.

(E) A school district may become a special needs district as to certain securities as provided in division (E) of this section.

(1) A board of education, by resolution, may declare its school district

to be a special needs district by determining both of the following:

(a) The student population is not being adequately serviced by the existing permanent improvements of the district.

(b) The district cannot obtain sufficient funds by the issuance of securities within the limitation of division (B) of this section to provide additional or improved needed permanent improvements in time to meet the needs.

(2) The board of education shall certify a copy of that resolution to the superintendent of public instruction with a statistical report showing all of the following:

(a) The history of and a projection of the growth of the tax valuation;

(b) The projected needs;

(c) The estimated cost of permanent improvements proposed to meet such projected needs.

(3) The superintendent of public instruction shall certify the district as an approved special needs district if the superintendent finds both of the following:

(a) The district does not have available sufficient additional funds from state or federal sources to meet the projected needs.

(b) The projection of the potential average growth of tax valuation during the next five years, according to the information certified to the superintendent and any other information the superintendent obtains, indicates a likelihood of potential average growth of tax valuation of the district during the next five years of an average of not less than one and one-half per cent per year. The findings and certification of the superintendent shall be conclusive.

(4) An approved special needs district may incur net indebtedness by the issuance of securities in accordance with the provisions of this chapter in an amount that does not exceed an amount equal to the greater of the following:

(a) Twelve per cent of the sum of its tax valuation plus an amount that is the product of multiplying that tax valuation by the percentage by which the tax valuation has increased over the tax valuation on the first day of the sixtieth month preceding the month in which its board determines to submit to the electors the question of issuing the proposed securities;

(b) Twelve per cent of the sum of its tax valuation plus an amount that is the product of multiplying that tax valuation by the percentage, determined by the superintendent of public instruction, by which that tax valuation is projected to increase during the next ten years.

(F) A school district may issue securities for emergency purposes, in a principal amount that does not exceed an amount equal to three per cent of

its tax valuation, as provided in this division.

(1) A board of education, by resolution, may declare an emergency if it determines both of the following:

(a) School buildings or other necessary school facilities in the district have been wholly or partially destroyed, or condemned by a constituted public authority, or that such buildings or facilities are partially constructed, or so constructed or planned as to require additions and improvements to them before the buildings or facilities are usable for their intended purpose, or that corrections to permanent improvements are necessary to remove or prevent health or safety hazards.

(b) Existing fiscal and net indebtedness limitations make adequate replacement, additions, or improvements impossible.

(2) Upon the declaration of an emergency, the board of education may, by resolution, submit to the electors of the district pursuant to section 133.18 of the Revised Code the question of issuing securities for the purpose of paying the cost, in excess of any insurance or condemnation proceeds received by the district, of permanent improvements to respond to the emergency need.

(3) The procedures for the election shall be as provided in section 133.18 of the Revised Code, except that:

(a) The form of the ballot shall describe the emergency existing, refer to this division as the authority under which the emergency is declared, and state that the amount of the proposed securities exceeds the limitations prescribed by division (B) of this section;

(b) The resolution required by division (B) of section 133.18 of the Revised Code shall be certified to the county auditor and the board of elections at least one hundred days prior to the election;

(c) The county auditor shall advise and, not later than ninety-five days before the election, confirm that advice by certification to, the board of education of the information required by division (C) of section 133.18 of the Revised Code;

(d) The board of education shall then certify its resolution and the information required by division (D) of section 133.18 of the Revised Code to the board of elections not less than ninety days prior to the election.

(4) Notwithstanding division (B) of section 133.21 of the Revised Code, the first principal payment of securities issued under this division may be set at any date not later than sixty months after the earliest possible principal payment otherwise provided for in that division.

(G) The board of education may contract with an architect, professional engineer, or other person experienced in the design and implementation of

energy conservation measures for an analysis and recommendations pertaining to installations, modifications of installations, or remodeling that would significantly reduce energy consumption in buildings owned by the district. The report shall include estimates of all costs of such installations, modifications, or remodeling, including costs of design, engineering, installation, maintenance, repairs, and debt service, forgone residual value of materials or equipment replaced by the energy conservation measure, as defined by the Ohio school facilities commission, a baseline analysis of actual energy consumption data for the preceding ~~five~~ three years, and estimates of the amounts by which energy consumption and resultant operational and maintenance costs, as defined by the commission, would be reduced.

If the board finds after receiving the report that the amount of money the district would spend on such installations, modifications, or remodeling is not likely to exceed the amount of money it would save in energy and resultant operational and maintenance costs over the ensuing fifteen years, the board may submit to the commission a copy of its findings and a request for approval to incur indebtedness to finance the making or modification of installations or the remodeling of buildings for the purpose of significantly reducing energy consumption.

If the commission determines that the board's findings are reasonable, it shall approve the board's request. Upon receipt of the commission's approval, the district may issue securities without a vote of the electors in a principal amount not to exceed nine-tenths of one per cent of its tax valuation for the purpose of making such installations, modifications, or remodeling, but the total net indebtedness of the district without a vote of the electors incurred under this and all other sections of the Revised Code, except section 3318.052 of the Revised Code, shall not exceed one per cent of the district's tax valuation.

So long as any securities issued under division (G) of this section remain outstanding, the board of education shall monitor the energy consumption and resultant operational and maintenance costs of buildings in which installations or modifications have been made or remodeling has been done pursuant to division (G) of this section and shall maintain and annually update a report documenting the reductions in energy consumption and resultant operational and maintenance cost savings attributable to such installations, modifications, or remodeling. The report shall be certified by an architect or engineer independent of any person that provided goods or services to the board in connection with the energy conservation measures that are the subject of the report. The resultant operational and maintenance

cost savings shall be certified by the school district treasurer. The report shall be submitted annually to the commission.

(H) With the consent of the superintendent of public instruction, a school district may incur without a vote of the electors net indebtedness that exceeds the amounts stated in divisions (A) and (G) of this section for the purpose of paying costs of permanent improvements, if and to the extent that both of the following conditions are satisfied:

(1) The fiscal officer of the school district estimates that receipts of the school district from payments made under or pursuant to agreements entered into pursuant to section 725.02, 1728.10, 3735.671, 5709.081, 5709.082, 5709.40, 5709.41, 5709.62, 5709.63, 5709.632, 5709.73, 5709.78, or 5709.82 of the Revised Code, or distributions under division (C) of section 5709.43 of the Revised Code, or any combination thereof, are, after accounting for any appropriate coverage requirements, sufficient in time and amount, and are committed by the proceedings, to pay the debt charges on the securities issued to evidence that indebtedness and payable from those receipts, and the taxing authority of the district confirms the fiscal officer's estimate, which confirmation is approved by the superintendent of public instruction;

(2) The fiscal officer of the school district certifies, and the taxing authority of the district confirms, that the district, at the time of the certification and confirmation, reasonably expects to have sufficient revenue available for the purpose of operating such permanent improvements for their intended purpose upon acquisition or completion thereof, and the superintendent of public instruction approves the taxing authority's confirmation.

The maximum maturity of securities issued under division (H) of this section shall be the lesser of twenty years or the maximum maturity calculated under section 133.20 of the Revised Code.

(I) A school district may incur net indebtedness by the issuance of securities in accordance with the provisions of this chapter in excess of the limit specified in division (B) or (C) of this section when necessary to raise the school district portion of the basic project cost and any additional funds necessary to participate in a project under Chapter 3318. of the Revised Code, including the cost of items designated by the Ohio school facilities commission as required locally funded initiatives, the cost of other locally funded initiatives in an amount that does not exceed fifty per cent of the district's portion of the basic project cost, and the cost for site acquisition. The school facilities commission shall notify the superintendent of public instruction whenever a school district will exceed either limit pursuant to

this division.

(J) A school district whose portion of the basic project cost of its classroom facilities project under sections 3318.01 to 3318.20 of the Revised Code is greater than or equal to one hundred million dollars may incur without a vote of the electors net indebtedness in an amount up to two per cent of its tax valuation through the issuance of general obligation securities in order to generate all or part of the amount of its portion of the basic project cost if the controlling board has approved the school facilities commission's conditional approval of the project under section 3318.04 of the Revised Code. The school district board and the Ohio school facilities commission shall include the dedication of the proceeds of such securities in the agreement entered into under section 3318.08 of the Revised Code. No state moneys shall be released for a project to which this section applies until the proceeds of any bonds issued under this section that are dedicated for the payment of the school district portion of the project are first deposited into the school district's project construction fund.

Sec. 156.01. As used in sections 156.01 to 156.05 of the Revised Code:

(A) "Avoided capital costs" means a measured reduction in the cost of future equipment or other capital purchases that results from implementation of one or more energy or water conservation measures, when compared to an established baseline for previous such cost.

(B) "Energy conservation measure" means an installation or modification of an installation in, or a remodeling of, an existing building in order to reduce energy consumption and operating costs. The term includes any of the following:

(1) Installation or modification of insulation in the building structure and systems within the building;

(2) Installation or modification of storm windows and doors, multiglazed windows and doors, and heat absorbing or heat reflective glazed and coated window and door systems; installation of additional glazing; reductions in glass area; and other window and door system modifications that reduce energy consumption and operating costs;

(3) Installation or modification of automatic energy control systems;

(4) Replacement or modification of heating, ventilating, or air conditioning systems;

(5) Application of caulking and weather stripping;

(6) Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a building unless the increase in illumination is necessary to conform to the applicable state or local building code for the proposed

lighting system;

(7) Installation or modification of energy recovery systems;

(8) Installation or modification of cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;

(9) Installation or modification of trigeneration systems that produce heat and cooling, as well as electricity, for use primarily within a building or complex of buildings;

(10) Installation or modification of systems that harvest renewable energy from solar, wind, water, biomass, bio-gas, or geothermal sources, for use primarily within a building or complex of buildings;

(11) Retro-commissioning or recommissioning energy-related systems to verify that they are installed and calibrated to optimize energy and operational performance within a building or complex of buildings;

(12) Consolidation, virtualization, and optimization of computer servers, data storage devices, or other information technology hardware and infrastructure;

(13) Any other modification, installation, or remodeling approved by the director of administrative services as an energy conservation measure for one or more buildings owned by ~~the~~ either of the following:

(a) The state;

(b) A state institution of higher education as defined in section 3345.011 of the Revised Code that implements the energy conservation measure in consultation with the director.

(C) "Energy saving measure" means the acquisition and installation, by purchase, lease, lease-purchase, lease with an option to buy, or installment purchase, of an energy conservation measure and any attendant architectural and engineering consulting services.

(D) "Energy, water, or wastewater cost savings" means a measured reduction in, as applicable, the cost of fuel, energy or water consumption, wastewater production, or stipulated operation or maintenance resulting from the implementation of one or more energy or water conservation measures, when compared to an established baseline for previous such costs, respectively.

(E) "Operating cost savings" means a measured reduction in the cost of stipulated operation or maintenance created by the installation of new equipment or implementation of a new service, when compared with an established baseline for previous such stipulated costs.

(F) "Water conservation measure" means an installation or modification of an installation in, or a remodeling of, an existing building or the



surrounding grounds in order to reduce water consumption. The term includes any of the following:

(1) Water-conserving fixture, appliance, or equipment, or the substitution of a nonwater-using fixture, appliance, or equipment;

(2) Water-conserving, landscape irrigation equipment;

(3) Landscaping measure that reduces storm water runoff demand and capture and hold applied water and rainfall, including landscape contouring such as the use of a berm, swale, or terrace and including the use of a soil amendment, including compost, that increases the water-holding capacity of the soil;

(4) Rainwater harvesting equipment or equipment to make use of water collected as part of a storm water system installed for water quality control;

(5) Equipment for recycling or reuse of water originating on the premises or from another source, including treated, municipal effluent;

(6) Equipment needed to capture water for nonpotable uses from any nonconventional, alternate source, including air conditioning condensate or gray water;

(7) Any other modification, installation, or remodeling approved by the ~~board of trustees of a state institution of higher education as defined in section 3345.011 of the Revised Code~~ director of administrative services as a water conservation measure for one or more buildings or the surrounding grounds owned by either of the following:

(a) The state;

(b) A state institution of higher education as defined in section 3345.011 of the Revised Code that implements the water conservation measure in consultation with the director.

(G) "Water saving measure" means the acquisition and installation, by the purchase, lease, lease-purchase, lease with an option to buy, or installment purchases of a water conservation measure and any attendant architectural and engineering consulting services.

Sec. 156.02. ~~(A) The director of administrative services may contract with an energy services company, contractor, architect, professional engineer, or other person experienced in the design and implementation of energy conservation measures for a report containing an analysis and recommendations pertaining to the implementation of energy conservation measures that would significantly reduce energy consumption and operating costs in any buildings owned by the state. The report shall include estimates of all costs of such measures, including the costs of design, engineering, installation, maintenance, repairs, and debt service, and estimates of the amounts by which energy consumption and operating costs would be~~

reduced.

~~(B) Upon the request of the board of trustees or managing authority of a state institution of higher education as defined in section 3345.011 of the Revised Code, the director may contract with~~ or a water services company, architect, professional engineer, contractor, or other person experienced in the design and implementation of energy or water conservation measures for a report containing an analysis and recommendations pertaining to the implementation of energy or water conservation measures that result in energy, water, or wastewater cost savings, operating cost savings, or avoided capital costs for the institution. The report shall include estimates of all costs of such installations, including the costs of design, engineering, installation, maintenance, repairs, and debt service, and estimates of the energy, water, or wastewater cost savings, operating cost savings, and avoided capital costs created.

Sec. 156.03. (A) If the director of administrative services wishes to enter into an installment payment contract pursuant to section 156.04 of the Revised Code or any other contract to implement one or more ~~energy saving measures or, in the case of a state institution of higher education pursuant to division (B) of section 156.02 of the Revised Code,~~ energy or water saving measures, the director may proceed under Chapter 153. of the Revised Code, or, alternatively, the director may request the controlling board to exempt the contract from Chapter 153. of the Revised Code.

If the controlling board by a majority vote approves an exemption, that chapter shall not apply to the contract and instead the director shall request proposals from at least three parties for the implementation of the energy or water saving measures. Prior to providing any interested party a copy of any such request, the director shall advertise, in a newspaper of general circulation in the county where the contract is to be performed, and may advertise by electronic means pursuant to rules adopted by the director, the director's intent to request proposals for the implementation of the energy or water saving measures. The notice shall invite interested parties to submit proposals for consideration and shall be published at least thirty days prior to the date for accepting proposals.

(B) Upon receiving the proposals, the director shall analyze them and, after considering the cost estimates of each proposal and the availability of funds to pay for each with current appropriations or by financing the cost of each through an installment payment contract under section 156.04 of the Revised Code, may select one or more proposals or reject all proposals. In selecting proposals, the director shall select the one or more proposals most likely to result in the greatest ~~savings when the cost of the proposal is~~

~~compared to the reduced energy and operating costs that will result from implementing the proposal. However, in the case of a state institution of higher education pursuant to division (B) of section 156.02 of the Revised Code, the director shall select the one or more proposals most likely to result in the greatest energy, water, or wastewater savings, operating costs savings, and avoided capital costs created.~~

~~(C)(4) No contract shall be awarded to implement energy or water saving measures under this section, other than in the case of a state institution of higher education, unless the director finds that one or both of the following circumstances exists, as applicable:~~

~~(a) In the case of a contract for a cogeneration system described in division (H) of section 156.01 of the Revised Code, the cost of the contract is not likely to exceed the amount of money that would be saved in energy and operating costs over no more than five years;~~

~~(b) In the case of any contract for any energy saving measure other than a cogeneration system, the cost of the contract is not likely to exceed the amount of money that would be saved in energy and operating costs over no more than ten years.~~

~~(2) In the case of a state institution of higher education pursuant to division (B) of section 156.02 of the Revised Code, no contract shall be awarded to implement energy or water saving measures for the institution under this section unless the director finds that both of the following circumstances exists:~~

~~(a)(1) Not less than one-fifteenth of the costs of the contract shall be paid within two years from the date of purchase;~~

~~(b) The (2) In the case of a contract for a cogeneration system described in division (B)(8) of section 156.01 of the Revised Code, the remaining balance of the cost of the contract shall be paid within fifteen twenty years from the date of purchase, and, in the case of all other contracts, fifteen years.~~

Sec. 156.04. (A) In accordance with this section and section 156.03 of the Revised Code, the director of administrative services may enter into an installment payment contract for the implementation of one or more energy or water saving measures. If the director wishes an installment payment contract to be exempted from Chapter 153. of the Revised Code, the director shall proceed pursuant to section 156.03 of the Revised Code.

~~(B)(4) Any installment payment contract under this section, other than in the case of a state institution of higher education, for one or more energy saving measures shall provide that all payments, except payments for repairs and obligations on termination of the contract prior to its expiration, are to~~

~~be a stated percentage of calculated savings of energy and operating costs attributable to the one or more measures over a defined period of time and are to be made only to the extent that those savings actually occur. No such contract shall contain any of the following:~~

~~(a) A requirement of any additional capital investment or contribution of funds, other than funds available from state or federal grants;~~

~~(b) In the case of a contract for an energy saving measure that is a cogeneration system described in division (H) of section 156.01 of the Revised Code, a payment term longer than five years;~~

~~(c) In the case of a contract for any energy saving measure that is not a cogeneration system, a payment term longer than ten years.~~

~~(2) Any installment payment contract under this section for one or more energy or water saving measures for a state institution of higher education pursuant to division (B) of section 156.02 of the Revised Code, shall provide that all payments, except payments for repairs and obligations on termination of the contract prior to its expiration, are to be a stated percentage of calculated energy, water, or wastewater cost savings, operating costs, and avoided capital costs attributable to the one or more measures over a defined period of time and are to be made only to the extent that those calculated amounts actually occur. No such contract shall contain either of the following:~~

~~(a)(1) A requirement of any additional capital investment or contribution of funds, other than funds available from state or federal grants;~~

~~(b) A (2) In the case of a contract for a cogeneration system described in division (B)(8) of section 156.01 of the Revised Code, a payment term longer than twenty years, and, in the case of all other contracts, a payment term longer than fifteen years.~~

(C) Any installment payment contract entered into under this section shall terminate no later than the last day of the fiscal biennium for which funds have been appropriated to the department of administrative services by the general assembly and shall be renewed in each succeeding fiscal biennium in which any balance of the contract remains unpaid, provided that both an appropriation for that succeeding fiscal biennium and the certification required by section 126.07 of the Revised Code are made.

(D) Any installment payment contract entered into under this section shall be eligible for financing provided through the Ohio air quality development authority under Chapter 3706. of the Revised Code.

Sec. 303.213. (A) As used in this section, "small wind farm" means wind turbines and associated facilities with a single interconnection to the electrical grid and designed for, or capable of, operation at an aggregate

capacity of less than five megawatts.

(B) Notwithstanding division (A) of section 303.211 of the Revised Code, sections 303.01 to 303.25 of the Revised Code confer power on a board of county commissioners or board of zoning appeals to adopt zoning regulations governing the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any small wind farm, whether publicly or privately owned, or the use of land for that purpose, which regulations may be more strict than the regulations prescribed in rules adopted under division ~~(C)~~(B)(2) of section 4906.20 of the Revised Code.

(C) The designation under this section of a small wind farm as a public utility for purposes of sections 303.01 to 303.25 of the Revised Code shall not affect the classification of a small wind farm for purposes of state or local taxation.

(D) Nothing in division (C) of this section shall be construed as affecting the classification of a telecommunications tower as defined in division (B) or (E) of section 303.211 of the Revised Code or any other public utility for purposes of state and local taxation.

Sec. 905.40. The director of agriculture ~~may promulgate,~~ shall adopt; and enforce uniform rules:

(A) Governing the storing and handling of fertilizers;

(B) For safety in the design, construction, location, installation, or operation of equipment for storing, handling, transporting, and utilizing anhydrous ammonia, aqueous ammonia, or other solutions for use as agricultural fertilizers; In addition, with regard to anhydrous ammonia that is used for agricultural purposes, the rules shall establish standards and procedures for the approval or disapproval of the design and construction of storage facilities for anhydrous ammonia and procedures for applying for such approval, including the form of the application.

(C) To prohibit the reselling or reuse of such containers without authorization by the owner thereof;

(D) Requiring that guaranteed analysis be stated in a form other than that defined in section 905.31 of the Revised Code when another form will not impose an economic hardship on manufacturers, distributors, and users of fertilizer by reason of conflicting labeling requirements among the states.

Sec. 905.41. (A) A storage facility for anhydrous ammonia that is used for agricultural purposes shall be designed and constructed in accordance with rules adopted under section 905.40 of the Revised Code. On and after the effective date of this section, no person shall construct a storage facility for anhydrous ammonia that is used for agricultural purposes without

applying for and receiving approval of the design of the facility and approval to construct the facility from the director of agriculture in accordance with those rules.

(B) Upon the submission of an application to the director for the approval of the design and construction of a storage facility for anhydrous ammonia that is used for agricultural purposes in accordance with rules adopted under section 905.40 of the Revised Code, the applicant shall submit written notification of the application to all of the following:

(1) The board of township trustees of the township or the legislative authority of the municipal corporation, as applicable, in which the storage facility is proposed to be located;

(2) The county sheriff, or the police chief of the police department of a municipal corporation, township, or township or joint township police district, as applicable, with jurisdiction over the location where the storage facility is proposed to be located;

(3) The fire chief of the fire department with jurisdiction over the location where the storage facility is proposed to be located.

(C) Prior to approving or disapproving a storage facility for anhydrous ammonia that is used for agricultural purposes, the director may take into consideration any past violations of an applicable state or federal law pertaining to environmental protection or the environmental laws of another country or any conviction of or guilty plea to a violation of section 901.511 of the Revised Code or a felony drug offense as defined in section 2925.01 of the Revised Code related to the use and storage of chemicals used for agriculture by the owner of the storage facility.

Sec. ~~905.461~~ 905.411. The director of agriculture may issue an order prohibiting the use of anhydrous ammonia equipment found not to comply with rules adopted under division (B) of section 905.40 of the Revised Code. No person shall use the equipment until a release in writing is issued by the director.

The director shall not issue a release until both of the following have occurred:

(A) The director has inspected the anhydrous ammonia equipment and has found that the equipment complies with rules adopted under division (B) of section 905.40 of the Revised Code;

(B) The person in control of the anhydrous ammonia equipment at the time of the noncompliance has paid the director in an amount equal to all expenses incurred by the director due to the order prohibiting use of the equipment.

Sec. 1509.01. As used in this chapter:

(A) "Well" means any borehole, whether drilled or bored, within the state for production, extraction, or injection of any gas or liquid mineral, excluding potable water to be used as such, but including natural or artificial brines and oil field waters.

(B) "Oil" means crude petroleum oil and all other hydrocarbons, regardless of gravity, that are produced in liquid form by ordinary production methods, but does not include hydrocarbons that were originally in a gaseous phase in the reservoir.

(C) "Gas" means all natural gas and all other fluid hydrocarbons that are not oil, including condensate.

(D) "Condensate" means liquid hydrocarbons ~~that were originally in the gaseous phase in the reservoir~~ separated at or near the well pad or along the gas production or gathering system prior to gas processing.

(E) "Pool" means an underground reservoir containing a common accumulation of oil or gas, or both, but does not include a gas storage reservoir. Each zone of a geological structure that is completely separated from any other zone in the same structure may contain a separate pool.

(F) "Field" means the general area underlaid by one or more pools.

(G) "Drilling unit" means the minimum acreage on which one well may be drilled, but does not apply to a well for injecting gas into or removing gas from a gas storage reservoir.

(H) "Waste" includes all of the following:

(1) Physical waste, as that term generally is understood in the oil and gas industry;

(2) Inefficient, excessive, or improper use, or the unnecessary dissipation, of reservoir energy;

(3) Inefficient storing of oil or gas;

(4) Locating, drilling, equipping, operating, or producing an oil or gas well in a manner that reduces or tends to reduce the quantity of oil or gas ultimately recoverable under prudent and proper operations from the pool into which it is drilled or that causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas;

(5) Other underground or surface waste in the production or storage of oil, gas, or condensate, however caused.

(I) "Correlative rights" means the reasonable opportunity to every person entitled thereto to recover and receive the oil and gas in and under the person's tract or tracts, or the equivalent thereof, without having to drill unnecessary wells or incur other unnecessary expense.

(J) "Tract" means a single, individually taxed parcel of land appearing on the tax list.

(K) "Owner," unless referring to a mine, means the person who has the right to drill on a tract or drilling unit, to drill into and produce from a pool, and to appropriate the oil or gas produced therefrom either for the person or for others, except that a person ceases to be an owner with respect to a well when the well has been plugged in accordance with applicable rules adopted and orders issued under this chapter. "Owner" does not include a person who obtains a lease of the mineral rights for oil and gas on a parcel of land if the person does not attempt to produce or produce oil or gas from a well or obtain a permit under this chapter for a well or if the entire interest of a well is transferred to the person in accordance with division (B) of section 1509.31 of the Revised Code.

(L) "Royalty interest" means the fee holder's share in the production from a well.

(M) "Discovery well" means the first well capable of producing oil or gas in commercial quantities from a pool.

(N) "Prepared clay" means a clay that is plastic and is thoroughly saturated with fresh water to a weight and consistency great enough to settle through saltwater in the well in which it is to be used, except as otherwise approved by the chief of the division of oil and gas resources management.

(O) "Rock sediment" means the combined cutting and residue from drilling sedimentary rocks and formation.

(P) "Excavations and workings," "mine," and "pillar" have the same meanings as in section 1561.01 of the Revised Code.

(Q) "Coal bearing township" means a township designated as such by the chief of the division of mineral resources management under section 1561.06 of the Revised Code.

(R) "Gas storage reservoir" means a continuous area of a subterranean porous sand or rock stratum or strata into which gas is or may be injected for the purpose of storing it therein and removing it therefrom and includes a gas storage reservoir as defined in section 1571.01 of the Revised Code.

(S) "Safe Drinking Water Act" means the "Safe Drinking Water Act," 88 Stat. 1661 (1974), 42 U.S.C.A. 300(f), as amended by the "Safe Drinking Water Amendments of 1977," 91 Stat. 1393, 42 U.S.C.A. 300(f), the "Safe Drinking Water Act Amendments of 1986," 100 Stat. 642, 42 U.S.C.A. 300(f), and the "Safe Drinking Water Act Amendments of 1996," 110 Stat. 1613, 42 U.S.C.A. 300(f), and regulations adopted under those acts.

(T) "Person" includes any political subdivision, department, agency, or instrumentality of this state; the United States and any department, agency, or instrumentality thereof; and any legal entity defined as a person under section 1.59 of the Revised Code.



(U) "Brine" means all saline geological formation water resulting from, obtained from, or produced in connection with exploration, drilling, well stimulation, production of oil or gas, or plugging of a well.

(V) "Waters of the state" means all streams, lakes, ponds, marshes, watercourses, waterways, springs, irrigation systems, drainage systems, and other bodies of water, surface or underground, natural or artificial, that are situated wholly or partially within this state or within its jurisdiction, except those private waters that do not combine or effect a junction with natural surface or underground waters.

(W) "Exempt Mississippian well" means a well that meets all of the following criteria:

(1) Was drilled and completed before January 1, 1980;

(2) Is located in an unglaciated part of the state;

(3) Was completed in a reservoir no deeper than the Mississippian Big Injun sandstone in areas underlain by Pennsylvanian or Permian stratigraphy, or the Mississippian Berea sandstone in areas directly underlain by Permian stratigraphy;

(4) Is used primarily to provide oil or gas for domestic use.

(X) "Exempt domestic well" means a well that meets all of the following criteria:

(1) Is owned by the owner of the surface estate of the tract on which the well is located;

(2) Is used primarily to provide gas for the owner's domestic use;

(3) Is located more than two hundred feet horizontal distance from any inhabited private dwelling house other than an inhabited private dwelling house located on the tract on which the well is located;

(4) Is located more than two hundred feet horizontal distance from any public building that may be used as a place of resort, assembly, education, entertainment, lodging, trade, manufacture, repair, storage, traffic, or occupancy by the public.

(Y) "Urbanized area" means an area where a well or production facilities of a well are located within a municipal corporation or within a township that has an unincorporated population of more than five thousand in the most recent federal decennial census prior to the issuance of the permit for the well or production facilities.

(Z) "Well stimulation" or "stimulation of a well" means the process of enhancing well productivity, including hydraulic fracturing operations.

(AA) "Production operation" means all operations and activities and all related equipment, facilities, and other structures that may be used in or associated with the exploration and production of oil, gas, or other mineral

resources that are regulated under this chapter, including operations and activities associated with site preparation, site construction, access road construction, well drilling, well completion, well stimulation, well site activities, reclamation, and plugging. "Production operation" also includes all of the following:

(1) The piping, equipment, and facilities used for the production and preparation of hydrocarbon gas or liquids for transportation or delivery;

(2) The processes of extraction and recovery, lifting, stabilization, treatment, separation, production processing, storage, waste disposal, and measurement of hydrocarbon gas and liquids, including related equipment and facilities;

(3) The processes and related equipment and facilities associated with production compression, gas lift, gas injection, fuel gas supply, well drilling, well stimulation, and well completion activities, including dikes, pits, and earthen and other impoundments used for the temporary storage of fluids and waste substances associated with well drilling, well stimulation, and well completion activities.

(BB) "Annular overpressurization" means the accumulation of fluids within an annulus with sufficient pressure to allow migration of annular fluids into underground sources of drinking water.

(CC) "Idle and orphaned well" means a well for which a bond has been forfeited or an abandoned well for which no money is available to plug the well in accordance with this chapter and rules adopted under it.

(DD) "Temporarily inactive well" means a well that has been granted temporary inactive status under section 1509.062 of the Revised Code.

(EE) "Material and substantial violation" means any of the following:

(1) Failure to obtain a permit to drill, reopen, convert, plugback, or plug a well under this chapter;

(2) Failure to obtain ~~or~~, maintain, update, or submit proof of insurance coverage that is required under this chapter;

(3) Failure to obtain ~~or~~, maintain, update, or submit proof of a surety bond that is required under this chapter;

(4) Failure to plug an abandoned well or idle and orphaned well unless the well has been granted temporary inactive status under section 1509.062 of the Revised Code or the chief of the division of oil and gas resources management has approved another option concerning the abandoned well or idle and orphaned well;

(5) Failure to restore a disturbed land surface as required by section 1509.072 of the Revised Code;

(6) Failure to reimburse the oil and gas well fund pursuant to a final

order issued under section 1509.071 of the Revised Code;

(7) Failure to comply with a final nonappealable order of the chief issued under section 1509.04 of the Revised Code;

(8) Failure to submit a report, test result, fee, or document that is required in this chapter or rules adopted under it.

(FF) "Severer" has the same meaning as in section 5749.01 of the Revised Code.

(GG) "Horizontal well" means a well that is drilled for the production of oil or gas in which the wellbore reaches a horizontal or near horizontal position in the Point Pleasant, Utica, or Marcellus formation and the well is stimulated.

(HH) "Well pad" means the area that is cleared or prepared for the drilling of one or more horizontal wells.

Sec. 1509.02. There is hereby created in the department of natural resources the division of oil and gas resources management, which shall be administered by the chief of the division of oil and gas resources management. The division has sole and exclusive authority to regulate the permitting, location, and spacing of oil and gas wells and production operations within the state, excepting only those activities regulated under federal laws for which oversight has been delegated to the environmental protection agency and activities regulated under sections 6111.02 to 6111.029 of the Revised Code. The regulation of oil and gas activities is a matter of general statewide interest that requires uniform statewide regulation, and this chapter and rules adopted under it constitute a comprehensive plan with respect to all aspects of the locating, drilling, well stimulation, completing, and operating of oil and gas wells within this state, including site construction and restoration, permitting related to those activities, and the disposal of wastes from those wells. In order to assist the division in the furtherance of its sole and exclusive authority as established in this section, the chief may enter into cooperative agreements with other state agencies for advice and consultation, including visitations at the surface location of a well on behalf of the division. Such cooperative agreements do not confer on other state agencies any authority to administer or enforce this chapter and rules adopted under it. In addition, such cooperative agreements shall not be construed to dilute or diminish the division's sole and exclusive authority as established in this section. Nothing in this section affects the authority granted to the director of transportation and local authorities in section 723.01 or 4513.34 of the Revised Code, provided that the authority granted under those sections shall not be exercised in a manner that discriminates against, unfairly impedes, or

obstructs oil and gas activities and operations regulated under this chapter.

The chief shall not hold any other public office, nor shall the chief be engaged in any occupation or business that might interfere with or be inconsistent with the duties as chief.

All moneys collected by the chief pursuant to sections 1509.06, 1509.061, 1509.062, 1509.071, 1509.13, 1509.22, ~~1509.221~~, 1509.222, 1509.28, 1509.34, and 1509.50 of the Revised Code, ninety per cent of moneys received by the treasurer of state from the tax levied in divisions (A)(5) and (6) of section 5749.02 of the Revised Code, all civil penalties paid under section 1509.33 of the Revised Code, and, notwithstanding any section of the Revised Code relating to the distribution or crediting of fines for violations of the Revised Code, all fines imposed under divisions (A) and (B) of section 1509.99 of the Revised Code and fines imposed under divisions (C) and (D) of section 1509.99 of the Revised Code for all violations prosecuted by the attorney general and for violations prosecuted by prosecuting attorneys that do not involve the transportation of brine by vehicle shall be deposited into the state treasury to the credit of the oil and gas well fund, which is hereby created. Fines imposed under divisions (C) and (D) of section 1509.99 of the Revised Code for violations prosecuted by prosecuting attorneys that involve the transportation of brine by vehicle and penalties associated with a compliance agreement entered into pursuant to this chapter shall be paid to the county treasury of the county where the violation occurred.

The fund shall be used solely and exclusively for the purposes enumerated in division (B) of section 1509.071 of the Revised Code, for the expenses of the division associated with the administration of this chapter and Chapter 1571. of the Revised Code and rules adopted under them, and for expenses that are critical and necessary for the protection of human health and safety and the environment related to oil and gas production in this state. The expenses of the division in excess of the moneys available in the fund shall be paid from general revenue fund appropriations to the department.

Sec. 1509.03. (A) The chief of the division of oil and gas resources management shall adopt, rescind, and amend, in accordance with Chapter 119. of the Revised Code, rules for the administration, implementation, and enforcement of this chapter. The rules shall include an identification of the subjects that the chief shall address when attaching terms and conditions to a permit with respect to a well and production facilities of a well that are located within an urbanized area or with respect to a horizontal well and production facilities associated with a horizontal well. The subjects shall

include all of the following:

- (1) Safety concerning the drilling or operation of a well;
- (2) Protection of the public and private water supply, including the amount of water used and the source or sources of the water;
- (3) Fencing and screening of surface facilities of a well;
- (4) Containment and disposal of drilling and production wastes;
- (5) Construction of access roads for purposes of the drilling and operation of a well;
- (6) Noise mitigation for purposes of the drilling of a well and the operation of a well, excluding safety and maintenance operations.

No person shall violate any rule of the chief adopted under this chapter.

(B)(1) Any order issuing, denying, or modifying a permit or notices required to be made by the chief pursuant to this chapter shall be made in compliance with Chapter 119. of the Revised Code, except that personal service may be used in lieu of service by mail. Every order issuing, denying, or modifying a permit under this chapter and described as such shall be considered an adjudication order for purposes of Chapter 119. of the Revised Code. Division (B)(1) of this section does not apply to a permit issued under section 1509.06 of the Revised Code.

(2) Where notice to the owners is required by this chapter, the notice shall be given as prescribed by a rule adopted by the chief to govern the giving of notices. The rule shall provide for notice by publication except in those cases where other types of notice are necessary in order to meet the requirements of the law.

(C) The chief or the chief's authorized representative may at any time enter upon lands, public or private, for the purpose of administration or enforcement of this chapter, the rules adopted or orders made thereunder, or terms or conditions of permits or registration certificates issued thereunder and may examine and copy records pertaining to the drilling, conversion, or operation of a well for injection of fluids and logs required by division (C) of section 1509.223 of the Revised Code. No person shall prevent or hinder the chief or the chief's authorized representative in the performance of official duties. If entry is prevented or hindered, the chief or the chief's authorized representative may apply for, and the court of common pleas may issue, an appropriate inspection warrant necessary to achieve the purposes of this chapter within the court's territorial jurisdiction.

(D) The chief may issue orders to enforce this chapter, rules adopted thereunder, and terms or conditions of permits issued thereunder. Any such order shall be considered an adjudication order for the purposes of Chapter 119. of the Revised Code. No person shall violate any order of the chief

issued under this chapter. No person shall violate a term or condition of a permit or registration certificate issued under this chapter.

(E) Orders of the chief denying, suspending, or revoking a registration certificate; approving or denying approval of an application for revision of a registered transporter's plan for disposal; or to implement, administer, or enforce division (A) of section 1509.224 and sections 1509.22, 1509.222, 1509.223, 1509.225, and 1509.226 of the Revised Code pertaining to the transportation of brine by vehicle and the disposal of brine so transported are not adjudication orders for purposes of Chapter 119. of the Revised Code. The chief shall issue such orders under division (A) or (B) of section 1509.224 of the Revised Code, as appropriate.

Sec. 1509.04. (A) The chief of the division of oil and gas resources management, or the chief's authorized representatives, shall enforce this chapter and the rules, terms and conditions of permits and registration certificates, and orders adopted or issued pursuant thereto, except that any peace officer, as defined in section 2935.01 of the Revised Code, may arrest for violations of this chapter involving transportation of brine by vehicle. The enforcement authority of the chief includes the authority to issue compliance notices and to enter into compliance agreements.

(B)(1) The chief or the chief's authorized representative may issue an administrative order to an owner for a violation of this chapter or rules adopted under it, terms and conditions of a permit issued under it, a registration certificate that is required under this chapter, or orders issued under this chapter.

(2)(a) If an owner or other person who is required to submit a report, test result, fee, or document by this chapter or rules adopted under it submits a request for an extension of time to submit the report, test result, fee, or document to the chief prior to the date on which the report, test result, fee, or document is due, the chief may grant an extension of not more than sixty additional days from the original date on which the report, test result, fee, or document is due.

(b) If an owner or other person who is required to submit a report, test result, fee, or document by this chapter or rules adopted under it fails to submit the report, test result, fee, or document before or on the date on which it is due and the chief has not granted an extension of time under division (B)(2)(a) of this section, the chief shall make reasonable attempts to notify the owner or other person of the failure to submit the report, test result, fee, or document. If an owner or other person who receives such a notification fails to submit the report, test result, fee, or document on or before thirty days after the date on which the chief so notified the owner or

other person, the chief may issue an order under division (B)(2)(c) of this section. The

(c) The chief may issue an order finding that an owner has committed a material and substantial violation.

(C) The chief, by order, immediately may suspend drilling, operating, or plugging activities that are related to a material and substantial violation and suspend and revoke an unused permit after finding either of the following:

(1) An owner has failed to comply with an order issued under division (B)(2)(c) of this section that is final and nonappealable.

(2) An owner is causing, engaging in, or maintaining a condition or activity that the chief determines presents an imminent danger to the health or safety of the public or that results in or is likely to result in immediate substantial damage to the natural resources of this state.

(D)(1) The chief may issue an order under division (C) of this section without prior notification if reasonable attempts to notify the owner have failed or if the owner is currently in material breach of a prior order, but in such an event notification shall be given as soon thereafter as practical.

(2) Not later than five days after the issuance of an order under division (C) of this section, the chief shall provide the owner an opportunity to be heard and to present evidence that one of the following applies:

(a) The condition or activity does not present an imminent danger to the public health or safety or is not likely to result in immediate substantial damage to natural resources.

(b) Required records, reports, or logs have been submitted.

(3) If the chief, after considering evidence presented by the owner under division (D)(2)(a) of this section, determines that the activities do not present such a threat or that the required records, reports, or logs have been submitted under division (D)(2)(b) of this section, the chief shall revoke the order. The owner may appeal an order to the court of common pleas of the county in which the activity that is the subject of the order is located.

(E) The chief may issue a bond forfeiture order pursuant to section 1509.071 of the Revised Code for failure to comply with a final nonappealable order issued or compliance agreement entered into under this section.

(F) The chief may notify drilling contractors, transporters, service companies, or other similar entities of the compliance status of an owner.

If the owner fails to comply with a prior enforcement action of the chief, the chief may issue a suspension order without prior notification, but in such an event the chief shall give notice as soon thereafter as practical. Not later than five calendar days after the issuance of an order, the chief shall provide

the owner an opportunity to be heard and to present evidence that required records, reports, or logs have been submitted. If the chief, after considering the evidence presented by the owner, determines that the requirements have been satisfied, the chief shall revoke the suspension order. The owner may appeal a suspension order to the court of common pleas of the county in which the activity that is the subject of the suspension order is located.

(G) The prosecuting attorney of the county or the attorney general, upon the request of the chief, may apply to the court of common pleas in the county in which any of the provisions of this chapter or any rules, terms or conditions of a permit or registration certificate, or orders adopted or issued pursuant to this chapter are being violated for a temporary restraining order, preliminary injunction, or permanent injunction restraining any person from such violation.

Sec. 1509.06. (A) An application for a permit to drill a new well, drill an existing well deeper, reopen a well, convert a well to any use other than its original purpose, or plug back a well to a different source of supply, including associated production operations, shall be filed with the chief of the division of oil and gas resources management upon such form as the chief prescribes and shall contain each of the following that is applicable:

(1) The name and address of the owner and, if a corporation, the name and address of the statutory agent;

(2) The signature of the owner or the owner's authorized agent. When an authorized agent signs an application, it shall be accompanied by a certified copy of the appointment as such agent.

(3) The names and addresses of all persons holding the royalty interest in the tract upon which the well is located or is to be drilled or within a proposed drilling unit;

(4) The location of the tract or drilling unit on which the well is located or is to be drilled identified by section or lot number, city, village, township, and county;

(5) Designation of the well by name and number;

(6)(a) The geological formation to be tested or used and the proposed total depth of the well;

(b) If the well is for the injection of a liquid, identity of the geological formation to be used as the injection zone and the composition of the liquid to be injected.

(7) The type of drilling equipment to be used;

~~(8) If the well is for the injection of a liquid, identity of the geological formation to be used as the injection zone and the composition of the liquid to be injected;~~



(a) An identification, to the best of the owner's knowledge, of each proposed source of ground water and surface water that will be used in the production operations of the well. The identification of each proposed source of water shall indicate if the water will be withdrawn from the Lake Erie watershed or the Ohio river watershed. In addition, the owner shall provide, to the best of the owner's knowledge, the proposed estimated rate and volume of the water withdrawal for the production operations. If recycled water will be used in the production operations, the owner shall provide the estimated volume of recycled water to be used. The owner shall submit to the chief an update of any of the information that is required by division (A)(8)(a) of this section if any of that information changes before the chief issues a permit for the application.

(b) Except as provided in division (A)(8)(c) of this section, for an application for a permit to drill a new well within an urbanized area, the results of sampling of water wells within three hundred feet of the proposed well prior to commencement of drilling. In addition, the owner shall include a list that identifies the location of each water well where the owner of the property on which the water well is located denied the owner access to sample the water well. The sampling shall be conducted in accordance with the guidelines established in "Best Management Practices For Pre-drilling Water Sampling" in effect at the time that the application is submitted. The division shall furnish those guidelines upon request and shall make them available on the division's web site. If the chief determines that conditions at the proposed well site warrant a revision, the chief may revise the distance established in this division for purposes of pre-drilling water sampling.

(c) For an application for a permit to drill a new horizontal well, the results of sampling of water wells within one thousand five hundred feet of the proposed horizontal wellhead prior to commencement of drilling. In addition, the owner shall include a list that identifies the location of each water well where the owner of the property on which the water well is located denied the owner access to sample the water well. The sampling shall be conducted in accordance with the guidelines established in "Best Management Practices For Pre-drilling Water Sampling" in effect at the time that the application is submitted. The division shall furnish those guidelines upon request and shall make them available on the division's web site. If the chief determines that conditions at the proposed well site warrant a revision, the chief may revise the distance established in this division for purposes of pre-drilling water sampling.

(9) For an application for a permit to drill a new well within an urbanized area, a sworn statement that the applicant has provided notice by

regular mail of the application to the owner of each parcel of real property that is located within five hundred feet of the surface location of the well and to the executive authority of the municipal corporation or the board of township trustees of the township, as applicable, in which the well is to be located. In addition, the notice shall contain a statement that informs an owner of real property who is required to receive the notice under division (A)(9) of this section that within five days of receipt of the notice, the owner is required to provide notice under section 1509.60 of the Revised Code to each residence in an occupied dwelling that is located on the owner's parcel of real property. The notice shall contain a statement that an application has been filed with the division of oil and gas resources management, identify the name of the applicant and the proposed well location, include the name and address of the division, and contain a statement that comments regarding the application may be sent to the division. The notice may be provided by hand delivery or regular mail. The identity of the owners of parcels of real property shall be determined using the tax records of the municipal corporation or county in which a parcel of real property is located as of the date of the notice.

(10) A plan for restoration of the land surface disturbed by drilling operations. The plan shall provide for compliance with the restoration requirements of division (A) of section 1509.072 of the Revised Code and any rules adopted by the chief pertaining to that restoration.

(11)(a) A description by name or number of the county, township, and municipal corporation roads, streets, and highways that the applicant anticipates will be used for access to and egress from the well site;

(b) For an application for a permit for a horizontal well, a copy of an agreement concerning maintenance and safe use of the roads, streets, and highways described in division (A)(11)(a) of this section entered into on reasonable terms with the public official that has the legal authority to enter into such maintenance and use agreements for each county, township, and municipal corporation, as applicable, in which any such road, street, or highway is located or an affidavit on a form prescribed by the chief attesting that the owner attempted in good faith to enter into an agreement under division (A)(11)(b) of this section with the applicable public official of each such county, township, or municipal corporation, but that no agreement was executed.

(12) Such other relevant information as the chief prescribes by rule.

Each application shall be accompanied by a map, on a scale not smaller than four hundred feet to the inch, prepared by an Ohio registered surveyor, showing the location of the well and containing such other data as may be

prescribed by the chief. If the well is or is to be located within the excavations and workings of a mine, the map also shall include the location of the mine, the name of the mine, and the name of the person operating the mine.

(B) The chief shall cause a copy of the weekly circular prepared by the division to be provided to the county engineer of each county that contains active or proposed drilling activity. The weekly circular shall contain, in the manner prescribed by the chief, the names of all applicants for permits, the location of each well or proposed well, the information required by division (A)(11) of this section, and any additional information the chief prescribes. In addition, the chief promptly shall transfer an electronic copy or facsimile, or if those methods are not available to a municipal corporation or township, a copy via regular mail, of a drilling permit application to the clerk of the legislative authority of the municipal corporation or to the clerk of the township in which the well or proposed well is or is to be located if the legislative authority of the municipal corporation or the board of township trustees has asked to receive copies of such applications and the appropriate clerk has provided the chief an accurate, current electronic mailing address or facsimile number, as applicable.

(C)(1) Except as provided in division (C)(2) of this section, the chief shall not issue a permit for at least ten days after the date of filing of the application for the permit unless, upon reasonable cause shown, the chief waives that period or a request for expedited review is filed under this section. However, the chief shall issue a permit within twenty-one days of the filing of the application unless the chief denies the application by order.

(2) If the location of a well or proposed well will be or is within an urbanized area, the chief shall not issue a permit for at least eighteen days after the date of filing of the application for the permit unless, upon reasonable cause shown, the chief waives that period or the chief at the chief's discretion grants a request for an expedited review. However, the chief shall issue a permit for a well or proposed well within an urbanized area within thirty days of the filing of the application unless the chief denies the application by order.

(D) An applicant may file a request with the chief for expedited review of a permit application if the well is not or is not to be located in a gas storage reservoir or reservoir protective area, as "reservoir protective area" is defined in section 1571.01 of the Revised Code. If the well is or is to be located in a coal bearing township, the application shall be accompanied by the affidavit of the landowner prescribed in section 1509.08 of the Revised Code.

In addition to a complete application for a permit that meets the requirements of this section and the permit fee prescribed by this section, a request for expedited review shall be accompanied by a separate nonrefundable filing fee of two hundred fifty dollars. Upon the filing of a request for expedited review, the chief shall cause the county engineer of the county in which the well is or is to be located to be notified of the filing of the permit application and the request for expedited review by telephone or other means that in the judgment of the chief will provide timely notice of the application and request. The chief shall issue a permit within seven days of the filing of the request unless the chief denies the application by order. Notwithstanding the provisions of this section governing expedited review of permit applications, the chief may refuse to accept requests for expedited review if, in the chief's judgment, the acceptance of the requests would prevent the issuance, within twenty-one days of their filing, of permits for which applications are pending.

(E) A well shall be drilled and operated in accordance with the plans, sworn statements, and other information submitted in the approved application.

(F) The chief shall issue an order denying a permit if the chief finds that there is a substantial risk that the operation will result in violations of this chapter or rules adopted under it that will present an imminent danger to public health or safety or damage to the environment, provided that where the chief finds that terms or conditions to the permit can reasonably be expected to prevent such violations, the chief shall issue the permit subject to those terms or conditions, including, if applicable, terms and conditions regarding subjects identified in rules adopted under section 1509.03 of the Revised Code. The issuance of a permit shall not be considered an order of the chief.

The chief shall post notice of each permit that has been approved under this section on the division's web site not later than two business days after the application for a permit has been approved.

(G) Each application for a permit required by section 1509.05 of the Revised Code, except an application to plug back an existing well that is required by that section and an application for a well drilled or reopened for purposes of section 1509.22 of the Revised Code, also shall be accompanied by a nonrefundable fee as follows:

(1) Five hundred dollars for a permit to conduct activities in a township with a population of fewer than ten thousand;

(2) Seven hundred fifty dollars for a permit to conduct activities in a township with a population of ten thousand or more, but fewer than fifteen

thousand;

(3) One thousand dollars for a permit to conduct activities in either of the following:

- (a) A township with a population of fifteen thousand or more;
- (b) A municipal corporation regardless of population.

(4) If the application is for a permit that requires mandatory pooling, an additional five thousand dollars.

For purposes of calculating fee amounts, populations shall be determined using the most recent federal decennial census.

Each application for the revision or reissuance of a permit shall be accompanied by a nonrefundable fee of two hundred fifty dollars.

(H)(1) Prior to the commencement of well pad construction and prior to the issuance of a permit to drill a proposed horizontal well or a proposed well that is to be located in an urbanized area, the division shall conduct a site review to identify and evaluate any site-specific terms and conditions that may be attached to the permit. At the site review, a representative of the division shall consider fencing, screening, and landscaping requirements, if any, for similar structures in the community in which the well is proposed to be located. The terms and conditions that are attached to the permit shall include the establishment of fencing, screening, and landscaping requirements for the surface facilities of the proposed well, including a tank battery of the well.

(2) Prior to the issuance of a permit to drill a proposed well, the division shall conduct a review to identify and evaluate any site-specific terms and conditions that may be attached to the permit if the proposed well will be located in a one-hundred-year floodplain or within the five-year time of travel associated with a public drinking water supply.

(I) A permit shall be issued by the chief in accordance with this chapter. A permit issued under this section for a well that is or is to be located in an urbanized area shall be valid for twelve months, and all other permits issued under this section shall be valid for twenty-four months.

(J) An applicant or a permittee, as applicable, shall submit to the chief an update of the information that is required under division (A)(8)(a) of this section if any of that information changes prior to commencement of production operations.

(K) A permittee or a permittee's authorized representative shall notify an inspector from the division at least twenty-four hours, or another time period agreed to by the chief's authorized representative, prior to the commencement of well pad construction and of drilling, reopening, converting, well stimulation, or plugback operations.

Sec. 1509.07. ~~An~~ (A)(1) Except as provided in division (A)(2) of this section, an owner of any well, except an exempt Mississippian well or an exempt domestic well, shall obtain liability insurance coverage from a company authorized to do business in this state in an amount of not less than one million dollars bodily injury coverage and property damage coverage to pay damages for injury to persons or damage to property caused by the drilling, operation, or plugging of all the owner's wells in this state. However, if any well is located within an urbanized area, the owner shall obtain liability insurance coverage in an amount of not less than three million dollars for bodily injury coverage and property damage coverage to pay damages for injury to persons or damage to property caused by the drilling, operation, or plugging of all of the owner's wells in this state. ~~The~~

(2) An owner of a horizontal well shall obtain liability insurance coverage from an insurer authorized to write such insurance in this state or from an insurer approved to write such insurance in this state under section 3905.33 of the Revised Code in an amount of not less than five million dollars bodily injury coverage and property damage coverage to pay damages for injury to persons or damage to property caused by the production operations of all the owner's wells in this state. The insurance policy shall include a reasonable level of coverage available for an environmental endorsement.

(3) An owner shall maintain the coverage required under division (A)(1) or (2) of this section until all the owner's wells are plugged and abandoned or are transferred to an owner who has obtained insurance as required under this section and who is not under a notice of material and substantial violation or under a suspension order. The owner shall provide proof of liability insurance coverage to the chief of the division of oil and gas resources management upon request. Upon failure of the owner to provide that proof when requested, the chief may order the suspension of any outstanding permits and operations of the owner until the owner provides proof of the required insurance coverage.

(B)(1) Except as otherwise provided in this section, an owner of any well, before being issued a permit under section 1509.06 of the Revised Code or before operating or producing from a well, shall execute and file with the division of oil and gas resources management a surety bond conditioned on compliance with the restoration requirements of section 1509.072, the plugging requirements of section 1509.12, the permit provisions of section 1509.13 of the Revised Code, and all rules and orders of the chief relating thereto, in an amount set by rule of the chief.

(2) The owner may deposit with the chief, instead of a surety bond, cash

in an amount equal to the surety bond as prescribed pursuant to this section or negotiable certificates of deposit or irrevocable letters of credit, issued by any bank organized or transacting business in this state or by any savings and loan association as defined in section 1151.01 of the Revised Code, having a cash value equal to or greater than the amount of the surety bond as prescribed pursuant to this section. Cash or certificates of deposit shall be deposited upon the same terms as those upon which surety bonds may be deposited. If certificates of deposit are deposited with the chief instead of a surety bond, the chief shall require the bank or savings and loan association that issued any such certificate to pledge securities of a cash value equal to the amount of the certificate that is in excess of the amount insured by any of the agencies and instrumentalities created under the "Federal Deposit Insurance Act," 64 Stat. 873 (1950), 12 U.S.C. 1811, as amended, and regulations adopted under it, including at least the federal deposit insurance corporation, bank insurance fund, and savings association insurance fund. The securities shall be security for the repayment of the certificate of deposit.

Immediately upon a deposit of cash, certificates of deposit, or letters of credit with the chief, the chief shall deliver them to the treasurer of state who shall hold them in trust for the purposes for which they have been deposited.

(3) Instead of a surety bond, the chief may accept proof of financial responsibility consisting of a sworn financial statement showing a net financial worth within this state equal to twice the amount of the bond for which it substitutes and, as may be required by the chief, a list of producing properties of the owner within this state or other evidence showing ability and intent to comply with the law and rules concerning restoration and plugging that may be required by rule of the chief. The owner of an exempt Mississippian well is not required to file scheduled updates of the financial documents, but shall file updates of those documents if requested to do so by the chief. The owner of a nonexempt Mississippian well shall file updates of the financial documents in accordance with a schedule established by rule of the chief. The chief, upon determining that an owner for whom the chief has accepted proof of financial responsibility instead of bond cannot demonstrate financial responsibility, shall order that the owner execute and file a bond or deposit cash, certificates of deposit, or irrevocable letters of credit as required by this section for the wells specified in the order within ten days of receipt of the order. If the order is not complied with, all wells of the owner that are specified in the order and for which no bond is filed or cash, certificates of deposit, or letters of credit are deposited shall be

plugged. No owner shall fail or refuse to plug such a well. Each day on which such a well remains unplugged thereafter constitutes a separate offense.

(4) The surety bond provided for in this section shall be executed by a surety company authorized to do business in this state.

The chief shall not approve any bond until it is personally signed and acknowledged by both principal and surety, or as to either by the principal's or surety's attorney in fact, with a certified copy of the power of attorney attached thereto. The chief shall not approve a bond unless there is attached a certificate of the superintendent of insurance that the company is authorized to transact a fidelity and surety business in this state.

All bonds shall be given in a form to be prescribed by the chief and shall run to the state as obligee.

(5) An owner of an exempt Mississippian well or an exempt domestic well, in lieu of filing a surety bond, cash in an amount equal to the surety bond, certificates of deposit, irrevocable letters of credit, or a sworn financial statement, may file a one-time fee of fifty dollars, which shall be deposited in the oil and gas well plugging fund created in section 1509.071 of the Revised Code.

(C) An owner, operator, producer, or other person shall not operate a well or produce from a well at any time if the owner, operator, producer, or other person has not satisfied the requirements established in this section.

Sec. 1509.10. (A) Any person drilling within the state shall, within sixty days after the completion of drilling operations to the proposed total depth or after a determination that a well is a dry or lost hole, file with the division of oil and gas resources management all wireline electric logs and an accurate well completion record on a form that is ~~approved~~ prescribed by the chief of the division of oil and gas resources management that designates:

- (1) The purpose for which the well was drilled;
- (2) The character, depth, and thickness of geological units encountered, including coal seams, mineral beds, associated fluids such as fresh water, brine, and crude oil, natural gas, and sour gas, if such seams, beds, fluids, or gases are known;
- (3) The dates on which drilling operations were commenced and completed;
- (4) The types of drilling tools used and the name of the person that drilled the well;
- (5) The length in feet of the various sizes of casing and tubing used in drilling the well, the amount removed after completion, the type and setting



depth of each packer, all other data relating to cementing in the annular space behind such casing or tubing, and data indicating completion as a dry, gas, oil, combination oil and gas, brine injection, or artificial brine well or a stratigraphic test;

(6) The number of perforations in the casing and the intervals of the perforations;

(7) The elevation above mean sea level of the point from which the depth measurements were made, stating also the height of the point above ground level at the well, the total depth of the well, and the deepest geological unit that was penetrated in the drilling of the well;

(8) If applicable, the type, volume, and concentration of acid, and the date on which acid was used in acidizing the well;

(9)(a) If applicable, the trade name and the total amount of all products, fluids, and substances, and the supplier of each product, fluid, or substance, not including cement and its constituents and lost circulation materials, intentionally added to facilitate the drilling of any portion of the well until the surface casing is set and properly sealed. The owner shall identify each additive used and provide a brief description of the purpose for which the additive is used. In addition, the owner shall include a list of all chemicals, not including any information that is designated as a trade secret pursuant to division (I)(1) of this section, intentionally added to all products, fluids, or substances and include each chemical's corresponding chemical abstracts service number and the maximum concentration of each chemical. The owner shall obtain the chemical information, not including any information that is designated as a trade secret pursuant to division (I)(1) of this section, from the company that drilled the well, provided service at the well, or supplied the chemicals. If the company that drilled the well, provided service at the well, or supplied the chemicals provides incomplete or inaccurate chemical information, the owner shall make reasonable efforts to obtain the required information from the company or supplier.

(b) For purposes of division (A)(9)(a) of this section, if recycled fluid was used, the total volume of recycled fluid and the well that is the source of the recycled fluid or the centralized facility that is the source of the recycled fluid.

(10)(a) If applicable, the type and volume of fluid, not including cement and its constituents or information that is designated as a trade secret pursuant to division (I)(1) of this section, used to stimulate the reservoir of the well, the reservoir breakdown pressure, the method used for the containment of fluids recovered from the fracturing of the well, the methods used for the containment of fluids when pulled from the wellbore from

swabbing the well, the average pumping rate of the well, and the name of the person that performed the well stimulation. In addition, the owner shall include a copy of the log from the stimulation of the well, a copy of the invoice for each of the procedures and methods described in division (A)~~(9)~~(10) of this section that were used on a well, and a copy of the pumping pressure and rate graphs. However, the owner may redact from the copy of each invoice that is required to be included under division (A)~~(9)~~(10) of this section the costs of and charges for the procedures and methods described in division (A)~~(9)~~(10) of this section that were used on a well.

~~(10)~~(b) If applicable, the trade name and the total volume of all products, fluids, and substances, and the supplier of each product, fluid, or substance used to stimulate the well. The owner shall identify each additive used, provide a brief description of the purpose for which the additive is used, and include the maximum concentration of the additive used. In addition, the owner shall include a list of all chemicals, not including any information that is designated as a trade secret pursuant to division (I)(1) of this section, intentionally added to all products, fluids, or substances and include each chemical's corresponding chemical abstracts service number and the maximum concentration of each chemical. The owner shall obtain the chemical information, not including any information that is designated as a trade secret pursuant to division (I)(1) of this section, from the company that stimulated the well or supplied the chemicals. If the company that stimulated the well or supplied the chemicals provides incomplete or inaccurate chemical information, the owner shall make reasonable efforts to obtain the required information from the company or supplier.

(c) For purposes of division (A)(10)(b) of this section, if recycled fluid was used, the total volume of recycled fluid and the well that is the source of the recycled fluid or the centralized facility that is the source of the recycled fluid.

(11) The name of the company that performed the logging of the well and the types of wireline electric logs performed on the well.

The well completion record shall be submitted in duplicate. The first copy shall be retained as a permanent record in the files of the division, and the second copy shall be transmitted by the chief to the division of geological survey.

(B)(1) Not later than sixty days after the completion of the drilling operations to the proposed total depth, the owner shall file all wireline electric logs with the division of oil and gas resources management and the chief shall transmit such logs electronically, if available, to the division of

geological survey. Such logs may be retained by the owner for a period of not more than six months, or such additional time as may be granted by the chief in writing, after the completion of the well substantially to the depth shown in the application required by section 1509.06 of the Revised Code.

(2) If a well is not completed within sixty days after the completion of drilling operations, the owner shall file with the division of oil and gas resources management a supplemental well completion record that includes all of the information required under this section within sixty days after the completion of the well.

(3) After a well is initially completed and stimulated and until the well is plugged, the owner shall report, on a form prescribed by the chief, all materials placed into the formation to refracture, restimulate, or newly complete the well. The owner shall submit the information within sixty days after completing the refracturing, restimulation, or new completion. In addition, the owner shall report the information required in divisions (A)(10)(a) to (c) of this section, as applicable, in a manner consistent with the requirements established in this section.

(C) Upon request in writing by the chief of the division of geological survey prior to the beginning of drilling of the well, the person drilling the well shall make available a complete set of cuttings accurately identified as to depth.

(D) The form of the well completion record required by this section shall be one that has been ~~approved~~ prescribed by the chief of the division of oil and gas resources management and the chief of the division of geological survey. The filing of a log as required by this section fulfills the requirement of filing a log with the chief of the division of geological survey in section 1505.04 of the Revised Code.

(E) ~~If there is a material listed on the invoice that is required by division (A)(9) of this section or designated under division (A)(9) or (10) or (B)(3) of this section is a material~~ for which the division of oil and gas resources management does not have a material safety data sheet, the ~~chief~~ owner shall ~~obtain~~ provide a copy of the material safety data sheet for the material and ~~post a copy of the material safety data sheet on the division's web site to~~ the chief.

(F) An owner shall submit to the chief the information that is required in divisions (A)(10)(b) and (c) and (B)(3) of this section consistent with the requirements established in this section using one of the following methods:

(1) On a form prescribed by the chief;

(2) Through the chemical disclosure registry that is maintained by the ground water protection council and the interstate oil and gas compact

commission:

(3) Any other means approved by the chief.

(G) The chief shall post on the division's web site each material safety data sheet obtained under division (E) of this section. In addition, the chief shall make available through the division's web site the chemical information that is required by divisions (A)(9) and (10) and (B)(3) of this section.

(H)(1) If a medical professional, in order to assist in the diagnosis or treatment of an individual who was affected by an incident associated with the production operations of a well, requests the exact chemical composition of each product, fluid, or substance and of each chemical component in a product, fluid, or substance that is designated as a trade secret pursuant to division (I) of this section, the person claiming the trade secret protection pursuant to that division shall provide to the medical professional the exact chemical composition of the product, fluid, or substance and of the chemical component in a product, fluid, or substance that is requested.

(2) A medical professional who receives information pursuant to division (H)(1) of this section shall keep the information confidential and shall not disclose the information for any purpose that is not related to the diagnosis or treatment of an individual who was affected by an incident associated with the production operations of a well. Nothing in division (H)(2) of this section precludes a medical professional from making any report required by law or professional ethical standards.

(I)(1) The owner of a well who is required to submit a well completion record under division (A) of this section or a report under division (B)(3) of this section or a person that provides information to the owner as described in and for purposes of division (A)(9) or (10) or (B)(3) of this section may designate without disclosing on a form prescribed by the chief and withhold from disclosure to the chief the identity, amount, concentration, or purpose of a product, fluid, or substance or of a chemical component in a product, fluid, or substance as a trade secret. The owner or person may pursue enforcement of any rights or remedies established in sections 1333.61 to 1333.69 of the Revised Code for misappropriation, as defined in section 1333.61 of the Revised Code, with respect to the identity, amount, concentration, or purpose of a product, fluid, or substance or a chemical component in a product, fluid, or substance designated as a trade secret pursuant to division (I)(1) of this section. The division shall not disclose information regarding the identity, amount, concentration, or purpose of any product, fluid, or substance or of any chemical component in a product, fluid, or substance designated as a trade secret pursuant to division (I)(1) of

this section.

(2) A property owner, an adjacent property owner, or any person or agency of this state having an interest that is or may be adversely affected by a product, fluid, or substance or by a chemical component in a product, fluid, or substance may commence a civil action in the court of common pleas of Franklin county against an owner or person described in division (I)(1) of this section challenging the owner's or person's claim to entitlement to trade secret protection for the specific identity, amount, concentration, or purpose of a product, fluid, or substance or of a chemical component in a product, fluid, or substance pursuant to division (I)(1) of this section. A person who commences a civil action pursuant to division (I)(2) of this section shall provide notice to the chief in a manner prescribed by the chief. In the civil action, the court shall conduct an in camera review of information submitted by an owner or person described in division (I)(1) of this section to determine if the identity, amount, concentration, or purpose of a product, fluid, or substance or of a chemical component in a product, fluid, or substance pursuant to division (I)(1) of this section is entitled to trade secret protection.

(J)(1) Except for any information that is designated as a trade secret pursuant to division (I)(1) of this section and except as provided in division (J)(2) of this section, the owner of a well shall maintain records of all chemicals placed in a well for a period of not less than two years after the date on which each such chemical was placed in the well. The chief may inspect the records at any time concerning any such chemical.

(2) An owner or person who has designated the identity, amount, concentration, or purpose of a product, fluid, or substance or of a chemical component in a product, fluid, or substance as a trade secret pursuant to division (I)(1) of this section shall maintain the records for such a product, fluid, or substance or for a chemical component in a product, fluid, or substance for a period of not less than two years after the date on which each such product, fluid, or substance or each such chemical component in a product, fluid, or substance was placed in the well. Upon the request of the chief, the owner or person, as applicable, shall disclose the records to the chief if the information is necessary to respond to a spill, release, or investigation. However, the chief shall not disclose the information that is designated as a trade secret.

(K)(1) For purposes of correcting inaccuracies and incompleteness in chemical information required by divisions (A)(9) and (10) and (B)(3) of this section, an owner shall be considered in substantial compliance if the owner has made reasonable efforts to obtain the required information from

the supplier.

(2) For purposes of reporting under this section, an owner is not required to report chemicals that occur incidentally or in trace amounts.

Sec. 1509.11. (A) The owner of any well, including a horizontal well, producing or capable of producing oil or gas shall file with the chief of the division of oil and gas resources management, on or before the thirty-first day of March, a statement of production of oil, gas, and brine for the last preceding calendar year in such form as the chief may prescribe. An owner that has more than one hundred such wells in this state shall submit electronically the statement of production in a format that is approved by the chief. The chief shall include on the form, at the minimum, a request for the submittal of the information that a person who is regulated under this chapter is required to submit under the "Emergency Planning and Community Right-To-Know Act of 1986," 100 Stat. 1728, 42 U.S.C.A. 11001, and regulations adopted under it, and that the division does not obtain through other reporting mechanisms.

(B) The chief shall not disclose information received from the department of taxation under division (C)(12) of section 5703.21 of the Revised Code until the related statement of production required by division (A) of this section is filed with the chief.

Sec. 1509.22. (A) Except when acting in accordance with section 1509.226 of the Revised Code, no person shall place or cause to be placed brine, crude oil, natural gas, or other fluids associated with the exploration or development of oil and gas resources in surface or ground water or in or on the land in such quantities or in such manner as actually causes or could reasonably be anticipated to cause either of the following:

(1) Water used for consumption by humans or domestic animals to exceed the standards of the Safe Drinking Water Act;

(2) Damage or injury to public health or safety or the environment.

(B) No person shall store or dispose of brine in violation of a plan approved under division (A) of section 1509.222 or section 1509.226 of the Revised Code, in violation of a resolution submitted under section 1509.226 of the Revised Code, or in violation of rules or orders applicable to those plans or resolutions.

(C) The chief of the division of oil and gas resources management shall adopt rules and issue orders regarding storage and disposal of brine and other waste substances; however, the storage and disposal of brine and other waste substances and the chief's rules relating to storage and disposal are subject to all of the following standards:

(1) Brine from any well except an exempt Mississippian well shall be

disposed of only by injection into an underground formation, including annular disposal if approved by rule of the chief, which injection shall be subject to division (D) of this section; by surface application in accordance with section 1509.226 of the Revised Code; in association with a method of enhanced recovery as provided in section 1509.21 of the Revised Code; or by other methods approved by the chief for testing or implementing a new technology or method of disposal. Brine from exempt Mississippian wells shall not be discharged directly into the waters of the state.

(2) Muds, cuttings, and other waste substances shall not be disposed of in violation of any rule.

(3) Pits or steel tanks shall be used as authorized by the chief for containing brine and other waste substances resulting from, obtained from, or produced in connection with drilling, well stimulation, reworking, reconditioning, plugging back, or plugging operations. The pits and steel tanks shall be constructed and maintained to prevent the escape of brine and other waste substances.

(4) A dike or pit may be used for spill prevention and control. A dike or pit so used shall be constructed and maintained to prevent the escape of brine and crude oil, and the reservoir within such a dike or pit shall be kept reasonably free of brine, crude oil, and other waste substances.

(5) Earthen impoundments constructed pursuant to the division's specifications may be used for the temporary storage of fluids used in the stimulation of a well.

(6) No pit, earthen impoundment, or dike shall be used for the temporary storage of brine or other substances except in accordance with divisions (C)(3) to (5) of this section.

(7) No pit or dike shall be used for the ultimate disposal of brine or other liquid waste substances.

(D)(1) No person, without first having obtained a permit from the chief, shall inject brine or other waste substances resulting from, obtained from, or produced in connection with oil or gas drilling, exploration, or production into an underground formation unless a rule of the chief expressly authorizes the injection without a permit. The permit shall be in addition to any permit required by section 1509.05 of the Revised Code, and the permit application shall be accompanied by a permit fee of one thousand dollars. The chief shall adopt rules in accordance with Chapter 119. of the Revised Code regarding the injection into wells of brine and other waste substances resulting from, obtained from, or produced in connection with oil or gas drilling, exploration, or production. ~~The rules may authorize tests to evaluate whether fluids or carbon dioxide may be injected in a reservoir and to~~

~~determine the maximum allowable injection pressure, which shall be conducted in accordance with methods prescribed in the rules or in accordance with conditions of the permit. In addition, the rules shall include provisions regarding applications all of the following:~~

~~(a) Applications for and issuance of the permits required by this division; entry~~

~~(b) Entry to conduct inspections and to examine and copy records to ascertain compliance with this division and rules, orders, and terms and conditions of permits adopted or issued under it; the~~

~~(c) The provision and maintenance of information through monitoring, recordkeeping, and reporting; and. In addition, the rules shall require the owner of an injection well who has been issued a permit under division (D) of this section to quarterly submit electronically to the chief information concerning each shipment of brine or other waste substances received by the owner for injection into the well.~~

~~(d) The provision and electronic reporting quarterly of information concerning brine and other waste substances from a transporter that is registered under section 1509.222 of the Revised Code prior to the injection of the transported brine or other waste substances;~~

~~(e) Any other provisions in furtherance of the goals of this section and the Safe Drinking Water Act. To~~

~~(2) The chief may adopt rules in accordance with Chapter 119. of the Revised Code authorizing tests to evaluate whether fluids or carbon dioxide may be injected in a reservoir and to determine the maximum allowable injection pressure, which shall be conducted in accordance with methods prescribed in the rules or in accordance with conditions of the permit. In addition, the chief may adopt rules that do both of the following:~~

~~(a) Establish the total depth of a well for which a permit has been applied for or issued under this division;~~

~~(b) Establish requirements and procedures to protect public health and safety.~~

~~(3) To implement the goals of the Safe Drinking Water Act, the chief shall not issue a permit for the injection of brine or other waste substances resulting from, obtained from, or produced in connection with oil or gas drilling, exploration, or production unless the chief concludes that the applicant has demonstrated that the injection will not result in the presence of any contaminant in ground water that supplies or can reasonably be expected to supply any public water system, such that the presence of the contaminant may result in the system's not complying with any national primary drinking water regulation or may otherwise adversely affect the~~



health of persons. ~~This~~

(4) The chief may issue an order to the owner of a well in existence on the effective date of this amendment to make changes in the operation of the well in order to correct problems or to address safety concerns.

(5) This division and rules, orders, and terms and conditions of permits adopted or issued under it shall be construed to be no more stringent than required for compliance with the Safe Drinking Water Act unless essential to ensure that underground sources of drinking water will not be endangered.

(E) The owner holding a permit, or an assignee or transferee who has assumed the obligations and liabilities imposed by this chapter and any rules adopted or orders issued under it pursuant to section 1509.31 of the Revised Code, and the operator of a well shall be liable for a violation of this section or any rules adopted or orders or terms or conditions of a permit issued under it.

(F) An owner shall replace the water supply of the holder of an interest in real property who obtains all or part of the holder's supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where the supply has been substantially disrupted by contamination, diminution, or interruption proximately resulting from the owner's oil or gas operation, or the owner may elect to compensate the holder of the interest in real property for the difference between the fair market value of the interest before the damage occurred to the water supply and the fair market value after the damage occurred if the cost of replacing the water supply exceeds this difference in fair market values. However, during the pendency of any order issued under this division, the owner shall obtain for the holder or shall reimburse the holder for the reasonable cost of obtaining a water supply from the time of the contamination, diminution, or interruption by the operation until the owner has complied with an order of the chief for compliance with this division or such an order has been revoked or otherwise becomes not effective. If the owner elects to pay the difference in fair market values, but the owner and the holder have not agreed on the difference within thirty days after the chief issues an order for compliance with this division, within ten days after the expiration of that thirty-day period, the owner and the chief each shall appoint an appraiser to determine the difference in fair market values, except that the holder of the interest in real property may elect to appoint and compensate the holder's own appraiser, in which case the chief shall not appoint an appraiser. The two appraisers appointed shall appoint a third appraiser, and within thirty days after the appointment of the third appraiser,

the three appraisers shall hold a hearing to determine the difference in fair market values. Within ten days after the hearing, the appraisers shall make their determination by majority vote and issue their final determination of the difference in fair market values. The chief shall accept a determination of the difference in fair market values made by agreement of the owner and holder or by appraisers under this division and shall make and dissolve orders accordingly. This division does not affect in any way the right of any person to enforce or protect, under applicable law, the person's interest in water resources affected by an oil or gas operation.

(G) In any action brought by the state for a violation of division (A) of this section involving any well at which annular disposal is used, there shall be a rebuttable presumption available to the state that the annular disposal caused the violation if the well is located within a one-quarter-mile radius of the site of the violation.

(H)(1) There is levied on the owner of an injection well who has been issued a permit under division (D) of this section the following fees:

(a) Five cents per barrel of each substance that is delivered to a well to be injected in the well when the substance is produced within the division of oil and gas resources management regulatory district in which the well is located or within an adjoining oil and gas resources management regulatory district:

(b) Twenty cents per barrel of each substance that is delivered to a well to be injected in the well when the substance is not produced within the division of oil and gas resources management regulatory district in which the well is located or within an adjoining oil and gas resources management regulatory district.

(2) The maximum number of barrels of substance per injection well in a calendar year on which a fee may be levied under division (H) of this section is five hundred thousand. If in a calendar year the owner of an injection well receives more than five hundred thousand barrels of substance to be injected in the owner's well and if the owner receives at least one substance that is produced within the division's regulatory district in which the well is located or within an adjoining regulatory district and at least one substance that is not produced within the division's regulatory district in which the well is located or within an adjoining regulatory district, the fee shall be calculated first on all of the barrels of substance that are not produced within the division's regulatory district in which the well is located or within an adjoining district at the rate established in division (H)(2) of this section. The fee then shall be calculated on the barrels of substance that are produced within the division's regulatory district in which the well is

located or within an adjoining district at the rate established in division (H)(1) of this section until the maximum number of barrels established in division (H)(2) of this section has been attained.

(3) The owner of an injection well who is issued a permit under division (D) of this section shall collect the fee levied by division (H) of this section on behalf of the division of oil and gas resources management and forward the fee to the division. The chief shall transmit all money received under division (H) of this section to the treasurer of state who shall deposit the money in the state treasury to the credit of the oil and gas well fund created in section 1509.02 of the Revised Code. The owner of an injection well who collects the fee levied by this division may retain up to three per cent of the amount that is collected.

(4) The chief shall adopt rules in accordance with Chapter 119. of the Revised Code establishing requirements and procedures for collection of the fee levied by division (H) of this section.

Sec. 1509.221. (A) No person, without first having obtained a permit from the chief of the division of oil and gas resources management, shall drill a well or inject a substance into a well for the exploration for or extraction of minerals or energy, other than oil or natural gas, including, but not limited to, the mining of sulfur by the Frasch process, the solution mining of minerals, the in situ combustion of fossil fuel, or the recovery of geothermal energy to produce electric power, unless a rule of the chief expressly authorizes the activity without a permit. The permit shall be in addition to any permit required by section 1509.05 of the Revised Code. The chief shall adopt rules in accordance with Chapter 119. of the Revised Code governing the issuance of permits under this section. The rules shall include provisions regarding the matters the applicant for a permit shall demonstrate to establish eligibility for a permit; the form and content of applications for permits; the terms and conditions of permits; entry to conduct inspections and to examine and copy records to ascertain compliance with this section and rules, orders, and terms and conditions of permits adopted or issued thereunder; provision and maintenance of information through monitoring, recordkeeping, and reporting; and other provisions in furtherance of the goals of this section and the Safe Drinking Water Act. To implement the goals of the Safe Drinking Water Act, the chief shall not issue a permit under this section, unless the chief concludes that the applicant has demonstrated that the drilling, injection of a substance, and extraction of minerals or energy will not result in the presence of any contaminant in underground water that supplies or can reasonably be expected to supply any public water system, such that the presence of the contaminant may

result in the system's not complying with any national primary drinking water regulation or may otherwise adversely affect the health of persons. The chief may issue, without a prior adjudication hearing, orders requiring compliance with this section and rules, orders, and terms and conditions of permits adopted or issued thereunder. This section and rules, orders, and terms and conditions of permits adopted or issued thereunder shall be construed to be no more stringent than required for compliance with the Safe Drinking Water Act, unless essential to ensure that underground sources of drinking water will not be endangered.

~~(B)(1) There is levied on the owner of an injection well who has been issued a permit under division (D) of section 1509.22 of the Revised Code the following fees:~~

~~(a) Five cents per barrel of each substance that is delivered to a well to be injected in the well when the substance is produced within the division of oil and gas resources management regulatory district in which the well is located or within an adjoining oil and gas resources management regulatory district;~~

~~(b) Twenty cents per barrel of each substance that is delivered to a well to be injected in the well when the substance is not produced within the division of oil and gas resources management regulatory district in which the well is located or within an adjoining oil and gas resources management regulatory district.~~

~~(2) The maximum number of barrels of substance per injection well in a calendar year on which a fee may be levied under division (B) of this section is five hundred thousand. If in a calendar year the owner of an injection well receives more than five hundred thousand barrels of substance to be injected in the owner's well and if the owner receives at least one substance that is produced within the division's regulatory district in which the well is located or within an adjoining regulatory district and at least one substance that is not produced within the division's regulatory district in which the well is located or within an adjoining regulatory district, the fee shall be calculated first on all of the barrels of substance that are not produced within the division's regulatory district in which the well is located or within an adjoining district at the rate established in division (B)(2) of this section. The fee then shall be calculated on the barrels of substance that are produced within the division's regulatory district in which the well is located or within an adjoining district at the rate established in division (B)(1) of this section until the maximum number of barrels established in division (B)(2) of this section has been attained.~~

~~(3) The owner of an injection well who is issued a permit under division~~

~~(D) of section 1509.22 of the Revised Code shall collect the fee levied by division (B) of this section on behalf of the division of oil and gas resources management and forward the fee to the division. The chief shall transmit all money received under division (B) of this section to the treasurer of state who shall deposit the money in the state treasury to the credit of the oil and gas well fund created in section 1509.02 of the Revised Code. The owner of an injection well who collects the fee levied by this division may retain up to three per cent of the amount that is collected.~~

~~(4) The chief shall adopt rules in accordance with Chapter 119. of the Revised Code establishing requirements and procedures for collection of the fee levied by division (B) of this section.~~

~~(C)~~ In an action under section 1509.04 or 1509.33 of the Revised Code to enforce this section, the court shall grant preliminary and permanent injunctive relief and impose a civil penalty upon the showing that the person against whom the action is brought has violated, is violating, or will violate this section or rules, orders, or terms or conditions of permits adopted or issued thereunder. The court shall not require, prior to granting such preliminary and permanent injunctive relief or imposing a civil penalty, proof that the violation was, is, or will be the result of intentional conduct or negligence. In any such action, any person may intervene as a plaintiff upon the demonstration that the person has an interest that is or may be adversely affected by the activity for which injunctive relief or a civil penalty is sought.

Sec. 1509.222. (A)(1) Except as provided in section 1509.226 of the Revised Code, no person shall transport brine by vehicle in this state unless the business entity that employs the person first registers with and obtains a registration certificate and identification number from the chief of the division of oil and gas resources management.

(2) No more than one registration certificate shall be required of any business entity. Registration certificates issued under this section are not transferable. An applicant shall file an application with the chief, containing such information in such form as the chief prescribes, ~~but including a.~~ The application shall include at least all of the following:

(a) A list that identifies each vehicle, vessel, railcar, and container that will be used in the transportation of brine;

(b) A plan for disposal that provides for compliance with the requirements of this chapter and rules of the chief pertaining to the transportation of brine by vehicle and the disposal of brine so transported and that lists all disposal sites that the applicant intends to use, ~~the;~~

(c) The bond required by section 1509.225 of the Revised Code, ~~and a;~~

(d) A certificate issued by an insurance company authorized to do business in this state certifying that the applicant has in force a liability insurance policy in an amount not less than three hundred thousand dollars bodily injury coverage and three hundred thousand dollars property damage coverage to pay damages for injury to persons or property caused by the collecting, handling, transportation, or disposal of brine. ~~The~~

The insurance policy required by division (A)(2)(d) of this section shall be maintained in effect during the term of the registration certificate. The policy or policies providing the coverage shall require the insurance company to give notice to the chief if the policy or policies lapse for any reason. Upon such termination of the policy, the chief may suspend the registration certificate until proper insurance coverage is obtained. ~~Each~~

(3) Each application for a registration certificate shall be accompanied by a nonrefundable fee of five hundred dollars.

~~(3)~~(4) If a business entity that has been issued a registration certificate under this section changes its name due to a business reorganization or merger, the business entity shall revise the bond or certificates of deposit required by section 1509.225 of the Revised Code and obtain a new certificate from an insurance company in accordance with division (A)(2)(e) of this section to reflect the change in the name of the business entity.

(B) The chief shall issue an order denying an application for a registration certificate if the chief finds that either of the following applies:

(1) The applicant, at the time of applying for the registration certificate, has been found liable by a final nonappealable order of a court of competent jurisdiction for damage to streets, roads, highways, bridges, culverts, or drainways pursuant to section 4513.34 or 5577.12 of the Revised Code until the applicant provides the chief with evidence of compliance with the order.

(2) The applicant's plan for disposal does not provide for compliance with the requirements of this chapter and rules of the chief pertaining to the transportation of brine by vehicle and the disposal of brine so transported.

(C) No applicant shall attempt to circumvent division (B) of this section by applying for a registration certificate under a different name or business organization name, by transferring responsibility to another person or entity, or by any similar act.

(D) A registered transporter shall apply to revise a disposal plan under procedures that the chief shall prescribe by rule. However, at a minimum, an application for a revision shall list all sources and disposal sites of brine currently transported. The chief shall deny any application for a revision of a plan under this division if the chief finds that the proposed revised plan does not provide for compliance with the requirements of this chapter and rules

of the chief pertaining to the transportation of brine by vehicle and the disposal of brine so transported. Approvals and denials of revisions shall be by order of the chief.

(E) The chief may adopt rules, issue orders, and attach terms and conditions to registration certificates as may be necessary to administer, implement, and enforce sections 1509.222 to 1509.226 of the Revised Code for protection of public health or safety or conservation of natural resources.

Sec. 1509.223. (A) No permit holder or owner of a well shall enter into an agreement with or permit any person to transport brine produced from the well who is not registered pursuant to section 1509.222 of the Revised Code or exempt from registration under section 1509.226 of the Revised Code.

(B) Each registered transporter shall file with the chief of the division of oil and gas resources management, on or before the fifteenth day of April, a statement concerning brine transported, including quantities transported and source and delivery points, during the last preceding calendar year, and such other information in such form as the chief may prescribe.

(C) Each registered transporter shall keep on each vehicle used to transport brine a daily log and have it available upon the request of the chief or an authorized representative of the chief or a peace officer. The log shall, at a minimum, include all of the following information:

- (1) The name of the owner or owners of the well or wells producing the brine to be transported;
- (2) The date and time the brine is loaded;
- (3) The name of the driver;
- (4) The amount of brine loaded at each collection point;
- (5) The disposal location;
- (6) The date and time the brine is disposed of and the amount of brine disposed of at each location.

The chief, by rule, may establish procedures for the electronic submission to the chief of the information that is required to be included in the daily log. No registered transporter shall falsify or fail to keep or submit the log required by this division.

(D) Each registered transporter shall legibly identify with reflective paints all vehicles employed in transporting or disposing of brine. Letters shall be no less than four inches in height and shall indicate the identification number issued by the chief, the word "brine," and the name and telephone number of the transporter.

(E) The chief shall maintain and keep a current list of persons registered to transport brine under section 1509.222 of the Revised Code. The list shall be open to public inspection. It is an affirmative defense to a charge under

division (A) of this section that at the time the permit holder or owner of a well entered into an agreement with or permitted a person to transport brine, the person was shown on the list as currently registered to transport brine.

Sec. 1509.23. (A) Rules of the chief of the division of oil and gas resources management may specify practices to be followed in the drilling and treatment of wells, production of oil and gas, and plugging of wells for protection of public health or safety or to prevent damage to natural resources, including specification of the following:

(1) Appropriate devices;

(2) Minimum distances that wells and other excavations, structures, and equipment shall be located from water wells, streets, roads, highways, rivers, lakes, streams, ponds, other bodies of water, railroad tracks, public or private recreational areas, zoning districts, and buildings or other structures. Rules adopted under division (A)(2) of this section shall not conflict with section 1509.021 of the Revised Code.

(3) Other methods of operation;

(4) Procedures, methods, and equipment and other requirements for equipment to prevent and contain discharges of oil and brine from oil production facilities and oil drilling and workover facilities consistent with and equivalent in scope, content, and coverage to section 311(j)(1)(c) of the "Federal Water Pollution Control Act Amendments of 1972," 86 Stat. 886, 33 U.S.C.A. 1251, as amended, and regulations adopted under it. In addition, the rules may specify procedures, methods, and equipment and other requirements for equipment to prevent and contain surface and subsurface discharges of fluids, condensates, and gases.

(5) Notifications;

(6) Requirements governing the location and construction of fresh water impoundments that are part of a production operation.

(B) The chief, in consultation with the emergency response commission created in section 3750.02 of the Revised Code, shall adopt rules in accordance with Chapter 119. of the Revised Code that specify the information that shall be included in an electronic database that the chief shall create and host. The information shall be that which the chief considers to be appropriate for the purpose of responding to emergency situations that pose a threat to public health or safety or the environment. At the minimum, the information shall include that which a person who is regulated under this chapter is required to submit under the "Emergency Planning and Community Right-To-Know Act of 1986," 100 Stat. 1728, 42 U.S.C.A. 11001, and regulations adopted under it.

In addition, the rules shall specify whether and to what extent the



database and the information that it contains will be made accessible to the public. The rules shall ensure that the database will be made available via the internet or a system of computer disks to the emergency response commission and to every local emergency planning committee and fire department in this state.

Sec. 1509.28. (A) The chief of the division of oil and gas resources management, upon the chief's own motion or upon application by the owners of sixty-five per cent of the land area overlying the pool, shall hold a hearing to consider the need for the operation as a unit of an entire pool or part thereof. An application by owners shall be accompanied by a nonrefundable fee of ten thousand dollars and by such information as the chief may request.

The chief shall make an order providing for the unit operation of a pool or part thereof if the chief finds that such operation is reasonably necessary to increase substantially the ultimate recovery of oil and gas, and the value of the estimated additional recovery of oil or gas exceeds the estimated additional cost incident to conducting the operation. The order shall be upon terms and conditions that are just and reasonable and shall prescribe a plan for unit operations that shall include:

- (1) A description of the unitized area, termed the unit area;
- (2) A statement of the nature of the operations contemplated;
- (3) An allocation to the separately owned tracts in the unit area of all the oil and gas that is produced from the unit area and is saved, being the production that is not used in the conduct of operations on the unit area or not unavoidably lost. The allocation shall be in accord with the agreement, if any, of the interested parties. If there is no such agreement, the chief shall determine the value, from the evidence introduced at the hearing, of each separately owned tract in the unit area, exclusive of physical equipment, for development of oil and gas by unit operations, and the production allocated to each tract shall be the proportion that the value of each tract so determined bears to the value of all tracts in the unit area.
- (4) A provision for the credits and charges to be made in the adjustment among the owners in the unit area for their respective investments in wells, tanks, pumps, machinery, materials, and equipment contributed to the unit operations;
- (5) A provision providing how the expenses of unit operations, including capital investment, shall be determined and charged to the separately owned tracts and how the expenses shall be paid;
- (6) A provision, if necessary, for carrying or otherwise financing any person who is unable to meet the person's financial obligations in

connection with the unit, allowing a reasonable interest charge for such service;

(7) A provision for the supervision and conduct of the unit operations, in respect to which each person shall have a vote with a value corresponding to the percentage of the expenses of unit operations chargeable against the interest of that person;

(8) The time when the unit operations shall commence, and the manner in which, and the circumstances under which, the unit operations shall terminate;

(9) Such additional provisions as are found to be appropriate for carrying on the unit operations, and for the protection or adjustment of correlative rights.

(B) No order of the chief providing for unit operations shall become effective unless and until the plan for unit operations prescribed by the chief has been approved in writing by those owners who, under the chief's order, will be required to pay at least sixty-five per cent of the costs of the unit operation, and also by the royalty or, with respect to unleased acreage, fee owners of sixty-five per cent of the acreage to be included in the unit. If the plan for unit operations has not been so approved by owners and royalty owners at the time the order providing for unit operations is made, the chief shall upon application and notice hold such supplemental hearings as may be required to determine if and when the plan for unit operations has been so approved. If the owners and royalty owners, or either, owning the required percentage of interest in the unit area do not approve the plan for unit operations within a period of six months from the date on which the order providing for unit operations is made, the order shall cease to be of force and shall be revoked by the chief.

An order providing for unit operations may be amended by an order made by the chief, in the same manner and subject to the same conditions as an original order providing for unit operations, provided that:

(1) If such an amendment affects only the rights and interests of the owners, the approval of the amendment by the royalty owners shall not be required.

(2) No such order of amendment shall change the percentage for allocation of oil and gas as established for any separately owned tract by the original order, except with the consent of all persons owning interest in the tract.

The chief, by an order, may provide for the unit operation of a pool or a part thereof that embraces a unit area established by a previous order of the chief. Such an order, in providing for the allocation of unit production, shall

first treat the unit area previously established as a single tract, and the portion of the unit production so allocated thereto shall then be allocated among the separately owned tracts included in the previously established unit area in the same proportions as those specified in the previous order.

Oil and gas allocated to a separately owned tract shall be deemed, for all purposes, to have been actually produced from the tract, and all operations, including, but not limited to, the commencement, drilling, operation of, or production from a well upon any portion of the unit area shall be deemed for all purposes the conduct of such operations and production from any lease or contract for lands any portion of which is included in the unit area. The operations conducted pursuant to the order of the chief shall constitute a fulfillment of all the express or implied obligations of each lease or contract covering lands in the unit area to the extent that compliance with such obligations cannot be had because of the order of the chief.

Oil and gas allocated to any tract, and the proceeds from the sale thereof, shall be the property and income of the several persons to whom, or to whose credit, the same are allocated or payable under the order providing for unit operations.

No order of the chief or other contract relating to the sale or purchase of production from a separately owned tract shall be terminated by the order providing for unit operations, but shall remain in force and apply to oil and gas allocated to the tract until terminated in accordance with the provisions thereof.

Except to the extent that the parties affected so agree, no order providing for unit operations shall be construed to result in a transfer of all or any part of the title of any person to the oil and gas rights in any tract in the unit area. All property, whether real or personal, that may be acquired for the account of the owners within the unit area shall be the property of such owners in the proportion that the expenses of unit operations are charged.

Sec. 1509.33. (A) Whoever violates sections 1509.01 to 1509.31 of the Revised Code, or any rules adopted or orders or terms or conditions of a permit or registration certificate issued pursuant to these sections for which no specific penalty is provided in this section, shall pay a civil penalty of not more than four thousand dollars for each offense.

(B) Whoever violates section 1509.221 of the Revised Code or any rules adopted or orders or terms or conditions of a permit issued thereunder shall pay a civil penalty of not more than two thousand five hundred dollars for each violation.

(C) Whoever violates division (D) of section 1509.22 or division (A)(1)

of section 1509.222 of the Revised Code shall pay a civil penalty of not less than two thousand five hundred dollars nor more than twenty thousand dollars for each violation.

(D) Whoever violates division (A) of section 1509.22 of the Revised Code shall pay a civil penalty of not less than two thousand five hundred dollars nor more than ten thousand dollars for each violation.

(E) Whoever violates division (A) of section 1509.223 of the Revised Code shall pay a civil penalty of not more than ten thousand dollars for each violation.

(F) Whoever violates section 1509.072 of the Revised Code or any rules adopted or orders issued to administer, implement, or enforce that section shall pay a civil penalty of not more than five thousand dollars for each violation.

(G) In addition to any other penalties provided in this chapter, whoever violates division (B) of section 1509.22 or division (A)(1) of section 1509.222 or knowingly violates division (A) of section 1509.223 of the Revised Code is liable for any damage or injury caused by the violation and for the cost of rectifying the violation and conditions caused by the violation. If two or more persons knowingly violate one or more of those divisions in connection with the same event, activity, or transaction, they are jointly and severally liable under this division.

(H) The attorney general, upon the request of the chief of the division of oil and gas resources management, shall commence an action under this section against any person who violates sections 1509.01 to 1509.31 of the Revised Code, or any rules adopted or orders or terms or conditions of a permit or registration certificate issued pursuant to these sections. Any action under this section is a civil action, governed by the Rules of Civil Procedure and other rules of practice and procedure applicable to civil actions. The remedy provided in this division is cumulative and concurrent with any other remedy provided in this chapter, and the existence or exercise of one remedy does not prevent the exercise of any other, except that no person shall be subject to both a civil penalty under division (A), (B), (C), or (D) of this section and a criminal penalty under section 1509.99 of the Revised Code for the same offense.

(I) For purposes of this section, each day of violation constitutes a separate offense.

Sec. 1509.99. (A) Whoever violates sections 1509.01 to 1509.31 of the Revised Code or any rules adopted or orders or terms or conditions of a permit issued pursuant to these sections for which no specific penalty is provided in this section shall be fined not less than one hundred nor more

than one thousand dollars for a first offense; for each subsequent offense ~~such~~ the person shall be fined not less than two hundred nor more than two thousand dollars.

(B) Whoever violates section 1509.221 of the Revised Code or any rules adopted or orders or terms or conditions of a permit issued thereunder shall be fined not more than five thousand dollars for each ~~day of~~ violation.

(C) Whoever knowingly violates section 1509.072, division (A), (B), or (D) of section 1509.22, division (A)(1) or (C) of section 1509.222, or division (A) or (D) of section 1509.223 of the Revised Code or any rules adopted or orders issued under division (C) of section 1509.22 or rules adopted or orders or terms or conditions of a registration certificate issued under division (E) of section 1509.222 of the Revised Code shall be fined ten thousand dollars or imprisoned for six months, or both for a first offense; for each subsequent offense ~~such~~ the person shall be fined twenty thousand dollars or imprisoned for two years, or both. Whoever negligently violates ~~such~~ those divisions, sections, rules, orders, or terms or conditions of a registration certificate shall be fined not more than five thousand dollars.

(D) Whoever violates division (C) of section 1509.223 of the Revised Code shall be fined not more than five hundred dollars for a first offense ~~nor~~ and not more than one thousand dollars for a subsequent offense.

(E) The prosecuting attorney of the county in which the offense was committed or the attorney general may prosecute an action under this section.

(F) For purposes of this section, each day of violation constitutes a separate offense.

Sec. 1514.01. As used in this chapter:

(A) "Surface mining" means all or any part of a process followed in the production of minerals from the earth or from the surface of the land by surface excavation methods, such as open pit mining, dredging, placering, or quarrying, and includes the removal of overburden for the purpose of determining the location, quantity, or quality of mineral deposits, and the incidental removal of coal at a rate less than one-sixth the total weight of minerals and coal removed during the year, but does not include: test or exploration boring; mining operations carried out beneath the surface by means of shafts, tunnels, or similar mine openings; the extraction of minerals, other than coal, by a landowner for the landowner's own noncommercial use where such material is extracted and used in an unprocessed form on the same tract of land; the extraction of minerals, other than coal, from borrow pits for highway construction purposes, provided that the extraction is performed under a bond, a contract, and specifications

that substantially provide for and require reclamation practices consistent with the requirements of this chapter; the removal of minerals incidental to construction work, provided that the owner or person having control of the land upon which the construction occurs, the contractor, or the construction firm possesses a valid building permit; the removal of minerals to a depth of not more than five feet, measured from the highest original surface elevation of the area to be excavated, where not more than one acre of land is excavated during twelve successive calendar months; routine dredging of a watercourse for purely navigational or flood control purposes during which materials are removed for noncommercial purposes, including activities conducted by or on behalf of a conservancy district, organized under Chapter 6101. of the Revised Code, for flood control purposes that are exempt from permitting requirements under section 10 of the "Rivers and Harbors Act of 1899," 30 Stat. 1151, 33 U.S.C. 403, as amended; or the extraction or movement of soil or minerals within a solid waste facility, as defined in section 3734.01 of the Revised Code, that is a sanitary landfill when the soil or minerals are used exclusively for the construction, operation, closure, and post-closure care of the facility or for maintenance activities at the facility.

(B) "Minerals" means sand, gravel, clay, shale, gypsum, halite, limestone, dolomite, sandstone, other stone, metalliferous or nonmetalliferous ore, or other material or substance of commercial value excavated in a solid state from natural deposits on or in the earth, but does not include coal or peat.

(C) "Overburden" means all of the earth and other materials that cover a natural deposit of minerals and also means such earth and other materials after removal from their natural state in the process of surface mining.

(D) "Spoil bank" means a pile of removed overburden.

(E) "Area of land affected" means the area of land that has been excavated, or upon which a spoil bank exists, or both.

(F)(1) "Operation" or "surface mining operation" means all of the premises, facilities, and equipment used in the process of removing minerals, or minerals and incidental coal, by surface mining from a mining area in the creation of which mining area overburden or minerals, or minerals and incidental coal, are disturbed or removed, such surface mining area being located upon a single tract of land or upon two or more contiguous tracts of land. Separation by a stream or roadway shall not preclude the tracts from being considered contiguous.

(2) When the context indicates, "operation" or "in-stream mining operation" means all of the premises, facilities, and equipment used in the

process of removing minerals by in-stream mining from a mining area.

(G) "Operator" means any person engaged in surface mining who removes minerals, or minerals and incidental coal, from the earth by surface mining or who removes overburden for the purpose of determining the location, quality, or quantity of a mineral deposit. "Operator" also means any person engaged in in-stream mining who removes minerals from the bottom of the channel of a watercourse by in-stream mining.

(H) "Performance bond" means the surety bond required to be filed under section 1514.04 of the Revised Code and includes cash, an irrevocable letter of credit, and negotiable certificates of deposit authorized to be deposited in lieu of the surety bond under that section.

(I) "Dewatering" means the withdrawal of ground water from an aquifer or saturated zone that may result in the lowering of the water level within the aquifer or saturated zone or a decline of the potentiometric surface within that aquifer or saturated zone.

(J) "Ground water" means all water occurring in an aquifer.

(K) "Cone of depression" means a depression or low point in the water table or potentiometric surface of a body of ground water that develops around a location from which ground water is being withdrawn.

(L) "High water mark" means the line on the shore that is established by the fluctuations of water and indicated by physical characteristics such as a natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding area.

(M) "In-stream mining" means all or any part of a process followed in the production of minerals from the bottom of the channel of a watercourse that drains a surface area of more than one hundred square miles. "In-stream mining" may be accomplished by using any technique or by using surface excavation methods, such as open pit mining, dredging, placering, or quarrying, and includes the removal of overburden for the purpose of determining the location, quantity, or quality of mineral deposits. "In-stream mining" does not include either of the following:

(1) Routine dredging for purely navigational or flood control purposes during which materials are removed for noncommercial purposes;

(2) The extraction of minerals, other than coal, by a landowner for the landowner's own noncommercial use when the material is extracted and used in an unprocessed form on the same tract of land.

For purposes of division (M) of this section, the number of square miles of surface area that a watercourse drains shall be determined by consulting

the "gazetteer of Ohio streams," which is a portion of the Ohio water plan inventory published in 1960 by the division of water in the department of natural resources, or its successor, if any.

(N) In provisions concerning in-stream mining, when the context is appropriate, "land" is deemed to include an area of a watercourse.

(O) "Watercourse" means any naturally occurring perennial or intermittent stream, river, or creek flowing within a defined stream bed and banks.

(P) "Certified mine foreperson" means the person whom the operator of a surface mining operation places in charge of the conditions and practices at the mine, who is responsible for conducting workplace examinations under 30 C.F.R. part 56, as amended, and who has passed an examination for the position administered by the division of mineral resources management.

Sec. 1514.02. (A) After the dates the chief of the division of mineral resources management prescribes by rule pursuant to section 1514.08 of the Revised Code, but not later than July 1, 1977, nor earlier than July 1, 1975, no operator shall engage in surface mining or conduct a surface mining operation without a surface mining permit issued by the chief.

No person shall engage in in-stream mining or conduct an in-stream mining operation without an in-stream mining permit issued by the chief. However, a person who, on ~~the effective date of this amendment~~ March 15, 2002, holds a valid permit to conduct in-stream mining that is issued under section 10 of the "Rivers and Harbors Appropriation Act of 1899," 30 Stat. 1151, 33 U.S.C. 403, as amended, shall not be required to obtain an in-stream mining permit from the chief under this section until the existing permit expires.

An application for a surface or in-stream mining permit shall be upon the form that the chief prescribes and provides and shall contain all of the following:

(1) The name and address of the applicant, of all partners if the applicant is a partnership, or of all officers and directors if the applicant is a corporation, and any other person who has a right to control or in fact controls the management of the applicant or the selection of officers, directors, or managers of the applicant;

(2) A list of the minerals and coal, if any coal, sought to be extracted, an estimate of the annual production rates for each mineral and coal, and a description of the land upon which the applicant proposes to engage in a surface or in-stream mining operation, which description shall set forth the names of the counties, townships, and municipal corporations, if any, in



which the land is located; the location of its boundaries; and a description of the land of sufficient certainty that it may be located and distinguished from other lands;

(3) The name of each county, township, or municipal corporation, if any, that has in effect a zoning resolution or ordinance that would affect the proposed surface or in-stream mining operation or, if no such zoning resolution or ordinance is in effect, a statement attesting to that fact. The application also shall contain an explanation of how the applicant intends to comply with any applicable provisions of a zoning resolution or ordinance.

(4) An estimate of the number of acres of land that will comprise the total area of land to be affected and an estimate of the number of acres of land to be affected during the first year of operation under the permit;

(5) The name and address of the owner of surface rights in the land upon which the applicant proposes to engage in surface or in-stream mining;

(6) A copy of the deed, lease, or other instrument that authorizes entry upon the land by the applicant or the applicant's agents if surface rights in the land are not owned by the applicant;

(7) A statement of whether any surface or in-stream mining permits or coal mining and reclamation permits are now held by the applicant in this state and, if so, the numbers of the permits;

(8) A statement of whether the applicant, any partner if the applicant is a partnership, any officer or director if the applicant is a corporation, or any other person who has a right to control or in fact controls the management of the applicant or the selection of officers, directors, or managers of the applicant has ever had a surface or in-stream mining permit or coal mining and reclamation permit issued by this or any other state suspended or revoked or has ever forfeited a surface or in-stream mining or coal mining and reclamation bond or cash, an irrevocable letter of credit, or a security deposited in lieu of a bond;

(9) A report of the results of test borings that the operator has conducted on the area or otherwise has readily available, including, to the extent that the information is readily available to the operator, the nature and depth of overburden and material underlying each mineral or coal deposit, and the thickness and extent of each mineral or coal deposit. In the case of an application for an in-stream mining permit, the report additionally shall include sufficient information to show the approximate depth to bedrock. All information relating to test boring results submitted to the chief pursuant to this section shall be kept confidential and not made a matter of public record, except that the information may be disclosed by the chief in any legal action in which the truthfulness of the information is material.

(10) A complete plan for surface or in-stream mining and reclamation of the area to be affected, which shall include a statement of the intended future uses of the area and show the approximate sequence in which mining and reclamation measures are to occur, the approximate intervals following mining during which the reclamation of all various parts of the area affected will be completed, and the measures the operator will perform to prevent damage to adjoining property and to achieve all of the following general performance standards for mining and reclamation:

(a) Prepare the site adequately for its intended future uses upon completion of mining;

(b) Where a plan of zoning or other comprehensive plan has been adopted that governs land uses or the construction of public improvements and utilities for an area that includes the area sought to be mined, ensure that future land uses within the site will not conflict with the plan. On and after ~~the effective date of this amendment~~ March 15, 2002, division (A)(10)(b) of this section does not apply to any surface or in-stream mining permit or applications for a surface or in-stream mining permit, any renewal of an existing surface or in-stream mining permit or application for a renewal of an existing surface or in-stream mining permit, any amendment or application for an amendment to an existing surface or in-stream mining permit, or any modification or application for a modification of a mining and reclamation plan of an existing surface or in-stream mining permit unless the application for such a permit, renewal, amendment, or modification is a resubmission, revision, or reconsideration of an application that was pending before the chief or was first approved prior to ~~the effective date of this amendment~~ March 15, 2002.

(c) Grade, contour, or terrace final slopes, wherever needed, sufficient to achieve soil stability and control landslides, erosion, and sedimentation. Highwalls will be permitted if they are compatible with the future uses specified in the plan and measures will be taken to ensure public safety. Where ponds, impoundments, or other resulting bodies of water are intended for recreational use, establish banks and slopes that will ensure safe access to those bodies of water. Where such bodies of water are not intended for recreation, include measures to ensure public safety, but access need not be provided.

(d) Resoil the area of land affected, wherever needed, with topsoil or suitable subsoil, fertilizer, lime, or soil amendments, as appropriate, in sufficient quantity and depth to raise and maintain a diverse growth of vegetation adequate to bind the soil and control soil erosion and sedimentation;

(e) Establish a diverse vegetative cover of grass and legumes or trees, grasses, and legumes capable of self-regeneration and plant succession wherever required by the plan;

(f) Remove or bury any metal, lumber, equipment, or other refuse resulting from mining, and remove or bury any unwanted or useless structures;

(g) Reestablish boundary, section corner, government, and other survey monuments that were removed by the operator;

(h) During mining and reclamation, ensure that contamination, resulting from mining, of underground water supplies is prevented. Upon completion of reclamation, ensure that any watercourse, lake, or pond located within the site boundaries is free of substances resulting from mining in amounts or concentrations that are harmful to persons, fish, waterfowl, or other beneficial species of aquatic life.

(i) During mining and reclamation, control drainage so as to prevent the causing of flooding, landslides, and flood hazards to adjoining lands resulting from the mining operation. Leave any ponds in such condition as to avoid their constituting a hazard to adjoining lands.

(j) During mining and reclamation, ensure that the effect of any reduction of the quantity of ground water is minimized;

(k) Ensure that mining and reclamation are carried out in the sequence and manner set forth in the plan and that reclamation measures are performed in a timely manner. All reclamation of an area of land affected shall be completed no later than three years following the mining of the area unless the operator makes a showing satisfactory to the chief that the future use of the area requires a longer period for completing reclamation.

(l) During mining, store topsoil or fill in quantities sufficient to complete the backfilling, grading, contouring, terracing, and resoiling that are specified in the plan. Stabilize the slopes of and plant each spoil bank to control soil erosion and sedimentation wherever substantial damage to adjoining property might occur.

(m) During mining, promptly remove, store, or cover any coal, pyritic shale, or other acid producing materials in a manner that will minimize acid drainage and the accumulation of acid water;

(n) During mining, detonate explosives in a manner that will prevent damage to adjoining property;

(o) In the case of in-stream mining, do all of the following:

(i) Limit access to the channel of a watercourse to a single point of entry on one bank of the watercourse;

(ii) Maintain riparian vegetation to the fullest extent possible;

(iii) Upon cessation of in-stream mining, stabilize and reclaim to the pre-mined condition the banks of a watercourse affected by in-stream mining.

(11) For any applicant, except an applicant for an in-stream mining permit, who intends to extract less than ten thousand tons of minerals per year and no incidental coal, a current tax map, in triplicate and notarized, and the appropriate United States geological survey seven and one-half minute topographic map. Each copy shall bear the applicant's name and shall identify the area of land to be affected corresponding to the application.

(12) For any applicant for a surface mining permit who intends to extract ten thousand tons of minerals or more per year or who intends to extract any incidental coal irrespective of the tonnage of minerals intended to be mined, a map, in triplicate, on a scale of not more than four hundred feet to the inch, or three copies of an enlarged United States geological survey topographic map on a scale of not more than four hundred feet to the inch. Each application for an in-stream mining permit shall include such a map regardless of the tons of minerals that the applicant intends to extract.

The map shall comply with all of the following:

(a) Be prepared and certified by a professional engineer or surveyor registered under Chapter 4733. of the Revised Code;

(b) Identify the area of land to be affected corresponding to the application;

(c) Show the probable limits of subjacent and adjacent deep, strip, surface, or in-stream mining operations, whether active, inactive, or mined out;

(d) Show the boundaries of the area of land to be affected during the period of the permit and the area of land estimated to be affected during the first year of operation, and name the surface and mineral owners of record of the area and the owners of record of adjoining surface properties;

(e) Show the names and locations of all streams, creeks, or other bodies of water, roads, railroads, utility lines, buildings, cemeteries, and oil and gas wells on the area of land to be affected and within five hundred feet of the perimeter of the area;

(f) Show the counties, municipal corporations, townships, and sections in which the area of land to be affected is located;

(g) Show the drainage plan on, above, below, and away from the area of land to be affected, indicating the directional flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving or to receive this discharge;

(h) Show the location of available test boring holes that the operator has conducted on the area of land to be affected or otherwise has readily available;

(i) Show the date on which the map was prepared, the north direction and the quadrangle sketch, and the exact location of the operation;

(j) Show the type, kind, location, and references of all existing boundary, section corner, government, and other survey monuments within the area to be affected and within five hundred feet of the perimeter of the area.

The certification of the maps shall read: "I, the undersigned, hereby certify that this map is correct, and shows to the best of my knowledge and belief all of the information required by the surface or in-stream mining laws, as applicable, of the state." The certification shall be signed and attested before a notary public. The chief may reject any map as incomplete if its accuracy is not so certified and attested.

(13) A certificate of public liability insurance issued by an insurance company authorized to do business in this state or obtained pursuant to sections 3905.30 to 3905.35 of the Revised Code covering all surface or in-stream mining operations of the applicant in this state and affording bodily injury and property damage protection in amounts not less than the following:

(a) One hundred thousand dollars for all damages because of bodily injury sustained by one person as the result of any one occurrence, and three hundred thousand dollars for all damages because of bodily injury sustained by two or more persons as the result of any one occurrence;

(b) One hundred thousand dollars for all claims arising out of damage to property as the result of any one occurrence, with an aggregate limit of three hundred thousand dollars for all property damage to which the policy applies.

(14) A sworn statement by the applicant that, during the term of any permit issued under this chapter or of any renewal of such a permit, the applicant will comply with all applicable zoning resolutions or ordinances that are in effect at the time the application is filed unless the resolutions or ordinances subsequently become invalid during the term of the permit or renewal;

(15) A copy of the advertisement that the applicant is required to have published in accordance with section 1514.022 of the Revised Code, if applicable;

(16) For any applicant whose operation may result in dewatering, a compilation of data in a form that is prescribed by the chief and that is

suitable to conduct ground water modeling in order to establish a projected cone of depression for purposes of section 1514.13 of the Revised Code. The chief shall adopt rules as provided in section 1514.08 of the Revised Code establishing the minimum requirements and standards governing the data required under this division.

(17) A statement by the applicant certifying that the applicant has communicated with the county engineer of the county in which the proposed surface or in-stream mining operation will be located regarding any streets and roads under the county engineer's jurisdiction that will be used by vehicles entering and leaving the proposed surface or in-stream mining operation;

(18) In the case of an application for an in-stream mining permit, and if required by the division of mineral resources management after review of an applicant's proposed in-stream mining plans, a hydraulic evaluation of the watercourse prepared by a professional engineer registered under Chapter 4733. of the Revised Code. ~~The~~ If the hydraulic evaluation is required, it shall include, without limitation, all of the following:

(a) Soundings that depict the cross-sectional views of the channel bottom of the watercourse and water elevations for the watercourse;

(b) A profile of the channel bottom;

(c) An analysis of design flows and water surface profiles for the watercourse prior to in-stream mining and the proposed final mining condition;

(d) An analysis of the expected changes in the roughness coefficient, resistance to water flow velocity, and hydraulic gradient in the channel bottom due to the proposed mining;

(e) Any additional information that the chief requires in order to evaluate the potential impact of in-stream mining on the watercourse and to determine if any additional performance standards are required to protect the environment and property outside the limits of the operation as established in the permit.

The chief may allow an applicant to deviate from the requirements of divisions (A)(18)(a) to (d) of this section if the chief determines that such a deviation is appropriate.

(B) No permit application or amendment shall be approved by the chief if the chief finds that the reclamation described in the application will not be performed in full compliance with this chapter or that there is not reasonable cause to believe that reclamation as required by this chapter will be accomplished.

The chief shall issue an order denying an application for an operating

permit or an amendment if the chief determines that the measures set forth in the plan are likely to be inadequate to prevent damage to adjoining property or to achieve one or more of the performance standards required in division (A)(10) of this section.

No permit application or amendment shall be approved if the approval would result in a violation of division (E), (F), or (G) of section 1514.10 of the Revised Code.

No permit application or amendment shall be approved to surface mine land adjacent to a public road in violation of section 1563.11 of the Revised Code.

To ensure adequate lateral support, no permit application or amendment shall be approved to engage in surface or in-stream mining on land that is closer than fifty feet of horizontal distance to any adjacent land or waters in which the operator making application does not own the surface or mineral rights unless the owners of the surface and mineral rights in and under the adjacent land or waters consent in writing to surface or in-stream mining closer than fifty feet of horizontal distance. The consent, or a certified copy thereof, shall be attached to the application as a part of the permanent record of the application for a surface or in-stream mining permit.

The chief shall issue an order granting a permit upon the chief's approval of an application, as required by this section, filing of the performance bond required by section 1514.04 of the Revised Code, payment of an acreage fee in the amount of seventy-five dollars multiplied by the number of acres estimated in the application that will comprise the area of land to be affected within the first year of operation under the permit, and payment of a permit fee. The amount of the permit fee for a surface mining permit shall be five hundred dollars, and the amount of the permit fee for an in-stream mining permit shall be two hundred fifty dollars.

The chief may issue an order denying a permit if the chief finds that the applicant, any partner if the applicant is a partnership, any officer or director if the applicant is a corporation, or any other person who has a right to control or in fact controls the management of the applicant or the selection of officers, directors, or managers of the applicant has substantially or materially failed to comply or continues to fail to comply with this chapter, which failure may consist of one or more violations thereof, a rule adopted thereunder, or an order of the chief or failure to perform reclamation as required by this chapter. The chief may deny or revoke the permit of any person who so violates or fails to comply or who purposely misrepresents or omits any material fact in the application for the permit or an amendment to a permit.

If the chief denies the permit, the chief shall state the reasons for denial in the order denying the permit.

Each permit shall be issued upon condition that the operator will comply with this chapter and perform the measures set forth in the operator's plan of mining and reclamation in a timely manner. The chief, mineral resources inspectors, or other authorized representatives of the chief may enter upon the premises of the operator at reasonable times for the purposes of determining whether or not there is compliance with this chapter.

(C) If the chief approves an application for a surface mining permit, the order granting the permit shall authorize the person to whom the permit is issued to engage as the operator of a surface mining operation upon the land described in the permit during a period that shall expire fifteen years after the date of issuance of the permit, or upon the date when the chief, after inspection, orders the release of any remaining performance bond deposited to assure satisfactory performance of the reclamation measures required pursuant to this chapter, whichever occurs earlier.

If the chief approves an application for an in-stream mining permit, the order granting the permit shall authorize the person to whom the permit is issued to engage as the operator of an in-stream mining operation on the land described in the permit during a period that shall expire ~~two~~ five years after the date of issuance of the permit, or on the date when the chief, after inspection, orders the release of any remaining bond, cash, irrevocable letters of credit, or certificates of deposit that were deposited to ensure satisfactory performance of the reclamation measures required under this chapter, whichever occurs earlier.

(D) Before an operator engages in a surface or in-stream mining operation on land not described in the operator's permit, but that is contiguous to the land described in the operator's permit, the operator shall file with the chief an application for an amendment to the operator's permit. Before approving an amendment, the chief shall require the information, maps, fees, and amount, except as otherwise provided by rule, of the performance bond as required for an original application under this section and shall apply the same prohibitions and restrictions applicable to land described in an original application for a permit. An applicant for a significant amendment to a permit, as "significant" is defined by rule, shall include a copy of the advertisement that the applicant is required to have published in accordance with section 1514.022 of the Revised Code. If the chief disapproves the amendment, the chief shall state the reasons for disapproval in the order disapproving the amendment. Upon the approval of an amendment by the chief, the operator shall be authorized to engage in



surface mining on the land or in-stream mining in the watercourse described in the operator's original permit plus the land or area of the watercourse described in the amendment until the date when the permit expires, or when the chief, after inspection, orders the release of any remaining performance bond deposited to assure satisfactory performance of the reclamation measures required pursuant to this chapter, whichever occurs earlier.

(E) An operator, at any time and upon application therefor and approval by the chief, may amend the plan of mining and reclamation filed with the application for a permit in order to change the reclamation measures to be performed, modify the interval after mining within which reclamation measures will be performed, change the sequence in which mining or reclamation will occur at specific locations within the area affected, mine acreage previously mined or reclaimed, or for any other purpose, provided that the plan, as amended, includes measures that the chief determines will be adequate to prevent damage to adjoining property and to achieve the performance standards set forth in division (A)(10) of this section. An application for a significant amendment to a plan, as "significant" is defined by rule, shall include a copy of the advertisement that the applicant is required to have published in accordance with section 1514.022 of the Revised Code.

The chief may propose one or more amendments to the plan in writing within ninety days after the fifth anniversary of the date of issuance of a surface mining permit or within ninety days after the first anniversary of the date of issuance of an in-stream mining permit. The chief's proposal may be made upon a finding of any of the following conditions after a complete review of the plan and inspection of the area of land affected, and the plan shall be so amended upon written concurrence in the findings and approval of the amendments by the operator:

(1) An alternate measure, in lieu of one previously approved in the plan, will more economically or effectively achieve one or more of the performance standards.

(2) Developments in reclamation technology make an alternate measure to achieve one or more of the performance standards more economical, feasible, practical, or effective.

(3) Changes in the use or development of adjoining lands require changes in the intended future uses of the area of land affected in order to prevent damage to adjoining property.

(F) The holder of a surface or in-stream mining permit who desires to transfer the rights granted under the permit to another person at any time during the term of the permit or its renewal shall file with the chief an

application for the transfer of the permit. The chief shall issue an order approving or disapproving the transfer of the permit in accordance with criteria and procedures established by rule.

Sec. 1514.021. (A) A permit holder who wishes to continue surface or in-stream mining operations after the expiration date of the existing permit or renewal permit shall file with the chief of the division of mineral resources management ~~an application~~ a notice of intent to renew for purposes of the renewal of a surface or in-stream mining permit or renewal permit at least ninety days before the expiration date of the existing permit or renewal permit. The ~~application~~ notice of intent to renew shall be ~~upon~~ on a form that the chief prescribes and provides and shall be accompanied by a permit renewal fee. The amount of the fee for renewal of a surface mining permit or renewal permit shall be one thousand dollars, and the amount of the fee for renewal of an in-stream mining permit or renewal permit shall be five hundred dollars.

(B) Upon receipt of ~~an application for renewal~~ a notice of intent to renew form and the permit renewal fee under division (A) of this section, the chief shall notify the ~~applicant~~ permit holder to submit a renewal application package. The permit holder shall submit a complete renewal package to the chief at least thirty days prior to the expiration of the existing surface or in-stream mining permit or renewal permit. The renewal application package shall include all of the following:

(1) A map that is a composite of the information required to be contained in the most recent annual report map under section 1514.03 of the Revised Code and of all surface or in-stream mining and reclamation activities conducted under the existing permit or renewal permit; ~~the~~

(2) The annual report required under section 1514.03 of the Revised Code; ~~in~~

(3) In the case of an applicant proposing a significant change to the plan of mining and reclamation, as "significant" is defined by rule, a copy of the advertisement that ~~the applicant~~ is required to have be published in accordance with section 1514.022 of the Revised Code; ~~and additional~~

(4) Additional maps, plans, and revised or updated information that the chief determines to be necessary for permit renewal. ~~Within sixty days after receipt of this notification, the applicant shall submit all the required information to the chief.~~

For a renewal permit requiring minor or minimal updates to the existing permit, renewal permit, or accompanying information, the chief may authorize a permit holder to file updated information through a surface mining permit modification process using a surface mining permit

modification form. However, the chief may require such a permit holder to submit a complete renewal application package.

(C)(1) Upon receipt of the ~~information~~ complete renewal application package required under division (B) of this section and except as otherwise provided in division (C)(2) of this section, the chief shall approve the application for renewal and issue an order granting a renewal permit unless the chief finds that any of the following applies:

(a) The permit holder's operation is not in substantial or material compliance with this chapter, rules adopted and orders issued under it, and the plan of mining and reclamation under the existing permit or renewal permit.

(b) The permit holder has not provided evidence that a performance bond filed under section 1514.04 of the Revised Code applicable to lands affected under the existing permit or renewal permit will remain effective until released under section 1514.05 of the Revised Code.

(c) The permit holder, any partner if the ~~applicant~~ permit holder is a partnership, any officer or director if the ~~applicant~~ permit holder is a corporation, or any other person who has a right to control or in fact controls the management of the ~~applicant~~ permit holder or the selection of officers, directors, or managers of the ~~applicant~~ permit holder has failed substantially or materially to comply or continues to fail to comply with this chapter as provided in section 1514.02 of the Revised Code.

(2) If the application for renewal proposes significant changes to the plan of mining and reclamation, as "significant" is defined by rule, the chief may, but is not required to, approve the application for renewal.

~~(D) Within sixty days after receiving the information and permit renewal fees required under divisions (A) and (B) of this section, the chief shall approve the application for renewal and issue an order granting a renewal permit, issue an order denying the application, or notify the applicant that the time limit for issuing such an order has been extended. This extension of time shall not exceed sixty days (1) After receiving a complete renewal application package and permit renewal fees required under divisions (A) and (B) of this section, the chief shall do one of the following:~~

(a) Approve the application for renewal and issue an order granting a renewal permit;

(b) Issue an order denying a renewal permit;

(c) Notify the applicant in accordance with division (D)(2) of this section that there are deficiencies in the renewal application package and that an extension of the time limit for issuing an order approving or

disapproving the renewal permit has been granted.

In making a decision regarding a renewal application package, the chief shall review the package for compliance with this chapter and rules adopted under it.

(2) The chief shall notify a permit holder and, if applicable, the permit holder's consultant, surveyor, or engineer of deficiencies or errors in a renewal application package and shall include in the notification a discussion of the deficiencies or errors.

A permit holder shall have up to one hundred eighty days after the expiration of the permit holder's permit or renewal permit to submit a revised renewal application package. A permit holder may request, in writing, an extension of the one hundred-eighty-day period for revisions to the renewal application package. The chief may approve a sixty-day extension. The chief shall notify the permit holder of the chief's decision to either grant or deny the extension.

Upon the submission of a revised renewal application package that is determined to be complete by the chief, the chief shall proceed to approve or deny the application in accordance with division (D)(1)(a) or (b) of this section. If the revised renewal application package is not submitted within one hundred eighty days after the permit expiration date or, if an extension has been granted, within two hundred forty days after the permit expiration date, the chief shall issue an order denying the renewal permit in accordance with division (D)(1)(b) of this section.

(E) If an applicant for a renewal permit has complied with division (A) of this section, the applicant may continue surface or in-stream mining operations under the existing permit or renewal permit after its expiration date until the ~~sixty-day time~~ period for filing ~~the information required by the chief under division (B) of this section~~ a complete renewal application package has expired under division (D) of this section or until the chief issues an order ~~under division (D) of this section~~ denying the renewal permit.

(F) A permit holder who fails to submit ~~an application~~ a notice of intent to renew form and required permit renewal fees within the time prescribed by division (A) of this section and a renewal application package under division (B) of this section shall cease surface or in-stream mining operations on the expiration date of the existing permit or renewal permit. If such a permit holder then submits a notice of intent to renew form, an application for renewal, and the permit renewal fees ~~otherwise required by division (A) of this section~~ on or before the thirtieth day after the expiration date of the expired permit or renewal permit and provides the information

required by the chief under division (B) of this section within sixty days after ~~being notified of the information required under that division~~ the permit expiration date, the permit holder need not submit the final map and report required by section 1514.03 of the Revised Code until the later of thirty days after the chief issues an order denying the application for renewal or thirty days after the chief's order is affirmed upon appeal under section 1513.13 or 1513.14 of the Revised Code. An applicant under this division who fails to provide the information required by the chief under division (B) of this section within the prescribed time period shall submit the final map and report required by section 1514.03 of the Revised Code within thirty days after the expiration of that prescribed period.

(G) If the chief issues an order denying an application for renewal of a permit or renewal permit after the expiration date of the permit, the permit holder shall cease surface or in-stream mining operations immediately and, within thirty days after the issuance of the order, shall submit the final report and map required under section 1514.03 of the Revised Code. The chief shall state the reasons for denial in the order denying renewal of the ~~application permit~~. ~~An applicant~~ A permit holder may appeal the chief's order denying the renewal under section 1513.13 of the Revised Code and may continue surface or in-stream mining and reclamation operations under the expired permit until the reclamation commission affirms the chief's order under that section and, if the applicant elects to appeal the order of the commission under section 1513.14 of the Revised Code, until the court of appeals affirms the order.

(H) The approval of an application for renewal under this section authorizes the continuation of an existing surface mining permit or renewal permit for a term of fifteen years from the expiration date of the existing permit.

The approval of an application for renewal under this section authorizes the continuation of an existing in-stream mining permit or renewal permit for a term of ~~two~~ five years from the expiration date of the existing permit.

(I) Any renewal permit is subject to all the requirements of this chapter and rules adopted under it.

Sec. 1514.03. Within thirty days after each anniversary date of issuance of a surface or in-stream mining permit, the operator shall file with the chief of the division of mineral resources management an annual report, on a form prescribed and furnished by the chief, that, for the period covered by the report, shall state the amount of and identify the types of minerals and coal, if any coal, produced and shall state the number of acres affected and the number of acres estimated to be affected during the next year of operation.

An annual report is not required to be filed if a final report is filed in lieu thereof.

Each annual report for a surface mining operation shall include a progress map indicating the location of areas of land affected during the period of the report and the location of the area of land estimated to be affected during the next year. The map shall be prepared in accordance with division (A)(11) or (12) of section 1514.02 of the Revised Code, as appropriate, except that a map prepared in accordance with division (A)(12) of that section may be certified by the operator or authorized agent of the operator in lieu of certification by a professional engineer or surveyor registered under Chapter 4733. of the Revised Code. However, the chief may require that an annual progress map or a final map be prepared by a registered professional engineer or registered surveyor if the chief has reason to believe that the operator exceeded the boundaries of the permit area or, if the operator filed the map required under division (A)(11) of section 1514.02 of the Revised Code, that the operator extracted ten thousand tons or more of minerals during the period covered by the report.

Each annual report for an in-stream mining operation shall include a statement of the total tonnage removed by in-stream mining for each month and of the surface acreage and depth of material removed by in-stream mining and shall include a map that identifies the area affected by the in-stream mining if the in-stream mining for the year addressed by the report occurred beyond the area identified in the most recent approved map, soundings that depict the cross-sectional views of the channel bottom of the watercourse if the soundings depict a cross-sectional view of the channel bottom that is different from the most recent approved map, and water elevations for the watercourse if water elevations are different from those indicated on the most recent approved map.

Each annual report shall be accompanied by a filing fee in the amount of five hundred dollars, except in the case of an annual report filed by a small operator or an in-stream mining operator. A small operator, which is a surface mine operator who intends to extract fewer than ten thousand tons of minerals and no coal during the next year of operation under the permit, or an in-stream mining operator shall include a filing fee in the amount of two hundred fifty dollars with each annual report. The annual report of any operator also shall be accompanied by an acreage fee in the amount of seventy-five dollars multiplied by the number of acres estimated in the report to be affected during the next year of operation under the permit. The acreage fee shall be adjusted by subtracting a credit of seventy-five dollars per excess acre paid for the preceding year if the acreage paid for the

preceding year exceeds the acreage actually affected or by adding an additional amount of seventy-five dollars per excess acre affected if the acreage actually affected exceeds the acreage paid for the preceding year.

With each annual report the operator shall file a performance bond in the amount, unless otherwise provided by rule, of five hundred dollars multiplied by the number of acres estimated to be affected during the next year of operation under the permit for which no performance bond previously was filed. Unless otherwise provided by rule, the bond shall be adjusted by subtracting a credit of five hundred dollars per excess acre for which bond was filed for the preceding year if the acreage for which the bond was filed for the preceding year exceeds the acreage actually affected, or by adding an amount of five hundred dollars per excess acre affected if the acreage actually affected exceeds the acreage for which bond was filed for the preceding year.

Within thirty days after the expiration of the surface or in-stream mining permit, or completion or abandonment of the operation, whichever occurs earlier, the operator shall submit a final report containing the same information required in an annual report, but covering the time from the last annual report to the expiration of the permit, or completion or abandonment of the operation, whichever occurs earlier.

Each final report shall include a map indicating the location of the area of land affected during the period of the report and the location of the total area of land affected under the permit. The map shall be prepared in accordance with division (A)(11) or (12) of section 1514.02 of the Revised Code, as appropriate.

In the case of a final report for an in-stream mining operation, the map also shall include the information required under division (A)(18) of section 1514.02 of the Revised Code, as applicable.

If the final report and certified map, as verified by the chief, show that the number of acres affected under the permit is larger than the number of acres for which the operator has paid an acreage fee or filed a performance bond, upon notification by the chief, the operator shall pay an additional acreage fee in the amount of seventy-five dollars multiplied by the difference between the number of acres affected under the permit and the number of acres for which the operator has paid an acreage fee and shall file an additional performance bond in the amount, unless otherwise provided by rule, of five hundred dollars multiplied by the difference between the number of acres affected under the permit and the number of acres for which the operator has filed bond.

If the final report and certified map, as verified by the chief, show that

the number of acres affected under the permit is smaller than the number of acres for which the operator has filed a performance bond, the chief shall order release of the excess bond. However, the chief shall retain a performance bond in a minimum amount of ten thousand dollars irrespective of the number of acres affected under the permit. The release of the excess bond shall be in an amount, unless otherwise provided by rule, equal to five hundred dollars multiplied by the difference between the number of acres affected under the permit and the number of acres for which the operator has filed bond.

The fees collected pursuant to this section and section 1514.02 of the Revised Code shall be deposited with the treasurer of state to the credit of the surface mining fund created under section 1514.06 of the Revised Code.

If upon inspection the chief finds that any filing fee, acreage fee, performance bond, or part thereof is not paid when due or is paid on the basis of false or substantially inaccurate reports, the chief may request the attorney general to recover the unpaid amounts that are due the state, and the attorney general shall commence appropriate legal proceedings to recover the unpaid amounts.

Sec. 1514.05. (A) At any time within the period allowed an operator by section 1514.02 of the Revised Code to reclaim an area of land affected by surface or in-stream mining, the operator may file a request, on a form provided by the chief of the division of mineral resources management, for inspection of the area of land upon which the reclamation, other than any required planting, is completed. The request shall include all of the following:

- (1) The location of the area and number of acres;
- (2) The permit number;

(3) A map showing the location of the acres reclaimed, prepared and certified in accordance with division (A)(11) or (12) of section 1514.02 of the Revised Code, as appropriate. In the case of an in-stream mining operation, the map also shall include, as applicable, the information required under division (A)(18) of section 1514.02 of the Revised Code.

The chief shall make an inspection and evaluation of the reclamation of the area of land for which the request was submitted within ninety days after receipt of the request or, if the operator fails to complete the reclamation or file the request as required, as soon as the chief learns of the default. Thereupon, if the chief approves the reclamation, other than any required planting, as meeting the requirements of this chapter, rules adopted thereunder, any orders issued during the mining or reclamation, and the specifications of the plan for mining and reclaiming, the chief shall issue an



order to the operator and the operator's surety releasing them from liability for one-half of the total amount of their surety bond on deposit to ensure reclamation for the area upon which reclamation is completed. If the operator has deposited cash, an irrevocable letter of credit, or certificates of deposit in lieu of a surety bond to ensure reclamation, the chief shall issue an order to the operator releasing one-half of the amount so held and promptly shall transmit a certified copy of the order to the treasurer of state. Upon presentation of the order to the treasurer of state by the operator to whom it was issued, or by the operator's authorized agent, the treasurer of state shall deliver to the operator or the operator's authorized agent the cash, irrevocable letter of credit, or certificates of deposit designated in the order.

If the chief does not approve the reclamation, other than any required planting, the chief shall notify the operator by certified mail. The notice shall be an order stating the reasons for unacceptability, ordering further actions to be taken, and setting a time limit for compliance. If the operator does not comply with the order within the time limit specified, the chief may order an extension of time for compliance after determining that the operator's noncompliance is for good cause, resulting from developments partially or wholly beyond the operator's control. If the operator complies within the time limit or the extension of time granted for compliance, the chief shall order release of the performance bond in the same manner as in the case of approval of reclamation, other than any required planting, by the chief, and the treasurer of state shall proceed as in that case. If the operator does not comply within the time limit and the chief does not order an extension, or if the chief orders an extension of time and the operator does not comply within the extension of time granted for compliance, the chief shall issue another order declaring that the operator has failed to reclaim and, if the operator's permit has not already expired or been revoked, revoking the operator's permit. The chief shall thereupon proceed under division (C) of this section.

(B) At any time within the period allowed an operator by section 1514.02 of the Revised Code to reclaim an area affected by surface mining, the operator may file a request, on a form provided by the chief, for inspection of the area of land on which all reclamation, including the successful establishment of any required planting, is completed. The request shall include all of the following:

- (1) The location of the area and number of acres;
- (2) The permit number;
- (3) The type and date of any required planting of vegetative cover and the degree of success of growth;

(4) A map showing the location of the acres reclaimed, prepared and certified in accordance with division (A)(11) or (12) of section 1514.02 of the Revised Code, as appropriate. In the case of an in-stream mining operation, the map also shall include the information required under division (A)(18) of section 1514.02 of the Revised Code.

The chief shall make an inspection and evaluation of the reclamation of the area of land for which the request was submitted within ninety days after receipt of the request or, if the operator fails to complete the reclamation or file the request as required, as soon as the chief learns of the default. Thereupon, if the chief finds that the reclamation meets the requirements of this chapter, rules adopted under it, any orders issued during the mining and reclamation, and the specifications of the plan for mining and reclaiming and decides to release any remaining performance bond on deposit to ensure reclamation of the area on which reclamation is completed, within ten days of completing the inspection and evaluation, the chief shall order release of the remaining performance bond in the same manner as in the case of approval of reclamation other than required planting, and the treasurer of state shall proceed as in that case.

If the chief does not approve the reclamation performed by the operator, the chief shall notify the operator by certified mail within ninety days of the filing of the application for inspection or of the date when the chief learns of the default. The notice shall be an order stating the reasons for unacceptability, ordering further actions to be taken, and setting a time limit for compliance. If the operator does not comply with the order within the time limit specified, the chief may order an extension of time for compliance after determining that the operator's noncompliance is for good cause, resulting from developments partially or wholly beyond the operator's control. If the operator complies within the time limit or the extension of time granted for compliance, the chief shall order release of the remaining performance bond in the same manner as in the case of approval of reclamation by the chief, and the treasurer of state shall proceed as in that case. If the operator does not comply within the time limit and the chief does not order an extension, or if the chief orders an extension of time and the operator does not comply within the extension of time granted for compliance, the chief shall issue another order declaring that the operator has failed to reclaim and, if the operator's permit has not already expired or been revoked, revoking the operator's permit. The chief then shall proceed under division (C) of this section.

(C) Upon issuing an order under division (A) or (B) of this section declaring that the operator has failed to reclaim, the chief shall make a

finding as to the number and location of the acres of land that the operator has failed to reclaim in the manner required by this chapter. The chief shall order the release of the performance bond in the amount of five hundred dollars per acre for those acres that the chief finds to have been reclaimed in the manner required by this chapter. The release shall be ordered in the same manner as in the case of other approval of reclamation by the chief, and the treasurer of state shall proceed as in that case. If the operator has on deposit cash, an irrevocable letter of credit, or certificates of deposit to ensure reclamation of the area of the land affected, the chief at the same time shall issue an order declaring that the remaining cash, irrevocable letter of credit, or certificates of deposit are the property of the state and are available for use by the chief in performing reclamation of the area and shall proceed in accordance with section 1514.06 of the Revised Code.

If the operator has on deposit a surety bond to ensure reclamation of the area of land affected, the chief shall notify the surety in writing of the operator's default and shall request the surety to perform the surety's obligation and that of the operator. The surety, within ten days after receipt of the notice, shall notify the chief as to whether it intends to perform those obligations.

If the surety chooses to perform, it shall arrange for work to begin within thirty days of the day on which it notifies the chief of its decision. If the surety completes the work as required by this chapter, the chief shall issue an order to the surety releasing the surety from liability under the bond in the same manner as if the surety were an operator proceeding under this section. If, after the surety begins the work, the chief determines that the surety is not carrying the work forward with reasonable progress, or that it is improperly performing the work, or that it has abandoned the work or otherwise failed to perform its obligation and that of the operator, the chief shall issue an order terminating the right of the surety to perform the work and demanding payment of the amount due as required by this chapter.

If the surety chooses not to perform and so notifies the chief, does not respond to the chief's notice within ten days of receipt thereof, or fails to begin work within thirty days of the day it timely notifies the chief of its decision to perform its obligation and that of the operator, the chief shall issue an order terminating the right of the surety to perform the work and demanding payment of the amount due, as required by this chapter.

Upon receipt of an order of the chief demanding payment of the amount due, the surety immediately shall deposit with the chief cash in the full amount due under the order for deposit with the treasurer of state. If the surety fails to make an immediate deposit, the chief shall certify it to the

attorney general for collection. When the chief has issued an order terminating the right of the surety and has the cash on deposit, the cash is the property of the state and is available for use by the chief, who shall proceed in accordance with section 1514.06 of the Revised Code.

Sec. 3706.27. (A) There is hereby created in the state treasury the advanced energy research and development fund to provide grants for advanced energy projects. There is hereby created in the state treasury the advanced energy research and development taxable fund to provide loans for advanced energy projects.

(B)(1) The advanced energy research and development fund and the advanced energy research and development taxable fund shall consist of the proceeds of obligations issued under section 166.08 of the Revised Code. Money shall be credited to the respective funds in the proportion that the executive director of the Ohio air quality development authority, with the affirmative vote of a majority of the members of the authority, determines appropriate.

(2) Any investment earnings from the money in the advanced energy research and development fund and in the advanced energy research and development taxable fund shall be credited to those funds, respectively. Any repayment of loans made from money in the advanced energy research and development taxable fund shall be credited to the ~~facilities establishment~~ alternative fuel transportation fund created in section ~~166.03~~ 122.075 of the Revised Code.

(C) The director of budget and management shall establish and maintain records or accounts for or within these funds in such a manner as to show the amount credited to the funds pursuant to section 166.08 of the Revised Code and that the amounts so credited have been expended for the purposes set forth in Section 2p or 13 of Article VIII, Ohio Constitution, and sections 166.08, 166.30, and 3706.26 of the Revised Code.

Sec. 3737.832. (A) As used in this section: (1) "Natural gas processing facilities" means installations, including associated buildings, pipes, valves, tanks, and other equipment, used to separate various fluids, hydrocarbons, natural gas liquids, and impurities from the raw natural gas, manufacturing residue gas suitable for transmission and distribution to end users.

(2) "Natural gas liquids fractionation facilities" means installations, including associated buildings, pipes, valves, tanks, and other equipment, used for the separation of mixtures of light hydrocarbons or natural gas liquids into individual, purity natural gas liquid products, which include ethane, propane, normal butane, iso-butane, and natural gasolines.

(3) "Shale oil processing premise" means a single parcel or contiguous

parcels of real estate, including any structures, facilities, appurtenances, equipment, devices, and activities thereon, where the processing of substances extracted from the Point Pleasant, Utica, and Marcellus formations occurs at a natural gas liquids fractionation or natural gas processing facility. "Shale oil processing premise" does not include a well pad or a production operation, as those terms are defined in section 1509.01 of the Revised Code, that is regulated under Chapter 1509. of the Revised Code.

(B) Notwithstanding any other provision of the Revised Code, the state fire marshal and the board of building standards shall have the exclusive authority to adopt fire safety standards relating to the construction at a shale oil processing premise of any structure subject to the nonresidential building codes established pursuant to section 3781.10 of the Revised Code. Notwithstanding any other provisions of the Revised Code, the state fire marshal shall have the sole and exclusive authority to adopt all other fire safety standards relating to a shale oil processing premise. Any standards established by the state fire marshal under this section shall be part of the state fire code.

(C) Notwithstanding any other provision of the Revised Code, the state fire marshal shall have sole and exclusive authority to enforce all fire safety standards adopted pursuant to this section, any other fire safety standards existing in the state fire code that are applicable to shale oil processing premises, and any actions authorized by sections 3737.41 to 3737.51 of the Revised Code at a shale oil processing premise.

(D) The state fire marshal may establish and collect reasonable permit and inspection fees for the regulation of a shale oil processing premise.

Sec. 4905.03. As used in this chapter:

(A) Any person, firm, copartnership, voluntary association, joint-stock association, company, or corporation, wherever organized or incorporated, is:

(1) A telephone company, when engaged in the business of transmitting telephonic messages to, from, through, or in this state;

(2) A motor transportation company, when engaged in the business of carrying and transporting persons or property or the business of providing or furnishing such transportation service, for hire, in or by motor-propelled vehicles of any kind, including trailers, for the public in general, over any public street, road, or highway in this state, except as provided in section 4921.02 of the Revised Code;

(3) An electric light company, when engaged in the business of supplying electricity for light, heat, or power purposes to consumers within

this state, including supplying electric transmission service for electricity delivered to consumers in this state, but excluding a regional transmission organization approved by the federal energy regulatory commission;

(4) A gas company, when engaged in the business of supplying artificial gas for lighting, power, or heating purposes to consumers within this state or when engaged in the business of supplying artificial gas to gas companies or to natural gas companies within this state, but a producer engaged in supplying to one or more gas or natural gas companies, only such artificial gas as is manufactured by that producer as a by-product of some other process in which the producer is primarily engaged within this state is not thereby a gas company. All rates, rentals, tolls, schedules, charges of any kind, or agreements between any gas company and any other gas company or any natural gas company providing for the supplying of artificial gas and for compensation for the same are subject to the jurisdiction of the public utilities commission.

(5) A natural gas company, when engaged in the business of supplying natural gas for lighting, power, or heating purposes to consumers within this state. Notwithstanding the above, neither the delivery nor sale of Ohio-produced natural gas or Ohio-produced raw natural gas liquids by a producer or gatherer under a public utilities commission-ordered exemption, adopted before, as to producers, or after, as to producers or gatherers, January 1, 1996, or the delivery or sale of Ohio-produced natural gas or Ohio-produced raw natural gas liquids by a producer or gatherer of Ohio-produced natural gas or Ohio-produced raw natural gas liquids, either to a lessor under an oil and gas lease of the land on which the producer's drilling unit is located, or the grantor incident to a right-of-way or easement to the producer or gatherer, shall cause the producer or gatherer to be a natural gas company for the purposes of this section.

All rates, rentals, tolls, schedules, charges of any kind, or agreements between a natural gas company and other natural gas companies or gas companies providing for the supply of natural gas and for compensation for the same are subject to the jurisdiction of the public utilities commission. The commission, upon application made to it, may relieve any producer or gatherer of natural gas, defined in this section as a gas company or a natural gas company, of compliance with the obligations imposed by this chapter and Chapters 4901., 4903., 4907., 4909., 4921., and 4923. of the Revised Code, so long as the producer or gatherer is not affiliated with or under the control of a gas company or a natural gas company engaged in the transportation or distribution of natural gas, or so long as the producer or gatherer does not engage in the distribution of natural gas to consumers.

Nothing in division (A)(5) of this section limits the authority of the commission to enforce sections 4905.90 to 4905.96 of the Revised Code.

(6) A pipe-line company, when engaged in the business of transporting natural gas, oil, or coal or its derivatives through pipes or tubing, either wholly or partly within this state, but not when engaged in the business of the transport associated with gathering lines, raw natural gas liquids, or finished product natural gas liquids;

(7) A water-works company, when engaged in the business of supplying water through pipes or tubing, or in a similar manner, to consumers within this state;

(8) A heating or cooling company, when engaged in the business of supplying water, steam, or air through pipes or tubing to consumers within this state for heating or cooling purposes;

(9) A messenger company, when engaged in the business of supplying messengers for any purpose;

(10) A street railway company, when engaged in the business of operating as a common carrier, a railway, wholly or partly within this state, with one or more tracks upon, along, above, or below any public road, street, alleyway, or ground, within any municipal corporation, operated by any motive power other than steam and not a part of an interurban railroad, whether the railway is termed street, inclined-plane, elevated, or underground railway;

(11) A suburban railroad company, when engaged in the business of operating as a common carrier, whether wholly or partially within this state, a part of a street railway constructed or extended beyond the limits of a municipal corporation, and not a part of an interurban railroad;

(12) An interurban railroad company, when engaged in the business of operating a railroad, wholly or partially within this state, with one or more tracks from one municipal corporation or point in this state to another municipal corporation or point in this state, whether constructed upon the public highways or upon private rights-of-way, outside of municipal corporations, using electricity or other motive power than steam power for the transportation of passengers, packages, express matter, United States mail, baggage, and freight. Such an interurban railroad company is included in the term "railroad" as used in section 4907.02 of the Revised Code.

(13) A sewage disposal system company, when engaged in the business of sewage disposal services through pipes or tubing, and treatment works, or in a similar manner, within this state.

(B) "Motor-propelled vehicle" means any automobile, automobile truck, motor bus, or any other self-propelled vehicle not operated or driven upon

fixed rails or tracks.

(C) As used in this section:

(1) "Gathering lines" has the same meaning as in section 4905.90 of the Revised Code.

(2) "Raw natural gas liquids" and "finished product natural gas liquids" have the same meanings as in section 4906.01 of the Revised Code.

Sec. 4905.90. As used in sections 4905.90 to 4905.96 of the Revised Code:

(A) "Contiguous property" includes, but is not limited to, a manufactured home park as defined in section 3733.01 of the Revised Code; a public or publicly subsidized housing project; an apartment complex; a condominium complex; a college or university; an office complex; a shopping center; a hotel; an industrial park; and a race track.

(B) "Gas" means natural gas, flammable gas, or gas which is toxic or corrosive.

(C) "Gathering ~~lines~~ line" and the "gathering of gas" have the same meaning as in the Natural Gas Pipeline Safety Act and the rules adopted by the United States department of transportation pursuant to the Natural Gas Pipeline Safety Act, including 49 C.F.R. part 192, as amended.

(D) "Gas gathering pipeline" means a gathering line that is not regulated under the Natural Gas Pipeline Safety Act and the rules adopted by the United States department of transportation pursuant to the Natural Gas Pipeline Safety Act, including 49 C.F.R. part 192, as amended. "Gas gathering pipeline" includes a pipeline used to collect and transport raw natural gas or transmission quality gas to the inlet of a gas processing plant, the inlet of a distribution system, or to a transmission line.

(E) "Gas processing plant" means a plant that processes raw natural gas into merchantable products, including transmission quality gas or natural gas liquids and also may include a plant that treats raw natural gas to remove impurities such as carbon dioxide, helium, nitrogen or water.

(F) "Intrastate pipe-line transportation" has the same meaning as in 82 Stat. 720 (1968), 49 U.S.C.A. App. 1671, as amended, but excludes the gathering of gas exempted by the Natural Gas Pipeline Safety Act.

~~(E)~~(G) "MAOP" means the maximum pressure at which a gas gathering pipeline, a processing plant gas stub pipeline, or any segment of such a pipeline may be operated under sections 4905.90 to 4905.96 of the Revised Code.

(H) "Master-meter system" means a pipe-line system that distributes gas within a contiguous property for which the system operator purchases gas for resale to consumers, including tenants. Such pipe-line system supplies



consumers who purchase the gas directly through a meter, or by paying rent, or by other means. The term includes a master-meter system as defined in 49 C.F.R. 191.3, as amended. The term excludes a pipeline within a manufactured home, mobile home, or a building.

~~(F)~~(I) "Natural Gas Pipeline Safety Act" means the "Natural Gas Pipeline Safety Act of 1968," 82 Stat. 720, 49 U.S.C.A. App. 1671 et seq., as amended.

~~(G)~~(J) "Operator" means any of the following:

(1) A gas company or natural gas company as defined in section 4905.03 of the Revised Code, except that division (A)(5) of that section does not authorize the public utilities commission to relieve any producer of gas, as a gas company or natural gas company, of compliance with sections 4905.90 to 4905.96 of the Revised Code or the pipe-line safety code created under section 4905.91 of the Revised Code;

(2) A pipe-line company, as defined in section 4905.03 of the Revised Code, when engaged in the business of transporting gas by pipeline;

(3) A public utility that is excepted from the definition of "public utility" under division (B) or (C) of section 4905.02 of the Revised Code, when engaged in supplying or transporting gas by pipeline within this state;

(4) Any person that owns, operates, manages, controls, or leases any of the following:

(a) Intrastate pipe-line transportation facilities within this state;

(b) Gas gathering lines within this state which are not exempted by the Natural Gas Pipeline Safety Act;

(c) A master-meter system within this state.

"Operator" does not include an ultimate consumer who owns a service line, as defined in 49 C.F.R. 192.3, as amended, on the real property of that ultimate consumer.

~~(H)~~(K) "Operator of a master-meter system" means a person described under division ~~(F)~~(J)(4)(c) of this section. An operator of a master-meter system is not a public utility under section 4905.02 or a gas or natural gas company under section 4905.03 of the Revised Code.

~~(I)~~(L) "Person" means:

(1) In addition to those defined in division (C) of section 1.59 of the Revised Code, a joint venture or a municipal corporation;

(2) Any trustee, receiver, assignee, or personal representative of persons defined in division ~~(H)~~(L)(1) of this section.

~~(J)~~(M) "Processing plant gas stub pipeline" means a gas pipeline that transports transmission quality gas from the tailgate of a gas processing plant to the inlet of an interstate or intrastate transmission line and that is

considered an extension of the gas processing plant, is not for public use, and is not regulated under the Natural Gas Pipeline Safety Act and the rules adopted by the United States department of transportation pursuant to the Natural Gas Pipeline Safety Act, including 49 C.F.R. part 92, as amended.

(N) "Safety audit" means the public utilities commission's audit of the premises, pipe-line facilities, and the records, maps, and other relevant documents of a master-meter system to determine the operator's compliance with sections 4905.90 to 4905.96 of the Revised Code and the pipe-line safety code.

~~(K)~~(O) "Safety inspection" means any inspection, survey, or testing of a master-meter system which is authorized or required by sections 4905.90 to 4905.96 of the Revised Code and the pipe-line safety code. The term includes, but is not limited to, leak surveys, inspection of regulators and critical valves, and monitoring of cathodic protection systems, where applicable.

~~(L)~~(P) "Safety-related condition" means any safety-related condition defined in 49 C.F.R. 191.23, as amended.

~~(M)~~(Q) "Total Mcfs of gas it supplied or delivered" means the sum of the following volumes of gas that an operator supplied or delivered, measured in units per one thousand cubic feet:

- (1) Residential sales;
- (2) Commercial and industrial sales;
- (3) Other sales to public authorities;
- (4) Interdepartmental sales;
- (5) Sales for resale;
- (6) Transportation of gas.

(R) "Transmission quality gas" means gas consisting predominantly of methane that meets all downstream specifications for transportation in an intrastate or interstate transmission pipeline and that is suitable for use by public consumers.

(S) "Raw natural gas" has the same meaning as in section 4906.01 of the Revised Code.

Sec. 4905.91. For the purpose of protecting the public safety with respect to intrastate ~~pipe-line transportation~~ pipe-lines used by any operator:

(A) The public utilities commission shall:

- (1) Adopt, and may amend or rescind, rules to carry out sections 4905.90 to 4905.96 of the Revised Code, including rules concerning pipe-line safety, drug testing, and enforcement procedures. The commission shall adopt these rules only after notice and opportunity for public comment. The rules adopted under this division and any orders issued under sections

4905.90 to 4905.96 of the Revised Code constitute the pipe-line safety code. The commission shall administer and enforce that code.

(2) Make certifications and reports to the United States department of transportation as required under the Natural Gas Pipeline Safety Act;

(3) Perform all regulatory and enforcement duties required under sections 4905.90 to 4905.96 of the Revised Code.

(B) The commission may:

(1) Investigate any service, act, practice, policy, or omission by any operator to determine its compliance with sections 4905.90 to 4905.96 of the Revised Code and the pipe-line safety code;

(2) Investigate any intrastate pipe-line transportation facility to determine if it is hazardous to life or property, as provided in 82 Stat. 720 (1968), 49 U.S.C.A. App. 1679b(b)(2) and (3);

(3) Investigate the existence or report of any safety-related condition that involves any intrastate pipe-line transportation facility;

(4) Enter into and perform contracts or agreements with the United States department of transportation to inspect interstate transmission facilities pursuant to the Natural Gas Pipeline Safety Act;

(5) Accept grants-in-aid, cash, and reimbursements provided for or made available to this state by the federal government to carry out the Natural Gas Pipeline Safety Act or to enforce sections 4905.90 to 4905.96 of the Revised Code and the pipe-line safety code. All such grants-in-aid, cash, and reimbursements shall be deposited to the credit of the gas pipe-line safety fund, which is hereby created in the state treasury, to be used by the commission for the purpose of carrying out this section.

(6) Enter into a cooperative agreement or a memorandum of understanding with another state agency for consultation services and the exchange of advice and technical expertise to assist the commission in exercising its regulatory authority under section 4905.04 of the Revised Code, provided that no such agreement or memorandum of understanding shall:

(a) Confer on the state agency any regulatory authority over the activities subject to sections 4905.90 to 4905.96 of the Revised Code;

(b) Diminish the sole and exclusive authority of the commission under section 4905.04 of the Revised Code.

(C) The With the exception of gas gathering pipelines and processing plant gas stub pipelines, the commission's regulation of gathering lines shall conform to the regulation of gathering lines in 49 C.F.R. 192 and 199, as amended, and the commission's annual certification agreements with the United States department of transportation, except that rule 4901:1-16-03,

paragraph (D) of rule 4901:1-16-05, and rule 4901:1-16-06 of the Ohio Administrative Code shall also apply to gathering lines. The procedural rules under chapter 4901:1-16 of the Ohio Administrative Code shall also apply to operators of gathering lines that are not gathering pipelines or processing plant gas stub pipelines.

Sec. 4905.911. (A)(1) The public utilities commission shall require an operator of either of the following types of pipelines that was completely constructed on or after the effective date of this section and that transports gas produced by a horizontal well to comply with the applicable pipe design requirements of 49 C.F.R. 192 subpart C:

(a) A gas gathering pipeline;

(b) A processing plant gas stub pipeline.

(2) The commission shall also require the operator to do all of the following regarding that pipeline:

(a) Design, install, construct, initially inspect, and initially test the pipeline in accordance with the requirements of 49 C.F.R. 192 if the pipeline is new, replaced, relocated, or otherwise changed;

(b) Control corrosion according to requirements of 49 C.F.R. 192 subpart I if the pipeline is metallic;

(c) Establish and carry out a damage prevention program under 49 C.F.R. 192.614;

(d) Establish and carry out a public education program under 49 C.F.R. 192.616;

(e) Establish the MAOP of the pipeline under 49 C.F.R. 192.619;

(f) Install and maintain pipeline markers according to the requirements for transmission lines under 49 C.F.R. 192.707;

(g) Perform leakage surveys according to requirements in 49 C.F.R. 192.706;

(h) Retain a record of each required leakage survey conducted under division (A)(2)(g) of this section and 49 C.F.R. 192.706 for five years or until the next leakage survey is completed, whichever time period is longer.

(B)(1) Any person who plans to construct a pipeline subject to division (A) of this section after the effective date of this section shall file with the public utilities commission division of pipeline safety a form approved by the division that includes all of the following information:

(a) The route of the proposed pipeline;

(b) The MAOP of the pipeline;

(c) The outside diameter of the pipeline;

(d) The wall thickness of the pipeline;

(e) The material that the pipeline will be made of;

(f) The yield strength of the pipeline.

The form shall be filed with the division not later than twenty-one days prior to the commencement of construction of the pipeline.

(2) Not later than sixty days after the completion of construction of a pipeline subject to division (B)(1) of this section, the operator of the pipeline shall file with the public utilities commission division of pipeline safety an explanation of the constructed pipeline's route and operating information.

(C) For purposes of this section:

(1) "Horizontal well" has the same meaning as in section 1509.01 of the Revised Code.

(2) "Operator" means any person that owns, operates, manages, controls, or leases a gas gathering pipeline or a processing plant gas stub pipeline.

Sec. 4905.95. (A) Except as otherwise provided in division (C) of this section:

(1) The public utilities commission, regarding any proceeding under this section, shall provide reasonable notice and the opportunity for a hearing in accordance with rules adopted under section 4901.13 of the Revised Code.

(2) Sections 4903.02 to 4903.082, 4903.09 to 4903.16, and 4903.20 to 4903.23 of the Revised Code apply to all proceedings and orders of the commission under this section and to all operators subject to those proceedings and orders.

(B) If, pursuant to a proceeding it specially initiates or to any other proceeding and after the hearing provided for under division (A) of this section, the commission finds that:

(1) An operator has violated or failed to comply with, or is violating or failing to comply with, sections 4905.90 to 4905.96 of the Revised Code or the pipe-line safety code, the commission by order:

(a) Shall require the operator to comply and to undertake corrective action necessary to protect the public safety;

(b) May assess upon the operator forfeitures of not more than one hundred thousand dollars for each day of each violation or noncompliance, except that the aggregate of such forfeitures shall not exceed ~~five hundred thousand~~ one million dollars for any related series of violations or noncompliances. In determining the amount of any such forfeiture, the commission shall consider all of the following:

(i) The gravity of the violation or noncompliance;

(ii) The operator's history of prior violations or noncompliances;

(iii) The operator's good faith efforts to comply and undertake corrective action;

- (iv) The operator's ability to pay the forfeiture;
- (v) The effect of the forfeiture on the operator's ability to continue as an operator;
- (vi) Such other matters as justice may require.

All forfeitures collected under this division or section 4905.96 of the Revised Code shall be deposited in the state treasury to the credit of the general revenue fund.

(c) May direct the attorney general to seek the remedies provided in section 4905.96 of the Revised Code.

(2) An intrastate pipe-line transportation facility is hazardous to life or property, the commission by order:

(a) Shall require the operator of the facility to take corrective action to remove the hazard. Such corrective action may include suspended or restricted use of the facility, physical inspection, testing, repair, replacement, or other action.

(b) May direct the attorney general to seek the remedies provided in section 4905.96 of the Revised Code.

(C) If, pursuant to a proceeding it specially initiates or to any other proceeding, the commission finds that an emergency exists due to a condition on an intrastate pipe-line transportation facility posing a clear and immediate danger to life or health or threatening a significant loss of property and requiring immediate corrective action to protect the public safety, the commission may issue, without notice or prior hearing, an order reciting its finding and may direct the attorney general to seek the remedies provided in section 4905.96 of the Revised Code. The order shall remain in effect for not more than forty days after the date of its issuance. The order shall provide for a hearing as soon as possible, but not later than thirty days after the date of its issuance. After the hearing the commission shall continue, revoke, or modify the order and may make findings under and seek appropriate remedies as provided in division (B) of this section.

Sec. 4906.01. As used in Chapter 4906. of the Revised Code:

(A) "Person" means an individual, corporation, business trust, association, estate, trust, or partnership or any officer, board, commission, department, division, or bureau of the state or a political subdivision of the state, or any other entity.

(B)(1) "Major utility facility" means:

(a) Electric generating plant and associated facilities designed for, or capable of, operation at a capacity of fifty megawatts or more;

(b) An electric transmission line and associated facilities of a design capacity of one hundred twenty-five kilovolts or more;

(c) A gas ~~or natural gas~~ transmission line and pipeline that is greater than five hundred feet in length, and its associated facilities, is more than nine inches in outside diameter and is designed for, ~~or capable of,~~ transporting gas ~~or natural gas~~ at pressures a maximum allowable operating pressure in excess of one hundred twenty-five pounds per square inch.

(2) "Major utility facility" does not include ~~gas or natural gas~~ any of the following:

(a) Gas transmission lines over which an agency of the United States has exclusive jurisdiction, ~~any;~~

(b) Any solid waste facilities as defined in section 6123.01 of the Revised Code, ~~or either of the following as defined by the power siting board;~~

~~(a)(c) Electric, ~~gas, natural gas~~ distributing lines and ~~gas or natural gas~~ gathering lines and associated facilities as defined by the power siting board;~~

~~(b)(d) Any manufacturing facility that creates byproducts that may be used in the generation of electricity as defined by the power siting board;~~

(e) Gathering lines, gas gathering pipelines, and processing plant gas stub pipelines as those terms are defined in section 4905.90 of the Revised Code and associated facilities;

(f) Any gas processing plant as defined in section 4905.90 of the Revised Code;

(g) Natural gas liquids finished product pipelines;

(h) Pipelines from a gas processing plant as defined in section 4905.90 of the Revised Code to a natural gas liquids fractionation plant, including a raw natural gas liquids pipeline, or to an interstate or intrastate gas pipeline;

(i) Any natural gas liquids fractionation plant;

(j) A production operation as defined in section 1509.01 of the Revised Code, including all pipelines upstream of any gathering lines;

(k) Any compressor stations used by the following:

(i) A gathering line, a gas gathering pipeline, a processing plant gas stub pipeline, or a gas processing plant as those terms are defined in section 4905.90 of the Revised Code;

(ii) A natural gas liquids finished product pipeline, a natural gas liquids fractionation plant, or any pipeline upstream of a natural gas liquids fractionation plant; or

(iii) A production operation as defined in section 1509.01 of the Revised Code.

(C) "Commence to construct" means any clearing of land, excavation, or other action that would adversely affect the natural environment of the site or route of a major utility facility, but does not include surveying changes

needed for temporary use of sites or routes for nonutility purposes, or uses in securing geological data, including necessary borings to ascertain foundation conditions.

(D) "Certificate" means a certificate of environmental compatibility and public need issued by the power siting board under section 4906.10 of the Revised Code or a construction certificate issued by the board under rules adopted under division (E) or (F) of section 4906.03 of the Revised Code.

(E) "Gas" means natural gas, flammable gas, or gas that is toxic or corrosive.

(F) "Natural gas liquids finished product pipeline" means a pipeline that carries finished product natural gas liquids to the inlet of an interstate or intrastate finished product natural gas liquid transmission pipeline, rail loading facility, or other petrochemical or refinery facility.

(G) "Natural gas liquids fractionation plant" means a facility that takes a feed of raw natural gas liquids and produces finished product natural gas liquids.

(H) "Raw natural gas" means hydrocarbons that are produced in a gaseous state from gas wells and that generally include methane, ethane, propane, butanes, pentanes, hexanes, heptanes, octanes, nonanes, and decanes, plus other naturally occurring impurities like water, carbon dioxide, hydrogen sulfide, nitrogen, oxygen, and helium.

(I) "Raw natural gas liquids" means naturally occurring hydrocarbons contained in raw natural gas that are extracted in a gas processing plant and liquefied and generally include mixtures of ethane, propane, butanes, and natural gasoline.

(J) "Finished product natural gas liquids" means an individual finished product produced by a natural gas liquids fractionation plant as a liquid that meets the specifications for commercial products as defined by the gas processors association. Those products include ethane, propane, iso-butane, normal butane, and natural gasoline.

Sec. 4906.03. The power siting board shall:

(A) Require such information from persons subject to its jurisdiction as it considers necessary to assist in the conduct of hearings and any investigations or studies it may undertake;

(B) Conduct any studies or investigations that it considers necessary or appropriate to carry out its responsibilities under this chapter;

(C) Adopt rules establishing criteria for evaluating the effects on environmental values of proposed and alternative sites, and projected needs for electric power, and such other rules as are necessary and convenient to implement this chapter, including rules governing application fees,



supplemental application fees, and other reasonable fees to be paid by persons subject to the board's jurisdiction. The board shall make an annual accounting of its collection and use of these fees and shall issue an annual report of its accounting, in the form and manner prescribed by its rules, not later than the last day of June of the year following the calendar year to which the report applies.

(D) Approve ~~or~~, disapprove, or modify and approve applications for certificates;

(E) Notwithstanding sections 4906.06 to 4906.14 of the Revised Code, the board may adopt rules to provide for an ~~abbreviated~~ accelerated review of an application for a construction certificate for construction of a major utility facility related to a coal research and development project as defined in section 1555.01 of the Revised Code, or to a coal development project as defined in section 1551.30 of the Revised Code, submitted to the Ohio coal development office for review under division (B)(7) of section 1551.33 of the Revised Code. Applications for construction certificates for construction of major utility facilities for Ohio coal research and development shall be filed with the board on the same day as the proposed facility or project is submitted to the Ohio coal development office for review.

The board shall render a decision on an application for a construction certificate within ninety days after receipt of the application and all of the data and information it may require from the applicant. In rendering a decision on an application for a construction certificate, the board shall only consider the criteria and make the findings and determinations set forth in divisions (A)(2), (3), (5), and (7) and division (B) of section 4906.10 of the Revised Code.

(F) Notwithstanding sections 4906.06 to 4906.14 of the Revised Code, the board shall adopt rules to provide for an accelerated review of an application for a construction certificate for any of the following:

(1) An electric transmission line that is:

(a) Not more than two miles in length;

(b) Primarily needed to attract or meet the requirements of a specific customer or specific customers;

(c) Necessary to maintain reliable electric service as a result of the retirement or shutdown of an electric generating facility located within the state; or

(d) A rebuilding of an existing transmission line.

(2) An electric generating facility that uses waste heat or natural gas and is primarily within the current boundary of an existing industrial or electric generating facility;

(3) A gas pipeline that is not more than five miles in length or is primarily needed to meet the requirements of a specific customer or specific customers.

The board shall adopt rules that provide for the automatic certification to any entity described in this division when an application by any such entity is not suspended by the board, an administrative law judge, or the chairperson or executive director of the board for good cause shown, within ninety days of submission of the application. If an application is suspended, the board shall approve, disapprove, or modify and approve the application not later than ninety days after the date of the suspension.

Sec. 4906.05. No certificate is required for a major utility facility on which construction had already commenced on October 23, 1972, or within two years thereafter. This section does not exempt such a facility from any other requirements of state and local laws and regulations.

No certificate is required for any major utility facility already in operation on October 23, 1972, and the facility shall not be exempt from any applicable state or local laws or regulations. A certificate is required for any substantial addition to a facility already in operation. "Substantial addition" shall be defined by the power siting board.

Any electric generating plant and associated facilities, electric transmission line and associated facilities, or gas ~~or natural gas transmission line~~ pipeline and associated facilities which is not a major utility facility is not exempt from state or local laws or regulations.

Sec. 4906.06. (A) An applicant for a certificate shall file with the office of the chairperson of the power siting board an application, in such form as the board prescribes, containing the following information:

- (1) A description of the location and of the major utility facility;
- (2) A summary of any studies that have been made by or for the applicant of the environmental impact of the facility;
- (3) A statement explaining the need for the facility;
- (4) A statement of the reasons why the proposed location is best suited for the facility;
- (5) A statement of how the facility fits into the applicant's forecast contained in the report submitted under section 4935.04 of the Revised Code;
- (6) Such other information as the applicant may consider relevant or as the board by rule or order may require. Copies of the studies referred to in division (A)(2) of this section shall be filed with the office of the chairperson, if ordered, and shall be available for public inspection.

The application shall be filed not ~~less than one year nor~~ more than five

years prior to the planned date of commencement of construction. ~~Either~~  
The five-year period may be waived by the board for good cause shown.

(B) Each application shall be accompanied by proof of service of a copy of such application on the chief executive officer of each municipal corporation and county, and the head of each public agency charged with the duty of protecting the environment or of planning land use, in the area in which any portion of such facility is to be located.

(C) Each applicant within fifteen days after the date of the filing of the application shall give public notice to persons residing in the municipal corporations and counties entitled to receive notice under division (B) of this section, by the publication of a summary of the application in newspapers of general circulation in such area. Proof of such publication shall be filed with the office of the chairperson.

(D) Inadvertent failure of service on, or notice to, any of the persons identified in divisions (B) and (C) of this section may be cured pursuant to orders of the board designed to afford them adequate notice to enable them to participate effectively in the proceeding. In addition, the board, after filing, may require the applicant to serve notice of the application or copies thereof or both upon such other persons, and file proof thereof, as the board considers appropriate.

(E) An application for an amendment of a certificate shall be in such form and contain such information as the board prescribes. Notice of such an application shall be given as required in divisions (B) and (C) of this section.

(F) Each application for certificate or an amendment shall be accompanied by the application fee prescribed by board rule. All application fees, supplemental application fees, and other fees collected by the board shall be deposited in the state treasury to the credit of the power siting board fund, which is hereby created. The chairperson shall administer and authorize expenditures from the fund for any of the purposes of this chapter. If the chairperson determines that moneys credited to the fund from an applicant's fee are not sufficient to pay the board's expenses associated with its review of the application, the chairperson shall request the approval of the controlling board to assess a supplemental application fee upon an applicant to pay anticipated additional expenses associated with the board's review of the application or an amendment to an application. If the chairperson finds that an application fee exceeds the amount needed to pay the board's expenses for review of the application, the chairperson shall cause a refund of the excess amount to be issued to the applicant from the fund.

Sec. 4906.07. (A) Upon the receipt of an application complying with section 4906.06 of the Revised Code, the power siting board shall promptly fix a date for a public hearing thereon, not less than sixty nor more than ninety days after such receipt, and shall conclude the proceeding as expeditiously as practicable.

(B) On an application for an amendment of a certificate, the board shall hold a hearing in the same manner as a hearing is held on an application for a certificate if the proposed change in the facility would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of such facility other than as provided in the alternates set forth in the application.

(C) The ~~chairman~~ chairperson of the power siting board shall cause each application filed with the board to be investigated and shall, not less than fifteen days prior to the date any application is set for hearing submit a written report to the board and to the applicant. A copy of such report shall be made available to any person upon request. Such report shall set forth the nature of the investigation, and shall contain recommended findings with regard to division (A) of section 4906.10 of the Revised Code and shall become part of the record and served upon all parties to the proceeding.

Sec. 4906.10. (A) The power siting board shall render a decision upon the record either granting or denying the application as filed, or granting it upon such terms, conditions, or modifications of the construction, operation, or maintenance of the major utility facility as the board considers appropriate. The certificate shall be conditioned upon the facility being in compliance with standards and rules adopted under sections 1501.33, 1501.34, and 4561.32 and Chapters 3704., 3734., and 6111. of the Revised Code. An applicant may withdraw an application if the board grants a certificate on terms, conditions, or modifications other than those proposed by the applicant in the application. The period of initial operation under a certificate shall expire two years after the date on which electric power is first generated by the facility. During the period of initial operation, the facility shall be subject to the enforcement and monitoring powers of the director of environmental protection under Chapters 3704., 3734., and 6111. of the Revised Code and to the emergency provisions under those chapters. If a major utility facility constructed in accordance with the terms and conditions of its certificate is unable to operate in compliance with all applicable requirements of state laws, rules, and standards pertaining to air pollution, the facility may apply to the director of environmental protection for a conditional operating permit under division (G) of section 3704.03 of the Revised Code and the rules adopted thereunder. The operation of a

major utility facility in compliance with a conditional operating permit is not in violation of its certificate. After the expiration of the period of initial operation of a major utility facility, the facility shall be under the jurisdiction of the environmental protection agency and shall comply with all laws, rules, and standards pertaining to air pollution, water pollution, and solid and hazardous waste disposal.

The board shall not grant a certificate for the construction, operation, and maintenance of a major utility facility, either as proposed or as modified by the board, unless it finds and determines all of the following:

(1) The basis of the need for the facility if the facility is an electric transmission line or gas ~~or natural gas transmission line~~ pipeline;

(2) The nature of the probable environmental impact;

(3) That the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations;

(4) In the case of an electric transmission line or generating facility, that the facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and that the facility will serve the interests of electric system economy and reliability;

(5) That the facility will comply with Chapters 3704., 3734., and 6111. of the Revised Code and all rules and standards adopted under those chapters and under sections 1501.33, 1501.34, and 4561.32 of the Revised Code. In determining whether the facility will comply with all rules and standards adopted under section 4561.32 of the Revised Code, the board shall consult with the office of aviation of the division of multi-modal planning and programs of the department of transportation under section 4561.341 of the Revised Code.

(6) That the facility will serve the public interest, convenience, and necessity;

(7) In addition to the provisions contained in divisions (A)(1) to (6) of this section and rules adopted under those divisions, what its impact will be on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929. of the Revised Code that is located within the site and alternative site of the proposed major utility facility. Rules adopted to evaluate impact under division (A)(7) of this section shall not require the compilation, creation, submission, or production of any information, document, or other data pertaining to land not located within the site and alternative site.

(8) That the facility incorporates maximum feasible water conservation

practices as determined by the board, considering available technology and the nature and economics of the various alternatives.

(B) If the board determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon that modification, provided that the municipal corporations and counties, and persons residing therein, affected by the modification shall have been given reasonable notice thereof.

(C) A copy of the decision and any opinion issued therewith shall be served upon each party.

Sec. 4906.20. (A) No person shall commence to construct an economically significant wind farm in this state without first having obtained a certificate from the power siting board. An economically significant wind farm with respect to which such a certificate is required shall be constructed, operated, and maintained in conformity with that certificate and any terms, conditions, and modifications it contains. A certificate shall be issued only pursuant to this section. The certificate may be transferred, subject to the approval of the board, to a person that agrees to comply with those terms, conditions, and modifications.

(B) The board shall adopt rules governing the certifying of economically significant wind farms under this section. Initial rules shall be adopted within one hundred twenty days after ~~this section's effective date~~ June 24, 2008.

(1) The rules shall provide for an application process for certifying economically significant wind farms that is identical to the extent practicable to the process applicable to certifying major utility facilities under sections 4906.06, 4906.07, 4906.08, 4906.09, 4906.10, 4906.11, and 4906.12 of the Revised Code and shall prescribe a reasonable schedule of application filing fees structured in the manner of the schedule of filing fees required for major utility facilities.

(2) Additionally, the rules shall prescribe reasonable regulations regarding any wind turbines and associated facilities of an economically significant wind farm, including, but not limited to, their location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement and including erosion control, aesthetics, recreational land use, wildlife protection, interconnection with power lines and with regional transmission organizations, independent transmission system operators, or similar organizations, ice throw, sound and noise levels, blade shear, shadow flicker, decommissioning, and necessary cooperation for site visits and enforcement investigations. The rules also shall prescribe a minimum setback for a wind turbine of an economically significant wind farm. That

minimum shall be equal to a horizontal distance, from the turbine's base to the property line of the wind farm property, equal to one and one-tenth times the total height of the turbine structure as measured from its base to the tip of its highest blade and be at least seven hundred fifty feet in horizontal distance from the tip of the turbine's nearest blade at ninety degrees to the exterior of the nearest, habitable, residential structure, if any, located on adjacent property at the time of the certification application. The setback shall apply in all cases except those in which all owners of property adjacent to the wind farm property waive application of the setback to that property pursuant to a procedure the board shall establish by rule and except in which, in a particular case, the board determines that a setback greater than the minimum is necessary.

~~(C) The board shall approve, or may modify and approve, an application for economically significant wind farm certification if it finds that the construction, operation, and maintenance of the economically significant wind farm will comply with the rules adopted under division (B) of this section. The certificate shall be conditioned upon the economically significant wind farm complying with rules adopted under section 4561.32 of the Revised Code.~~

Sec. 4928.01. (A) As used in this chapter:

(1) "Ancillary service" means any function necessary to the provision of electric transmission or distribution service to a retail customer and includes, but is not limited to, scheduling, system control, and dispatch services; reactive supply from generation resources and voltage control service; reactive supply from transmission resources service; regulation service; frequency response service; energy imbalance service; operating reserve-spinning reserve service; operating reserve-supplemental reserve service; load following; back-up supply service; real-power loss replacement service; dynamic scheduling; system black start capability; and network stability service.

(2) "Billing and collection agent" means a fully independent agent, not affiliated with or otherwise controlled by an electric utility, electric services company, electric cooperative, or governmental aggregator subject to certification under section 4928.08 of the Revised Code, to the extent that the agent is under contract with such utility, company, cooperative, or aggregator solely to provide billing and collection for retail electric service on behalf of the utility company, cooperative, or aggregator.

(3) "Certified territory" means the certified territory established for an electric supplier under sections 4933.81 to 4933.90 of the Revised Code.

(4) "Competitive retail electric service" means a component of retail

electric service that is competitive as provided under division (B) of this section.

(5) "Electric cooperative" means a not-for-profit electric light company that both is or has been financed in whole or in part under the "Rural Electrification Act of 1936," 49 Stat. 1363, 7 U.S.C. 901, and owns or operates facilities in this state to generate, transmit, or distribute electricity, or a not-for-profit successor of such company.

(6) "Electric distribution utility" means an electric utility that supplies at least retail electric distribution service.

(7) "Electric light company" has the same meaning as in section 4905.03 of the Revised Code and includes an electric services company, but excludes any self-generator to the extent that it consumes electricity it so produces, sells that electricity for resale, or obtains electricity from a generating facility it hosts on its premises.

(8) "Electric load center" has the same meaning as in section 4933.81 of the Revised Code.

(9) "Electric services company" means an electric light company that is engaged on a for-profit or not-for-profit basis in the business of supplying or arranging for the supply of only a competitive retail electric service in this state. "Electric services company" includes a power marketer, power broker, aggregator, or independent power producer but excludes an electric cooperative, municipal electric utility, governmental aggregator, or billing and collection agent.

(10) "Electric supplier" has the same meaning as in section 4933.81 of the Revised Code.

(11) "Electric utility" means an electric light company that has a certified territory and is engaged on a for-profit basis either in the business of supplying a noncompetitive retail electric service in this state or in the businesses of supplying both a noncompetitive and a competitive retail electric service in this state. "Electric utility" excludes a municipal electric utility or a billing and collection agent.

(12) "Firm electric service" means electric service other than nonfirm electric service.

(13) "Governmental aggregator" means a legislative authority of a municipal corporation, a board of township trustees, or a board of county commissioners acting as an aggregator for the provision of a competitive retail electric service under authority conferred under section 4928.20 of the Revised Code.

(14) A person acts "knowingly," regardless of the person's purpose, when the person is aware that the person's conduct will probably cause a



certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist.

(15) "Level of funding for low-income customer energy efficiency programs provided through electric utility rates" means the level of funds specifically included in an electric utility's rates on October 5, 1999, pursuant to an order of the public utilities commission issued under Chapter 4905. or 4909. of the Revised Code and in effect on October 4, 1999, for the purpose of improving the energy efficiency of housing for the utility's low-income customers. The term excludes the level of any such funds committed to a specific nonprofit organization or organizations pursuant to a stipulation or contract.

(16) "Low-income customer assistance programs" means the percentage of income payment plan program, the home energy assistance program, the home weatherization assistance program, and the targeted energy efficiency and weatherization program.

(17) "Market development period" for an electric utility means the period of time beginning on the starting date of competitive retail electric service and ending on the applicable date for that utility as specified in section 4928.40 of the Revised Code, irrespective of whether the utility applies to receive transition revenues under this chapter.

(18) "Market power" means the ability to impose on customers a sustained price for a product or service above the price that would prevail in a competitive market.

(19) "Mercantile customer" means a commercial or industrial customer if the electricity consumed is for nonresidential use and the customer consumes more than seven hundred thousand kilowatt hours per year or is part of a national account involving multiple facilities in one or more states.

(20) "Municipal electric utility" means a municipal corporation that owns or operates facilities to generate, transmit, or distribute electricity.

(21) "Noncompetitive retail electric service" means a component of retail electric service that is noncompetitive as provided under division (B) of this section.

(22) "Nonfirm electric service" means electric service provided pursuant to a schedule filed under section 4905.30 of the Revised Code or pursuant to an arrangement under section 4905.31 of the Revised Code, which schedule or arrangement includes conditions that may require the customer to curtail or interrupt electric usage during nonemergency circumstances upon notification by an electric utility.

(23) "Percentage of income payment plan arrears" means funds eligible

for collection through the percentage of income payment plan rider, but uncollected as of July 1, 2000.

(24) "Person" has the same meaning as in section 1.59 of the Revised Code.

(25) "Advanced energy project" means any technologies, products, activities, or management practices or strategies that facilitate the generation or use of electricity or energy and that reduce or support the reduction of energy consumption or support the production of clean, renewable energy for industrial, distribution, commercial, institutional, governmental, research, not-for-profit, or residential energy users, including, but not limited to, advanced energy resources and renewable energy resources. "Advanced energy project" also includes any project described in division (A), (B), or (C) of section 4928.621 of the Revised Code.

(26) "Regulatory assets" means the unamortized net regulatory assets that are capitalized or deferred on the regulatory books of the electric utility, pursuant to an order or practice of the public utilities commission or pursuant to generally accepted accounting principles as a result of a prior commission rate-making decision, and that would otherwise have been charged to expense as incurred or would not have been capitalized or otherwise deferred for future regulatory consideration absent commission action. "Regulatory assets" includes, but is not limited to, all deferred demand-side management costs; all deferred percentage of income payment plan arrears; post-in-service capitalized charges and assets recognized in connection with statement of financial accounting standards no. 109 (receivables from customers for income taxes); future nuclear decommissioning costs and fuel disposal costs as those costs have been determined by the commission in the electric utility's most recent rate or accounting application proceeding addressing such costs; the undepreciated costs of safety and radiation control equipment on nuclear generating plants owned or leased by an electric utility; and fuel costs currently deferred pursuant to the terms of one or more settlement agreements approved by the commission.

(27) "Retail electric service" means any service involved in supplying or arranging for the supply of electricity to ultimate consumers in this state, from the point of generation to the point of consumption. For the purposes of this chapter, retail electric service includes one or more of the following "service components": generation service, aggregation service, power marketing service, power brokerage service, transmission service, distribution service, ancillary service, metering service, and billing and collection service.

(28) "Starting date of competitive retail electric service" means January 1, 2001.

(29) "Customer-generator" means a user of a net metering system.

(30) "Net metering" means measuring the difference in an applicable billing period between the electricity supplied by an electric service provider and the electricity generated by a customer-generator that is fed back to the electric service provider.

(31) "Net metering system" means a facility for the production of electrical energy that does all of the following:

(a) Uses as its fuel either solar, wind, biomass, landfill gas, or hydropower, or uses a microturbine or a fuel cell;

(b) Is located on a customer-generator's premises;

(c) Operates in parallel with the electric utility's transmission and distribution facilities;

(d) Is intended primarily to offset part or all of the customer-generator's requirements for electricity.

(32) "Self-generator" means an entity in this state that owns or hosts on its premises an electric generation facility that produces electricity primarily for the owner's consumption and that may provide any such excess electricity to another entity, whether the facility is installed or operated by the owner or by an agent under a contract.

(33) "Rate plan" means the standard service offer in effect on the effective date of the amendment of this section by S.B. 221 of the 127th general assembly, July 31, 2008.

(34) "Advanced energy resource" means any of the following:

(a) Any method or any modification or replacement of any property, process, device, structure, or equipment that increases the generation output of an electric generating facility to the extent such efficiency is achieved without additional carbon dioxide emissions by that facility;

(b) Any distributed generation system consisting of customer cogeneration technology;

(c) Clean coal technology that includes a carbon-based product that is chemically altered before combustion to demonstrate a reduction, as expressed as ash, in emissions of nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or sulfur trioxide in accordance with the American society of testing and materials standard D1757A or a reduction of metal oxide emissions in accordance with standard D5142 of that society, or clean coal technology that includes the design capability to control or prevent the emission of carbon dioxide, which design capability the commission shall adopt by rule and shall be based on economically feasible best available

technology or, in the absence of a determined best available technology, shall be of the highest level of economically feasible design capability for which there exists generally accepted scientific opinion;

(d) Advanced nuclear energy technology consisting of generation III technology as defined by the nuclear regulatory commission; other, later technology; or significant improvements to existing facilities;

(e) Any fuel cell used in the generation of electricity, including, but not limited to, a proton exchange membrane fuel cell, phosphoric acid fuel cell, molten carbonate fuel cell, or solid oxide fuel cell;

(f) Advanced solid waste or construction and demolition debris conversion technology, including, but not limited to, advanced stoker technology, and advanced fluidized bed gasification technology, that results in measurable greenhouse gas emissions reductions as calculated pursuant to the United States environmental protection agency's waste reduction model (WARM);

(g) Demand-side management and any energy efficiency improvement;

(h) Any new, retrofitted, refueled, or repowered generating facility located in Ohio, including a simple or combined-cycle natural gas generating facility or a generating facility that uses biomass, coal, modular nuclear, or any other fuel as its input;

(i) Any uprated capacity of an existing electric generating facility if the uprated capacity results from the deployment of advanced technology.

"Advanced energy resource" does not include a waste energy recovery system that is, or has been, included in an energy efficiency program of an electric distribution utility pursuant to requirements under section 4928.66 of the Revised Code.

(35) "Air contaminant source" has the same meaning as in section 3704.01 of the Revised Code.

(36) "Cogeneration technology" means technology that produces electricity and useful thermal output simultaneously.

(37)(a) "Renewable energy resource" means ~~solar~~ any of the following:

(i) Solar photovoltaic or solar thermal energy, ~~wind;~~

(ii) Wind energy, ~~power;~~

(iii) Power produced by a hydroelectric facility, ~~geothermal;~~

(iv) Geothermal energy, ~~fuel;~~

(v) Fuel derived from solid wastes, as defined in section 3734.01 of the Revised Code, through fractionation, biological decomposition, or other process that does not principally involve combustion, ~~biomass;~~

(vi) Biomass energy, ~~energy;~~

(vii) Energy produced by cogeneration technology that is placed into

service on or before December 31, 2015, and for which more than ninety per cent of the total annual energy input is from combustion of a waste or byproduct gas from an air contaminant source in this state, which source has been in operation since on or before January 1, 1985, provided that the cogeneration technology is a part of a facility located in a county having a population of more than three hundred sixty-five thousand but less than three hundred seventy thousand according to the most recent federal decennial census, ~~biologically;~~

~~(viii) Biologically derived methane gas, or energy;~~

~~(ix) Energy derived from nontreated by-products of the pulping process or wood manufacturing process, including bark, wood chips, sawdust, and lignin in spent pulping liquors. "Renewable~~

~~"Renewable energy resource" includes, but is not limited to, any fuel cell used in the generation of electricity, including, but not limited to, a proton exchange membrane fuel cell, phosphoric acid fuel cell, molten carbonate fuel cell, or solid oxide fuel cell; wind turbine located in the state's territorial waters of Lake Erie; methane gas emitted from an abandoned coal mine; waste energy recovery system placed into service or retrofitted on or after the effective date of the amendment of this section by S.B. 315 of the 129th general assembly, except that a waste energy recovery system described in division (A)(38)(b) of this section may be included only if it was placed into service between January 1, 2002, and December 31, 2004; storage facility that will promote the better utilization of a renewable energy resource ~~that primarily generates off peak;~~ or distributed generation system used by a customer to generate electricity from any such energy. ~~As~~~~

~~"Renewable energy resource" does not include a waste energy recovery system that is, or was, on or after January 1, 2012, included in an energy efficiency program of an electric distribution utility pursuant to requirements under section 4928.66 of the Revised Code.~~

~~(b) As used in division (A)(37) of this section, "hydroelectric facility" means a hydroelectric generating facility that is located at a dam on a river, or on any water discharged to a river, that is within or bordering this state or within or bordering an adjoining state and meets all of the following standards:~~

~~(a)(i) The facility provides for river flows that are not detrimental for fish, wildlife, and water quality, including seasonal flow fluctuations as defined by the applicable licensing agency for the facility.~~

~~(b)(ii) The facility demonstrates that it complies with the water quality standards of this state, which compliance may consist of certification under Section 401 of the "Clean Water Act of 1977," 91 Stat. 1598, 1599, 33~~

U.S.C. 1341, and demonstrates that it has not contributed to a finding by this state that the river has impaired water quality under Section 303(d) of the "Clean Water Act of 1977," 114 Stat. 870, 33 U.S.C. 1313.

~~(e)~~(iii) The facility complies with mandatory prescriptions regarding fish passage as required by the federal energy regulatory commission license issued for the project, regarding fish protection for riverine, anadromous, and catadromous fish.

~~(d)~~(iv) The facility complies with the recommendations of the Ohio environmental protection agency and with the terms of its federal energy regulatory commission license regarding watershed protection, mitigation, or enhancement, to the extent of each agency's respective jurisdiction over the facility.

~~(e)~~(v) The facility complies with provisions of the "Endangered Species Act of 1973," 87 Stat. 884, 16 U.S.C. 1531 to 1544, as amended.

~~(f)~~(vi) The facility does not harm cultural resources of the area. This can be shown through compliance with the terms of its federal energy regulatory commission license or, if the facility is not regulated by that commission, through development of a plan approved by the Ohio historic preservation office, to the extent it has jurisdiction over the facility.

~~(g)~~(vii) The facility complies with the terms of its federal energy regulatory commission license or exemption that are related to recreational access, accommodation, and facilities or, if the facility is not regulated by that commission, the facility complies with similar requirements as are recommended by resource agencies, to the extent they have jurisdiction over the facility; and the facility provides access to water to the public without fee or charge.

~~(h)~~(viii) The facility is not recommended for removal by any federal agency or agency of any state, to the extent the particular agency has jurisdiction over the facility.

(38) "Waste energy recovery system" means either of the following:

(a) A facility that generates electricity through the conversion of energy from either of the following:

(i) Exhaust heat from engines or manufacturing, industrial, commercial, or institutional sites, except for exhaust heat from a facility whose primary purpose is the generation of electricity;

(ii) Reduction of pressure in gas pipelines before gas is distributed through the pipeline, provided that the conversion of energy to electricity is achieved without using additional fossil fuels.

(b) A facility at a state institution of higher education as defined in section 3345.011 of the Revised Code that recovers waste heat from

electricity-producing engines or combustion turbines and that simultaneously uses the recovered heat to produce steam, provided that the facility was placed into service between January 1, 2002, and December 31, 2004.

(39) "Smart grid" means capital improvements to an electric distribution utility's distribution infrastructure that improve reliability, efficiency, resiliency, or reduce energy demand or use, including, but not limited to, advanced metering and automation of system functions.

(40) "Combined heat and power system" means the coproduction of electricity and useful thermal energy from the same fuel source designed to achieve thermal-efficiency levels of at least sixty per cent, with at least twenty per cent of the system's total useful energy in the form of thermal energy.

(B) For the purposes of this chapter, a retail electric service component shall be deemed a competitive retail electric service if the service component is competitive pursuant to a declaration by a provision of the Revised Code or pursuant to an order of the public utilities commission authorized under division (A) of section 4928.04 of the Revised Code. Otherwise, the service component shall be deemed a noncompetitive retail electric service.

Sec. 4928.02. It is the policy of this state to do the following throughout this state:

(A) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service;

(B) Ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs;

(C) Ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities;

(D) Encourage innovation and market access for cost-effective supply- and demand-side retail electric service including, but not limited to, demand-side management, time-differentiated pricing, waste energy recovery systems, smart grid programs, and implementation of advanced metering infrastructure;

(E) Encourage cost-effective and efficient access to information regarding the operation of the transmission and distribution systems of electric utilities in order to promote both effective customer choice of retail electric service and the development of performance standards and targets

for service quality for all consumers, including annual achievement reports written in plain language;

(F) Ensure that an electric utility's transmission and distribution systems are available to a customer-generator or owner of distributed generation, so that the customer-generator or owner can market and deliver the electricity it produces;

(G) Recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment;

(H) Ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates;

(I) Ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power;

(J) Provide coherent, transparent means of giving appropriate incentives to technologies that can adapt successfully to potential environmental mandates;

(K) Encourage implementation of distributed generation across customer classes through regular review and updating of administrative rules governing critical issues such as, but not limited to, interconnection standards, standby charges, and net metering;

(L) Protect at-risk populations, including, but not limited to, when considering the implementation of any new advanced energy or renewable energy resource;

(M) Encourage the education of small business owners in this state regarding the use of, and encourage the use of, energy efficiency programs and alternative energy resources in their businesses;

(N) Facilitate the state's effectiveness in the global economy.

In carrying out this policy, the commission shall consider rules as they apply to the costs of electric distribution infrastructure, including, but not limited to, line extensions, for the purpose of development in this state.

Sec. 4928.111. The public utilities commission shall consult with electric distribution utilities to review the distribution infrastructure in this state and shall consult with regional transmission organizations and entities that own or control transmission facilities to review the transmission infrastructure in this state.

Sec. 4928.2314. (A) The transfer and ownership of phase-in-recovery



property and the imposition, charging, collection, and receipt of phase-in-recovery revenues under sections 4928.231 to 4928.2317 of the Revised Code are exempt from all taxes and similar charges imposed by the state or any county, municipal corporation, school district, local authority, or other subdivision.

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

(C) Nothing in this section prohibits the levy of the tax imposed under Chapter 5751. of the Revised Code.

Sec. 4928.61. (A) There is hereby established in the state treasury the advanced energy fund, into which shall be deposited all advanced energy revenues remitted to the director of development under division (B) of this section, for the exclusive purposes of funding the advanced energy program created under section 4928.62 of the Revised Code and paying the program's administrative costs. Interest on the fund shall be credited to the fund.

(B) Advanced energy revenues shall include all of the following:

(1) Revenues remitted to the director after collection by each electric distribution utility in this state of a temporary rider on retail electric distribution service rates as such rates are determined by the public utilities commission pursuant to this chapter. The rider shall be a uniform amount statewide, determined by the director of development, after consultation with the public benefits advisory board created by section 4928.58 of the Revised Code. The amount shall be determined by dividing an aggregate revenue target for a given year as determined by the director, after consultation with the advisory board, by the number of customers of electric distribution utilities in this state in the prior year. Such aggregate revenue target shall not exceed more than fifteen million dollars in any year through 2005 and shall not exceed more than five million dollars in any year after 2005. The rider shall be imposed beginning on the effective date of the amendment of this section by Sub. H.B. 251 of the 126th general assembly, January 4, 2007, and shall terminate at the end of ten years following the

starting date of competitive retail electric service or until the advanced energy fund, including interest, reaches one hundred million dollars, whichever is first.

(2) Revenues from payments, repayments, and collections under the advanced energy program and from program income;

(3) Revenues remitted to the director after collection by a municipal electric utility or electric cooperative in this state upon the utility's or cooperative's decision to participate in the advanced energy fund;

(4) Revenues from renewable energy compliance payments as provided under division (C)(2) of section 4928.64 of the Revised Code;

(5) Revenue from forfeitures under division (C) of section 4928.66 of the Revised Code;

(6) Funds transferred pursuant to division (B) of Section 512.10 of S.B. 315 of the 129th general assembly;

(7) Interest earnings on the advanced energy fund.

(C)(1) Each electric distribution utility in this state shall remit to the director on a quarterly basis the revenues described in divisions (B)(1) and (2) of this section. Such remittances shall occur within thirty days after the end of each calendar quarter.

(2) Each participating electric cooperative and participating municipal electric utility shall remit to the director on a quarterly basis the revenues described in division (B)(3) of this section. Such remittances shall occur within thirty days after the end of each calendar quarter. For the purpose of division (B)(3) of this section, the participation of an electric cooperative or municipal electric utility in the energy efficiency revolving loan program as it existed immediately prior to the effective date of the amendment of this section by Sub. H.B. 251 of the 126th general assembly, January 4, 2007, does not constitute a decision to participate in the advanced energy fund under this section as so amended.

(3) All remittances under divisions (C)(1) and (2) of this section shall continue only until the end of ten years following the starting date of competitive retail electric service or until the advanced energy fund, including interest, reaches one hundred million dollars, whichever is first.

(D) Any moneys collected in rates for non-low-income customer energy efficiency programs, as of October 5, 1999, and not contributed to the energy efficiency revolving loan fund authorized under this section prior to the effective date of its amendment by Sub. H.B. 251 of the 126th general assembly, January 4, 2007, shall be used to continue to fund cost-effective, residential energy efficiency programs, be contributed into the universal service fund as a supplement to that required under section 4928.53 of the

Revised Code, or be returned to ratepayers in the form of a rate reduction at the option of the affected electric distribution utility.

Sec. 4928.62. (A) There is hereby created the advanced energy program, which shall be administered by the director of development. Under the program, the director may authorize the use of moneys in the advanced energy fund for financial, technical, and related assistance for advanced energy projects in this state or for economic development assistance, in furtherance of the purposes set forth in section 4928.63 of the Revised Code.

~~To~~

(1) To the extent feasible given approved applications for assistance, the assistance shall be distributed among the certified territories of electric distribution utilities and participating electric cooperatives, and among the service areas of participating municipal electric utilities, in amounts proportionate to the remittances of each utility and cooperative under divisions (B)(1) and (3) of section 4928.61 of the Revised Code.

(2) The funds described in division (B)(6) of section 4928.61 of the Revised Code shall not be subject to the territorial requirements of division (A)(1) of this section.

(3) The director shall not authorize financial assistance for an advanced energy project under the program unless the director first determines that the project will create new jobs or preserve existing jobs in this state or use innovative technologies or materials.

(B) In carrying out sections 4928.61 to 4928.63 of the Revised Code, the director may do all of the following to further the public interest in advanced energy projects and economic development:

(1) Award grants, contracts, loans, loan participation agreements, linked deposits, and energy production incentives;

(2) Acquire in the name of the director any property of any kind or character in accordance with this section, by purchase, purchase at foreclosure, or exchange, on such terms and in such manner as the director considers proper;

(3) Make and enter into all contracts and agreements necessary or incidental to the performance of the director's duties and the exercise of the director's powers under sections 4928.61 to 4928.63 of the Revised Code;

(4) Employ or enter into contracts with financial consultants, marketing consultants, consulting engineers, architects, managers, construction experts, attorneys, technical monitors, energy evaluators, or other employees or agents as the director considers necessary, and fix their compensation;

(5) Adopt rules prescribing the application procedures for financial assistance under the advanced energy program; the fees, charges, interest

rates, payment schedules, local match requirements, and other terms and conditions of any grants, contracts, loans, loan participation agreements, linked deposits, and energy production incentives; criteria pertaining to the eligibility of participating lending institutions; and any other matters necessary for the implementation of the program;

(6) Do all things necessary and appropriate for the operation of the program.

(C) The department of development may hold ownership to any unclaimed energy efficiency and renewable energy emission allowances provided for in Chapter 3745-14 of the Administrative Code or otherwise, that result from advanced energy projects that receive funding from the advanced energy fund, and it may use the allowances to further the public interest in advanced energy projects or for economic development.

(D) Financial statements, financial data, and trade secrets submitted to or received by the director from an applicant or recipient of financial assistance under sections 4928.61 to 4928.63 of the Revised Code, or any information taken from those statements, data, or trade secrets for any purpose, are not public records for the purpose of section 149.43 of the Revised Code.

(E) Nothing in the amendments of sections 4928.61, 4928.62, and 4928.63 of the Revised Code by Sub. H.B. 251 of the 126th general assembly shall affect any pending or effected assistance, pending or effected purchases or exchanges of property made, or pending or effected contracts or agreements entered into pursuant to division (A) or (B) of this section as the section existed prior to the effective date of those amendments, January 4, 2007, or shall affect the exemption provided under division (C) of this section as the section existed prior to that effective date.

(F) Any assistance a school district receives for an advanced energy project, including a geothermal heating, ventilating, and air conditioning system, shall be in addition to any assistance provided under Chapter 3318. of the Revised Code and shall not be included as part of the district or state portion of the basic project cost under that chapter.

Sec. 4928.64. (A)(1) As used in sections 4928.64 and 4928.65 of the Revised Code, "alternative energy resource" means an advanced energy resource or renewable energy resource, as defined in section 4928.01 of the Revised Code that has a placed-in-service date of January 1, 1998, or after; a renewable energy resource created on or after January 1, 1998, by the modification or retrofit of any facility placed in service prior to January 1, 1998; or a mercantile customer-sited advanced energy resource or renewable energy resource, whether new or existing, that the mercantile customer

commits for integration into the electric distribution utility's demand-response, energy efficiency, or peak demand reduction programs as provided under division (A)(2)(c) of section 4928.66 of the Revised Code, including, but not limited to, any of the following:

(a) A resource that has the effect of improving the relationship between real and reactive power;

(b) A resource that makes efficient use of waste heat or other thermal capabilities owned or controlled by a mercantile customer;

(c) Storage technology that allows a mercantile customer more flexibility to modify its demand or load and usage characteristics;

(d) Electric generation equipment owned or controlled by a mercantile customer that uses an advanced energy resource or renewable energy resource;

(e) Any advanced energy resource or renewable energy resource of the mercantile customer that can be utilized effectively as part of any advanced energy resource plan of an electric distribution utility and would otherwise qualify as an alternative energy resource if it were utilized directly by an electric distribution utility.

(2) For the purpose of this section and as it considers appropriate, the public utilities commission may classify any new technology as such an advanced energy resource or a renewable energy resource.

(B) By 2025 and thereafter, an electric distribution utility shall provide from alternative energy resources, including, at its discretion, alternative energy resources obtained pursuant to an electricity supply contract, a portion of the electricity supply required for its standard service offer under section 4928.141 of the Revised Code, and an electric services company shall provide a portion of its electricity supply for retail consumers in this state from alternative energy resources, including, at its discretion, alternative energy resources obtained pursuant to an electricity supply contract. That portion shall equal twenty-five per cent of the total number of kilowatt hours of electricity sold by the subject utility or company to any and all retail electric consumers whose electric load centers are served by that utility and are located within the utility's certified territory or, in the case of an electric services company, are served by the company and are located within this state. However, nothing in this section precludes a utility or company from providing a greater percentage. The baseline for a utility's or company's compliance with the alternative energy resource requirements of this section shall be the average of such total kilowatt hours it sold in the preceding three calendar years, except that the commission may reduce a utility's or company's baseline to adjust for new economic growth in the

utility's certified territory or, in the case of an electric services company, in the company's service area in this state.

Of the alternative energy resources implemented by the subject utility or company by 2025 and thereafter:

(1) Half may be generated from advanced energy resources;

(2) At least half shall be generated from renewable energy resources, including one-half per cent from solar energy resources, in accordance with the following benchmarks:

By end of year	Renewable energy resources	Solar energy resources
2009	0.25%	0.004%
2010	0.50%	0.010%
2011	1%	0.030%
2012	1.5%	0.060%
2013	2%	0.090%
2014	2.5%	0.12%
2015	3.5%	0.15%
2016	4.5%	0.18%
2017	5.5%	0.22%
2018	6.5%	0.26%
2019	7.5%	0.3%
2020	8.5%	0.34%
2021	9.5%	0.38%
2022	10.5%	0.42%
2023	11.5%	0.46%
2024 and each calendar year thereafter	12.5%	0.5%

(3) At least one-half of the renewable energy resources implemented by the utility or company shall be met through facilities located in this state; the remainder shall be met with resources that can be shown to be deliverable into this state.

(C)(1) The commission annually shall review an electric distribution utility's or electric services company's compliance with the most recent applicable benchmark under division (B)(2) of this section and, in the course of that review, shall identify any undercompliance or noncompliance of the utility or company that it determines is weather-related, related to equipment or resource shortages for advanced energy or renewable energy resources as applicable, or is otherwise outside the utility's or company's control.

(2) Subject to the cost cap provisions of division (C)(3) of this section, if the commission determines, after notice and opportunity for hearing, and

based upon its findings in that review regarding avoidable undercompliance or noncompliance, but subject to division (C)(4) of this section, that the utility or company has failed to comply with any such benchmark, the commission shall impose a renewable energy compliance payment on the utility or company.

(a) The compliance payment pertaining to the solar energy resource benchmarks under division (B)(2) of this section shall be an amount per megawatt hour of undercompliance or noncompliance in the period under review, starting at four hundred fifty dollars for 2009, four hundred dollars for 2010 and 2011, and similarly reduced every two years thereafter through 2024 by fifty dollars, to a minimum of fifty dollars.

(b) The compliance payment pertaining to the renewable energy resource benchmarks under division (B)(2) of this section shall equal the number of additional renewable energy credits that the electric distribution utility or electric services company would have needed to comply with the applicable benchmark in the period under review times an amount that shall begin at forty-five dollars and shall be adjusted annually by the commission to reflect any change in the consumer price index as defined in section 101.27 of the Revised Code, but shall not be less than forty-five dollars.

(c) The compliance payment shall not be passed through by the electric distribution utility or electric services company to consumers. The compliance payment shall be remitted to the commission, for deposit to the credit of the advanced energy fund created under section 4928.61 of the Revised Code. Payment of the compliance payment shall be subject to such collection and enforcement procedures as apply to the collection of a forfeiture under sections 4905.55 to 4905.60 and 4905.64 of the Revised Code.

(3) An electric distribution utility or an electric services company need not comply with a benchmark under division (B)(1) or (2) of this section to the extent that its reasonably expected cost of that compliance exceeds its reasonably expected cost of otherwise producing or acquiring the requisite electricity by three per cent or more. The cost of compliance shall be calculated as though any exemption from taxes and assessments had not been granted under section 5727.75 of the Revised Code.

(4)(a) An electric distribution utility or electric services company may request the commission to make a force majeure determination pursuant to this division regarding all or part of the utility's or company's compliance with any minimum benchmark under division (B)(2) of this section during the period of review occurring pursuant to division (C)(2) of this section. The commission may require the electric distribution utility or electric

services company to make solicitations for renewable energy resource credits as part of its default service before the utility's or company's request of force majeure under this division can be made.

(b) Within ninety days after the filing of a request by an electric distribution utility or electric services company under division (C)(4)(a) of this section, the commission shall determine if renewable energy resources are reasonably available in the marketplace in sufficient quantities for the utility or company to comply with the subject minimum benchmark during the review period. In making this determination, the commission shall consider whether the electric distribution utility or electric services company has made a good faith effort to acquire sufficient renewable energy or, as applicable, solar energy resources to so comply, including, but not limited to, by banking or seeking renewable energy resource credits or by seeking the resources through long-term contracts. Additionally, the commission shall consider the availability of renewable energy or solar energy resources in this state and other jurisdictions in the PJM interconnection regional transmission organization or its successor and the midwest system operator or its successor.

(c) If, pursuant to division (C)(4)(b) of this section, the commission determines that renewable energy or solar energy resources are not reasonably available to permit the electric distribution utility or electric services company to comply, during the period of review, with the subject minimum benchmark prescribed under division (B)(2) of this section, the commission shall modify that compliance obligation of the utility or company as it determines appropriate to accommodate the finding. Commission modification shall not automatically reduce the obligation for the electric distribution utility's or electric services company's compliance in subsequent years. If it modifies the electric distribution utility or electric services company obligation under division (C)(4)(c) of this section, the commission may require the utility or company, if sufficient renewable energy resource credits exist in the marketplace, to acquire additional renewable energy resource credits in subsequent years equivalent to the utility's or company's modified obligation under division (C)(4)(c) of this section.

(5) The commission shall establish a process to provide for at least an annual review of the alternative energy resource market in this state and in the service territories of the regional transmission organizations that manage transmission systems located in this state. The commission shall use the results of this study to identify any needed changes to the amount of the renewable energy compliance payment specified under divisions (C)(2)(a)



and (b) of this section. Specifically, the commission may increase the amount to ensure that payment of compliance payments is not used to achieve compliance with this section in lieu of actually acquiring or realizing energy derived from renewable energy resources. However, if the commission finds that the amount of the compliance payment should be otherwise changed, the commission shall present this finding to the general assembly for legislative enactment.

(D)(1) The commission annually shall submit to the general assembly in accordance with section 101.68 of the Revised Code a report describing ~~the~~ all of the following:

(a) The compliance of electric distribution utilities and electric services companies with division (B) of this section ~~and any:~~

(b) The average annual cost of renewable energy credits purchased by utilities and companies for the year covered in the report;

(c) Any strategy for utility and company compliance or for encouraging the use of alternative energy resources in supplying this state's electricity needs in a manner that considers available technology, costs, job creation, and economic impacts. ~~The~~

The commission shall begin providing the information described in division (D)(1)(b) of this section in each report submitted after the effective date of the amendment of this section by S.B. 315 of the 129th general assembly. The commission shall allow and consider public comments on the report prior to its submission to the general assembly. Nothing in the report shall be binding on any person, including any utility or company for the purpose of its compliance with any benchmark under division (B) of this section, or the enforcement of that provision under division (C) of this section.

(2) The governor, in consultation with the commission chairperson, shall appoint an alternative energy advisory committee. The committee shall examine available technology for and related timetables, goals, and costs of the alternative energy resource requirements under division (B) of this section and shall submit to the commission a semiannual report of its recommendations.

(E) All costs incurred by an electric distribution utility in complying with the requirements of this section shall be bypassable by any consumer that has exercised choice of supplier under section 4928.03 of the Revised Code.

Sec. 4928.66. (A)(1)(a) Beginning in 2009, an electric distribution utility shall implement energy efficiency programs that achieve energy savings equivalent to at least three-tenths of one per cent of the total, annual

average, and normalized kilowatt-hour sales of the electric distribution utility during the preceding three calendar years to customers in this state. An energy efficiency program may include a combined heat and power system placed into service or retrofitted on or after the effective date of the amendment of this section by S.B. 315 of the 129th general assembly, or a waste energy recovery system placed into service or retrofitted on or after the same date, except that a waste energy recovery system described in division (A)(38)(b) of section 4928.01 of the Revised Code may be included only if it was placed into service between January 1, 2002, and December 31, 2004. For a waste energy recovery or combined heat and power system, the savings shall be as estimated by the public utilities commission. The savings requirement, using such a three-year average, shall increase to an additional five-tenths of one per cent in 2010, seven-tenths of one per cent in 2011, eight-tenths of one per cent in 2012, nine-tenths of one per cent in 2013, one per cent from 2014 to 2018, and two per cent each year thereafter, achieving a cumulative, annual energy savings in excess of twenty-two per cent by the end of 2025. For purposes of a waste energy recovery or combined heat and power system, an electric distribution utility shall not apply more than the total annual percentage of the electric distribution utility's industrial-customer load, relative to the electric distribution utility's total load, to the annual energy savings requirement.

(b) Beginning in 2009, an electric distribution utility shall implement peak demand reduction programs designed to achieve a one per cent reduction in peak demand in 2009 and an additional seventy-five hundredths of one per cent reduction each year through 2018. In 2018, the standing committees in the house of representatives and the senate primarily dealing with energy issues shall make recommendations to the general assembly regarding future peak demand reduction targets.

(2) For the purposes of divisions (A)(1)(a) and (b) of this section:

(a) The baseline for energy savings under division (A)(1)(a) of this section shall be the average of the total kilowatt hours the electric distribution utility sold in the preceding three calendar years, and the baseline for a peak demand reduction under division (A)(1)(b) of this section shall be the average peak demand on the utility in the preceding three calendar years, except that the commission may reduce either baseline to adjust for new economic growth in the utility's certified territory.

(b) The commission may amend the benchmarks set forth in division (A)(1)(a) or (b) of this section if, after application by the electric distribution utility, the commission determines that the amendment is necessary because the utility cannot reasonably achieve the benchmarks due to regulatory,

economic, or technological reasons beyond its reasonable control.

(c) Compliance with divisions (A)(1)(a) and (b) of this section shall be measured by including the effects of all demand-response programs for mercantile customers of the subject electric distribution utility, all waste energy recovery systems and all combined heat and power systems, and all such mercantile customer-sited energy efficiency, including waste energy recovery and combined heat and power, and peak demand reduction programs, adjusted upward by the appropriate loss factors. Any mechanism designed to recover the cost of energy efficiency, including waste energy recovery and combined heat and power, and peak demand reduction programs under divisions (A)(1)(a) and (b) of this section may exempt mercantile customers that commit their demand-response or other customer-sited capabilities, whether existing or new, for integration into the electric distribution utility's demand-response, energy efficiency, including waste energy recovery and combined heat and power, or peak demand reduction programs, if the commission determines that that exemption reasonably encourages such customers to commit those capabilities to those programs. If a mercantile customer makes such existing or new demand-response, energy efficiency, including waste energy recovery and combined heat and power, or peak demand reduction capability available to an electric distribution utility pursuant to division (A)(2)(c) of this section, the electric utility's baseline under division (A)(2)(a) of this section shall be adjusted to exclude the effects of all such demand-response, energy efficiency, including waste energy recovery and combined heat and power, or peak demand reduction programs that may have existed during the period used to establish the baseline. The baseline also shall be normalized for changes in numbers of customers, sales, weather, peak demand, and other appropriate factors so that the compliance measurement is not unduly influenced by factors outside the control of the electric distribution utility.

(d) Programs implemented by a utility may include demand-response programs, smart grid investment programs, provided that such programs are demonstrated to be cost-beneficial, customer-sited programs, including waste energy recovery and combined heat and power systems, and transmission and distribution infrastructure improvements that reduce line losses. Division (A)(2)(c) of this section shall be applied to include facilitating efforts by a mercantile customer or group of those customers to offer customer-sited demand-response, energy efficiency, including waste energy recovery and combined heat and power, or peak demand reduction capabilities to the electric distribution utility as part of a reasonable arrangement submitted to the commission pursuant to section 4905.31 of the

Revised Code.

(e) No programs or improvements described in division (A)(2)(d) of this section shall conflict with any statewide building code adopted by the board of building standards.

(B) In accordance with rules it shall adopt, the public utilities commission shall produce and docket at the commission an annual report containing the results of its verification of the annual levels of energy efficiency and of peak demand reductions achieved by each electric distribution utility pursuant to division (A) of this section. A copy of the report shall be provided to the consumers' counsel.

(C) If the commission determines, after notice and opportunity for hearing and based upon its report under division (B) of this section, that an electric distribution utility has failed to comply with an energy efficiency or peak demand reduction requirement of division (A) of this section, the commission shall assess a forfeiture on the utility as provided under sections 4905.55 to 4905.60 and 4905.64 of the Revised Code, either in the amount, per day per undercompliance or noncompliance, relative to the period of the report, equal to that prescribed for noncompliances under section 4905.54 of the Revised Code, or in an amount equal to the then existing market value of one renewable energy credit per megawatt hour of undercompliance or noncompliance. Revenue from any forfeiture assessed under this division shall be deposited to the credit of the advanced energy fund created under section 4928.61 of the Revised Code.

(D) The commission may establish rules regarding the content of an application by an electric distribution utility for commission approval of a revenue decoupling mechanism under this division. Such an application shall not be considered an application to increase rates and may be included as part of a proposal to establish, continue, or expand energy efficiency or conservation programs. The commission by order may approve an application under this division if it determines both that the revenue decoupling mechanism provides for the recovery of revenue that otherwise may be ~~foregone~~ forgone by the utility as a result of or in connection with the implementation by the electric distribution utility of any energy efficiency or energy conservation programs and reasonably aligns the interests of the utility and of its customers in favor of those programs.

(E) The commission additionally shall adopt rules that require an electric distribution utility to provide a customer upon request with two years' consumption data in an accessible form.

Sec. 4928.70. (A) The public utilities commission may periodically review any green pricing program offered in this state as part of competitive

retail electric service. At the conclusion of a review, the commission may make recommendations to improve or expand the program subject of the review.

(B) The commission shall adopt rules necessary to carry out purposes of this section.

Sec. 4928.71. The public utilities commission shall study whether increased energy efficiency, demand response, generation, and transmission provide increased opportunities for customer choice. The commission shall include in the study an evaluation of emerging technologies. The commission shall commence the study not later than eighteen months after the effective date of this section. At the conclusion of the study, the commission shall prepare a report of its findings and make the report available on its web site.

Sec. 4928.72. The public utilities commission may, in cooperation with the department of transportation, work with other states to develop a multi-state study on the development of compressed natural gas infrastructures for transportation.

Sec. 4935.04. (A) As used in this chapter:

(1) "Major utility facility" means:

(a) An electric transmission line and associated facilities of a design capacity of one hundred twenty-five kilovolts or more;

(b) A gas or natural gas transmission line and associated facilities designed for, or capable of, transporting gas or natural gas at pressures in excess of one hundred twenty-five pounds per square inch.

"Major utility facility" does not include electric, gas, or natural gas distributing lines and gas or natural gas gathering lines and associated facilities as defined by the public utilities commission; facilities owned or operated by industrial firms, persons, or institutions that produce or transmit gas or natural gas, or electricity primarily for their own use or as a byproduct of their operations; gas or natural gas transmission lines and associated facilities over which an agency of the United States has certificate jurisdiction; facilities owned or operated by a person furnishing gas or natural gas directly to fifteen thousand or fewer customers within this state.

(2) "Person" has the meaning set forth in section 4906.01 of the Revised Code.

(B) Each person owning or operating a gas or natural gas transmission line and associated facilities within this state over which an agency of the United States has certificate jurisdiction shall furnish to the commission a copy of the energy information filed by the person with that agency of the

United States.

(C) Each person owning or operating a major utility facility within this state, or furnishing gas, natural gas, or electricity directly to more than fifteen thousand customers within this state shall furnish a report to the commission for its review. The report shall be furnished annually, except that for a gas or natural gas company the report shall be furnished every three years. The report shall be termed the long-term forecast report and shall contain:

(1) A year-by-year, ten-year forecast of annual energy demand, peak load, reserves, and a general description of the resource ~~plan~~ planning projections to meet demand;

(2) A range of projected loads during the period;

(3) A description of major utility facilities planned to be added or taken out of service in the next ten years, including, to the extent the information is available, prospective sites for transmission line locations;

(4) For gas and natural gas, a projection of anticipated supply, supply prices, and sources of supply over the forecast period;

(5) A description of proposed changes in the transmission system planned for the next five years;

(6) A month-by-month forecast of both energy demand and peak load for electric utilities, and gas sendout for gas and natural gas utilities, for the next two years. The report shall describe the major utility facilities that, in the judgment of such person, will be required to supply system demands during the forecast period. The report from a gas or natural gas utility shall cover the ten- and five-year periods next succeeding the date of the report, and the report from an electric utility shall cover the twenty-, ten-, and five-year periods next succeeding the date of the report. Each report shall be made available to the public and furnished upon request to municipal corporations and governmental agencies charged with the duty of protecting the environment or of planning land use. The report shall be in such form and shall contain such information as may be prescribed by the commission.

Each person not owning or operating a major utility facility within this state and serving fifteen thousand or fewer gas or natural gas, or electric customers within this state shall furnish such information as the commission requires.

(D) The commission shall:

(1) Review and comment on the reports filed under division (C) of this section, and make the information contained in the reports readily available to the public and other interested government agencies;

(2) Compile and publish each year the general locations of proposed and

existing transmission line routes within its jurisdiction as identified in the reports filed under division (C) of this section, identifying the general location of such sites and routes and the approximate year when construction is expected to commence, and to make such information readily available to the public, to each newspaper of daily or weekly circulation within the area affected by the proposed site and route, and to interested federal, state, and local agencies;

(3) Hold a public hearing upon the showing of good cause to the commission by an interested party.

If a hearing is held, the commission shall fix a time for the hearing, which shall be not later than ninety days after the report is filed, and publish notice of the date, time of day, and location of the hearing in a newspaper of general circulation in each county in which the person furnishing the report has or intends to locate a major utility facility and will provide service during the period covered by the report. The notice shall be published not less than fifteen nor more than thirty days before the hearing and shall state the matters to be considered.

(4) Require such information from persons subject to its jurisdiction as necessary to assist in the conduct of hearings and any investigation or studies it may undertake;

(5) Conduct any studies or investigations that are necessary or appropriate to carry out its responsibilities under this section.

(E)(1) The scope of the hearing held under division (D)(3) of this section shall be limited to issues relating to forecasting. The power siting board, the office of consumers' counsel, and all other persons having an interest in the proceedings shall be afforded the opportunity to be heard and to be represented by counsel. The commission may adjourn the hearing from time to time.

(2) The hearing shall include, but not be limited to, a review of:

(a) The projected loads and energy requirements for each year of the period;

(b) The estimated installed capacity and supplies to meet the projected load requirements.

(F) Based upon the report furnished pursuant to division (C) of this section and the hearing record, the commission, within ninety days from the close of the record in the hearing, shall determine if:

(1) All information relating to current activities, facilities agreements, and published energy policies of the state has been completely and accurately represented;

(2) The load requirements are based on substantially accurate historical

information and adequate methodology;

(3) The forecasting methods consider the relationships between price and energy consumption;

(4) The report identifies and projects reductions in energy demands due to energy conservation measures in the industrial, commercial, residential, transportation, and energy production sectors in the service area;

(5) Utility company forecasts of loads and resources are reasonable in relation to population growth estimates made by state and federal agencies, transportation, and economic development plans and forecasts, and make recommendations where possible for necessary and reasonable alternatives to meet forecasted electric power demand;

(6) The report considers plans for expansion of the regional power grid and the planned facilities of other utilities in the state;

(7) All assumptions made in the forecast are reasonable and adequately documented.

(G) The commission shall adopt rules under section 111.15 of the Revised Code to establish criteria for evaluating the long-term forecasts of needs for gas and electric transmission service, to conduct hearings held under this section, to establish reasonable fees to defray the direct cost of the hearings and the review process, and such other rules as are necessary and convenient to implement this section.

(H) The hearing record produced under this section and the determinations of the commission shall be introduced into evidence and shall be considered in determining the basis of need for power siting board deliberations under division (A)(1) of section 4906.10 of the Revised Code. The hearing record produced under this section shall be introduced into evidence and shall be considered by the ~~public utilities~~ commission in its initiation of programs, examinations, and findings under section 4905.70 of the Revised Code, and shall be considered in the commission's determinations with respect to the establishment of just and reasonable rates under section 4909.15 of the Revised Code and financing utility facilities and authorizing issuance of all securities under sections 4905.40, 4905.401, 4905.41, and 4905.42 of the Revised Code. The forecast findings also shall serve as the basis for all other energy planning and development activities of the state government where electric and gas data are required.

(I)(1) No court other than the supreme court shall have power to review, suspend, or delay any determination made by the commission under this section, or enjoin, restrain, or interfere with the commission in the performance of official duties. A writ of mandamus shall not be issued against the commission by any court other than the supreme court.



(2) A final determination made by the commission shall be reversed, vacated, or modified by the supreme court on appeal, if, upon consideration of the record, such court is of the opinion that such determination was unreasonable or unlawful.

The proceeding to obtain such reversal, vacation, or modification shall be by notice of appeal, filed with the commission by any party to the proceeding before it, against the commission, setting forth the determination appealed from and errors complained of. The notice of appeal shall be served, unless waived, upon the commission by leaving a copy at the office of the chairperson of the commission at Columbus. The court may permit an interested party to intervene by cross-appeal.

(3) No proceeding to reverse, vacate, or modify a determination of the commission is commenced unless the notice of appeal is filed within sixty days after the date of the determination.

Sec. 5703.21. (A) Except as provided in divisions (B) and (C) of this section, no agent of the department of taxation, except in the agent's report to the department or when called on to testify in any court or proceeding, shall divulge any information acquired by the agent as to the transactions, property, or business of any person while acting or claiming to act under orders of the department. Whoever violates this provision shall thereafter be disqualified from acting as an officer or employee or in any other capacity under appointment or employment of the department.

(B)(1) For purposes of an audit pursuant to section 117.15 of the Revised Code, or an audit of the department pursuant to Chapter 117. of the Revised Code, or an audit, pursuant to that chapter, the objective of which is to express an opinion on a financial report or statement prepared or issued pursuant to division (A)(7) or (9) of section 126.21 of the Revised Code, the officers and employees of the auditor of state charged with conducting the audit shall have access to and the right to examine any state tax returns and state tax return information in the possession of the department to the extent that the access and examination are necessary for purposes of the audit. Any information acquired as the result of that access and examination shall not be divulged for any purpose other than as required for the audit or unless the officers and employees are required to testify in a court or proceeding under compulsion of legal process. Whoever violates this provision shall thereafter be disqualified from acting as an officer or employee or in any other capacity under appointment or employment of the auditor of state.

(2) For purposes of an internal audit pursuant to section 126.45 of the Revised Code, the officers and employees of the office of internal auditing in the office of budget and management charged with conducting the

internal audit shall have access to and the right to examine any state tax returns and state tax return information in the possession of the department to the extent that the access and examination are necessary for purposes of the internal audit. Any information acquired as the result of that access and examination shall not be divulged for any purpose other than as required for the internal audit or unless the officers and employees are required to testify in a court or proceeding under compulsion of legal process. Whoever violates this provision shall thereafter be disqualified from acting as an officer or employee or in any other capacity under appointment or employment of the office of internal auditing.

(3) As provided by section 6103(d)(2) of the Internal Revenue Code, any federal tax returns or federal tax information that the department has acquired from the internal revenue service, through federal and state statutory authority, may be disclosed to the auditor of state or the office of internal auditing solely for purposes of an audit of the department.

(4) For purposes of Chapter 3739. of the Revised Code, an agent of the department of taxation may share information with the division of state fire marshal that the agent finds during the course of an investigation.

(C) Division (A) of this section does not prohibit any of the following:

(1) Divulging information contained in applications, complaints, and related documents filed with the department under section 5715.27 of the Revised Code or in applications filed with the department under section 5715.39 of the Revised Code;

(2) Providing information to the office of child support within the department of job and family services pursuant to section 3125.43 of the Revised Code;

(3) Disclosing to the board of motor vehicle collision repair registration any information in the possession of the department that is necessary for the board to verify the existence of an applicant's valid vendor's license and current state tax identification number under section 4775.07 of the Revised Code;

(4) Providing information to the administrator of workers' compensation pursuant to sections 4123.271 and 4123.591 of the Revised Code;

(5) Providing to the attorney general information the department obtains under division (J) of section 1346.01 of the Revised Code;

(6) Permitting properly authorized officers, employees, or agents of a municipal corporation from inspecting reports or information pursuant to rules adopted under section 5745.16 of the Revised Code;

(7) Providing information regarding the name, account number, or business address of a holder of a vendor's license issued pursuant to section

5739.17 of the Revised Code, a holder of a direct payment permit issued pursuant to section 5739.031 of the Revised Code, or a seller having a use tax account maintained pursuant to section 5741.17 of the Revised Code, or information regarding the active or inactive status of a vendor's license, direct payment permit, or seller's use tax account;

(8) Releasing invoices or invoice information furnished under section 4301.433 of the Revised Code pursuant to that section;

(9) Providing to a county auditor notices or documents concerning or affecting the taxable value of property in the county auditor's county. Unless authorized by law to disclose documents so provided, the county auditor shall not disclose such documents;

(10) Providing to a county auditor sales or use tax return or audit information under section 333.06 of the Revised Code;

(11) Subject to section 4301.441 of the Revised Code, disclosing to the appropriate state agency information in the possession of the department of taxation that is necessary to verify a permit holder's gallonage or noncompliance with taxes levied under Chapter 4301. or 4305. of the Revised Code;

(12) Disclosing to the department of natural resources information in the possession of the department that is necessary to verify the taxpayer's compliance with division (A)(1), ~~(5), (6)~~, (8), or (9) of section 5749.02 of the Revised Code and information received pursuant to section 1509.50 of the Revised Code concerning the amount due under that section;

(13) Disclosing to the department of job and family services, industrial commission, and bureau of workers' compensation information in the possession of the department of taxation solely for the purpose of identifying employers that misclassify employees as independent contractors or that fail to properly report and pay employer tax liabilities. The department of taxation shall disclose only such information that is necessary to verify employer compliance with law administered by those agencies.

(14) Disclosing to the Ohio casino control commission information in the possession of the department of taxation that is necessary to verify a taxpayer's compliance with section 5753.02 of the Revised Code and sections related thereto.

Sec. 5751.01. As used in this chapter:

(A) "Person" means, but is not limited to, individuals, combinations of individuals of any form, receivers, assignees, trustees in bankruptcy, firms, companies, joint-stock companies, business trusts, estates, partnerships, limited liability partnerships, limited liability companies, associations, joint ventures, clubs, societies, for-profit corporations, S corporations, qualified

subchapter S subsidiaries, qualified subchapter S trusts, trusts, entities that are disregarded for federal income tax purposes, and any other entities.

(B) "Consolidated elected taxpayer" means a group of two or more persons treated as a single taxpayer for purposes of this chapter as the result of an election made under section 5751.011 of the Revised Code.

(C) "Combined taxpayer" means a group of two or more persons treated as a single taxpayer for purposes of this chapter under section 5751.012 of the Revised Code.

(D) "Taxpayer" means any person, or any group of persons in the case of a consolidated elected taxpayer or combined taxpayer treated as one taxpayer, required to register or pay tax under this chapter. "Taxpayer" does not include excluded persons.

(E) "Excluded person" means any of the following:

(1) Any person with not more than one hundred fifty thousand dollars of taxable gross receipts during the calendar year. Division (E)(1) of this section does not apply to a person that is a member of a consolidated elected taxpayer;

(2) A public utility that paid the excise tax imposed by section 5727.24 or 5727.30 of the Revised Code based on one or more measurement periods that include the entire tax period under this chapter, except that a public utility that is a combined company is a taxpayer with regard to the following gross receipts:

(a) Taxable gross receipts directly attributed to a public utility activity, but not directly attributed to an activity that is subject to the excise tax imposed by section 5727.24 or 5727.30 of the Revised Code;

(b) Taxable gross receipts that cannot be directly attributed to any activity, multiplied by a fraction whose numerator is the taxable gross receipts described in division (E)(2)(a) of this section and whose denominator is the total taxable gross receipts that can be directly attributed to any activity;

(c) Except for any differences resulting from the use of an accrual basis method of accounting for purposes of determining gross receipts under this chapter and the use of the cash basis method of accounting for purposes of determining gross receipts under section 5727.24 of the Revised Code, the gross receipts directly attributed to the activity of a natural gas company shall be determined in a manner consistent with division (D) of section 5727.03 of the Revised Code.

As used in division (E)(2) of this section, "combined company" and "public utility" have the same meanings as in section 5727.01 of the Revised Code.

(3) A financial institution, as defined in section 5725.01 of the Revised Code, that paid the corporation franchise tax charged by division (D) of section 5733.06 of the Revised Code based on one or more taxable years that include the entire tax period under this chapter;

(4) A dealer in intangibles, as defined in section 5725.01 of the Revised Code, that paid the dealer in intangibles tax levied by division (D) of section 5707.03 of the Revised Code based on one or more measurement periods that include the entire tax period under this chapter;

(5) A financial holding company as defined in the "Bank Holding Company Act," 12 U.S.C. 1841(p);

(6) A bank holding company as defined in the "Bank Holding Company Act," 12 U.S.C. 1841(a);

(7) A savings and loan holding company as defined in the "Home Owners Loan Act," 12 U.S.C. 1467a(a)(1)(D) that is engaging only in activities or investments permissible for a financial holding company under 12 U.S.C. 1843(k);

(8) A person directly or indirectly owned by one or more financial institutions, financial holding companies, bank holding companies, or savings and loan holding companies described in division (E)(3), (5), (6), or (7) of this section that is engaged in activities permissible for a financial holding company under 12 U.S.C. 1843(k), except that any such person held pursuant to merchant banking authority under 12 U.S.C. 1843(k)(4)(H) or 12 U.S.C. 1843(k)(4)(I) is not an excluded person, or a person directly or indirectly owned by one or more insurance companies described in division (E)(9) of this section that is authorized to do the business of insurance in this state.

For the purposes of division (E)(8) of this section, a person owns another person under the following circumstances:

(a) In the case of corporations issuing capital stock, one corporation owns another corporation if it owns fifty per cent or more of the other corporation's capital stock with current voting rights;

(b) In the case of a limited liability company, one person owns the company if that person's membership interest, as defined in section 1705.01 of the Revised Code, is fifty per cent or more of the combined membership interests of all persons owning such interests in the company;

(c) In the case of a partnership, trust, or other unincorporated business organization other than a limited liability company, one person owns the organization if, under the articles of organization or other instrument governing the affairs of the organization, that person has a beneficial interest in the organization's profits, surpluses, losses, or distributions of fifty per

cent or more of the combined beneficial interests of all persons having such an interest in the organization;

(d) In the case of multiple ownership, the ownership interests of more than one person may be aggregated to meet the fifty per cent ownership tests in this division only when each such owner is described in division (E)(3), (5), (6), or (7) of this section and is engaged in activities permissible for a financial holding company under 12 U.S.C. 1843(k) or is a person directly or indirectly owned by one or more insurance companies described in division (E)(9) of this section that is authorized to do the business of insurance in this state.

(9) A domestic insurance company or foreign insurance company, as defined in section 5725.01 of the Revised Code, that paid the insurance company premiums tax imposed by section 5725.18 or Chapter 5729. of the Revised Code based on one or more measurement periods that include the entire tax period under this chapter;

(10) A person that solely facilitates or services one or more securitizations or similar transactions for any person described in division (E)(3), (5), (6), (7), (8), or (9) of this section, or a person that solely facilitates or services one or more securitizations of phase-in-recovery property pursuant to a final financing order as those terms are defined in section 4928.23 of the Revised Code. For purposes of this division, "securitization" means transferring one or more assets to one or more persons and then issuing securities backed by the right to receive payment from the asset or assets so transferred.

(11) Except as otherwise provided in this division, a pre-income tax trust as defined in division (FF)(4) of section 5747.01 of the Revised Code and any pass-through entity of which such pre-income tax trust owns or controls, directly, indirectly, or constructively through related interests, more than five per cent of the ownership or equity interests. If the pre-income tax trust has made a qualifying pre-income tax trust election under division (FF)(3) of section 5747.01 of the Revised Code, then the trust and the pass-through entities of which it owns or controls, directly, indirectly, or constructively through related interests, more than five per cent of the ownership or equity interests, shall not be excluded persons for purposes of the tax imposed under section 5751.02 of the Revised Code.

(12) Nonprofit organizations or the state and its agencies, instrumentalities, or political subdivisions.

(F) Except as otherwise provided in divisions (F)(2), (3), and (4) of this section, "gross receipts" means the total amount realized by a person, without deduction for the cost of goods sold or other expenses incurred, that

contributes to the production of gross income of the person, including the fair market value of any property and any services received, and any debt transferred or forgiven as consideration.

(1) The following are examples of gross receipts:

(a) Amounts realized from the sale, exchange, or other disposition of the taxpayer's property to or with another;

(b) Amounts realized from the taxpayer's performance of services for another;

(c) Amounts realized from another's use or possession of the taxpayer's property or capital;

(d) Any combination of the foregoing amounts.

(2) "Gross receipts" excludes the following amounts:

(a) Interest income except interest on credit sales;

(b) Dividends and distributions from corporations, and distributive or proportionate shares of receipts and income from a pass-through entity as defined under section 5733.04 of the Revised Code;

(c) Receipts from the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code, without regard to the length of time the person held the asset. Notwithstanding section 1221 of the Internal Revenue Code, receipts from hedging transactions also are excluded to the extent the transactions are entered into primarily to protect a financial position, such as managing the risk of exposure to (i) foreign currency fluctuations that affect assets, liabilities, profits, losses, equity, or investments in foreign operations; (ii) interest rate fluctuations; or (iii) commodity price fluctuations. As used in division (F)(2)(c) of this section, "hedging transaction" has the same meaning as used in section 1221 of the Internal Revenue Code and also includes transactions accorded hedge accounting treatment under statement of financial accounting standards number 133 of the financial accounting standards board. For the purposes of division (F)(2)(c) of this section, the actual transfer of title of real or tangible personal property to another entity is not a hedging transaction.

(d) Proceeds received attributable to the repayment, maturity, or redemption of the principal of a loan, bond, mutual fund, certificate of deposit, or marketable instrument;

(e) The principal amount received under a repurchase agreement or on account of any transaction properly characterized as a loan to the person;

(f) Contributions received by a trust, plan, or other arrangement, any of which is described in section 501(a) of the Internal Revenue Code, or to which Title 26, Subtitle A, Chapter 1, Subchapter (D) of the Internal

Revenue Code applies;

(g) Compensation, whether current or deferred, and whether in cash or in kind, received or to be received by an employee, former employee, or the employee's legal successor for services rendered to or for an employer, including reimbursements received by or for an individual for medical or education expenses, health insurance premiums, or employee expenses, or on account of a dependent care spending account, legal services plan, any cafeteria plan described in section 125 of the Internal Revenue Code, or any similar employee reimbursement;

(h) Proceeds received from the issuance of the taxpayer's own stock, options, warrants, puts, or calls, or from the sale of the taxpayer's treasury stock;

(i) Proceeds received on the account of payments from insurance policies, except those proceeds received for the loss of business revenue;

(j) Gifts or charitable contributions received; membership dues received by trade, professional, homeowners', or condominium associations; and payments received for educational courses, meetings, meals, or similar payments to a trade, professional, or other similar association; and fundraising receipts received by any person when any excess receipts are donated or used exclusively for charitable purposes;

(k) Damages received as the result of litigation in excess of amounts that, if received without litigation, would be gross receipts;

(l) Property, money, and other amounts received or acquired by an agent on behalf of another in excess of the agent's commission, fee, or other remuneration;

(m) Tax refunds, other tax benefit recoveries, and reimbursements for the tax imposed under this chapter made by entities that are part of the same combined taxpayer or consolidated elected taxpayer group, and reimbursements made by entities that are not members of a combined taxpayer or consolidated elected taxpayer group that are required to be made for economic parity among multiple owners of an entity whose tax obligation under this chapter is required to be reported and paid entirely by one owner, pursuant to the requirements of sections 5751.011 and 5751.012 of the Revised Code;

(n) Pension reversions;

(o) Contributions to capital;

(p) Sales or use taxes collected as a vendor or an out-of-state seller on behalf of the taxing jurisdiction from a consumer or other taxes the taxpayer is required by law to collect directly from a purchaser and remit to a local, state, or federal tax authority;



(q) In the case of receipts from the sale of cigarettes or tobacco products by a wholesale dealer, retail dealer, distributor, manufacturer, or seller, all as defined in section 5743.01 of the Revised Code, an amount equal to the federal and state excise taxes paid by any person on or for such cigarettes or tobacco products under subtitle E of the Internal Revenue Code or Chapter 5743. of the Revised Code;

(r) In the case of receipts from the sale of motor fuel by a licensed motor fuel dealer, licensed retail dealer, or licensed permissive motor fuel dealer, all as defined in section 5735.01 of the Revised Code, an amount equal to federal and state excise taxes paid by any person on such motor fuel under section 4081 of the Internal Revenue Code or Chapter 5735. of the Revised Code;

(s) In the case of receipts from the sale of beer or intoxicating liquor, as defined in section 4301.01 of the Revised Code, by a person holding a permit issued under Chapter 4301. or 4303. of the Revised Code, an amount equal to federal and state excise taxes paid by any person on or for such beer or intoxicating liquor under subtitle E of the Internal Revenue Code or Chapter 4301. or 4305. of the Revised Code;

(t) Receipts realized by a new motor vehicle dealer or used motor vehicle dealer, as defined in section 4517.01 of the Revised Code, from the sale or other transfer of a motor vehicle, as defined in that section, to another motor vehicle dealer for the purpose of resale by the transferee motor vehicle dealer, but only if the sale or other transfer was based upon the transferee's need to meet a specific customer's preference for a motor vehicle;

(u) Receipts from a financial institution described in division (E)(3) of this section for services provided to the financial institution in connection with the issuance, processing, servicing, and management of loans or credit accounts, if such financial institution and the recipient of such receipts have at least fifty per cent of their ownership interests owned or controlled, directly or constructively through related interests, by common owners;

(v) Receipts realized from administering anti-neoplastic drugs and other cancer chemotherapy, biologicals, therapeutic agents, and supportive drugs in a physician's office to patients with cancer;

(w) Funds received or used by a mortgage broker that is not a dealer in intangibles, other than fees or other consideration, pursuant to a table-funding mortgage loan or warehouse-lending mortgage loan. Terms used in division (F)(2)(w) of this section have the same meanings as in section 1322.01 of the Revised Code, except "mortgage broker" means a person assisting a buyer in obtaining a mortgage loan for a fee or other

consideration paid by the buyer or a lender, or a person engaged in table-funding or warehouse-lending mortgage loans that are first lien mortgage loans.

(x) Property, money, and other amounts received by a professional employer organization, as defined in section 4125.01 of the Revised Code, from a client employer, as defined in that section, in excess of the administrative fee charged by the professional employer organization to the client employer;

(y) In the case of amounts retained as commissions by a permit holder under Chapter 3769. of the Revised Code, an amount equal to the amounts specified under that chapter that must be paid to or collected by the tax commissioner as a tax and the amounts specified under that chapter to be used as purse money;

(z) Qualifying distribution center receipts.

(i) For purposes of division (F)(2)(z) of this section:

(I) "Qualifying distribution center receipts" means receipts of a supplier from qualified property that is delivered to a qualified distribution center, multiplied by a quantity that equals one minus the Ohio delivery percentage.

(II) "Qualified property" means tangible personal property delivered to a qualified distribution center that is shipped to that qualified distribution center solely for further shipping by the qualified distribution center to another location in this state or elsewhere. "Further shipping" includes storing and repackaging such property into smaller or larger bundles, so long as such property is not subject to further manufacturing or processing.

(III) "Qualified distribution center" means a warehouse or other similar facility in this state that, for the qualifying year, is operated by a person that is not part of a combined taxpayer group and that has a qualifying certificate. However, all warehouses or other similar facilities that are operated by persons in the same taxpayer group and that are located within one mile of each other shall be treated as one qualified distribution center.

(IV) "Qualifying year" means the calendar year to which the qualifying certificate applies.

(V) "Qualifying period" means the period of the first day of July of the second year preceding the qualifying year through the thirtieth day of June of the year preceding the qualifying year.

(VI) "Qualifying certificate" means the certificate issued by the tax commissioner after the operator of a distribution center files an annual application with the commissioner. The application and annual fee shall be filed and paid for each qualified distribution center on or before the first day of September before the qualifying year or within forty-five days after the

distribution center opens, whichever is later.

The applicant must substantiate to the commissioner's satisfaction that, for the qualifying period, all persons operating the distribution center have more than fifty per cent of the cost of the qualified property shipped to a location such that it would be situated outside this state under the provisions of division (E) of section 5751.033 of the Revised Code. The applicant must also substantiate that the distribution center cumulatively had costs from its suppliers equal to or exceeding five hundred million dollars during the qualifying period. (For purposes of division (F)(2)(z)(i)(VI) of this section, "supplier" excludes any person that is part of the consolidated elected taxpayer group, if applicable, of the operator of the qualified distribution center.) The commissioner may require the applicant to have an independent certified public accountant certify that the calculation of the minimum thresholds required for a qualified distribution center by the operator of a distribution center has been made in accordance with generally accepted accounting principles. The commissioner shall issue or deny the issuance of a certificate within sixty days after the receipt of the application. A denial is subject to appeal under section 5717.02 of the Revised Code. If the operator files a timely appeal under section 5717.02 of the Revised Code, the operator shall be granted a qualifying certificate, provided that the operator is liable for any tax, interest, or penalty upon amounts claimed as qualifying distribution center receipts, other than those receipts exempt under division (C)(1) of section 5751.011 of the Revised Code, that would have otherwise not been owed by its suppliers if the qualifying certificate was valid.

(VII) "Ohio delivery percentage" means the proportion of the total property delivered to a destination inside Ohio from the qualified distribution center during the qualifying period compared with total deliveries from such distribution center everywhere during the qualifying period.

(ii) If the distribution center is new and was not open for the entire qualifying period, the operator of the distribution center may request that the commissioner grant a qualifying certificate. If the certificate is granted and it is later determined that more than fifty per cent of the qualified property during that year was not shipped to a location such that it would be situated outside of this state under the provisions of division (E) of section 5751.033 of the Revised Code or if it is later determined that the person that operates the distribution center had average monthly costs from its suppliers of less than forty million dollars during that year, then the operator of the distribution center shall be liable for any tax, interest, or penalty upon amounts claimed as qualifying distribution center receipts, other than those

receipts exempt under division (C)(1) of section 5751.011 of the Revised Code, that would have not otherwise been owed by its suppliers during the qualifying year if the qualifying certificate was valid. (For purposes of division (F)(2)(z)(ii) of this section, "supplier" excludes any person that is part of the consolidated elected taxpayer group, if applicable, of the operator of the qualified distribution center.)

(iii) When filing an application for a qualifying certificate under division (F)(2)(z)(i)(VI) of this section, the operator of a qualified distribution center also shall provide documentation, as the commissioner requires, for the commissioner to ascertain the Ohio delivery percentage. The commissioner, upon issuing the qualifying certificate, also shall certify the Ohio delivery percentage. The operator of the qualified distribution center may appeal the commissioner's certification of the Ohio delivery percentage in the same manner as an appeal is taken from the denial of a qualifying certificate under division (F)(2)(z)(i)(VI) of this section.

Within thirty days after all appeals have been exhausted, the operator of the qualified distribution center shall notify the affected suppliers of qualified property that such suppliers are required to file, within sixty days after receiving notice from the operator of the qualified distribution center, amended reports for the impacted calendar quarter or quarters or calendar year, whichever the case may be. Any additional tax liability or tax overpayment shall be subject to interest but shall not be subject to the imposition of any penalty so long as the amended returns are timely filed. The supplier of tangible personal property delivered to the qualified distribution center shall include in its report of taxable gross receipts the receipts from the total sales of property delivered to the qualified distribution center for the calendar quarter or calendar year, whichever the case may be, multiplied by the Ohio delivery percentage for the qualifying year. Nothing in division (F)(2)(z)(iii) of this section shall be construed as imposing liability on the operator of a qualified distribution center for the tax imposed by this chapter arising from any change to the Ohio delivery percentage.

(iv) In the case where the distribution center is new and not open for the entire qualifying period, the operator shall make a good faith estimate of an Ohio delivery percentage for use by suppliers in their reports of taxable gross receipts for the remainder of the qualifying period. The operator of the facility shall disclose to the suppliers that such Ohio delivery percentage is an estimate and is subject to recalculation. By the due date of the next application for a qualifying certificate, the operator shall determine the actual Ohio delivery percentage for the estimated qualifying period and

proceed as provided in division (F)(2)(z)(iii) of this section with respect to the calculation and recalculation of the Ohio delivery percentage. The supplier is required to file, within sixty days after receiving notice from the operator of the qualified distribution center, amended reports for the impacted calendar quarter or quarters or calendar year, whichever the case may be. Any additional tax liability or tax overpayment shall be subject to interest but shall not be subject to the imposition of any penalty so long as the amended returns are timely filed.

(v) Qualifying certificates and Ohio delivery percentages issued by the commissioner shall be open to public inspection and shall be timely published by the commissioner. A supplier relying in good faith on a certificate issued under this division shall not be subject to tax on the qualifying distribution center receipts under division (F)(2)(z) of this section. A person receiving a qualifying certificate is responsible for paying the tax, interest, and penalty upon amounts claimed as qualifying distribution center receipts that would not otherwise have been owed by the supplier if the qualifying certificate were available when it is later determined that the qualifying certificate should not have been issued because the statutory requirements were in fact not met.

(vi) The annual fee for a qualifying certificate shall be one hundred thousand dollars for each qualified distribution center. If a qualifying certificate is not issued, the annual fee is subject to refund after the exhaustion of all appeals provided for in division (F)(2)(z)(i)(VI) of this section. The fee imposed under this division may be assessed in the same manner as the tax imposed under this chapter. The first one hundred thousand dollars of the annual application fees collected each calendar year shall be credited to the commercial activity tax administrative fund. The remainder of the annual application fees collected shall be distributed in the same manner required under section 5751.20 of the Revised Code.

(vii) The tax commissioner may require that adequate security be posted by the operator of the distribution center on appeal when the commissioner disagrees that the applicant has met the minimum thresholds for a qualified distribution center as set forth in divisions (F)(2)(z)(i)(VI) and (F)(2)(z)(ii) of this section.

(aa) Receipts of an employer from payroll deductions relating to the reimbursement of the employer for advancing moneys to an unrelated third party on an employee's behalf;

(bb) Cash discounts allowed and taken;

(cc) Returns and allowances;

(dd) Bad debts from receipts on the basis of which the tax imposed by

this chapter was paid in a prior quarterly tax payment period. For the purpose of this division, "bad debts" means any debts that have become worthless or uncollectible between the preceding and current quarterly tax payment periods, have been uncollected for at least six months, and that may be claimed as a deduction under section 166 of the Internal Revenue Code and the regulations adopted under that section, or that could be claimed as such if the taxpayer kept its accounts on the accrual basis. "Bad debts" does not include repossessed property, uncollectible amounts on property that remains in the possession of the taxpayer until the full purchase price is paid, or expenses in attempting to collect any account receivable or for any portion of the debt recovered;

(ee) Any amount realized from the sale of an account receivable to the extent the receipts from the underlying transaction giving rise to the account receivable were included in the gross receipts of the taxpayer;

(ff) Any receipts directly attributed to providing public services pursuant to sections 126.60 to 126.605 of the Revised Code, or any receipts directly attributed to a transfer agreement or to the enterprise transferred under that agreement under section 4313.02 of the Revised Code.

(gg) Any receipts for which the tax imposed by this chapter is prohibited by the Constitution or laws of the United States or the Constitution of Ohio.

(hh)(i) As used in this division:

(I) "Qualified uranium receipts" means receipts from the sale, exchange, lease, loan, production, processing, or other disposition of uranium within a uranium enrichment zone certified by the tax commissioner under division (F)(2)(hh)(ii) of this section. "Qualified uranium receipts" does not include any receipts with a situs in this state outside a uranium enrichment zone certified by the tax commissioner under division (F)(2)(hh)(ii) of this section.

(II) "Uranium enrichment zone" means all real property that is part of a uranium enrichment facility licensed by the United States nuclear regulatory commission and that was or is owned or controlled by the United States department of energy or its successor.

(ii) Any person that owns, leases, or operates real or tangible personal property constituting or located within a uranium enrichment zone may apply to the tax commissioner to have the uranium enrichment zone certified for the purpose of excluding qualified uranium receipts under division (F)(2)(hh) of this section. The application shall include such information that the tax commissioner prescribes. Within sixty days after receiving the application, the tax commissioner shall certify the zone for that purpose if

the commissioner determines that the property qualifies as a uranium enrichment zone as defined in division (F)(2)(hh) of this section, or, if the tax commissioner determines that the property does not qualify, the commissioner shall deny the application or request additional information from the applicant. If the tax commissioner denies an application, the commissioner shall state the reasons for the denial. The applicant may appeal the denial of an application to the board of tax appeals pursuant to section 5717.02 of the Revised Code. If the applicant files a timely appeal, the tax commissioner shall conditionally certify the applicant's property. The conditional certification shall expire when all of the applicant's appeals are exhausted. Until final resolution of the appeal, the applicant shall retain the applicant's records in accordance with section 5751.12 of the Revised Code, notwithstanding any time limit on the preservation of records under that section.

(ii) Amounts realized by licensed motor fuel dealers or licensed permissive motor fuel dealers from the exchange of petroleum products, including motor fuel, between such dealers, provided that delivery of the petroleum products occurs at a refinery, terminal, pipeline, or marine vessel and that the exchanging dealers agree neither dealer shall require monetary compensation from the other for the value of the exchanged petroleum products other than such compensation for differences in product location or grade. Division (F)(2)(ii) of this section does not apply to amounts realized as a result of differences in location or grade of exchanged petroleum products or from handling, lubricity, dye, or other additive injections fees, pipeline security fees, or similar fees. As used in this division, "motor fuel," "licensed motor fuel dealer," "licensed permissive motor fuel dealer," and "terminal" have the same meanings as in section 5735.01 of the Revised Code.

~~(hh)~~(jj) In the case of amounts collected by a licensed casino operator from casino gaming, amounts in excess of the casino operator's gross casino revenue. In this division, "casino operator" and "casino gaming" have the meanings defined in section 3772.01 of the Revised Code, and "gross casino revenue" has the meaning defined in section 5753.01 of the Revised Code.

(3) In the case of a taxpayer when acting as a real estate broker, "gross receipts" includes only the portion of any fee for the service of a real estate broker, or service of a real estate salesperson associated with that broker, that is retained by the broker and not paid to an associated real estate salesperson or another real estate broker. For the purposes of this division, "real estate broker" and "real estate salesperson" have the same meanings as in section 4735.01 of the Revised Code.

(4) A taxpayer's method of accounting for gross receipts for a tax period shall be the same as the taxpayer's method of accounting for federal income tax purposes for the taxpayer's federal taxable year that includes the tax period. If a taxpayer's method of accounting for federal income tax purposes changes, its method of accounting for gross receipts under this chapter shall be changed accordingly.

(G) "Taxable gross receipts" means gross receipts situated to this state under section 5751.033 of the Revised Code.

(H) A person has "substantial nexus with this state" if any of the following applies. The person:

- (1) Owns or uses a part or all of its capital in this state;
- (2) Holds a certificate of compliance with the laws of this state authorizing the person to do business in this state;
- (3) Has bright-line presence in this state;
- (4) Otherwise has nexus with this state to an extent that the person can be required to remit the tax imposed under this chapter under the Constitution of the United States.

(I) A person has "bright-line presence" in this state for a reporting period and for the remaining portion of the calendar year if any of the following applies. The person:

(1) Has at any time during the calendar year property in this state with an aggregate value of at least fifty thousand dollars. For the purpose of division (I)(1) of this section, owned property is valued at original cost and rented property is valued at eight times the net annual rental charge.

(2) Has during the calendar year payroll in this state of at least fifty thousand dollars. Payroll in this state includes all of the following:

(a) Any amount subject to withholding by the person under section 5747.06 of the Revised Code;

(b) Any other amount the person pays as compensation to an individual under the supervision or control of the person for work done in this state; and

(c) Any amount the person pays for services performed in this state on its behalf by another.

(3) Has during the calendar year taxable gross receipts of at least five hundred thousand dollars.

(4) Has at any time during the calendar year within this state at least twenty-five per cent of the person's total property, total payroll, or total gross receipts.

(5) Is domiciled in this state as an individual or for corporate, commercial, or other business purposes.



(J) "Tangible personal property" has the same meaning as in section 5739.01 of the Revised Code.

(K) "Internal Revenue Code" means the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended. Any term used in this chapter that is not otherwise defined has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes unless a different meaning is clearly required. Any reference in this chapter to the Internal Revenue Code includes other laws of the United States relating to federal income taxes.

(L) "Calendar quarter" means a three-month period ending on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September, or the thirty-first day of December.

(M) "Tax period" means the calendar quarter or calendar year on the basis of which a taxpayer is required to pay the tax imposed under this chapter.

(N) "Calendar year taxpayer" means a taxpayer for which the tax period is a calendar year.

(O) "Calendar quarter taxpayer" means a taxpayer for which the tax period is a calendar quarter.

(P) "Agent" means a person authorized by another person to act on its behalf to undertake a transaction for the other, including any of the following:

- (1) A person receiving a fee to sell financial instruments;
- (2) A person retaining only a commission from a transaction with the other proceeds from the transaction being remitted to another person;
- (3) A person issuing licenses and permits under section 1533.13 of the Revised Code;
- (4) A lottery sales agent holding a valid license issued under section 3770.05 of the Revised Code;
- (5) A person acting as an agent of the division of liquor control under section 4301.17 of the Revised Code.

(Q) "Received" includes amounts accrued under the accrual method of accounting.

(R) "Reporting person" means a person in a consolidated elected taxpayer or combined taxpayer group that is designated by that group to legally bind the group for all filings and tax liabilities and to receive all legal notices with respect to matters under this chapter, or, for the purposes of section 5751.04 of the Revised Code, a separate taxpayer that is not a member of such a group.

Sec. 6301.12. (A) The office of workforce development within the

department of job and family services shall comprehensively review the direct and indirect economic impact of businesses engaged in the production of horizontal wells in this state and, based on its findings, prepare an annual Ohio workforce report. The report shall include at least all of the following with respect to the industry:

(1) The total number of jobs created or retained during the previous year;

(2) The total number of Ohio-based contractors that employ skilled construction trades;

(3) The number of employees who are residents of this state;

(4) The total economic impact;

(5) A review of the state's regional workforce development plans required by the "Workforce Investment Act of 1998," 112 Stat. 936, 29 U.S.C.A. 2801, as amended, that outline workforce development efforts including goals and benchmarks toward maximizing job training, education, and job creation opportunities in the state.

(B) The office shall submit its annual Ohio workforce report to the members of the general assembly and post it on the office's internet web site.

SECTION 101.02. That existing sections 122.075, 123.011, 125.836, 131.50, 133.06, 156.01, 156.02, 156.03, 156.04, 303.213, 905.40, 905.461, 1509.01, 1509.02, 1509.03, 1509.04, 1509.06, 1509.07, 1509.10, 1509.11, 1509.22, 1509.221, 1509.222, 1509.223, 1509.23, 1509.28, 1509.33, 1509.99, 1514.01, 1514.02, 1514.021, 1514.03, 1514.05, 3706.27, 4905.03, 4905.90, 4905.91, 4905.95, 4906.01, 4906.03, 4906.05, 4906.06, 4906.07, 4906.10, 4906.20, 4928.01, 4928.02, 4928.2314, 4928.61, 4928.62, 4928.64, 4928.66, 4935.04, 5703.21, and 5751.01 of the Revised Code are hereby repealed.

SECTION 512.10. As soon as possible after the effective date of this section, the Director of Budget and Management shall do both of the following:

(A) Transfer any unexpended and unencumbered amounts received from the repayment of loans made from money in the Advanced Energy Research and Development Taxable Fund (Fund 7004), except for such amounts in the Facilities Establishment Fund (Fund 7037), to the Alternative Fuel Transportation Fund (Fund 5CG0); and

(B) Transfer any unexpended and unencumbered amounts in the

Advanced Energy Research and Development Taxable Fund (Fund 7004) and the Advanced Energy Research and Development Fund (Fund 7005) to the Advanced Energy Fund (Fund 5M50).

SECTION 701.10. The Department of Administrative Services and the Department of Transportation cooperatively shall analyze their respective motor vehicle fleets to determine whether it is beneficial to establish standards for vehicle replacement in order to increase the overall efficiency of the state motor vehicle fleet. Not later than September 1, 2012, the Department of Administrative Services and the Department of Transportation shall produce a joint report with their findings and shall deliver the report to the Speaker of the House of Representatives, the Minority Leader of the House of Representatives, the President of the Senate, the Minority Leader of the Senate, and the Governor.

SECTION 715.10. The injection well disposal fees levied by section 1509.22 of the Revised Code, as amended by this act, are a continuation of the injection well disposal fees levied by section 1509.221 of the Revised Code as that section existed prior to its amendment by this act.

SECTION 715.20. (A) Not later than eighteen months after the effective date of this section, the Directors of Natural Resources and Transportation jointly shall prepare a report analyzing the effectiveness of agreements executed pursuant to division (A)(11)(b) of section 1509.06 of the Revised Code, as amended by this act.

(B) The Directors shall prepare the report with input from all of the following:

- (1) A statewide organization representing county commissioners;
- (2) A statewide organization representing county engineers;
- (3) A statewide organization representing municipal corporations;
- (4) A statewide organization representing township trustees;
- (5) A statewide organization representing the oil and gas industry.

(C) The Directors shall provide the report to each member of the General Assembly and to the Governor.

SECTION 737.10. (A) The Director of Environmental Protection, in coordination with the Department of Natural Resources, the United States Environmental Protection Agency, and other entities as determined

appropriate by the Director, shall coordinate the evaluation of emerging wastewater treatment and recycling technologies that may reduce reliance on underground injection wells and may assist in the advancement of industry in this state, including the exploration and production of oil and gas. As part of the evaluation, the Director may initiate, participate in, oversee, or consult on pilot projects regarding wastewater treatment and recycling technologies.

(B) The Director of Environmental Protection, in coordination with the Public Utilities Commission of Ohio, the United States Environmental Protection Agency, and other entities as determined appropriate by the Director, shall conduct a study that identifies current and future environmental regulatory requirements and how those requirements may impact current and future power generation and transmission in this state.

SECTION 755.10. The Department of Transportation and the Public Utilities Commission cooperatively shall analyze the cost effectiveness of purchasing vehicles that operate on compressed natural gas and the conversion of certain state motor vehicles to operate on compressed natural gas. Not later than January 30, 2013, the Department and the Commission shall produce a joint report with their findings and shall deliver the report to the Speaker of the House of Representatives, the Minority Leader of the House of Representatives, the President of the Senate, the Minority Leader of the Senate, and the Governor.

SECTION 812.20. **Sections exempt from referendum: general effective date.** The amendments by this act of section 133.06 of the Revised Code and Section 701.10 of this act are exempt from the referendum under Ohio Constitution, Article II, Section 1d and section 1.471 of the Revised Code and therefore take effect immediately when this act becomes law.

SECTION 815.10. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the following section, presented in this act as a composite of the section as amended by the acts indicated, is the resulting version of the section in effect prior to the effective date of the section as presented in this act:

Section 5751.01 of the Revised Code as amended by Am. Sub. H.B. 153

Am. Sub. S. B. No. 315

129th G.A.

149

and Sub. H.B. 277 of the 129th General Assembly.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

Am. Sub. S. B. No. 315

129th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_ day of \_\_\_\_\_, A. D. 20\_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_