

**As Introduced**

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

**S. B. No. 315**

**Senator Jones  
(by request)**

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**A B I L L**

To amend sections 122.075, 123.011, 125.836, 133.06, 1  
156.01, 156.02, 156.03, 156.04, 303.213, 1505.09, 2  
1509.01, 1509.02, 1509.03, 1509.06, 1509.07, 3  
1509.10, 1509.11, 1509.22, 1509.221, 1509.222, 4  
1509.223, 1509.23, 1509.31, 1509.50, 1514.01, 5  
1514.02, 1514.021, 1514.03, 1514.05, 3706.27, 6  
4905.90, 4905.91, 4905.95, 4906.01, 4906.03, 7  
4906.05, 4906.06, 4906.07, 4906.10, 4906.20, 8  
4906.99, 4928.01, 4928.02, 4928.143, 4928.61, 9  
4928.62, 4928.66, 4935.04, and 6111.30 and to 10  
enact sections 4905.911, 4928.111, 4928.70, 11  
4928.71, 4928.72, and 6111.32 of the Revised Code 12  
to make changes to the energy and natural 13  
resources laws and related programs of the state. 14

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

**Section 101.01.** That sections 122.075, 123.011, 125.836, 15  
133.06, 156.01, 156.02, 156.03, 156.04, 303.213, 1505.09, 1509.01, 16  
1509.02, 1509.03, 1509.06, 1509.07, 1509.10, 1509.11, 1509.22, 17  
1509.221, 1509.222, 1509.223, 1509.23, 1509.31, 1509.50, 1514.01, 18  
1514.02, 1514.021, 1514.03, 1514.05, 3706.27, 4905.90, 4905.91, 19  
4905.95, 4906.01, 4906.03, 4906.05, 4906.06, 4906.07, 4906.10, 20

4906.20, 4906.99, 4928.01, 4928.02, 4928.143, 4928.61, 4928.62, 21  
4928.66, 4935.04, and 6111.30 be amended and sections 4905.911, 22  
4928.111, 4928.70, 4928.71, 4928.72, and 6111.32 of the Revised 23  
Code be enacted to read as follows: 24

**Sec. 122.075.** (A) As used in this section: 25

(1) "Alternative fuel" has the same meaning as in section 26  
125.831 of the Revised Code. 27

(2) "Biodiesel" means a mono-alkyl ester combustible liquid 28  
fuel that is derived from vegetable oils or animal fats, or any 29  
combination of those reagents, and that meets American society for 30  
testing and materials specification D6751-03a for biodiesel fuel 31  
(B100) blend stock distillate fuels. 32

(3) "Diesel fuel" and "gasoline" have the same meanings as in 33  
section 5735.01 of the Revised Code. 34

(4) "Ethanol" has the same meaning as in section 5733.46 of 35  
the Revised Code. 36

(5) "Blended biodiesel" means diesel fuel containing at least 37  
twenty per cent biodiesel by volume. 38

(6) "Blended gasoline" means gasoline containing at least 39  
eighty-five per cent ethanol by volume. 40

(7) "Incremental cost" means either of the following: 41

(a) The difference in cost between blended gasoline and 42  
gasoline containing ten per cent or less ethanol at the time that 43  
the blended gasoline is purchased; 44

(b) The difference in cost between blended biodiesel and 45  
diesel fuel containing two per cent or less biodiesel at the time 46  
that the blended biodiesel is purchased. 47

(B) For the purpose of improving the air quality in this 48

state, the director of development shall establish an alternative 49  
fuel transportation ~~grant~~ program under which the director may 50  
make grants and loans to businesses, nonprofit organizations, 51  
public school systems, or local governments for the purchase and 52  
installation of alternative fuel refueling or distribution 53  
facilities and terminals, for the purchase and use of alternative 54  
fuel, and to pay the costs of educational and promotional 55  
materials and activities intended for prospective alternative fuel 56  
consumers, fuel marketers, and others in order to increase the 57  
availability and use of alternative fuel. 58

(C) The director, in consultation with the director of 59  
agriculture, shall adopt rules in accordance with Chapter 119. of 60  
the Revised Code that are necessary for the administration of the 61  
alternative fuel transportation ~~grant~~ program. The rules shall 62  
establish at least all of the following: 63

(1) An application form and procedures governing the 64  
application process for a ~~grant~~ receiving funds under the program; 65

(2) A procedure for prioritizing the award of grants and 66  
loans under the program. The procedures shall give preference to 67  
all of the following: 68

(a) Publicly accessible refueling facilities; 69

(b) Entities ~~seeking grants~~ applying to the program that have 70  
secured funding from other sources, including, but not limited to, 71  
private or federal ~~grants~~ incentives; 72

(c) Entities that have presented compelling evidence of 73  
demand in the market in which the facilities or terminals will be 74  
located; 75

(d) Entities that have committed to utilizing purchased or 76  
installed facilities or terminals for the greatest number of 77  
years; 78

(e) Entities that will be purchasing or installing facilities 79  
or terminals for any type of alternative fuel. 80

(3) A requirement that the maximum ~~grant~~ incentive for the 81  
purchase and installation of an alternative fuel refueling or 82  
distribution facility or terminal be eighty per cent of the cost 83  
of the facility or terminal, except that at least twenty per cent 84  
of the total net cost of the facility or terminal shall be 85  
incurred by the ~~grant~~ recipient and not compensated for by any 86  
other source; 87

(4) A requirement that the maximum ~~grant~~ incentive for the 88  
purchase of alternative fuel be eighty per cent of the cost of the 89  
fuel or, in the case of blended biodiesel or blended gasoline, 90  
eighty per cent of the incremental cost of the blended biodiesel 91  
or blended gasoline; 92

(5) Any other criteria, procedures, or guidelines that the 93  
director determines are necessary to administer the program, 94  
including fees, charges, interest rates, and payment schedules. 95

(D) An applicant for a grant or loan under this section that 96  
sells motor vehicle fuel at retail shall agree that if the 97  
applicant receives a ~~grant~~ funding, the applicant will report to 98  
the director the gallon or gallon equivalent amounts of 99  
alternative fuel the applicant sells at retail in this state for a 100  
period of three years after the ~~grant is awarded~~ project is 101  
completed. 102

The director shall enter into a written confidentiality 103  
agreement with the applicant regarding the gallon or gallon 104  
equivalent amounts sold as described in this division, and upon 105  
execution of the agreement this information is not a public 106  
record. 107

(E) There is hereby created in the state treasury the 108  
alternative fuel transportation ~~grant~~ fund. The fund shall consist 109

of money transferred to the fund under division (C) of section 110  
125.836 and under division (B)(2) of section 3706.27 of the 111  
Revised Code, money that is appropriated to it by the general 112  
assembly, and money as may be specified by the general assembly 113  
from the advanced energy fund created by section 4928.61 of the 114  
Revised Code. Money in the fund shall be used to make grants and 115  
loans under the alternative fuel transportation ~~grant~~ program and 116  
by the director in the administration of that program. 117

**Sec. 123.011.** (A) As used in this section: 118

(1) "Construct" includes reconstruct, improve, renovate, 119  
enlarge, or otherwise alter. 120

(2) "Energy consumption analysis" means the evaluation of all 121  
energy consuming systems, components, and equipment by demand and 122  
type of energy, including the internal energy load imposed on a 123  
facility by its occupants and the external energy load imposed by 124  
climatic conditions. 125

(3) "Energy performance index" means a number describing the 126  
energy requirements of a facility per square foot of floor space 127  
or per cubic foot of occupied volume as appropriate under defined 128  
internal and external ambient conditions over an entire seasonal 129  
cycle. 130

(4) "Facility" means a building or other structure, or part 131  
of a building or other structure, that includes provision for a 132  
heating, refrigeration, ventilation, cooling, lighting, hot water, 133  
or other major energy consuming system, component, or equipment. 134

(5) "Life-cycle cost analysis" means a general approach to 135  
economic evaluation that takes into account all dollar costs 136  
related to owning, operating, maintaining, and ultimately 137  
disposing of a project over the appropriate study period. 138

(6) "Political subdivision" means a county, township, 139

municipal corporation, board of education of any school district, 140  
or any other body corporate and politic that is responsible for 141  
government activities in a geographic area smaller than that of 142  
the state. 143

(7) "State funded" means funded in whole or in part through 144  
appropriation by the general assembly or through the use of any 145  
guarantee provided by this state. 146

(8) "State institution of higher education" has the same 147  
meaning as in section 3345.011 of the Revised Code. 148

(9) "Cogeneration" means the simultaneous production of 149  
thermal energy and electricity for use primarily within a building 150  
or complex of buildings. 151

(B) There is hereby created within the department of 152  
administrative services the office of energy services. The office 153  
shall be under the supervision of a manager, who shall be 154  
appointed by the director of administrative services. The director 155  
shall assign to the office such number of employees and furnish 156  
such equipment and supplies as are necessary for the performance 157  
of the office's duties. 158

The office shall develop energy efficiency and conservation 159  
programs in each of the following areas: 160

(1) New construction design and review; 161

(2) Existing building audit and retrofit; 162

(3) Energy efficient procurement; 163

(4) Alternative fuel vehicles. 164

The office may accept and administer grants from public and 165  
private sources for carrying out any of its duties under this 166  
section. 167

(C) No state agency, department, division, bureau, office, 168  
unit, board, commission, authority, quasi-governmental entity, or 169

institution, including those agencies otherwise excluded from the 170  
jurisdiction of the department under division (A)(3) of section 171  
123.01 of the Revised Code, shall lease, construct, or cause to be 172  
leased or constructed, within the limits prescribed in this 173  
section, a state-funded facility, without a proper life-cycle cost 174  
analysis or, in the case of a lease, an energy consumption 175  
analysis, as computed or prepared by a qualified architect or 176  
engineer in accordance with the rules required by division (D) of 177  
this section. 178

Construction shall proceed only upon the disclosure to the 179  
office, for the facility chosen, of the life-cycle costs as 180  
determined in this section and the capitalization of the initial 181  
construction costs of the building. The results of life-cycle cost 182  
analysis shall be a primary consideration in the selection of a 183  
building design. That analysis shall be required only for 184  
construction of buildings with an area of five thousand square 185  
feet or greater. For projects with an estimated construction cost 186  
exceeding fifty million dollars, the analysis shall include a 187  
review of cogeneration as an energy source. An energy consumption 188  
analysis for the term of a proposed lease shall be required only 189  
for the leasing of an area of twenty thousand square feet or 190  
greater within a given building boundary. That analysis shall be a 191  
primary consideration in the selection of a facility to be leased. 192

Nothing in this section shall deprive or limit any state 193  
agency that has review authority over design, construction, or 194  
leasing plans from requiring a life-cycle cost analysis or energy 195  
consumption analysis. 196

(D) For the purposes of assisting the department in its 197  
responsibility for state-funded facilities pursuant to section 198  
123.01 of the Revised Code and of cost-effectively reducing the 199  
energy consumption of those and any other state-funded facilities, 200  
thereby promoting fiscal, economic, and environmental benefits to 201

this state, the office shall promulgate rules specifying 202  
cost-effective, energy efficiency and conservation standards that 203  
may govern the lease, design, construction, operation, and 204  
maintenance of all state-funded facilities, except facilities of 205  
state institutions of higher education or facilities operated by a 206  
political subdivision. The office of energy efficiency in the 207  
department of development shall cooperate in providing information 208  
and technical expertise to the office of energy services to ensure 209  
promulgation of rules of maximum effectiveness. The standards 210  
prescribed by rules promulgated under this division may draw from 211  
or incorporate, by reference or otherwise and in whole or in part, 212  
standards already developed or implemented by any competent, 213  
public or private standards organization or program. The rules 214  
also may include any of the following: 215

(1) Specifications for a life-cycle cost analysis that shall 216  
determine, for the economic life of such state-funded facility, 217  
the reasonably expected costs of facility ownership, operation, 218  
and maintenance including labor and materials. Life-cycle cost may 219  
be expressed as an annual cost for each year of the facility's 220  
use. 221

A life-cycle cost analysis additionally may include an energy 222  
consumption analysis that conforms to division (D)(2) of this 223  
section. 224

(2) Specifications for an energy consumption analysis of the 225  
facility's heating, refrigeration, ventilation, cooling, lighting, 226  
hot water, and other major energy consuming systems, components, 227  
and equipment. 228

A life-cycle cost analysis and energy consumption analysis 229  
shall be based on the best currently available methods of 230  
analysis, such as those of the national institute of standards and 231  
technology, the United States department of energy or other 232  
federal agencies, professional societies, and directions developed 233



by the department. 234

(3) Specifications for energy performance indices, to be used 235  
to audit and evaluate competing design proposals submitted to the 236  
state. 237

(4) A requirement that, not later than two years after April 238  
6, 2007, each state-funded facility, except a facility of a state 239  
institution of higher education or a facility operated by a 240  
political subdivision, is managed by at least one building 241  
operator certified under the building operator certification 242  
program or any equivalent program or standards as shall be 243  
prescribed in the rules and considered reasonably equivalent. 244

(5) An application process by which a manager of a specified 245  
state-funded facility, except a facility of a state institution of 246  
higher education or a facility operated by a political 247  
subdivision, may apply for a waiver of compliance with any 248  
provision of the rules required by divisions (D)(1) to (4) of this 249  
section. 250

(E) The office of energy services shall promulgate rules to 251  
ensure that energy efficiency and conservation will be considered 252  
in the purchase of products and equipment, except motor vehicles, 253  
by any state agency, department, division, bureau, office, unit, 254  
board, commission, authority, quasi-governmental entity, or 255  
institution. Minimum energy efficiency standards for purchased 256  
products and equipment may be required, based on federal testing 257  
and labeling where available or on standards developed by the 258  
office. The rules shall apply to the competitive selection of 259  
energy consuming systems, components, and equipment under Chapter 260  
125. of the Revised Code where possible. 261

The office also shall ensure energy efficient and energy 262  
conserving purchasing practices by doing all of the following: 263

(1) Cooperatively with the office of energy efficiency, 264

identifying available energy efficiency and conservation opportunities;	265 266
(2) Providing for interchange of information among purchasing agencies;	267 268
(3) Identifying laws, policies, rules, and procedures that need modification;	269 270
(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;	271 272 273 274
(5) Cooperatively with the office of energy efficiency, providing technical assistance and training to state employees involved in the purchasing process.	275 276 277
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.	278 279 280 281
(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.	282 283 284 285 286 287 288 289 290 291 292 293 294 295

(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. 326

(3) "Incremental cost" means the difference in cost between 327  
blended biodiesel and conventional petroleum-based diesel fuel at 328  
the time the blended biodiesel is purchased. 329

(B) The department of administrative services shall establish 330  
and administer a credit banking and selling program. The 331  
department may sell or trade credits in accordance with procedures 332  
established pursuant to the "Energy Policy Act of 1992," 106 Stat. 333  
2897, 42 U.S.C. 13258. 334

(C) There is hereby created in the state treasury the 335  
"biodiesel revolving fund," to which shall be credited moneys 336  
received from the sale of credits under this section, any moneys 337  
appropriated to the fund by the general assembly, and any other 338  
moneys obtained or accepted by the department for crediting to the 339  
fund. Moneys credited to the fund shall be used to pay for the 340  
incremental cost of biodiesel for use in vehicles owned or leased 341  
by the state that use diesel fuel. The director of administrative 342  
services, after consultation with the director of development, may 343  
direct the director of budget and management to transfer available 344  
moneys in the biodiesel revolving fund to the alternative fuel 345  
transportation ~~grant~~ fund created in section 122.075 of the 346  
Revised Code to be used by the department of development for the 347  
purposes specified in that section. 348

(D) The director of administrative services shall adopt rules 349  
under Chapter 119. of the Revised Code that are necessary for the 350  
administration of the credit banking and selling program. 351

**Sec. 133.06.** (A) A school district shall not incur, without a 352  
vote of the electors, net indebtedness that exceeds an amount 353  
equal to one-tenth of one per cent of its tax valuation, except as 354  
provided in divisions (G) and (H) of this section and in division 355  
(C) of section 3313.372 of the Revised Code, or as prescribed in 356

section 3318.052 or 3318.44 of the Revised Code, or as provided in 357  
division (J) of this section. 358

(B) Except as provided in divisions (E), (F), and (I) of this 359  
section, a school district shall not incur net indebtedness that 360  
exceeds an amount equal to nine per cent of its tax valuation. 361

(C) A school district shall not submit to a vote of the 362  
electors the question of the issuance of securities in an amount 363  
that will make the district's net indebtedness after the issuance 364  
of the securities exceed an amount equal to four per cent of its 365  
tax valuation, unless the superintendent of public instruction, 366  
acting under policies adopted by the state board of education, and 367  
the tax commissioner, acting under written policies of the 368  
commissioner, consent to the submission. A request for the 369  
consents shall be made at least one hundred twenty days prior to 370  
the election at which the question is to be submitted. 371

The superintendent of public instruction shall certify to the 372  
district the superintendent's and the tax commissioner's decisions 373  
within thirty days after receipt of the request for consents. 374

If the electors do not approve the issuance of securities at 375  
the election for which the superintendent of public instruction 376  
and tax commissioner consented to the submission of the question, 377  
the school district may submit the same question to the electors 378  
on the date that the next special election may be held under 379  
section 3501.01 of the Revised Code without submitting a new 380  
request for consent. If the school district seeks to submit the 381  
same question at any other subsequent election, the district shall 382  
first submit a new request for consent in accordance with this 383  
division. 384

(D) In calculating the net indebtedness of a school district, 385  
none of the following shall be considered: 386

(1) Securities issued to acquire school buses and other 387

equipment used in transporting pupils or issued pursuant to	388
division (D) of section 133.10 of the Revised Code;	389
(2) Securities issued under division (F) of this section,	390
under section 133.301 of the Revised Code, and, to the extent in	391
excess of the limitation stated in division (B) of this section,	392
under division (E) of this section;	393
(3) Indebtedness resulting from the dissolution of a joint	394
vocational school district under section 3311.217 of the Revised	395
Code, evidenced by outstanding securities of that joint vocational	396
school district;	397
(4) Loans, evidenced by any securities, received under	398
sections 3313.483, 3317.0210, 3317.0211, and 3317.64 of the	399
Revised Code;	400
(5) Debt incurred under section 3313.374 of the Revised Code;	401
(6) Debt incurred pursuant to division (B)(5) of section	402
3313.37 of the Revised Code to acquire computers and related	403
hardware;	404
(7) Debt incurred under section 3318.042 of the Revised Code.	405
(E) A school district may become a special needs district as	406
to certain securities as provided in division (E) of this section.	407
(1) A board of education, by resolution, may declare its	408
school district to be a special needs district by determining both	409
of the following:	410
(a) The student population is not being adequately serviced	411
by the existing permanent improvements of the district.	412
(b) The district cannot obtain sufficient funds by the	413
issuance of securities within the limitation of division (B) of	414
this section to provide additional or improved needed permanent	415
improvements in time to meet the needs.	416
(2) The board of education shall certify a copy of that	417

resolution to the superintendent of public instruction with a 418  
statistical report showing all of the following: 419

(a) The history of and a projection of the growth of the tax 420  
valuation; 421

(b) The projected needs; 422

(c) The estimated cost of permanent improvements proposed to 423  
meet such projected needs. 424

(3) The superintendent of public instruction shall certify 425  
the district as an approved special needs district if the 426  
superintendent finds both of the following: 427

(a) The district does not have available sufficient 428  
additional funds from state or federal sources to meet the 429  
projected needs. 430

(b) The projection of the potential average growth of tax 431  
valuation during the next five years, according to the information 432  
certified to the superintendent and any other information the 433  
superintendent obtains, indicates a likelihood of potential 434  
average growth of tax valuation of the district during the next 435  
five years of an average of not less than one and one-half per 436  
cent per year. The findings and certification of the 437  
superintendent shall be conclusive. 438

(4) An approved special needs district may incur net 439  
indebtedness by the issuance of securities in accordance with the 440  
provisions of this chapter in an amount that does not exceed an 441  
amount equal to the greater of the following: 442

(a) Twelve per cent of the sum of its tax valuation plus an 443  
amount that is the product of multiplying that tax valuation by 444  
the percentage by which the tax valuation has increased over the 445  
tax valuation on the first day of the sixtieth month preceding the 446  
month in which its board determines to submit to the electors the 447

question of issuing the proposed securities; 448

(b) Twelve per cent of the sum of its tax valuation plus an 449  
amount that is the product of multiplying that tax valuation by 450  
the percentage, determined by the superintendent of public 451  
instruction, by which that tax valuation is projected to increase 452  
during the next ten years. 453

(F) A school district may issue securities for emergency 454  
purposes, in a principal amount that does not exceed an amount 455  
equal to three per cent of its tax valuation, as provided in this 456  
division. 457

(1) A board of education, by resolution, may declare an 458  
emergency if it determines both of the following: 459

(a) School buildings or other necessary school facilities in 460  
the district have been wholly or partially destroyed, or condemned 461  
by a constituted public authority, or that such buildings or 462  
facilities are partially constructed, or so constructed or planned 463  
as to require additions and improvements to them before the 464  
buildings or facilities are usable for their intended purpose, or 465  
that corrections to permanent improvements are necessary to remove 466  
or prevent health or safety hazards. 467

(b) Existing fiscal and net indebtedness limitations make 468  
adequate replacement, additions, or improvements impossible. 469

(2) Upon the declaration of an emergency, the board of 470  
education may, by resolution, submit to the electors of the 471  
district pursuant to section 133.18 of the Revised Code the 472  
question of issuing securities for the purpose of paying the cost, 473  
in excess of any insurance or condemnation proceeds received by 474  
the district, of permanent improvements to respond to the 475  
emergency need. 476

(3) The procedures for the election shall be as provided in 477  
section 133.18 of the Revised Code, except that: 478



(a) The form of the ballot shall describe the emergency 479  
existing, refer to this division as the authority under which the 480  
emergency is declared, and state that the amount of the proposed 481  
securities exceeds the limitations prescribed by division (B) of 482  
this section; 483

(b) The resolution required by division (B) of section 133.18 484  
of the Revised Code shall be certified to the county auditor and 485  
the board of elections at least one hundred days prior to the 486  
election; 487

(c) The county auditor shall advise and, not later than 488  
ninety-five days before the election, confirm that advice by 489  
certification to, the board of education of the information 490  
required by division (C) of section 133.18 of the Revised Code; 491

(d) The board of education shall then certify its resolution 492  
and the information required by division (D) of section 133.18 of 493  
the Revised Code to the board of elections not less than ninety 494  
days prior to the election. 495

(4) Notwithstanding division (B) of section 133.21 of the 496  
Revised Code, the first principal payment of securities issued 497  
under this division may be set at any date not later than sixty 498  
months after the earliest possible principal payment otherwise 499  
provided for in that division. 500

(G) The board of education may contract with an architect, 501  
professional engineer, or other person experienced in the design 502  
and implementation of energy conservation measures for an analysis 503  
and recommendations pertaining to installations, modifications of 504  
installations, or remodeling that would significantly reduce 505  
energy consumption in buildings owned by the district. The report 506  
shall include estimates of all costs of such installations, 507  
modifications, or remodeling, including costs of design, 508  
engineering, installation, maintenance, repairs, and debt service, 509

forgone residual value of materials or equipment replaced by the 510  
energy conservation measure, as defined by the Ohio school 511  
facilities commission, a baseline analysis of actual energy 512  
consumption data for the preceding ~~five~~ three years, and estimates 513  
of the amounts by which energy consumption and resultant 514  
operational and maintenance costs, as defined by the commission, 515  
would be reduced. 516

If the board finds after receiving the report that the amount 517  
of money the district would spend on such installations, 518  
modifications, or remodeling is not likely to exceed the amount of 519  
money it would save in energy and resultant operational and 520  
maintenance costs over the ensuing fifteen years, the board may 521  
submit to the commission a copy of its findings and a request for 522  
approval to incur indebtedness to finance the making or 523  
modification of installations or the remodeling of buildings for 524  
the purpose of significantly reducing energy consumption. 525

If the commission determines that the board's findings are 526  
reasonable, it shall approve the board's request. Upon receipt of 527  
the commission's approval, the district may issue securities 528  
without a vote of the electors in a principal amount not to exceed 529  
nine-tenths of one per cent of its tax valuation for the purpose 530  
of making such installations, modifications, or remodeling, but 531  
the total net indebtedness of the district without a vote of the 532  
electors incurred under this and all other sections of the Revised 533  
Code, except section 3318.052 of the Revised Code, shall not 534  
exceed one per cent of the district's tax valuation. 535

So long as any securities issued under division (G) of this 536  
section remain outstanding, the board of education shall monitor 537  
the energy consumption and resultant operational and maintenance 538  
costs of buildings in which installations or modifications have 539  
been made or remodeling has been done pursuant to division (G) of 540  
this section and shall maintain and annually update a report 541

documenting the reductions in energy consumption and resultant 542  
operational and maintenance cost savings attributable to such 543  
installations, modifications, or remodeling. The report shall be 544  
certified by an architect or engineer independent of any person 545  
that provided goods or services to the board in connection with 546  
the energy conservation measures that are the subject of the 547  
report. The resultant operational and maintenance cost savings 548  
shall be certified by the school district treasurer. The report 549  
shall be submitted annually to the commission. 550

(H) With the consent of the superintendent of public 551  
instruction, a school district may incur without a vote of the 552  
electors net indebtedness that exceeds the amounts stated in 553  
divisions (A) and (G) of this section for the purpose of paying 554  
costs of permanent improvements, if and to the extent that both of 555  
the following conditions are satisfied: 556

(1) The fiscal officer of the school district estimates that 557  
receipts of the school district from payments made under or 558  
pursuant to agreements entered into pursuant to section 725.02, 559  
1728.10, 3735.671, 5709.081, 5709.082, 5709.40, 5709.41, 5709.62, 560  
5709.63, 5709.632, 5709.73, 5709.78, or 5709.82 of the Revised 561  
Code, or distributions under division (C) of section 5709.43 of 562  
the Revised Code, or any combination thereof, are, after 563  
accounting for any appropriate coverage requirements, sufficient 564  
in time and amount, and are committed by the proceedings, to pay 565  
the debt charges on the securities issued to evidence that 566  
indebtedness and payable from those receipts, and the taxing 567  
authority of the district confirms the fiscal officer's estimate, 568  
which confirmation is approved by the superintendent of public 569  
instruction; 570

(2) The fiscal officer of the school district certifies, and 571  
the taxing authority of the district confirms, that the district, 572  
at the time of the certification and confirmation, reasonably 573

expects to have sufficient revenue available for the purpose of 574  
operating such permanent improvements for their intended purpose 575  
upon acquisition or completion thereof, and the superintendent of 576  
public instruction approves the taxing authority's confirmation. 577

The maximum maturity of securities issued under division (H) 578  
of this section shall be the lesser of twenty years or the maximum 579  
maturity calculated under section 133.20 of the Revised Code. 580

(I) A school district may incur net indebtedness by the 581  
issuance of securities in accordance with the provisions of this 582  
chapter in excess of the limit specified in division (B) or (C) of 583  
this section when necessary to raise the school district portion 584  
of the basic project cost and any additional funds necessary to 585  
participate in a project under Chapter 3318. of the Revised Code, 586  
including the cost of items designated by the Ohio school 587  
facilities commission as required locally funded initiatives, the 588  
cost of other locally funded initiatives in an amount that does 589  
not exceed fifty per cent of the district's portion of the basic 590  
project cost, and the cost for site acquisition. The school 591  
facilities commission shall notify the superintendent of public 592  
instruction whenever a school district will exceed either limit 593  
pursuant to this division. 594

(J) A school district whose portion of the basic project cost 595  
of its classroom facilities project under sections 3318.01 to 596  
3318.20 of the Revised Code is greater than or equal to one 597  
hundred million dollars may incur without a vote of the electors 598  
net indebtedness in an amount up to two per cent of its tax 599  
valuation through the issuance of general obligation securities in 600  
order to generate all or part of the amount of its portion of the 601  
basic project cost if the controlling board has approved the 602  
school facilities commission's conditional approval of the project 603  
under section 3318.04 of the Revised Code. The school district 604  
board and the Ohio school facilities commission shall include the 605

dedication of the proceeds of such securities in the agreement 606  
entered into under section 3318.08 of the Revised Code. No state 607  
moneys shall be released for a project to which this section 608  
applies until the proceeds of any bonds issued under this section 609  
that are dedicated for the payment of the school district portion 610  
of the project are first deposited into the school district's 611  
project construction fund. 612

**Sec. 156.01.** As used in sections 156.01 to 156.05 of the 613  
Revised Code: 614

(A) "Avoided capital costs" means a measured reduction in the 615  
cost of future equipment or other capital purchases that results 616  
from implementation of one or more energy or water conservation 617  
measures, when compared to an established baseline for previous 618  
such cost. 619

(B) "Energy conservation measure" means an installation or 620  
modification of an installation in, or a remodeling of, an 621  
existing building in order to reduce energy consumption and 622  
operating costs. The term includes any of the following: 623

(1) Installation or modification of insulation in the 624  
building structure and systems within the building; 625

(2) Installation or modification of storm windows and doors, 626  
multiglazed windows and doors, and heat absorbing or heat 627  
reflective glazed and coated window and door systems; installation 628  
of additional glazing; reductions in glass area; and other window 629  
and door system modifications that reduce energy consumption and 630  
operating costs; 631

(3) Installation or modification of automatic energy control 632  
systems; 633

(4) Replacement or modification of heating, ventilating, or 634  
air conditioning systems; 635

- (5) Application of caulking and weather stripping; 636
- (6) Replacement or modification of lighting fixtures to 637  
increase the energy efficiency of the lighting system without 638  
increasing the overall illumination of a building unless the 639  
increase in illumination is necessary to conform to the applicable 640  
state or local building code for the proposed lighting system; 641
- (7) Installation or modification of energy recovery systems; 642
- (8) Installation or modification of cogeneration systems that 643  
produce steam or forms of energy such as heat, as well as 644  
electricity, for use primarily within a building or complex of 645  
buildings; 646
- (9) Installation or modification of trigeneration systems 647  
that produce heat and cooling, as well as electricity, for use 648  
primarily within a building or complex of buildings; 649
- (10) Installation or modification of systems that harvest 650  
renewable energy from solar, wind, water, biomass, bio-gas, or 651  
geothermal sources, for use primarily within a building or complex 652  
of buildings; 653
- (11) Retro-commissioning or recommissioning energy-related 654  
systems to verify that they are installed and calibrated to 655  
optimize energy and operational performance within a building or 656  
complex of buildings; 657
- (12) Consolidation, virtualization, and optimization of 658  
computer servers, data storage devices, or other information 659  
technology hardware and infrastructure; 660
- (13) Any other modification, installation, or remodeling 661  
approved by the director of administrative services as an energy 662  
conservation measure for one or more buildings owned by ~~the~~ either 663  
of the following: 664
- (a) The state; 665

(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. 666  
667  
668

(C) "Energy saving measure" means the acquisition and 669  
installation, by purchase, lease, lease-purchase, lease with an 670  
option to buy, or installment purchase, of an energy conservation 671  
measure and any attendant architectural and engineering consulting 672  
services. 673

(D) "Energy, water, or wastewater cost savings" means a 674  
measured reduction in, as applicable, the cost of fuel, energy or 675  
water consumption, wastewater production, or stipulated operation 676  
or maintenance resulting from the implementation of one or more 677  
energy or water conservation measures, when compared to an 678  
established baseline for previous such costs, respectively. 679

(E) "Operating cost savings" means a measured reduction in 680  
the cost of stipulated operation or maintenance created by the 681  
installation of new equipment or implementation of a new service, 682  
when compared with an established baseline for previous such 683  
stipulated costs. 684

(F) "Water conservation measure" means an installation or 685  
modification of an installation in, or a remodeling of, an 686  
existing building or the surrounding grounds in order to reduce 687  
water consumption. The term includes any of the following: 688

(1) Water-conserving fixture, appliance, or equipment, or the 689  
substitution of a nonwater-using fixture, appliance, or equipment; 690

(2) Water-conserving, landscape irrigation equipment; 691

(3) Landscaping measure that reduces storm water runoff 692  
demand and capture and hold applied water and rainfall, including 693  
landscape contouring such as the use of a berm, swale, or terrace 694  
and including the use of a soil amendment, including compost, that 695  
increases the water-holding capacity of the soil; 696

(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 727  
buildings owned by the state. The report shall include estimates 728  
of all costs of such measures, including the costs of design, 729  
engineering, installation, maintenance, repairs, and debt service, 730  
and estimates of the amounts by which energy consumption and 731  
operating costs would be reduced. 732~~

~~(B) Upon the request of the board of trustees or managing 733  
authority of a state institution of higher education as defined in 734  
section 3345.011 of the Revised Code, the director may contract 735  
with or a water services company, architect, professional 736  
engineer, contractor, or other person experienced in the design 737  
and implementation of energy or water conservation measures for a 738  
report containing an analysis and recommendations pertaining to 739  
the implementation of energy or water conservation measures that 740  
result in energy, water, or wastewater cost savings, operating 741  
cost savings, or avoided capital costs for the institution. The 742  
report shall include estimates of all costs of such installations, 743  
including the costs of design, engineering, installation, 744  
maintenance, repairs, and debt service, and estimates of the 745  
energy, water, or wastewater cost savings, operating cost savings, 746  
and avoided capital costs created. 747~~

**Sec. 156.03.** (A) If the director of administrative services 748  
wishes to enter into an installment payment contract pursuant to 749  
section 156.04 of the Revised Code or any other contract to 750  
implement one or more ~~energy saving measures or, in the case of a 751  
state institution of higher education pursuant to division (B) of 752  
section 156.02 of the Revised Code,~~ energy or water saving 753  
measures, the director may proceed under Chapter 153. of the 754  
Revised Code, or, alternatively, the director may request the 755  
controlling board to exempt the contract from Chapter 153. of the 756  
Revised Code. 757

If the controlling board by a majority vote approves an 758  
exemption, that chapter shall not apply to the contract and 759  
instead the director shall request proposals from at least three 760  
parties for the implementation of the energy or water saving 761  
measures. Prior to providing any interested party a copy of any 762  
such request, the director shall advertise, in a newspaper of 763  
general circulation in the county where the contract is to be 764  
performed, and may advertise by electronic means pursuant to rules 765  
adopted by the director, the director's intent to request 766  
proposals for the implementation of the energy or water saving 767  
measures. The notice shall invite interested parties to submit 768  
proposals for consideration and shall be published at least thirty 769  
days prior to the date for accepting proposals. 770

(B) Upon receiving the proposals, the director shall analyze 771  
them and, after considering the cost estimates of each proposal 772  
and the availability of funds to pay for each with current 773  
appropriations or by financing the cost of each through an 774  
installment payment contract under section 156.04 of the Revised 775  
Code, may select one or more proposals or reject all proposals. In 776  
selecting proposals, the director shall select the one or more 777  
proposals most likely to result in the greatest ~~savings when the~~ 778  
~~cost of the proposal is compared to the reduced energy and~~ 779  
~~operating costs that will result from implementing the proposal.~~ 780  
~~However, in the case of a state institution of higher education~~ 781  
~~pursuant to division (B) of section 156.02 of the Revised Code,~~ 782  
~~the director shall select the one or more proposals most likely to~~ 783  
~~result in the greatest energy, water, or wastewater savings,~~ 784  
operating costs savings, and avoided capital costs created. 785

(C)~~(1)~~ No contract shall be awarded to implement energy or 786  
water saving measures under this section, ~~other than in the case~~ 787  
~~of a state institution of higher education, unless the director~~ 788  
~~finds that one or both of the following circumstances exists, as~~ 789

applicable; 790

~~(a) In the case of a contract for a cogeneration system 791  
described in division (H) of section 156.01 of the Revised Code, 792  
the cost of the contract is not likely to exceed the amount of 793  
money that would be saved in energy and operating costs over no 794  
more than five years; 795~~

~~(b) In the case of any contract for any energy saving measure 796  
other than a cogeneration system, the cost of the contract is not 797  
likely to exceed the amount of money that would be saved in energy 798  
and operating costs over no more than ten years. 799~~

~~(2) In the case of a state institution of higher education 800  
pursuant to division (B) of section 156.02 of the Revised Code, no 801  
contract shall be awarded to implement energy or water saving 802  
measures for the institution under this section unless the 803  
director finds that both of the following circumstances exists: 804~~

~~(a)(1) Not less than one-fifteenth of the costs of the 805  
contract shall be paid within two years from the date of purchase; 806~~

~~(b)(2) The remaining balance of the cost of the contract 807  
shall be paid within fifteen years from the date of purchase. 808~~

**Sec. 156.04.** (A) In accordance with this section and section 809  
156.03 of the Revised Code, the director of administrative 810  
services may enter into an installment payment contract for the 811  
implementation of one or more energy or water saving measures. If 812  
the director wishes an installment payment contract to be exempted 813  
from Chapter 153. of the Revised Code, the director shall proceed 814  
pursuant to section 156.03 of the Revised Code. 815

(B)~~(1)~~ Any installment payment contract under this section, 816  
~~other than in the case of a state institution of higher education,~~ 817  
~~for one or more energy saving measures shall provide that all 818  
payments, except payments for repairs and obligations on 819~~

~~termination of the contract prior to its expiration, are to be a 820  
stated percentage of calculated savings of energy and operating 821  
costs attributable to the one or more measures over a defined 822  
period of time and are to be made only to the extent that those 823  
savings actually occur. No such contract shall contain any of the 824  
following: 825~~

~~(a) A requirement of any additional capital investment or 826  
contribution of funds, other than funds available from state or 827  
federal grants; 828~~

~~(b) In the case of a contract for an energy saving measure 829  
that is a cogeneration system described in division (H) of section 830  
156.01 of the Revised Code, a payment term longer than five years; 831~~

~~(c) In the case of a contract for any energy saving measure 832  
that is not a cogeneration system, a payment term longer than ten 833  
years. 834~~

~~(2) Any installment payment contract under this section for 835  
one or more energy or water saving measures for a state 836  
institution of higher education pursuant to division (B) of 837  
section 156.02 of the Revised Code, shall provide that all 838  
payments, except payments for repairs and obligations on 839  
termination of the contract prior to its expiration, are to be a 840  
stated percentage of calculated energy, water, or wastewater cost 841  
savings, operating costs, and avoided capital costs attributable 842  
to the one or more measures over a defined period of time and are 843  
to be made only to the extent that those calculated amounts 844  
actually occur. No such contract shall contain either of the 845  
following: 846~~

~~(a)(1) A requirement of any additional capital investment or 847  
contribution of funds, other than funds available from state or 848  
federal grants; 849~~

~~(b)(2) A payment term longer than fifteen years. 850~~

(C) Any installment payment contract entered into under this 851  
section shall terminate no later than the last day of the fiscal 852  
biennium for which funds have been appropriated to the department 853  
of administrative services by the general assembly and shall be 854  
renewed in each succeeding fiscal biennium in which any balance of 855  
the contract remains unpaid, provided that both an appropriation 856  
for that succeeding fiscal biennium and the certification required 857  
by section 126.07 of the Revised Code are made. 858

(D) Any installment payment contract entered into under this 859  
section shall be eligible for financing provided through the Ohio 860  
air quality development authority under Chapter 3706. of the 861  
Revised Code. 862

**Sec. 303.213.** (A) As used in this section, "small wind farm" 863  
means wind turbines and associated facilities with a single 864  
interconnection to the electrical grid and designed for, or 865  
capable of, operation at an aggregate capacity of less than five 866  
megawatts. 867

(B) Notwithstanding division (A) of section 303.211 of the 868  
Revised Code, sections 303.01 to 303.25 of the Revised Code confer 869  
power on a board of county commissioners or board of zoning 870  
appeals to adopt zoning regulations governing the location, 871  
erection, construction, reconstruction, change, alteration, 872  
maintenance, removal, use, or enlargement of any small wind farm, 873  
whether publicly or privately owned, or the use of land for that 874  
purpose, which regulations may be more strict than the regulations 875  
prescribed in rules adopted under division ~~(C)~~(B)(2) of section 876  
4906.20 of the Revised Code. 877

(C) The designation under this section of a small wind farm 878  
as a public utility for purposes of sections 303.01 to 303.25 of 879  
the Revised Code shall not affect the classification of a small 880  
wind farm for purposes of state or local taxation. 881

(D) Nothing in division (C) of this section shall be 882  
construed as affecting the classification of a telecommunications 883  
tower as defined in division (B) or (E) of section 303.211 of the 884  
Revised Code or any other public utility for purposes of state and 885  
local taxation. 886

**Sec. 1505.09.** There is hereby created in the state treasury 887  
the geological mapping fund, to be administered by the chief of 888  
the division of geological survey. The fund shall be used for the 889  
purposes of performing the necessary field, laboratory, and 890  
administrative tasks to map and make public reports on the 891  
geology, geologic hazards, and energy and mineral resources of the 892  
state. The source of moneys for the fund shall include, but not be 893  
limited to, the mineral severance tax as specified in section 894  
5749.02 of the Revised Code ~~and~~, the fees collected under rules 895  
adopted under section 1505.05 of the Revised Code, and ten per 896  
cent of the money collected from fees under division (H) of 897  
section 1509.22 of the Revised Code. The chief may seek federal or 898  
other moneys in addition to the mineral severance tax ~~and~~, fees, 899  
and money credited to the fund to carry out the purposes of this 900  
section. If the chief receives federal moneys for the purposes of 901  
this section, the chief shall deposit those moneys into the state 902  
treasury to the credit of a fund created by the controlling board 903  
to carry out those purposes. Other moneys received by the chief 904  
for the purposes of this section in addition to the mineral 905  
severance tax, fees, money credited to the geological mapping fund 906  
under section 1509.22 of the Revised Code, and federal moneys 907  
shall be credited to the geological mapping fund. 908

**Sec. 1509.01.** As used in this chapter: 909

(A) "Well" means any borehole, whether drilled or bored, 910  
within the state for production, extraction, or injection of any 911  
gas or liquid mineral, excluding potable water to be used as such, 912

but including natural or artificial brines and oil field waters. 913

(B) "Oil" means crude petroleum oil and all other 914  
hydrocarbons, regardless of gravity, that are produced in liquid 915  
form by ordinary production methods, but does not include 916  
hydrocarbons that were originally in a gaseous phase in the 917  
reservoir. 918

(C) "Gas" means ~~all natural wet~~ gas and ~~all other fluid~~ 919  
~~hydrocarbons that are not oil, including condensate~~ dry gas. 920

(D) "Condensate" means liquid hydrocarbons recovered at the 921  
surface that were originally in the gaseous phase in the 922  
reservoir. 923

(E) "Pool" means an underground reservoir containing a common 924  
accumulation of oil or gas, or both, but does not include a gas 925  
storage reservoir. Each zone of a geological structure that is 926  
completely separated from any other zone in the same structure may 927  
contain a separate pool. 928

(F) "Field" means the general area underlaid by one or more 929  
pools. 930

(G) "Drilling unit" means the minimum acreage on which one 931  
well may be drilled, but does not apply to a well for injecting 932  
gas into or removing gas from a gas storage reservoir. 933

(H) "Waste" includes all of the following: 934

(1) Physical waste, as that term generally is understood in 935  
the oil and gas industry; 936

(2) Inefficient, excessive, or improper use, or the 937  
unnecessary dissipation, of reservoir energy; 938

(3) Inefficient storing of oil or gas; 939

(4) Locating, drilling, equipping, operating, or producing an 940  
oil or gas well in a manner that reduces or tends to reduce the 941  
quantity of oil or gas ultimately recoverable under prudent and 942

proper operations from the pool into which it is drilled or that 943  
causes or tends to cause unnecessary or excessive surface loss or 944  
destruction of oil or gas; 945

(5) Other underground or surface waste in the production or 946  
storage of oil, gas, or condensate, however caused. 947

(I) "Correlative rights" means the reasonable opportunity to 948  
every person entitled thereto to recover and receive the oil and 949  
gas in and under the person's tract or tracts, or the equivalent 950  
thereof, without having to drill unnecessary wells or incur other 951  
unnecessary expense. 952

(J) "Tract" means a single, individually taxed parcel of land 953  
appearing on the tax list. 954

(K) "Owner," unless referring to a mine, means the person who 955  
has the right to drill on a tract or drilling unit, to drill into 956  
and produce from a pool, and to appropriate the oil or gas 957  
produced therefrom either for the person or for others, except 958  
that a person ceases to be an owner with respect to a well when 959  
the well has been plugged in accordance with applicable rules 960  
adopted and orders issued under this chapter. "Owner" does not 961  
include a person who obtains a lease of the mineral rights for oil 962  
and gas on a parcel of land if the person does not attempt to 963  
produce or produce oil or gas from a well or obtain a permit under 964  
this chapter for a well or if the entire interest of a well is 965  
transferred to the person in accordance with division (B) of 966  
section 1509.31 of the Revised Code. 967

(L) "Royalty interest" means the fee holder's share in the 968  
production from a well. 969

(M) "Discovery well" means the first well capable of 970  
producing oil or gas in commercial quantities from a pool. 971

(N) "Prepared clay" means a clay that is plastic and is 972  
thoroughly saturated with fresh water to a weight and consistency 973



great enough to settle through saltwater in the well in which it 974  
is to be used, except as otherwise approved by the chief of the 975  
division of oil and gas resources management. 976

(O) "Rock sediment" means the combined cutting and residue 977  
from drilling sedimentary rocks and formation. 978

(P) "Excavations and workings," "mine," and "pillar" have the 979  
same meanings as in section 1561.01 of the Revised Code. 980

(Q) "Coal bearing township" means a township designated as 981  
such by the chief of the division of mineral resources management 982  
under section 1561.06 of the Revised Code. 983

(R) "Gas storage reservoir" means a continuous area of a 984  
subterranean porous sand or rock stratum or strata into which gas 985  
is or may be injected for the purpose of storing it therein and 986  
removing it therefrom and includes a gas storage reservoir as 987  
defined in section 1571.01 of the Revised Code. 988

(S) "Safe Drinking Water Act" means the "Safe Drinking Water 989  
Act," 88 Stat. 1661 (1974), 42 U.S.C.A. 300(f), as amended by the 990  
"Safe Drinking Water Amendments of 1977," 91 Stat. 1393, 42 991  
U.S.C.A. 300(f), the "Safe Drinking Water Act Amendments of 1986," 992  
100 Stat. 642, 42 U.S.C.A. 300(f), and the "Safe Drinking Water 993  
Act Amendments of 1996," 110 Stat. 1613, 42 U.S.C.A. 300(f), and 994  
regulations adopted under those acts. 995

(T) "Person" includes any political subdivision, department, 996  
agency, or instrumentality of this state; the United States and 997  
any department, agency, or instrumentality thereof; and any legal 998  
entity defined as a person under section 1.59 of the Revised Code. 999

(U) "Brine" means all saline geological formation water 1000  
resulting from, obtained from, or produced in connection with 1001  
exploration, drilling, well stimulation, production of oil or gas, 1002  
or plugging of a well. 1003

(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. 1065

(BB) "Annular overpressurization" means the accumulation of 1066  
fluids within an annulus with sufficient pressure to allow 1067  
migration of annular fluids into underground sources of drinking 1068  
water. 1069

(CC) "Idle and orphaned well" means a well for which a bond 1070  
has been forfeited or an abandoned well for which no money is 1071  
available to plug the well in accordance with this chapter and 1072  
rules adopted under it. 1073

(DD) "Temporarily inactive well" means a well that has been 1074  
granted temporary inactive status under section 1509.062 of the 1075  
Revised Code. 1076

(EE) "Material and substantial violation" means any of the 1077  
following: 1078

(1) Failure to obtain a permit to drill, reopen, convert, 1079  
plugback, or plug a well under this chapter; 1080

(2) Failure to obtain or maintain insurance coverage that is 1081  
required under this chapter; 1082

(3) Failure to obtain or maintain a surety bond that is 1083  
required under this chapter; 1084

(4) Failure to plug an abandoned well or idle and orphaned 1085  
well unless the well has been granted temporary inactive status 1086  
under section 1509.062 of the Revised Code or the chief of the 1087  
division of oil and gas resources management has approved another 1088  
option concerning the abandoned well or idle and orphaned well; 1089

(5) Failure to restore a disturbed land surface as required 1090  
by section 1509.072 of the Revised Code; 1091

(6) Failure to reimburse the oil and gas well fund pursuant 1092  
to a final order issued under section 1509.071 of the Revised 1093  
Code; 1094

(7) Failure to comply with a final nonappealable order of the chief issued under section 1509.04 of the Revised Code; 1095  
1096

(8) Failure to submit a report, test result, fee, or document that is required in this chapter or rules adopted under it. 1097  
1098

(FF) "Severer" has the same meaning as in section 5749.01 of the Revised Code. 1099  
1100

(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 and the well is stimulated. 1101  
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1103

(HH) "Well pad" means the area that is cleared or prepared for the drilling of a well. 1104  
1105

(II) "Dry gas" means all natural gas that contains no appreciable quantity of dissolved liquid hydrocarbon. 1106  
1107

(JJ) "Wet gas" means natural gas that contains ethane, propane, butane, or other hydrocarbons or any combination of them. 1108  
1109

**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 1110  
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site construction and restoration, permitting related to those 1125  
activities, and the disposal of wastes from those wells. The chief 1126  
may enter into cooperative agreements with other state agencies, 1127  
as the chief determines necessary, to assist in the enforcement of 1128  
this chapter, rules adopted under it, and other pertinent 1129  
provisions of the Revised Code and to ensure public health and 1130  
safety. Nothing in this section affects the authority granted to 1131  
the director of transportation and local authorities in section 1132  
723.01 or 4513.34 of the Revised Code, provided that the authority 1133  
granted under those sections shall not be exercised in a manner 1134  
that discriminates against, unfairly impedes, or obstructs oil and 1135  
gas activities and operations regulated under this chapter. 1136

The chief shall not hold any other public office, nor shall 1137  
the chief be engaged in any occupation or business that might 1138  
interfere with or be inconsistent with the duties as chief. 1139

All moneys collected by the chief pursuant to sections 1140  
1509.06, 1509.061, 1509.062, 1509.071, 1509.13, ~~1509.22, 1509.221,~~ 1141  
1509.222, 1509.34, and 1509.50 of the Revised Code, ninety per 1142  
cent of the money collected from fees levied under division (H) of 1143  
section 1509.22 of the Revised Code, ninety per cent of moneys 1144  
received by the treasurer of state from the tax levied in 1145  
divisions (A)(5) and (6) of section 5749.02 of the Revised Code, 1146  
all civil penalties paid under section 1509.33 of the Revised 1147  
Code, and, notwithstanding any section of the Revised Code 1148  
relating to the distribution or crediting of fines for violations 1149  
of the Revised Code, all fines imposed under divisions (A) and (B) 1150  
of section 1509.99 of the Revised Code and fines imposed under 1151  
divisions (C) and (D) of section 1509.99 of the Revised Code for 1152  
all violations prosecuted by the attorney general and for 1153  
violations prosecuted by prosecuting attorneys that do not involve 1154  
the transportation of brine by vehicle shall be deposited into the 1155  
state treasury to the credit of the oil and gas well fund, which 1156

is hereby created. Fines imposed under divisions (C) and (D) of 1157  
section 1509.99 of the Revised Code for violations prosecuted by 1158  
prosecuting attorneys that involve the transportation of brine by 1159  
vehicle and penalties associated with a compliance agreement 1160  
entered into pursuant to this chapter shall be paid to the county 1161  
treasury of the county where the violation occurred. 1162

The fund shall be used solely and exclusively for the 1163  
purposes enumerated in division (B) of section 1509.071 of the 1164  
Revised Code, for the expenses of the division associated with the 1165  
administration of this chapter and Chapter 1571. of the Revised 1166  
Code and rules adopted under them, and for expenses that are 1167  
critical and necessary for the protection of human health and 1168  
safety and the environment related to oil and gas production in 1169  
this state. The expenses of the division in excess of the moneys 1170  
available in the fund shall be paid from general revenue fund 1171  
appropriations to the department. 1172

**Sec. 1509.03.** (A) The chief of the division of oil and gas 1173  
resources management shall adopt, rescind, and amend, in 1174  
accordance with Chapter 119. of the Revised Code, rules for the 1175  
administration, implementation, and enforcement of this chapter. 1176  
The rules shall include an identification of the subjects that the 1177  
chief shall address when attaching terms and conditions to a 1178  
permit with respect to a well and production facilities of a well 1179  
that are located within an urbanized area or with respect to a 1180  
horizontal well and production facilities associated with a 1181  
horizontal well. The subjects shall include all of the following: 1182

(1) Safety concerning the drilling or operation of a well; 1183

(2) Protection of the public and private water supply, 1184  
including the amount of water used and the source or sources of 1185  
the water; 1186

(3) Fencing and screening of surface facilities of a well; 1187

(4) Containment and disposal of drilling and production wastes;	1188 1189
(5) Construction of access roads for purposes of the drilling and operation of a well;	1190 1191
(6) Noise mitigation for purposes of the drilling of a well and the operation of a well, excluding safety and maintenance operations.	1192 1193 1194
No person shall violate any rule of the chief adopted under this chapter.	1195 1196
(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. <u>Division (B)(1) of this section does not apply to a permit issued under section 1509.06 of the Revised Code.</u>	1197 1198 1199 1200 1201 1202 1203 1204 1205
(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.	1206 1207 1208 1209 1210
(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	1211 1212 1213 1214 1215 1216 1217 1218



prevent or hinder the chief or the chief's authorized 1219  
representative in the performance of official duties. If entry is 1220  
prevented or hindered, the chief or the chief's authorized 1221  
representative may apply for, and the court of common pleas may 1222  
issue, an appropriate inspection warrant necessary to achieve the 1223  
purposes of this chapter within the court's territorial 1224  
jurisdiction. 1225

(D) The chief may issue orders to enforce this chapter, rules 1226  
adopted thereunder, and terms or conditions of permits issued 1227  
thereunder. Any such order shall be considered an adjudication 1228  
order for the purposes of Chapter 119. of the Revised Code. No 1229  
person shall violate any order of the chief issued under this 1230  
chapter. No person shall violate a term or condition of a permit 1231  
or registration certificate issued under this chapter. 1232

(E) Orders of the chief denying, suspending, or revoking a 1233  
registration certificate; approving or denying approval of an 1234  
application for revision of a registered transporter's plan for 1235  
disposal; or to implement, administer, or enforce division (A) of 1236  
section 1509.224 and sections 1509.22, 1509.222, 1509.223, 1237  
1509.225, and 1509.226 of the Revised Code pertaining to the 1238  
transportation of brine by vehicle and the disposal of brine so 1239  
transported are not adjudication orders for purposes of Chapter 1240  
119. of the Revised Code. The chief shall issue such orders under 1241  
division (A) or (B) of section 1509.224 of the Revised Code, as 1242  
appropriate. 1243

**Sec. 1509.06.** (A) An application for a permit to drill a new 1244  
well, drill an existing well deeper, reopen a well, convert a well 1245  
to any use other than its original purpose, or plug back a well to 1246  
a different source of supply, including associated production 1247  
operations, shall be filed with the chief of the division of oil 1248  
and gas resources management upon such form as the chief 1249

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) The geological formation to be tested or used and the proposed total depth of the well;
- (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;
- (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 1280  
under section 1509.60 of the Revised Code to each residence in an 1281  
occupied dwelling that is located on the owner's parcel of real 1282  
property. The notice shall contain a statement that an application 1283  
has been filed with the division of oil and gas resources 1284  
management, identify the name of the applicant and the proposed 1285  
well location, include the name and address of the division, and 1286  
contain a statement that comments regarding the application may be 1287  
sent to the division. The notice may be provided by hand delivery 1288  
or regular mail. The identity of the owners of parcels of real 1289  
property shall be determined using the tax records of the 1290  
municipal corporation or county in which a parcel of real property 1291  
is located as of the date of the notice. 1292

(10) A plan for restoration of the land surface disturbed by 1293  
drilling operations. The plan shall provide for compliance with 1294  
the restoration requirements of division (A) of section 1509.072 1295  
of the Revised Code and any rules adopted by the chief pertaining 1296  
to that restoration. 1297

(11) A description by name or number of the county, township, 1298  
and municipal corporation roads, streets, and highways that the 1299  
applicant anticipates will be used for access to and egress from 1300  
the well site; 1301

(12) For an application for a permit for a horizontal well, a 1302  
copy of an agreement, containing reasonable terms, concerning 1303  
maintenance of the roads, streets, and highways described in 1304  
division (A)(11) of this section between the applicant and the 1305  
board of county commissioners of each county, and the board of 1306  
township trustees of each township and the legislative authority 1307  
of each municipal corporation, as applicable, in which any such 1308  
road, street, or highway is located. If such an agreement cannot 1309  
be executed, the applicant may include with the application an 1310  
affidavit on a form prescribed by the chief attesting that the 1311

applicant is willing and attempted in good faith to enter into an 1312  
agreement under this division with the applicable board of county 1313  
commissioners, board of township trustees, or legislative 1314  
authority of the municipal corporation, but that no agreement was 1315  
executed. 1316

(13) An identification of each source of ground water and 1317  
surface water that will be used in the production operations of 1318  
the well. The identification of each source of water shall 1319  
indicate if the water will be withdrawn from the Lake Erie 1320  
watershed or the Ohio river watershed. In addition, the applicant 1321  
shall provide the estimated rate and volume of the water 1322  
withdrawal for the production operations. 1323

(14) Except as provided in division (A)(15) of this section, 1324  
for an application for a permit to drill a new well within an 1325  
urbanized area, the results of sampling of all water wells within 1326  
three hundred feet of the proposed well prior to commencement of 1327  
drilling. The sampling shall be conducted in accordance with the 1328  
guidelines established in "Best Management Practices For 1329  
Pre-drilling Water Sampling," April 30, 2005. The division shall 1330  
furnish those guidelines upon request and shall make them 1331  
available on the division's web site. The chief may revise the 1332  
distance established in this division for purposes of pre-drilling 1333  
water sampling if the chief determines that such a revision is 1334  
necessary to protect a water supply or if the chief determines 1335  
that conditions at the proposed well site warrant such a revision. 1336

(15) For an application for a permit to drill a new 1337  
horizontal well, the results of sampling of all water wells within 1338  
one thousand five hundred feet of the proposed horizontal well 1339  
prior to commencement of drilling. The sampling shall be conducted 1340  
in accordance with the guidelines established in "Best Management 1341  
Practices For Pre-drilling Water Sampling," April 30, 2005. The 1342  
division shall furnish those guidelines upon request and shall 1343

make them available on the division's web site. The chief may 1344  
revise the distance established in this division for purposes of 1345  
pre-drilling water sampling if the chief determines that such a 1346  
revision is necessary to protect a water supply or if the chief 1347  
determines that conditions at the proposed well site warrant such 1348  
a revision. 1349

(16) Such other relevant information as the chief prescribes 1350  
by rule. 1351

Each application shall be accompanied by a map, on a scale 1352  
not smaller than four hundred feet to the inch, prepared by an 1353  
Ohio registered surveyor, showing the location of the well and 1354  
containing such other data as may be prescribed by the chief. If 1355  
the well is or is to be located within the excavations and 1356  
workings of a mine, the map also shall include the location of the 1357  
mine, the name of the mine, and the name of the person operating 1358  
the mine. 1359

(B) The chief shall cause a copy of the weekly circular 1360  
prepared by the division to be provided to the county engineer of 1361  
each county that contains active or proposed drilling activity. 1362  
The weekly circular shall contain, in the manner prescribed by the 1363  
chief, the names of all applicants for permits, the location of 1364  
each well or proposed well, the information required by division 1365  
(A)(11) of this section, and any additional information the chief 1366  
prescribes. In addition, the chief promptly shall transfer an 1367  
electronic copy or facsimile, or if those methods are not 1368  
available to a municipal corporation or township, a copy via 1369  
regular mail, of a drilling permit application to the clerk of the 1370  
legislative authority of the municipal corporation or to the clerk 1371  
of the township in which the well or proposed well is or is to be 1372  
located if the legislative authority of the municipal corporation 1373  
or the board of township trustees has asked to receive copies of 1374  
such applications and the appropriate clerk has provided the chief 1375

an accurate, current electronic mailing address or facsimile 1376  
number, as applicable. 1377

(C)(1) Except as provided in division (C)(2) of this section, 1378  
the chief shall not issue a permit for at least ten days after the 1379  
date of filing of the application for the permit unless, upon 1380  
reasonable cause shown, the chief waives that period or a request 1381  
for expedited review is filed under this section. However, the 1382  
chief shall issue a permit within twenty-one days of the filing of 1383  
the application unless the chief denies the application by order. 1384

(2) If the location of a well or proposed well will be or is 1385  
within an urbanized area, the chief shall not issue a permit for 1386  
at least eighteen days after the date of filing of the application 1387  
for the permit unless, upon reasonable cause shown, the chief 1388  
waives that period or the chief at the chief's discretion grants a 1389  
request for an expedited review. However, the chief shall issue a 1390  
permit for a well or proposed well within an urbanized area within 1391  
thirty days of the filing of the application unless the chief 1392  
denies the application by order. 1393

(D) An applicant may file a request with the chief for 1394  
expedited review of a permit application if the well is not or is 1395  
not to be located in a gas storage reservoir or reservoir 1396  
protective area, as "reservoir protective area" is defined in 1397  
section 1571.01 of the Revised Code. If the well is or is to be 1398  
located in a coal bearing township, the application shall be 1399  
accompanied by the affidavit of the landowner prescribed in 1400  
section 1509.08 of the Revised Code. 1401

In addition to a complete application for a permit that meets 1402  
the requirements of this section and the permit fee prescribed by 1403  
this section, a request for expedited review shall be accompanied 1404  
by a separate nonrefundable filing fee of two hundred fifty 1405  
dollars. Upon the filing of a request for expedited review, the 1406  
chief shall cause the county engineer of the county in which the 1407

well is or is to be located to be notified of the filing of the 1408  
permit application and the request for expedited review by 1409  
telephone or other means that in the judgment of the chief will 1410  
provide timely notice of the application and request. The chief 1411  
shall issue a permit within seven days of the filing of the 1412  
request unless the chief denies the application by order. 1413  
Notwithstanding the provisions of this section governing expedited 1414  
review of permit applications, the chief may refuse to accept 1415  
requests for expedited review if, in the chief's judgment, the 1416  
acceptance of the requests would prevent the issuance, within 1417  
twenty-one days of their filing, of permits for which applications 1418  
are pending. 1419

(E) A well shall be drilled and operated in accordance with 1420  
the plans, sworn statements, and other information submitted in 1421  
the approved application. 1422

(F) The chief shall issue an order denying a permit if the 1423  
chief finds that there is a substantial risk that the operation 1424  
will result in violations of this chapter or rules adopted under 1425  
it that will present an imminent danger to public health or safety 1426  
or damage to the environment, provided that where the chief finds 1427  
that terms or conditions to the permit can reasonably be expected 1428  
to prevent such violations, the chief shall issue the permit 1429  
subject to those terms or conditions, including, if applicable, 1430  
terms and conditions regarding subjects identified in rules 1431  
adopted under section 1509.03 of the Revised Code. The issuance of 1432  
a permit shall not be considered an order of the chief. 1433

(G) Each application for a permit required by section 1509.05 1434  
of the Revised Code, except an application to plug back an 1435  
existing well that is required by that section and an application 1436  
for a well drilled or reopened for purposes of section 1509.22 of 1437  
the Revised Code, also shall be accompanied by a nonrefundable fee 1438  
as follows: 1439

(1) Five hundred dollars for a permit to conduct activities	1440
in a township with a population of fewer than ten thousand;	1441
(2) Seven hundred fifty dollars for a permit to conduct	1442
activities in a township with a population of ten thousand or	1443
more, but fewer than fifteen thousand;	1444
(3) One thousand dollars for a permit to conduct activities	1445
in either of the following:	1446
(a) A township with a population of fifteen thousand or more;	1447
(b) A municipal corporation regardless of population.	1448
(4) If the application is for a permit that requires	1449
mandatory pooling, an additional five thousand dollars;	1450
<u>(5) If the application is for a permit that requires unit</u>	1451
<u>operation of a pool pursuant to section 1509.28 of the Revised</u>	1452
<u>Code, an additional fifteen thousand dollars.</u>	1453
For purposes of calculating fee amounts, populations shall be	1454
determined using the most recent federal decennial census.	1455
Each application for the revision or reissuance of a permit	1456
shall be accompanied by a nonrefundable fee of two hundred fifty	1457
dollars.	1458
(H) Prior to the issuance of a permit to drill <u>a proposed</u>	1459
<u>horizontal well or</u> a proposed well that is to be located in an	1460
urbanized area, the division shall conduct a site review to	1461
identify and evaluate any site-specific terms and conditions that	1462
may be attached to the permit. At the site review, a	1463
representative of the division shall consider fencing, screening,	1464
and landscaping requirements, if any, for similar structures in	1465
the community in which the well is proposed to be located. The	1466
terms and conditions that are attached to the permit shall include	1467
the establishment of fencing, screening, and landscaping	1468
requirements for the surface facilities of the proposed well,	1469



including a tank battery of the well. 1470

(I) A permit shall be issued by the chief in accordance with 1471  
this chapter. A permit issued under this section for a well that 1472  
is or is to be located in an urbanized area shall be valid for 1473  
twelve months, and all other permits issued under this section 1474  
shall be valid for twenty-four months. 1475

(J) An applicant or a permittee, as applicable, shall submit 1476  
to the chief an update of the information that is required under 1477  
division (A)(13) of this section if any of that information 1478  
changes. 1479

(K) A permittee or a permittee's authorized representative 1480  
shall notify an inspector from the division at least twenty-four 1481  
hours, or another time period agreed to by the chief's authorized 1482  
representative, prior to the commencement of well pad construction 1483  
and of drilling, reopening, converting, well stimulation, or 1484  
plugback operations. 1485

**Sec. 1509.07.** An (A)(1) Except as provided in division (A)(2) 1486  
of this section, an owner of any well, except an exempt 1487  
Mississippian well or an exempt domestic well, shall obtain 1488  
liability insurance coverage from a company authorized to do 1489  
business in this state in an amount of not less than one million 1490  
dollars bodily injury coverage and property damage coverage to pay 1491  
damages for injury to persons or damage to property caused by the 1492  
drilling, operation, or plugging of all the owner's wells in this 1493  
state. However, if any well is located within an urbanized area, 1494  
the owner shall obtain liability insurance coverage in an amount 1495  
of not less than three million dollars for bodily injury coverage 1496  
and property damage coverage to pay damages for injury to persons 1497  
or damage to property caused by the drilling, operation, or 1498  
plugging of all of the owner's wells in this state. ~~The~~ 1499

(2) An owner of a horizontal well shall obtain liability 1500

insurance coverage from a company authorized to do business in 1501  
this state in an amount of not less than five million dollars 1502  
bodily injury coverage and property damage coverage to pay damages 1503  
for injury to persons or damage to property caused by the 1504  
drilling, operation, or plugging of all the owner's wells in this 1505  
state. The insurance policy shall include a reasonable level of 1506  
coverage available for an environmental endorsement covering any 1507  
pollution and contamination occurring as a result of the drilling, 1508  
operation, or plugging of the owner's wells. 1509

(3) An owner shall maintain the coverage required under 1510  
division (A)(1) or (2) of this section until all the owner's wells 1511  
are plugged and abandoned or are transferred to an owner who has 1512  
obtained insurance as required under this section and who is not 1513  
under a notice of material and substantial violation or under a 1514  
suspension order. The owner shall provide proof of liability 1515  
insurance coverage to the chief of the division of oil and gas 1516  
resources management upon request. Upon failure of the owner to 1517  
provide that proof when requested, the chief may order the 1518  
suspension of any outstanding permits and operations of the owner 1519  
until the owner provides proof of the required insurance coverage. 1520

(B)(1) Except as otherwise provided in this section, an owner 1521  
of any well, before being issued a permit under section 1509.06 of 1522  
the Revised Code or before operating or producing from a well, 1523  
shall execute and file with the division of oil and gas resources 1524  
management a surety bond conditioned on compliance with the 1525  
restoration requirements of section 1509.072, the plugging 1526  
requirements of section 1509.12, the permit provisions of section 1527  
1509.13 of the Revised Code, and all rules and orders of the chief 1528  
relating thereto, in an amount set by rule of the chief. 1529

(2) The owner may deposit with the chief, instead of a surety 1530  
bond, cash in an amount equal to the surety bond as prescribed 1531  
pursuant to this section or negotiable certificates of deposit or 1532

irrevocable letters of credit, issued by any bank organized or 1533  
transacting business in this state or by any savings and loan 1534  
association as defined in section 1151.01 of the Revised Code, 1535  
having a cash value equal to or greater than the amount of the 1536  
surety bond as prescribed pursuant to this section. Cash or 1537  
certificates of deposit shall be deposited upon the same terms as 1538  
those upon which surety bonds may be deposited. If certificates of 1539  
deposit are deposited with the chief instead of a surety bond, the 1540  
chief shall require the bank or savings and loan association that 1541  
issued any such certificate to pledge securities of a cash value 1542  
equal to the amount of the certificate that is in excess of the 1543  
amount insured by any of the agencies and instrumentalities 1544  
created under the "Federal Deposit Insurance Act," 64 Stat. 873 1545  
(1950), 12 U.S.C. 1811, as amended, and regulations adopted under 1546  
it, including at least the federal deposit insurance corporation, 1547  
bank insurance fund, and savings association insurance fund. The 1548  
securities shall be security for the repayment of the certificate 1549  
of deposit. 1550

Immediately upon a deposit of cash, certificates of deposit, 1551  
or letters of credit with the chief, the chief shall deliver them 1552  
to the treasurer of state who shall hold them in trust for the 1553  
purposes for which they have been deposited. 1554

(3) Instead of a surety bond, the chief may accept proof of 1555  
financial responsibility consisting of a sworn financial statement 1556  
showing a net financial worth within this state equal to twice the 1557  
amount of the bond for which it substitutes and, as may be 1558  
required by the chief, a list of producing properties of the owner 1559  
within this state or other evidence showing ability and intent to 1560  
comply with the law and rules concerning restoration and plugging 1561  
that may be required by rule of the chief. The owner of an exempt 1562  
Mississippian well is not required to file scheduled updates of 1563  
the financial documents, but shall file updates of those documents 1564

if requested to do so by the chief. The owner of a nonexempt 1565  
Mississippian well shall file updates of the financial documents 1566  
in accordance with a schedule established by rule of the chief. 1567  
The chief, upon determining that an owner for whom the chief has 1568  
accepted proof of financial responsibility instead of bond cannot 1569  
demonstrate financial responsibility, shall order that the owner 1570  
execute and file a bond or deposit cash, certificates of deposit, 1571  
or irrevocable letters of credit as required by this section for 1572  
the wells specified in the order within ten days of receipt of the 1573  
order. If the order is not complied with, all wells of the owner 1574  
that are specified in the order and for which no bond is filed or 1575  
cash, certificates of deposit, or letters of credit are deposited 1576  
shall be plugged. No owner shall fail or refuse to plug such a 1577  
well. Each day on which such a well remains unplugged thereafter 1578  
constitutes a separate offense. 1579

(4) The surety bond provided for in this section shall be 1580  
executed by a surety company authorized to do business in this 1581  
state. 1582

The chief shall not approve any bond until it is personally 1583  
signed and acknowledged by both principal and surety, or as to 1584  
either by the principal's or surety's attorney in fact, with a 1585  
certified copy of the power of attorney attached thereto. The 1586  
chief shall not approve a bond unless there is attached a 1587  
certificate of the superintendent of insurance that the company is 1588  
authorized to transact a fidelity and surety business in this 1589  
state. 1590

All bonds shall be given in a form to be prescribed by the 1591  
chief and shall run to the state as obligee. 1592

(5) An owner of an exempt Mississippian well or an exempt 1593  
domestic well, in lieu of filing a surety bond, cash in an amount 1594  
equal to the surety bond, certificates of deposit, irrevocable 1595  
letters of credit, or a sworn financial statement, may file a 1596

one-time fee of fifty dollars, which shall be deposited in the oil 1597  
and gas well plugging fund created in section 1509.071 of the 1598  
Revised Code. 1599

(C) An owner, operator, producer, or other person shall not 1600  
operate a well or produce from a well at any time if the owner, 1601  
operator, producer, or other person has not satisfied the 1602  
requirements established in this section. 1603

**Sec. 1509.10.** (A) Any person drilling within the state shall, 1604  
within sixty days after the completion of drilling operations to 1605  
the proposed total depth or after a determination that a well is a 1606  
dry or lost hole, file with the division of oil and gas resources 1607  
management all wireline electric logs and an accurate well 1608  
completion record on a form that is approved by the chief of the 1609  
division of oil and gas resources management that designates: 1610

(1) The purpose for which the well was drilled; 1612

(2) The character, depth, and thickness of geological units 1613  
encountered, including coal seams, mineral beds, associated fluids 1614  
such as fresh water, brine, and crude oil, natural gas, and sour 1615  
gas, if such seams, beds, fluids, or gases are known; 1616

(3) The dates on which drilling operations were commenced and 1617  
completed; 1618

(4) The types of drilling tools used and the name of the 1619  
person that drilled the well; 1620

(5) The length in feet of the various sizes of casing and 1621  
tubing used in drilling the well, the amount removed after 1622  
completion, the type and setting depth of each packer, all other 1623  
data relating to cementing in the annular space behind such casing 1624  
or tubing, and data indicating completion as a dry, gas, oil, 1625  
combination oil and gas, brine injection, or artificial brine well 1626

or a stratigraphic test; 1627

(6) The number of perforations in the casing and the 1628  
intervals of the perforations; 1629

(7) The elevation above mean sea level of the point from 1630  
which the depth measurements were made, stating also the height of 1631  
the point above ground level at the well, the total depth of the 1632  
well, and the deepest geological unit that was penetrated in the 1633  
drilling of the well; 1634

(8) If applicable, the type, volume, and concentration of 1635  
acid, and the date on which acid was used in acidizing the well; 1636

(9) If applicable, the type and volume of the fluid, not 1637  
including cement and its constituents, used to drill the well. For 1638  
each proprietary component in the fluid, the owner shall identify 1639  
the chemical class to which the component belongs and provide the 1640  
proportion of the component to the amount of the fluid in which it 1641  
was used. 1642

(10) If applicable, the type and volume of fluid, not 1643  
including cement and its constituents, used to stimulate the 1644  
reservoir of the well, the reservoir breakdown pressure, the 1645  
method used for the containment of fluids recovered from the 1646  
fracturing of the well, the methods used for the containment of 1647  
fluids when pulled from the wellbore from swabbing the well, the 1648  
average pumping rate of the well, and the name of the person that 1649  
performed the well stimulation. For each proprietary component in 1650  
the fluid, the owner shall identify the chemical class to which 1651  
the component belongs and provide the proportion of the component 1652  
to the amount of the fluid in which it was used. In addition, the 1653  
owner shall include a copy of the log from the stimulation of the 1654  
well, a copy of the invoice for each of the procedures and methods 1655  
described in division (A)(9)(10) of this section that were used on 1656  
a well, and a copy of the pumping pressure and rate graphs. 1657

However, the owner may redact from the copy of each invoice that 1658  
is required to be included under division (A)~~(9)~~(10) of this 1659  
section the costs of and charges for the procedures and methods 1660  
described in division (A)~~(9)~~(10) of this section that were used on 1661  
a well. 1662

~~(10)~~(11) The name of the company that performed the logging 1663  
of the well and the types of wireline electric logs performed on 1664  
the well. 1665

The well completion record shall be submitted in duplicate. 1666  
The first copy shall be retained as a permanent record in the 1667  
files of the division, and the second copy shall be transmitted by 1668  
the chief to the division of geological survey. 1669

(B)(1) Not later than sixty days after the completion of the 1670  
drilling operations to the proposed total depth, the owner shall 1671  
file all wireline electric logs with the division of oil and gas 1672  
resources management and the chief shall transmit such logs 1673  
electronically, if available, to the division of geological 1674  
survey. Such logs may be retained by the owner for a period of not 1675  
more than six months, or such additional time as may be granted by 1676  
the chief in writing, after the completion of the well 1677  
substantially to the depth shown in the application required by 1678  
section 1509.06 of the Revised Code. 1679

(2) If a well is not completed within sixty days after the 1680  
completion of drilling operations, the owner shall file with the 1681  
division of oil and gas resources management a supplemental well 1682  
completion record that includes all of the information required 1683  
under this section within sixty days after the completion of the 1684  
well. 1685

(C) Upon request in writing by the chief of the division of 1686  
geological survey prior to the beginning of drilling of the well, 1687  
the person drilling the well shall make available a complete set 1688

of cuttings accurately identified as to depth. 1689

(D) The form of the well completion record required by this 1690  
section shall be one that has been approved by the chief of the 1691  
division of oil and gas resources management and the chief of the 1692  
division of geological survey. The filing of a log as required by 1693  
this section fulfills the requirement of filing a log with the 1694  
chief of the division of geological survey in section 1505.04 of 1695  
the Revised Code. 1696

(E) If ~~there is~~ a material listed or designated under 1697  
division (A)(9) or (F) of this section or listed on the invoice 1698  
that is required by division (A)~~(9)~~(10) of this section is a 1699  
material for which the division of oil and gas resources 1700  
management does not have a material safety data sheet, the chief 1701  
shall obtain a copy of the material safety data sheet for the 1702  
material ~~and post a copy of the material safety data sheet on the~~ 1703  
~~division's web site.~~ 1704

(F) In addition to complying with the other requirements 1705  
established in this section, the owner of a well shall file with 1706  
the chief of the division of oil and gas resources management a 1707  
list of each chemical compound and its corresponding amount, not 1708  
including cement and its constituents, that was used during the 1709  
preceding year in the servicing, operating, and plugging of the 1710  
well in a form that the chief prescribes. For each proprietary 1711  
component that was used in the servicing, operating, and plugging 1712  
of the well, the owner shall identify the chemical class to which 1713  
the component belongs and provide the proportion of the component 1714  
to the amount of the fluid in which it was used. The list shall be 1715  
submitted on or before the thirtieth day of June of each year. An 1716  
owner that has more than one hundred wells shall submit 1717  
electronically the list of chemical compounds and the 1718  
corresponding amounts used in a format that is approved by the 1719  
chief. 1720



The chief may inspect at any time the records concerning any chemical compound that is used in the production operations of a well. 1721  
1722  
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(G) The chief shall post on the division's web site each material safety data sheet obtained under division (E) of this section and each list received under division (F) of this section. 1724  
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(H) The owner of a well, upon request, shall provide to emergency responders the exact chemical composition of each fluid designated under divisions (A)(9) and (10) of this section and of each chemical compound listed under division (F) of this section. The exact chemical composition shall include identification of each proprietary component. 1727  
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**Sec. 1509.11.** (A) The owner of any well that is not a high volume horizontal well and is 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. 1733  
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(B) The owner of any high volume horizontal well that is producing or capable of producing oil or gas shall file with the chief, on or before the fifteenth day of the month following the close of each calendar quarter, a statement of production of oil, 1748  
1749  
1750  
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gas, wet gas, condensate, and brine for the preceding calendar 1752  
quarter in such form as the chief may prescribe. An owner that has 1753  
more than one hundred high volume horizontal wells in this state 1754  
shall submit electronically the statement of production in a 1755  
format that is approved by the chief. The chief shall include on 1756  
the form, at the minimum, a request for the submittal of the 1757  
information that a person who is regulated under this chapter is 1758  
required to submit under the "Emergency Planning and Community 1759  
Right-To-Know Act of 1986," 100 Stat. 1728, 42 U.S.C. 11001, and 1760  
regulations adopted under it, and that the division does not 1761  
obtain through other reporting mechanisms. 1762

**Sec. 1509.22.** (A) Except when acting in accordance with 1763  
section 1509.226 of the Revised Code, no person shall place or 1764  
cause to be placed brine, crude oil, natural gas, or other fluids 1765  
associated with the exploration or development of oil and gas 1766  
resources in surface or ground water or in or on the land in such 1767  
quantities or in such manner as actually causes or could 1768  
reasonably be anticipated to cause either of the following: 1769

(1) Water used for consumption by humans or domestic animals 1770  
to exceed the standards of the Safe Drinking Water Act; 1771

(2) Damage or injury to public health or safety or the 1772  
environment. 1773

(B) No person shall store or dispose of brine in violation of 1774  
a plan approved under division (A) of section 1509.222 or section 1775  
1509.226 of the Revised Code, in violation of a resolution 1776  
submitted under section 1509.226 of the Revised Code, or in 1777  
violation of rules or orders applicable to those plans or 1778  
resolutions. 1779

(C) The chief of the division of oil and gas resources 1780  
management shall adopt rules and issue orders regarding storage 1781  
and disposal of brine and other waste substances; however, the 1782

storage and disposal of brine and other waste substances and the 1783  
chief's rules relating to storage and disposal are subject to all 1784  
of the following standards: 1785

(1) Brine from any well except an exempt Mississippian well 1786  
shall be disposed of only by injection into an underground 1787  
formation, including annular disposal if approved by rule of the 1788  
chief, which injection shall be subject to division (D) of this 1789  
section; by surface application in accordance with section 1790  
1509.226 of the Revised Code; in association with a method of 1791  
enhanced recovery as provided in section 1509.21 of the Revised 1792  
Code; or by other methods approved by the chief for testing or 1793  
implementing a new technology or method of disposal. Brine from 1794  
exempt Mississippian wells shall not be discharged directly into 1795  
the waters of the state. 1796

(2) Muds, cuttings, and other waste substances shall not be 1797  
disposed of in violation of any rule. 1798

(3) Pits or steel tanks shall be used as authorized by the 1799  
chief for containing brine and other waste substances resulting 1800  
from, obtained from, or produced in connection with drilling, well 1801  
stimulation, reworking, reconditioning, plugging back, or plugging 1802  
operations. The pits and steel tanks shall be constructed and 1803  
maintained to prevent the escape of brine and other waste 1804  
substances. 1805

(4) A dike or pit may be used for spill prevention and 1806  
control. A dike or pit so used shall be constructed and maintained 1807  
to prevent the escape of brine and crude oil, and the reservoir 1808  
within such a dike or pit shall be kept reasonably free of brine, 1809  
crude oil, and other waste substances. 1810

(5) Earthen impoundments constructed pursuant to the 1811  
division's specifications may be used for the temporary storage of 1812  
fluids used in the stimulation of a well. 1813

(6) No pit, earthen impoundment, or dike shall be used for 1814  
the temporary storage of brine or other substances except in 1815  
accordance with divisions (C)(3) to (5) of this section. 1816

(7) No pit or dike shall be used for the ultimate disposal of 1817  
brine or other liquid waste substances. 1818

(D)(1) No person, without first having obtained a permit from 1819  
the chief, shall inject brine or other waste substances resulting 1820  
from, obtained from, or produced in connection with oil or gas 1821  
drilling, exploration, or production into an underground formation 1822  
unless a rule of the chief expressly authorizes the injection 1823  
without a permit. The permit shall be in addition to any permit 1824  
required by section 1509.05 of the Revised Code, and the permit 1825  
application shall be accompanied by a permit fee of one thousand 1826  
dollars. The chief shall adopt rules in accordance with Chapter 1827  
119. of the Revised Code regarding the injection into wells of 1828  
brine and other waste substances resulting from, obtained from, or 1829  
produced in connection with oil or gas drilling, exploration, or 1830  
production. ~~The rules may authorize tests to evaluate whether 1831  
fluids or carbon dioxide may be injected in a reservoir and to 1832  
determine the maximum allowable injection pressure, which shall be 1833  
conducted in accordance with methods prescribed in the rules or in 1834  
accordance with conditions of the permit. In addition, the rules 1835  
shall include provisions regarding applications all of the 1836  
following: 1837~~

(a) Applications for and issuance of the permits required by 1838  
this division; ~~entry~~ 1839

(b) Entry to conduct inspections and to examine and copy 1840  
records to ascertain compliance with this division and rules, 1841  
orders, and terms and conditions of permits adopted or issued 1842  
under it; ~~the~~ 1843

(c) The provision and maintenance of information through 1844

monitoring, recordkeeping, and reporting; ~~and~~ 1845

(d) Any other provisions in furtherance of the goals of this 1846  
section and the Safe Drinking Water Act. ~~Fe~~ 1847

(2) The chief may adopt rules in accordance with Chapter 119. 1848  
of the Revised Code authorizing tests to evaluate whether fluids 1849  
or carbon dioxide may be injected in a reservoir and to determine 1850  
the maximum allowable injection pressure, which shall be conducted 1851  
in accordance with methods prescribed in the rules or in 1852  
accordance with conditions of the permit. In addition, the chief 1853  
may adopt rules that do both of the following: 1854

(a) Establish the total depth of a well for which a permit 1855  
has been applied for or issued under this division; 1856

(b) Establish requirements and procedures in accordance with 1857  
which the chief may address threats to public health and safety. 1858

(3) To implement the goals of the Safe Drinking Water Act, 1859  
the chief shall not issue a permit for the injection of brine or 1860  
other waste substances resulting from, obtained from, or produced 1861  
in connection with oil or gas drilling, exploration, or production 1862  
unless the chief concludes that the applicant has demonstrated 1863  
that the injection will not result in the presence of any 1864  
contaminant in ground water that supplies or can reasonably be 1865  
expected to supply any public water system, such that the presence 1866  
of the contaminant may result in the system's not complying with 1867  
any national primary drinking water regulation or may otherwise 1868  
adversely affect the health of persons. ~~This~~ 1869

(4) This division and rules, orders, and terms and conditions 1870  
of permits adopted or issued under it shall be construed to be no 1871  
more stringent than required for compliance with the Safe Drinking 1872  
Water Act unless essential to ensure that underground sources of 1873  
drinking water will not be endangered. 1874

(5) The chief, by order, may require a person to whom a 1875

permit was issued under this division prior to the effective date 1876  
of this amendment to comply with any or all of the rules adopted 1877  
under this division. 1878

(E) The owner holding a permit, or an assignee or transferee 1879  
who has assumed the obligations and liabilities imposed by this 1880  
chapter and any rules adopted or orders issued under it pursuant 1881  
to section 1509.31 of the Revised Code, and the operator of a well 1882  
shall be liable for a violation of this section or any rules 1883  
adopted or orders or terms or conditions of a permit issued under 1884  
it. 1885

(F) An owner shall replace the water supply of the holder of 1886  
an interest in real property who obtains all or part of the 1887  
holder's supply of water for domestic, agricultural, industrial, 1888  
or other legitimate use from an underground or surface source 1889  
where the supply has been substantially disrupted by 1890  
contamination, diminution, or interruption proximately resulting 1891  
from the owner's oil or gas operation, or the owner may elect to 1892  
compensate the holder of the interest in real property for the 1893  
difference between the fair market value of the interest before 1894  
the damage occurred to the water supply and the fair market value 1895  
after the damage occurred if the cost of replacing the water 1896  
supply exceeds this difference in fair market values. However, 1897  
during the pendency of any order issued under this division, the 1898  
owner shall obtain for the holder or shall reimburse the holder 1899  
for the reasonable cost of obtaining a water supply from the time 1900  
of the contamination, diminution, or interruption by the operation 1901  
until the owner has complied with an order of the chief for 1902  
compliance with this division or such an order has been revoked or 1903  
otherwise becomes not effective. If the owner elects to pay the 1904  
difference in fair market values, but the owner and the holder 1905  
have not agreed on the difference within thirty days after the 1906  
chief issues an order for compliance with this division, within 1907

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) Ten 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) One dollar per barrel of each substance that is delivered 1940  
to a well to be injected in the well when the substance is not 1941  
produced within the division of oil and gas resources management 1942  
regulatory district in which the well is located or within an 1943  
adjoining oil and gas resources management regulatory district. 1944

(2) The maximum number of barrels of substance per injection 1945  
well in a calendar year on which a fee may be levied under 1946  
division (H) of this section is five hundred thousand. If in a 1947  
calendar year the owner of an injection well receives more than 1948  
five hundred thousand barrels of substance to be injected in the 1949  
owner's well and if the owner receives at least one substance that 1950  
is produced within the division's regulatory district in which the 1951  
well is located or within an adjoining regulatory district and at 1952  
least one substance that is not produced within the division's 1953  
regulatory district in which the well is located or within an 1954  
adjoining regulatory district, the fee shall be calculated first 1955  
on all of the barrels of substance that are not produced within 1956  
the division's regulatory district in which the well is located or 1957  
within an adjoining district at the rate established in division 1958  
(H)(2) of this section. The fee then shall be calculated on the 1959  
barrels of substance that are produced within the division's 1960  
regulatory district in which the well is located or within an 1961  
adjoining district at the rate established in division (H)(1) of 1962  
this section until the maximum number of barrels established in 1963  
division (H)(2) of this section has been attained. 1964

(3) The owner of an injection well who is issued a permit 1965  
under division (D) of this section shall collect the fee levied by 1966  
division (H) of this section on behalf of the division of oil and 1967  
gas resources management and forward the fee to the division. The 1968  
chief shall transmit all money received under division (H) of this 1969  
section to the treasurer of state who shall deposit and credit the 1970  
money in accordance with division (H)(4) of this section. The 1971



owner of an injection well who collects the fee levied by this 1972  
division may retain up to three per cent of the amount that is 1973  
collected. 1974

(4) Ten per cent of the proceeds of the fees levied under 1975  
division (H) of this section shall be deposited in the state 1976  
treasury to the credit of the geological mapping fund created in 1977  
section 1505.09 of the Revised Code, and ninety per cent of the 1978  
proceeds shall be deposited in the state treasury to the credit of 1979  
the oil and gas well fund created in section 1509.02 of the 1980  
Revised Code. 1981

(5) The chief shall adopt rules in accordance with Chapter 1982  
119. of the Revised Code establishing requirements and procedures 1983  
for collection of the fee levied by division (H) of this section. 1984

(I)(1) Except as provided in division (I)(2) of this section, 1985  
the owner of an injection well who is issued a permit under 1986  
division (D) of this section shall not inject brine or other waste 1987  
substances into the well unless the owner first receives from the 1988  
transporter of the brine or other waste substances a list of each 1989  
chemical compound that was used in the drilling, stimulating, 1990  
servicing, operating, or plugging of the well from which the brine 1991  
or other waste substances originated. The owner of the well shall 1992  
maintain the list and make it available for inspection by the 1993  
chief at all times. In addition, the owner annually shall submit 1994  
to the chief all lists received under this division in a form 1995  
prescribed by the chief. 1996

(2) If the owner of the well from which the brine or other 1997  
waste substances originated has submitted the information that is 1998  
required by section 1509.10 of the Revised Code and has so 1999  
notified the owner of the injection well into which the brine or 2000  
other waste substances will be injected, the owner of the 2001  
injection well may inject in the injection well brine or other 2002  
waste substances from that well without first receiving from the 2003

transporter of the brine or other waste substances the information 2004  
that is required by division (I)(1) of this section. 2005

(3) As used in this division, "transporter" means a 2006  
transporter that is registered under section 1509.222 of the 2007  
Revised Code. 2008

**Sec. 1509.221.** (A) No person, without first having obtained a 2009  
permit from the chief of the division of oil and gas resources 2010  
management, shall drill a well or inject a substance into a well 2011  
for the exploration for or extraction of minerals or energy, other 2012  
than oil or natural gas, including, but not limited to, the mining 2013  
of sulfur by the Frasch process, the solution mining of minerals, 2014  
the in situ combustion of fossil fuel, or the recovery of 2015  
geothermal energy to produce electric power, unless a rule of the 2016  
chief expressly authorizes the activity without a permit. The 2017  
permit shall be in addition to any permit required by section 2018  
1509.05 of the Revised Code. The chief shall adopt rules in 2019  
accordance with Chapter 119. of the Revised Code governing the 2020  
issuance of permits under this section. The rules shall include 2021  
provisions regarding the matters the applicant for a permit shall 2022  
demonstrate to establish eligibility for a permit; the form and 2023  
content of applications for permits; the terms and conditions of 2024  
permits; entry to conduct inspections and to examine and copy 2025  
records to ascertain compliance with this section and rules, 2026  
orders, and terms and conditions of permits adopted or issued 2027  
thereunder; provision and maintenance of information through 2028  
monitoring, recordkeeping, and reporting; and other provisions in 2029  
furtherance of the goals of this section and the Safe Drinking 2030  
Water Act. To implement the goals of the Safe Drinking Water Act, 2031  
the chief shall not issue a permit under this section, unless the 2032  
chief concludes that the applicant has demonstrated that the 2033  
drilling, injection of a substance, and extraction of minerals or 2034  
energy will not result in the presence of any contaminant in 2035

underground water that supplies or can reasonably be expected to 2036  
supply any public water system, such that the presence of the 2037  
contaminant may result in the system's not complying with any 2038  
national primary drinking water regulation or may otherwise 2039  
adversely affect the health of persons. The chief may issue, 2040  
without a prior adjudication hearing, orders requiring compliance 2041  
with this section and rules, orders, and terms and conditions of 2042  
permits adopted or issued thereunder. This section and rules, 2043  
orders, and terms and conditions of permits adopted or issued 2044  
thereunder shall be construed to be no more stringent than 2045  
required for compliance with the Safe Drinking Water Act, unless 2046  
essential to ensure that underground sources of drinking water 2047  
will not be endangered. 2048

~~(B)(1) There is levied on the owner of an injection well who 2049  
has been issued a permit under division (D) of section 1509.22 of 2050  
the Revised Code the following fees: 2051~~

~~(a) Five cents per barrel of each substance that is delivered 2052  
to a well to be injected in the well when the substance is 2053  
produced within the division of oil and gas resources management 2054  
regulatory district in which the well is located or within an 2055  
adjoining oil and gas resources management regulatory district; 2056~~

~~(b) Twenty cents per barrel of each substance that is 2057  
delivered to a well to be injected in the well when the substance 2058  
is not produced within the division of oil and gas resources 2059  
management regulatory district in which the well is located or 2060  
within an adjoining oil and gas resources management regulatory 2061  
district. 2062~~

~~(2) The maximum number of barrels of substance per injection 2063  
well in a calendar year on which a fee may be levied under 2064  
division (B) of this section is five hundred thousand. If in a 2065  
calendar year the owner of an injection well receives more than 2066  
five hundred thousand barrels of substance to be injected in the 2067~~

~~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 2100  
is brought has violated, is violating, or will violate this 2101  
section or rules, orders, or terms or conditions of permits 2102  
adopted or issued thereunder. The court shall not require, prior 2103  
to granting such preliminary and permanent injunctive relief or 2104  
imposing a civil penalty, proof that the violation was, is, or 2105  
will be the result of intentional conduct or negligence. In any 2106  
such action, any person may intervene as a plaintiff upon the 2107  
demonstration that the person has an interest that is or may be 2108  
adversely affected by the activity for which injunctive relief or 2109  
a civil penalty is sought. 2110

**Sec. 1509.222.** (A)(1) Except as provided in section 1509.226 2111  
of the Revised Code, no person shall transport brine by vehicle in 2112  
this state unless the business entity that employs the person 2113  
first registers with and obtains a registration certificate and 2114  
identification number from the chief of the division of oil and 2115  
gas resources management. 2116

(2) No more than one registration certificate shall be 2117  
required of any business entity. Registration certificates issued 2118  
under this section are not transferable. An applicant shall file 2119  
an application with the chief, containing such information in such 2120  
form as the chief prescribes, ~~but including a.~~ The application 2121  
shall include at least all of the following: 2122

(a) A list that identifies each vehicle that will be used in 2123  
the transportation of brine; 2124

(b) A list that identifies each trailer or container that 2125  
will be used in the transportation of brine; 2126

(c) A plan for disposal that provides for compliance with the 2127  
requirements of this chapter and rules of the chief pertaining to 2128  
the transportation of brine by vehicle and the disposal of brine 2129  
so transported and that lists all disposal sites that the 2130

applicant intends to use, ~~the~~ i 2131

(d) The bond required by section 1509.225 of the Revised 2132

Code, ~~and a~~ i 2133

(e) A certificate issued by an insurance company authorized 2134

to do business in this state certifying that the applicant has in 2135

force a liability insurance policy in an amount not less than 2136

three hundred thousand dollars bodily injury coverage and three 2137

hundred thousand dollars property damage coverage to pay damages 2138

for injury to persons or property caused by the collecting, 2139

handling, transportation, or disposal of brine. ~~The~~ 2140

The insurance policy required by division (A)(2)(e) of this 2141

section shall be maintained in effect during the term of the 2142

registration certificate. The policy or policies providing the 2143

coverage shall require the insurance company to give notice to the 2144

chief if the policy or policies lapse for any reason. Upon such 2145

termination of the policy, the chief may suspend the registration 2146

certificate until proper insurance coverage is obtained. ~~Each~~ 2147

(3) Each application for a registration certificate shall be 2148

accompanied by a nonrefundable fee of five hundred dollars. 2149

~~(3)~~(4) If a business entity that has been issued a 2150

registration certificate under this section changes its name due 2151

to a business reorganization or merger, the business entity shall 2152

revise the bond or certificates of deposit required by section 2153

1509.225 of the Revised Code and obtain a new certificate from an 2154

insurance company in accordance with division (A)(2)(e) of this 2155

section to reflect the change in the name of the business entity. 2156

(B) The chief shall issue an order denying an application for 2157

a registration certificate if the chief finds that either of the 2158

following applies: 2159

(1) The applicant, at the time of applying for the 2160

registration certificate, has been found liable by a final 2161

nonappealable order of a court of competent jurisdiction for 2162  
damage to streets, roads, highways, bridges, culverts, or 2163  
drainways pursuant to section 4513.34 or 5577.12 of the Revised 2164  
Code until the applicant provides the chief with evidence of 2165  
compliance with the order. 2166

(2) The applicant's plan for disposal does not provide for 2167  
compliance with the requirements of this chapter and rules of the 2168  
chief pertaining to the transportation of brine by vehicle and the 2169  
disposal of brine so transported. 2170

(C) No applicant shall attempt to circumvent division (B) of 2171  
this section by applying for a registration certificate under a 2172  
different name or business organization name, by transferring 2173  
responsibility to another person or entity, or by any similar act. 2174

(D) A registered transporter shall apply to revise a disposal 2175  
plan under procedures that the chief shall prescribe by rule. 2176  
However, at a minimum, an application for a revision shall list 2177  
all sources and disposal sites of brine currently transported. The 2178  
chief shall deny any application for a revision of a plan under 2179  
this division if the chief finds that the proposed revised plan 2180  
does not provide for compliance with the requirements of this 2181  
chapter and rules of the chief pertaining to the transportation of 2182  
brine by vehicle and the disposal of brine so transported. 2183  
Approvals and denials of revisions shall be by order of the chief. 2184

(E) The chief may adopt rules, issue orders, and attach terms 2185  
and conditions to registration certificates as may be necessary to 2186  
administer, implement, and enforce sections 1509.222 to 1509.226 2187  
of the Revised Code for protection of public health or safety or 2188  
conservation of natural resources. 2189

(F) A registered transporter shall provide to the chief the 2190  
information that is required by division (I)(1) of section 1509.22 2191  
of the Revised Code. 2192

Sec. 1509.223. (A) No permit holder or owner of a well shall 2193  
enter into an agreement with or permit any person to transport 2194  
brine produced from the well who is not registered pursuant to 2195  
section 1509.222 of the Revised Code or exempt from registration 2196  
under section 1509.226 of the Revised Code. 2197

(B) Each registered transporter shall file with the chief of 2198  
the division of oil and gas resources management, on or before the 2199  
fifteenth day of April, a statement concerning brine transported, 2200  
including quantities transported and source and delivery points, 2201  
during the last preceding calendar year, and such other 2202  
information in such form as the chief may prescribe. 2203

(C) Each registered transporter shall keep on each vehicle 2204  
used to transport brine a daily log and have it available upon the 2205  
request of the chief or an authorized representative of the chief 2206  
or a peace officer. The log shall, at a minimum, include all of 2207  
the following information: 2208

(1) The name of the owner or owners of the well or wells 2209  
producing the brine to be transported; 2210

(2) The date and time the brine is loaded; 2211

(3) The name of the driver; 2212

(4) The amount of brine loaded at each collection point; 2213

(5) The disposal location; 2214

(6) The date and time the brine is disposed of and the amount 2215  
of brine disposed of at each location. 2216

The chief, by rule, may establish procedures for the 2217  
submission to the chief of the information that is required to be 2218  
included in the daily log. No registered transporter shall falsify 2219  
or fail to keep or submit the log required by this division. 2220

(D) Each registered transporter shall legibly identify with 2221



reflective paints all vehicles employed in transporting or 2222  
disposing of brine. Letters shall be no less than four inches in 2223  
height and shall indicate the identification number issued by the 2224  
chief, the word "brine," and the name and telephone number of the 2225  
transporter. 2226

(E) The chief shall maintain and keep a current list of 2227  
persons registered to transport brine under section 1509.222 of 2228  
the Revised Code. The list shall be open to public inspection. It 2229  
is an affirmative defense to a charge under division (A) of this 2230  
section that at the time the permit holder or owner of a well 2231  
entered into an agreement with or permitted a person to transport 2232  
brine, the person was shown on the list as currently registered to 2233  
transport brine. 2234

(F) Except as otherwise provided in this division, no person 2235  
shall be issued a registration certificate or renewal of a 2236  
registration certificate under section 1509.222 of the Revised 2237  
Code unless the business entity applying for the registration 2238  
certificate or renewal of a registration certificate installs an 2239  
electronic transponder of a type approved by the chief on each 2240  
vehicle that will be used to transport brine. The electronic 2241  
transponder shall allow the chief to electronically verify the 2242  
registration status of the transporter and the origin and 2243  
disposition of the fluid being transported for disposal. 2244

The chief may waive the requirements established in this 2245  
division if the same business entity owns and operates both the 2246  
facility that will receive the brine for disposal and the well 2247  
that produced the brine that will be disposed of and the business 2248  
entity is not in the business of transporting brine for disposal 2249  
for any other person. 2250

**Sec. 1509.23.** (A) Rules of the chief of the division of oil 2251  
and gas resources management may specify practices to be followed 2252

in the drilling and treatment of wells, production of oil and gas, 2253  
and plugging of wells for protection of public health or safety or 2254  
to prevent damage to natural resources, including specification of 2255  
the following: 2256

(1) Appropriate devices; 2257

(2) Minimum distances that wells and other excavations, 2258  
structures, and equipment shall be located from water wells, 2259  
streets, roads, highways, rivers, lakes, streams, ponds, other 2260  
bodies of water, railroad tracks, public or private recreational 2261  
areas, zoning districts, and buildings or other structures. Rules 2262  
adopted under division (A)(2) of this section shall not conflict 2263  
with section 1509.021 of the Revised Code. 2264

(3) Other methods of operation; 2265

(4) Procedures, methods, and equipment and other requirements 2266  
for equipment to prevent and contain discharges of oil and brine 2267  
from oil production facilities and oil drilling and workover 2268  
facilities consistent with and equivalent in scope, content, and 2269  
coverage to section 311(j)(1)(c) of the "Federal Water Pollution 2270  
Control Act Amendments of 1972," 86 Stat. 886, 33 U.S.C.A. 1251, 2271  
as amended, and regulations adopted under it. In addition, the 2272  
rules may specify procedures, methods, and equipment and other 2273  
requirements for equipment to prevent and contain surface and 2274  
subsurface discharges of fluids, condensates, and gases. 2275

(5) Notifications; 2276

(6) Requirements governing the location and construction of 2277  
fresh water impoundments that are part of a production operation. 2278

(B) The chief, in consultation with the emergency response 2279  
commission created in section 3750.02 of the Revised Code, shall 2280  
adopt rules in accordance with Chapter 119. of the Revised Code 2281  
that specify the information that shall be included in an 2282  
electronic database that the chief shall create and host. The 2283

information shall be that which the chief considers to be 2284  
appropriate for the purpose of responding to emergency situations 2285  
that pose a threat to public health or safety or the environment. 2286  
At the minimum, the information shall include that which a person 2287  
who is regulated under this chapter is required to submit under 2288  
the "Emergency Planning and Community Right-To-Know Act of 1986," 2289  
100 Stat. 1728, 42 U.S.C.A. 11001, and regulations adopted under 2290  
it. 2291

In addition, the rules shall specify whether and to what 2292  
extent the database and the information that it contains will be 2293  
made accessible to the public. The rules shall ensure that the 2294  
database will be made available via the internet or a system of 2295  
computer disks to the emergency response commission and to every 2296  
local emergency planning committee and fire department in this 2297  
state. 2298

**Sec. 1509.31.** (A) Whenever the entire interest of an oil and 2299  
gas lease is assigned or otherwise transferred, the assignor or 2300  
transferor shall notify the holders of the royalty interests, and, 2301  
if a well or wells exist on the lease, the division of oil and gas 2302  
resources management, of the name and address of the assignee or 2303  
transferee by certified mail, return receipt requested, not later 2304  
than thirty days after the date of the assignment or transfer. 2305  
When notice of any such assignment or transfer is required to be 2306  
provided to the division, it shall be provided on a form 2307  
prescribed and provided by the division and verified by both the 2308  
assignor or transferor and by the assignee or transferee and shall 2309  
be accompanied by a nonrefundable fee of one hundred dollars for 2310  
each well. The notice form applicable to assignments or transfers 2311  
of a well to the owner of the surface estate of the tract on which 2312  
the well is located shall contain a statement informing the 2313  
landowner that the well may require periodic servicing to maintain 2314  
its productivity; that, upon assignment or transfer of the well to 2315

the landowner, the landowner becomes responsible for compliance 2316  
with the requirements of this chapter and rules adopted under it, 2317  
including, without limitation, the proper disposal of brine 2318  
obtained from the well, the plugging of the well when it becomes 2319  
incapable of producing oil or gas, and the restoration of the well 2320  
site; and that, upon assignment or transfer of the well to the 2321  
landowner, the landowner becomes responsible for the costs of 2322  
compliance with the requirements of this chapter and rules adopted 2323  
under it and the costs for operating and servicing the well. 2324

(B) When the entire interest of a well is proposed to be 2325  
assigned or otherwise transferred to the landowner for use as an 2326  
exempt domestic well, the owner who has been issued a permit under 2327  
this chapter for the well shall submit to the chief of the 2328  
division of oil and gas resources management an application for 2329  
the assignment or transfer that contains all documents that the 2330  
chief requires and a nonrefundable fee of one hundred dollars. The 2331  
application for such an assignment or transfer shall be prescribed 2332  
and provided by the chief. The chief may approve the application 2333  
if the application is accompanied by a release of all of the oil 2334  
and gas leases that are included in the applicable formation of 2335  
the drilling unit, the release is in a form such that the well 2336  
ownership merges with the fee simple interest of the surface 2337  
tract, and the release is in a form that may be recorded. However, 2338  
if the owner of the well does not release the oil and gas leases 2339  
associated with the well that is proposed to be assigned or 2340  
otherwise transferred or if the fee simple tract that results from 2341  
the merger of the well ownership with the fee simple interest of 2342  
the surface tract is less than five acres, the proposed exempt 2343  
domestic well owner shall post a five thousand dollar bond with 2344  
the division prior to the assignment or transfer of the well to 2345  
ensure that the well will be properly plugged. The chief, for good 2346  
cause, may modify the requirements of this section governing the 2347  
assignment or transfer of the interests of a well to the 2348

landowner. Upon the assignment or transfer of the well, the owner 2349  
of an exempt domestic well is not subject to the severance tax 2350  
levied under section 5749.02 of the Revised Code, but is subject 2351  
to all applicable fees established in this chapter. 2352

(C) The owner holding a permit under section 1509.05 of the 2353  
Revised Code is responsible for all obligations and liabilities 2354  
imposed by this chapter and any rules, orders, and terms and 2355  
conditions of a permit adopted or issued under it, and no 2356  
assignment or transfer by the owner relieves the owner of the 2357  
obligations and liabilities until and unless the assignee or 2358  
transferee files with the division the information described in 2359  
divisions (A)(1), (2), (3), (4), (5), (10), (11), and ~~(12)~~(16) of 2360  
section 1509.06 of the Revised Code; obtains liability insurance 2361  
coverage required by section 1509.07 of the Revised Code, except 2362  
when none is required by that section; and executes and files a 2363  
surety bond, negotiable certificates of deposit or irrevocable 2364  
letters of credit, or cash, as described in that section. Instead 2365  
of a bond, but only upon acceptance by the chief, the assignee or 2366  
transferee may file proof of financial responsibility, described 2367  
in section 1509.07 of the Revised Code. Section 1509.071 of the 2368  
Revised Code applies to the surety bond, cash, and negotiable 2369  
certificates of deposit and irrevocable letters of credit 2370  
described in this section. Unless the chief approves a 2371  
modification, each assignee or transferee shall operate in 2372  
accordance with the plans and information filed by the permit 2373  
holder pursuant to section 1509.06 of the Revised Code. 2374

(D) If a mortgaged property that is being foreclosed is 2375  
subject to an oil or gas lease, pipeline agreement, or other 2376  
instrument related to the production or sale of oil or natural gas 2377  
and the lease, agreement, or other instrument was recorded 2378  
subsequent to the mortgage, and if the lease, agreement, or other 2379  
instrument is not in default, the oil or gas lease, pipeline 2380

agreement, or other instrument, as applicable, has priority over 2381  
all other liens, claims, or encumbrances on the property so that 2382  
the oil or gas lease, pipeline agreement, or other instrument is 2383  
not terminated or extinguished upon the foreclosure sale of the 2384  
mortgaged property. If the owner of the mortgaged property was 2385  
entitled to oil and gas royalties before the foreclosure sale, the 2386  
oil or gas royalties shall be paid to the purchaser of the 2387  
foreclosed property. 2388

**Sec. 1509.50.** (A) An oil and gas regulatory cost recovery 2389  
assessment is hereby imposed by this section on an owner. An owner 2390  
shall pay the assessment in the same manner as a severer who is 2391  
required to file a return under section 5749.06 of the Revised 2392  
Code. However, an owner may designate a severer who shall pay the 2393  
owner's assessment on behalf of the owner on the return that the 2394  
severer is required to file under that section. If a severer so 2395  
pays an owner's assessment, the severer may recoup from the owner 2396  
the amount of the assessment. Except for an exempt domestic well, 2397  
the assessment imposed shall be in addition to the taxes levied on 2398  
the severance of oil and gas under section 5749.02 of the Revised 2399  
Code. 2400

(B)(1) Except for an exempt domestic well, the oil and gas 2401  
regulatory cost recovery assessment shall ~~be calculated on a~~ 2402  
~~quarterly basis and shall be one of the following:~~ 2403

~~(a) If the sum of ten cents per barrel of oil for all of the 2404  
wells of the owner, one half of one cent per one thousand cubic 2405  
feet of natural gas for all of the wells of the owner, and the 2406  
amount of the severance tax levied on each severer for all of the 2407  
wells of the owner under divisions (A)(5) and (6) of section 2408  
5749.02 of the Revised Code, as applicable, is greater than the 2409  
sum of fifteen dollars for each well owned by the owner, the 2410  
amount of the assessment is the sum of ten cents per barrel of oil 2411~~

~~for all of the wells of the owner and one half of one cent per one  
thousand cubic feet of natural gas for all of the wells of the  
owner.~~ 2412  
2413  
2414

~~(b) If the sum of ten cents per barrel of oil for all of the  
wells of the owner, one half of one cent per one thousand cubic  
feet of natural gas for all of the wells of the owner, and apply  
if the amount of the severance tax levied on each severer for all  
of the wells of the owner under divisions (A)(5) and (6) of  
section 5749.02 of the Revised Code, as applicable, is less than  
the sum of fifteen dollars for each well owned by the owner~~7~~. The  
assessment shall be calculated on a quarterly basis, and the  
~~amount of the assessment is~~ shall be the sum of fifteen dollars  
for each well owned by the owner less the amount of the tax levied  
on each severer for all of the wells of the owner under divisions  
(A)(5) and (6) of section 5749.02 of the Revised Code, as  
applicable.~~ 2415  
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(2) The oil and gas regulatory cost recovery assessment for a 2428  
well that becomes an exempt domestic well on and after June 30,  
2010, shall be sixty dollars to be paid to the division of oil and 2429  
gas resources management on the first day of July of each year. 2430  
2431

(C) All money collected pursuant to this section shall be 2432  
deposited in the state treasury to the credit of the oil and gas 2433  
well fund created in section 1509.02 of the Revised Code. 2434

(D) Except for purposes of revenue distribution as specified 2435  
in division (B) of section 5749.02 of the Revised Code, the oil 2436  
and gas regulatory cost recovery assessment imposed by this 2437  
section shall be treated the same and equivalent for all purposes 2438  
as the taxes levied on the severance of oil and gas under that 2439  
section. However, the assessment imposed by this section is not a 2440  
tax under Chapter 5749. of the Revised Code. 2441

**Sec. 1514.01.** As used in this chapter: 2442

(A) "Surface mining" means all or any part of a process 2443  
followed in the production of minerals from the earth or from the 2444  
surface of the land by surface excavation methods, such as open 2445  
pit mining, dredging, placering, or quarrying, and includes the 2446  
removal of overburden for the purpose of determining the location, 2447  
quantity, or quality of mineral deposits, and the incidental 2448  
removal of coal at a rate less than one-sixth the total weight of 2449  
minerals and coal removed during the year, but does not include: 2450  
test or exploration boring; mining operations carried out beneath 2451  
the surface by means of shafts, tunnels, or similar mine openings; 2452  
the extraction of minerals, other than coal, by a landowner for 2453  
the landowner's own noncommercial use where such material is 2454  
extracted and used in an unprocessed form on the same tract of 2455  
land; the extraction of minerals, other than coal, from borrow 2456  
pits for highway construction purposes, provided that the 2457  
extraction is performed under a bond, a contract, and 2458  
specifications that substantially provide for and require 2459  
reclamation practices consistent with the requirements of this 2460  
chapter; the removal of minerals incidental to construction work, 2461  
provided that the owner or person having control of the land upon 2462  
which the construction occurs, the contractor, or the construction 2463  
firm possesses a valid building permit; the removal of minerals to 2464  
a depth of not more than five feet, measured from the highest 2465  
original surface elevation of the area to be excavated, where not 2466  
more than one acre of land is excavated during twelve successive 2467  
calendar months; routine dredging of a watercourse for purely 2468  
navigational or flood control purposes during which materials are 2469  
removed for noncommercial purposes, including activities conducted 2470  
by or on behalf of a conservancy district, organized under Chapter 2471  
6101. of the Revised Code, for flood control purposes that are 2472  
exempt from permitting requirements under section 10 of the 2473  
"Rivers and Harbors Act of 1899," 30 Stat. 1151, 33 U.S.C. 403, as 2474  
amended; or the extraction or movement of soil or minerals within 2475



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 2507  
by surface mining or who removes overburden for the purpose of 2508  
determining the location, quality, or quantity of a mineral 2509  
deposit. "Operator" also means any person engaged in in-stream 2510  
mining who removes minerals from the bottom of the channel of a 2511  
watercourse by in-stream mining. 2512

(H) "Performance bond" means the surety bond required to be 2513  
filed under section 1514.04 of the Revised Code and includes cash, 2514  
an irrevocable letter of credit, and negotiable certificates of 2515  
deposit authorized to be deposited in lieu of the surety bond 2516  
under that section. 2517

(I) "Dewatering" means the withdrawal of ground water from an 2518  
aquifer or saturated zone that may result in the lowering of the 2519  
water level within the aquifer or saturated zone or a decline of 2520  
the potentiometric surface within that aquifer or saturated zone. 2521

(J) "Ground water" means all water occurring in an aquifer. 2522

(K) "Cone of depression" means a depression or low point in 2523  
the water table or potentiometric surface of a body of ground 2524  
water that develops around a location from which ground water is 2525  
being withdrawn. 2526

(L) "High water mark" means the line on the shore that is 2527  
established by the fluctuations of water and indicated by physical 2528  
characteristics such as a natural line impressed on the bank; 2529  
shelving; changes in the character of soil; destruction of 2530  
terrestrial vegetation; the presence of litter and debris; or 2531  
other appropriate means that consider the characteristics of the 2532  
surrounding area. 2533

(M) "In-stream mining" means all or any part of a process 2534  
followed in the production of minerals from the bottom of the 2535  
channel of a watercourse that drains a surface area of more than 2536  
one hundred square miles. "In-stream mining" may be accomplished 2537

by using any technique or by using surface excavation methods, 2538  
such as open pit mining, dredging, placering, or quarrying, and 2539  
includes the removal of overburden for the purpose of determining 2540  
the location, quantity, or quality of mineral deposits. "In-stream 2541  
mining" does not include either of the following: 2542

(1) Routine dredging for purely navigational or flood control 2543  
purposes during which materials are removed for noncommercial 2544  
purposes; 2545

(2) The extraction of minerals, other than coal, by a 2546  
landowner for the landowner's own noncommercial use when the 2547  
material is extracted and used in an unprocessed form on the same 2548  
tract of land. 2549

For purposes of division (M) of this section, the number of 2550  
square miles of surface area that a watercourse drains shall be 2551  
determined by consulting the "gazetteer of Ohio streams," which is 2552  
a portion of the Ohio water plan inventory published in 1960 by 2553  
the division of water in the department of natural resources, or 2554  
its successor, if any. 2555

(N) In provisions concerning in-stream mining, when the 2556  
context is appropriate, "land" is deemed to include an area of a 2557  
watercourse. 2558

(O) "Watercourse" means any naturally occurring perennial or 2559  
intermittent stream, river, or creek flowing within a defined 2560  
stream bed and banks. 2561

(P) "Certified mine foreperson" means the person whom the 2562  
operator of a surface mining operation places in charge of the 2563  
conditions and practices at the mine, who is responsible for 2564  
conducting workplace examinations under 30 C.F.R. part 56, as 2565  
amended, and who has passed an examination for the position 2566  
administered by the division of mineral resources management. 2567

**Sec. 1514.02.** (A) After the dates the chief of the division 2568  
of mineral resources management prescribes by rule pursuant to 2569  
section 1514.08 of the Revised Code, but not later than July 1, 2570  
1977, nor earlier than July 1, 1975, no operator shall engage in 2571  
surface mining or conduct a surface mining operation without a 2572  
surface mining permit issued by the chief. 2573

No person shall engage in in-stream mining or conduct an 2574  
in-stream mining operation without an in-stream mining permit 2575  
issued by the chief. However, a person who, on ~~the effective date~~ 2576  
~~of this amendment~~ March 15, 2002, holds a valid permit to conduct 2577  
in-stream mining that is issued under section 10 of the "Rivers 2578  
and Harbors Appropriation Act of 1899," 30 Stat. 1151, 33 U.S.C. 2579  
403, as amended, shall not be required to obtain an in-stream 2580  
mining permit from the chief under this section until the existing 2581  
permit expires. 2582

An application for a surface or in-stream mining permit shall 2583  
be upon the form that the chief prescribes and provides and shall 2584  
contain all of the following: 2585

(1) The name and address of the applicant, of all partners if 2586  
the applicant is a partnership, or of all officers and directors 2587  
if the applicant is a corporation, and any other person who has a 2588  
right to control or in fact controls the management of the 2589  
applicant or the selection of officers, directors, or managers of 2590  
the applicant; 2591

(2) A list of the minerals and coal, if any coal, sought to 2592  
be extracted, an estimate of the annual production rates for each 2593  
mineral and coal, and a description of the land upon which the 2594  
applicant proposes to engage in a surface or in-stream mining 2595  
operation, which description shall set forth the names of the 2596  
counties, townships, and municipal corporations, if any, in which 2597  
the land is located; the location of its boundaries; and a 2598

description of the land of sufficient certainty that it may be 2599  
located and distinguished from other lands; 2600

(3) The name of each county, township, or municipal 2601  
corporation, if any, that has in effect a zoning resolution or 2602  
ordinance that would affect the proposed surface or in-stream 2603  
mining operation or, if no such zoning resolution or ordinance is 2604  
in effect, a statement attesting to that fact. The application 2605  
also shall contain an explanation of how the applicant intends to 2606  
comply with any applicable provisions of a zoning resolution or 2607  
ordinance. 2608

(4) An estimate of the number of acres of land that will 2609  
comprise the total area of land to be affected and an estimate of 2610  
the number of acres of land to be affected during the first year 2611  
of operation under the permit; 2612

(5) The name and address of the owner of surface rights in 2613  
the land upon which the applicant proposes to engage in surface or 2614  
in-stream mining; 2615

(6) A copy of the deed, lease, or other instrument that 2616  
authorizes entry upon the land by the applicant or the applicant's 2617  
agents if surface rights in the land are not owned by the 2618  
applicant; 2619

(7) A statement of whether any surface or in-stream mining 2620  
permits or coal mining and reclamation permits are now held by the 2621  
applicant in this state and, if so, the numbers of the permits; 2622

(8) A statement of whether the applicant, any partner if the 2623  
applicant is a partnership, any officer or director if the 2624  
applicant is a corporation, or any other person who has a right to 2625  
control or in fact controls the management of the applicant or the 2626  
selection of officers, directors, or managers of the applicant has 2627  
ever had a surface or in-stream mining permit or coal mining and 2628  
reclamation permit issued by this or any other state suspended or 2629

revoked or has ever forfeited a surface or in-stream mining or 2630  
coal mining and reclamation bond or cash, an irrevocable letter of 2631  
credit, or a security deposited in lieu of a bond; 2632

(9) A report of the results of test borings that the operator 2633  
has conducted on the area or otherwise has readily available, 2634  
including, to the extent that the information is readily available 2635  
to the operator, the nature and depth of overburden and material 2636  
underlying each mineral or coal deposit, and the thickness and 2637  
extent of each mineral or coal deposit. In the case of an 2638  
application for an in-stream mining permit, the report 2639  
additionally shall include sufficient information to show the 2640  
approximate depth to bedrock. All information relating to test 2641  
boring results submitted to the chief pursuant to this section 2642  
shall be kept confidential and not made a matter of public record, 2643  
except that the information may be disclosed by the chief in any 2644  
legal action in which the truthfulness of the information is 2645  
material. 2646

(10) A complete plan for surface or in-stream mining and 2647  
reclamation of the area to be affected, which shall include a 2648  
statement of the intended future uses of the area and show the 2649  
approximate sequence in which mining and reclamation measures are 2650  
to occur, the approximate intervals following mining during which 2651  
the reclamation of all various parts of the area affected will be 2652  
completed, and the measures the operator will perform to prevent 2653  
damage to adjoining property and to achieve all of the following 2654  
general performance standards for mining and reclamation: 2655

(a) Prepare the site adequately for its intended future uses 2656  
upon completion of mining; 2657

(b) Where a plan of zoning or other comprehensive plan has 2658  
been adopted that governs land uses or the construction of public 2659  
improvements and utilities for an area that includes the area 2660  
sought to be mined, ensure that future land uses within the site 2661

will not conflict with the plan. On and after ~~the effective date~~ 2662  
~~of this amendment~~ March 15, 2002, division (A)(10)(b) of this 2663  
section does not apply to any surface or in-stream mining permit 2664  
or applications for a surface or in-stream mining permit, any 2665  
renewal of an existing surface or in-stream mining permit or 2666  
application for a renewal of an existing surface or in-stream 2667  
mining permit, any amendment or application for an amendment to an 2668  
existing surface or in-stream mining permit, or any modification 2669  
or application for a modification of a mining and reclamation plan 2670  
of an existing surface or in-stream mining permit unless the 2671  
application for such a permit, renewal, amendment, or modification 2672  
is a resubmission, revision, or reconsideration of an application 2673  
that was pending before the chief or was first approved prior to 2674  
~~the effective date of this amendment~~ March 15, 2002. 2675

(c) Grade, contour, or terrace final slopes, wherever needed, 2676  
sufficient to achieve soil stability and control landslides, 2677  
erosion, and sedimentation. Highwalls will be permitted if they 2678  
are compatible with the future uses specified in the plan and 2679  
measures will be taken to ensure public safety. Where ponds, 2680  
impoundments, or other resulting bodies of water are intended for 2681  
recreational use, establish banks and slopes that will ensure safe 2682  
access to those bodies of water. Where such bodies of water are 2683  
not intended for recreation, include measures to ensure public 2684  
safety, but access need not be provided. 2685

(d) Resoil the area of land affected, wherever needed, with 2686  
topsoil or suitable subsoil, fertilizer, lime, or soil amendments, 2687  
as appropriate, in sufficient quantity and depth to raise and 2688  
maintain a diverse growth of vegetation adequate to bind the soil 2689  
and control soil erosion and sedimentation; 2690

(e) Establish a diverse vegetative cover of grass and legumes 2691  
or trees, grasses, and legumes capable of self-regeneration and 2692  
plant succession wherever required by the plan; 2693

(f) Remove or bury any metal, lumber, equipment, or other refuse resulting from mining, and remove or bury any unwanted or useless structures;	2694 2695 2696
(g) Reestablish boundary, section corner, government, and other survey monuments that were removed by the operator;	2697 2698
(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.	2699 2700 2701 2702 2703 2704 2705
(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.	2706 2707 2708 2709 2710
(j) During mining and reclamation, ensure that the effect of any reduction of the quantity of ground water is minimized;	2711 2712
(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.	2713 2714 2715 2716 2717 2718 2719
(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	2720 2721 2722 2723 2724



property might occur. 2725

(m) During mining, promptly remove, store, or cover any coal, 2726  
pyritic shale, or other acid producing materials in a manner that 2727  
will minimize acid drainage and the accumulation of acid water; 2728

(n) During mining, detonate explosives in a manner that will 2729  
prevent damage to adjoining property; 2730

(o) In the case of in-stream mining, do all of the following: 2731

(i) Limit access to the channel of a watercourse to a single 2732  
point of entry on one bank of the watercourse; 2733

(ii) Maintain riparian vegetation to the fullest extent 2734  
possible; 2735

(iii) Upon cessation of in-stream mining, stabilize and 2736  
reclaim to the pre-mined condition the banks of a watercourse 2737  
affected by in-stream mining. 2738

(11) For any applicant, except an applicant for an in-stream 2739  
mining permit, who intends to extract less than ten thousand tons 2740  
of minerals per year and no incidental coal, a current tax map, in 2741  
triplicate and notarized, and the appropriate United States 2742  
geological survey seven and one-half minute topographic map. Each 2743  
copy shall bear the applicant's name and shall identify the area 2744  
of land to be affected corresponding to the application. 2745

(12) For any applicant for a surface mining permit who 2746  
intends to extract ten thousand tons of minerals or more per year 2747  
or who intends to extract any incidental coal irrespective of the 2748  
tonnage of minerals intended to be mined, a map, in triplicate, on 2749  
a scale of not more than four hundred feet to the inch, or three 2750  
copies of an enlarged United States geological survey topographic 2751  
map on a scale of not more than four hundred feet to the inch. 2752  
Each application for an in-stream mining permit shall include such 2753  
a map regardless of the tons of minerals that the applicant 2754

intends to extract.	2755
The map shall comply with all of the following:	2756
(a) Be prepared and certified by a professional engineer or surveyor registered under Chapter 4733. of the Revised Code;	2757 2758
(b) Identify the area of land to be affected corresponding to the application;	2759 2760
(c) Show the probable limits of subjacent and adjacent deep, strip, surface, or in-stream mining operations, whether active, inactive, or mined out;	2761 2762 2763
(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;	2764 2765 2766 2767 2768
(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;	2769 2770 2771 2772 2773
(f) Show the counties, municipal corporations, townships, and sections in which the area of land to be affected is located;	2774 2775
(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;	2776 2777 2778 2779 2780
(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;	2781 2782 2783
(i) Show the date on which the map was prepared, the north	2784

direction and the quadrangle sketch, and the exact location of the 2785  
operation; 2786

(j) Show the type, kind, location, and references of all 2787  
existing boundary, section corner, government, and other survey 2788  
monuments within the area to be affected and within five hundred 2789  
feet of the perimeter of the area. 2790

The certification of the maps shall read: "I, the 2791  
undersigned, hereby certify that this map is correct, and shows to 2792  
the best of my knowledge and belief all of the information 2793  
required by the surface or in-stream mining laws, as applicable, 2794  
of the state." The certification shall be signed and attested 2795  
before a notary public. The chief may reject any map as incomplete 2796  
if its accuracy is not so certified and attested. 2797

(13) A certificate of public liability insurance issued by an 2798  
insurance company authorized to do business in this state or 2799  
obtained pursuant to sections 3905.30 to 3905.35 of the Revised 2800  
Code covering all surface or in-stream mining operations of the 2801  
applicant in this state and affording bodily injury and property 2802  
damage protection in amounts not less than the following: 2803

(a) One hundred thousand dollars for all damages because of 2804  
bodily injury sustained by one person as the result of any one 2805  
occurrence, and three hundred thousand dollars for all damages 2806  
because of bodily injury sustained by two or more persons as the 2807  
result of any one occurrence; 2808

(b) One hundred thousand dollars for all claims arising out 2809  
of damage to property as the result of any one occurrence, with an 2810  
aggregate limit of three hundred thousand dollars for all property 2811  
damage to which the policy applies. 2812

(14) A sworn statement by the applicant that, during the term 2813  
of any permit issued under this chapter or of any renewal of such 2814  
a permit, the applicant will comply with all applicable zoning 2815

resolutions or ordinances that are in effect at the time the 2816  
application is filed unless the resolutions or ordinances 2817  
subsequently become invalid during the term of the permit or 2818  
renewal; 2819

(15) A copy of the advertisement that the applicant is 2820  
required to have published in accordance with section 1514.022 of 2821  
the Revised Code, if applicable; 2822

(16) For any applicant whose operation may result in 2823  
dewatering, a compilation of data in a form that is prescribed by 2824  
the chief and that is suitable to conduct ground water modeling in 2825  
order to establish a projected cone of depression for purposes of 2826  
section 1514.13 of the Revised Code. The chief shall adopt rules 2827  
as provided in section 1514.08 of the Revised Code establishing 2828  
the minimum requirements and standards governing the data required 2829  
under this division. 2830

(17) A statement by the applicant certifying that the 2831  
applicant has communicated with the county engineer of the county 2832  
in which the proposed surface or in-stream mining operation will 2833  
be located regarding any streets and roads under the county 2834  
engineer's jurisdiction that will be used by vehicles entering and 2835  
leaving the proposed surface or in-stream mining operation; 2836

(18) In the case of an application for an in-stream mining 2837  
permit, and if required by the division of mineral resources 2838  
management after review of an applicant's proposed in-stream 2839  
mining plans, a hydraulic evaluation of the watercourse prepared 2840  
by a professional engineer registered under Chapter 4733. of the 2841  
Revised Code. ~~The~~ If the hydraulic evaluation is required, it 2842  
shall include, without limitation, all of the following: 2843

(a) Soundings that depict the cross-sectional views of the 2844  
channel bottom of the watercourse and water elevations for the 2845  
watercourse; 2846

(b) A profile of the channel bottom;	2847
(c) An analysis of design flows and water surface profiles for the watercourse prior to in-stream mining and the proposed final mining condition;	2848 2849 2850
(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;	2851 2852 2853
(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.	2854 2855 2856 2857 2858
<u>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.</u>	2859 2860 2861
(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.	2862 2863 2864 2865 2866
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.	2867 2868 2869 2870 2871 2872
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.	2873 2874 2875
No permit application or amendment shall be approved to	2876

surface mine land adjacent to a public road in violation of 2877  
section 1563.11 of the Revised Code. 2878

To ensure adequate lateral support, no permit application or 2879  
amendment shall be approved to engage in surface or in-stream 2880  
mining on land that is closer than fifty feet of horizontal 2881  
distance to any adjacent land or waters in which the operator 2882  
making application does not own the surface or mineral rights 2883  
unless the owners of the surface and mineral rights in and under 2884  
the adjacent land or waters consent in writing to surface or 2885  
in-stream mining closer than fifty feet of horizontal distance. 2886  
The consent, or a certified copy thereof, shall be attached to the 2887  
application as a part of the permanent record of the application 2888  
for a surface or in-stream mining permit. 2889

The chief shall issue an order granting a permit upon the 2890  
chief's approval of an application, as required by this section, 2891  
filing of the performance bond required by section 1514.04 of the 2892  
Revised Code, payment of an acreage fee in the amount of 2893  
seventy-five dollars multiplied by the number of acres estimated 2894  
in the application that will comprise the area of land to be 2895  
affected within the first year of operation under the permit, and 2896  
payment of a permit fee. The amount of the permit fee for a 2897  
surface mining permit shall be five hundred dollars, and the 2898  
amount of the permit fee for an in-stream mining permit shall be 2899  
two hundred fifty dollars. 2900

The chief may issue an order denying a permit if the chief 2901  
finds that the applicant, any partner if the applicant is a 2902  
partnership, any officer or director if the applicant is a 2903  
corporation, or any other person who has a right to control or in 2904  
fact controls the management of the applicant or the selection of 2905  
officers, directors, or managers of the applicant has 2906  
substantially or materially failed to comply or continues to fail 2907  
to comply with this chapter, which failure may consist of one or 2908

more violations thereof, a rule adopted thereunder, or an order of 2909  
the chief or failure to perform reclamation as required by this 2910  
chapter. The chief may deny or revoke the permit of any person who 2911  
so violates or fails to comply or who purposely misrepresents or 2912  
omits any material fact in the application for the permit or an 2913  
amendment to a permit. 2914

If the chief denies the permit, the chief shall state the 2915  
reasons for denial in the order denying the permit. 2916

Each permit shall be issued upon condition that the operator 2917  
will comply with this chapter and perform the measures set forth 2918  
in the operator's plan of mining and reclamation in a timely 2919  
manner. The chief, mineral resources inspectors, or other 2920  
authorized representatives of the chief may enter upon the 2921  
premises of the operator at reasonable times for the purposes of 2922  
determining whether or not there is compliance with this chapter. 2923

(C) If the chief approves an application for a surface mining 2924  
permit, the order granting the permit shall authorize the person 2925  
to whom the permit is issued to engage as the operator of a 2926  
surface mining operation upon the land described in the permit 2927  
during a period that shall expire fifteen years after the date of 2928  
issuance of the permit, or upon the date when the chief, after 2929  
inspection, orders the release of any remaining performance bond 2930  
deposited to assure satisfactory performance of the reclamation 2931  
measures required pursuant to this chapter, whichever occurs 2932  
earlier. 2933

If the chief approves an application for an in-stream mining 2934  
permit, the order granting the permit shall authorize the person 2935  
to whom the permit is issued to engage as the operator of an 2936  
in-stream mining operation on the land described in the permit 2937  
during a period that shall expire ~~two~~ five years after the date of 2938  
issuance of the permit, or on the date when the chief, after 2939  
inspection, orders the release of any remaining bond, cash, 2940

irrevocable letters of credit, or certificates of deposit that 2941  
were deposited to ensure satisfactory performance of the 2942  
reclamation measures required under this chapter, whichever occurs 2943  
earlier. 2944

(D) Before an operator engages in a surface or in-stream 2945  
mining operation on land not described in the operator's permit, 2946  
but that is contiguous to the land described in the operator's 2947  
permit, the operator shall file with the chief an application for 2948  
an amendment to the operator's permit. Before approving an 2949  
amendment, the chief shall require the information, maps, fees, 2950  
and amount, except as otherwise provided by rule, of the 2951  
performance bond as required for an original application under 2952  
this section and shall apply the same prohibitions and 2953  
restrictions applicable to land described in an original 2954  
application for a permit. An applicant for a significant amendment 2955  
to a permit, as "significant" is defined by rule, shall include a 2956  
copy of the advertisement that the applicant is required to have 2957  
published in accordance with section 1514.022 of the Revised Code. 2958  
If the chief disapproves the amendment, the chief shall state the 2959  
reasons for disapproval in the order disapproving the amendment. 2960  
Upon the approval of an amendment by the chief, the operator shall 2961  
be authorized to engage in surface mining on the land or in-stream 2962  
mining in the watercourse described in the operator's original 2963  
permit plus the land or area of the watercourse described in the 2964  
amendment until the date when the permit expires, or when the 2965  
chief, after inspection, orders the release of any remaining 2966  
performance bond deposited to assure satisfactory performance of 2967  
the reclamation measures required pursuant to this chapter, 2968  
whichever occurs earlier. 2969

(E) An operator, at any time and upon application therefor 2970  
and approval by the chief, may amend the plan of mining and 2971  
reclamation filed with the application for a permit in order to 2972



change the reclamation measures to be performed, modify the 2973  
interval after mining within which reclamation measures will be 2974  
performed, change the sequence in which mining or reclamation will 2975  
occur at specific locations within the area affected, mine acreage 2976  
previously mined or reclaimed, or for any other purpose, provided 2977  
that the plan, as amended, includes measures that the chief 2978  
determines will be adequate to prevent damage to adjoining 2979  
property and to achieve the performance standards set forth in 2980  
division (A)(10) of this section. An application for a significant 2981  
amendment to a plan, as "significant" is defined by rule, shall 2982  
include a copy of the advertisement that the applicant is required 2983  
to have published in accordance with section 1514.022 of the 2984  
Revised Code. 2985

The chief may propose one or more amendments to the plan in 2986  
writing within ninety days after the fifth anniversary of the date 2987  
of issuance of a surface mining permit or within ninety days after 2988  
the first anniversary of the date of issuance of an in-stream 2989  
mining permit. The chief's proposal may be made upon a finding of 2990  
any of the following conditions after a complete review of the 2991  
plan and inspection of the area of land affected, and the plan 2992  
shall be so amended upon written concurrence in the findings and 2993  
approval of the amendments by the operator: 2994

(1) An alternate measure, in lieu of one previously approved 2995  
in the plan, will more economically or effectively achieve one or 2996  
more of the performance standards. 2997

(2) Developments in reclamation technology make an alternate 2998  
measure to achieve one or more of the performance standards more 2999  
economical, feasible, practical, or effective. 3000

(3) Changes in the use or development of adjoining lands 3001  
require changes in the intended future uses of the area of land 3002  
affected in order to prevent damage to adjoining property. 3003

(F) The holder of a surface or in-stream mining permit who 3004  
desires to transfer the rights granted under the permit to another 3005  
person at any time during the term of the permit or its renewal 3006  
shall file with the chief an application for the transfer of the 3007  
permit. The chief shall issue an order approving or disapproving 3008  
the transfer of the permit in accordance with criteria and 3009  
procedures established by rule. 3010

**Sec. 1514.021.** (A) A permit holder who wishes to continue 3011  
surface or in-stream mining operations after the expiration date 3012  
of the existing permit or renewal permit shall file with the chief 3013  
of the division of mineral resources management ~~an application a~~ 3014  
notice of intent to renew for purposes of the renewal of a surface 3015  
or in-stream mining permit or renewal permit at least ninety days 3016  
before the expiration date of the existing permit or renewal 3017  
permit. The ~~application~~ notice of intent to renew shall be ~~upon~~ 3018  
~~the~~ on a form that the chief prescribes and provides and shall be 3019  
accompanied by a permit renewal fee. The amount of the fee for 3020  
renewal of a surface mining permit or renewal permit shall be one 3021  
thousand dollars, and the amount of the fee for renewal of an 3022  
in-stream mining permit or renewal permit shall be five hundred 3023  
dollars. 3024

(B) Upon receipt of ~~an application for renewal~~ a notice of 3025  
intent to renew form and the permit renewal fee under division (A) 3026  
of this section, the chief shall notify the ~~applicant~~ permit 3027  
holder to submit a renewal application package. The permit holder 3028  
shall submit a complete renewal package to the chief at least 3029  
thirty days prior to the expiration of the existing surface or 3030  
in-stream mining permit or renewal permit. The renewal application 3031  
package shall include all of the following: 3032

(1) A map that is a composite of the information required to 3033  
be contained in the most recent annual report map under section 3034

1514.03 of the Revised Code and of all surface or in-stream mining 3035  
and reclamation activities conducted under the existing permit or 3036  
renewal permit; ~~the~~ 3037

(2) The annual report required under section 1514.03 of the 3038  
Revised Code; ~~in~~ 3039

(3) In the case of an applicant proposing a significant 3040  
change to the plan of mining and reclamation, as "significant" is 3041  
defined by rule, a copy of the advertisement that ~~the applicant~~ is 3042  
required to ~~have~~ be published in accordance with section 1514.022 3043  
of the Revised Code; ~~and additional~~ 3044

(4) Additional maps, plans, and revised or updated 3045  
information that the chief determines to be necessary for permit 3046  
renewal. ~~Within sixty days after receipt of this notification, the~~ 3047  
~~applicant shall submit all the required information to the chief.~~ 3048

For a renewal permit requiring minor or minimal updates to 3049  
the existing permit, renewal permit, or accompanying information, 3050  
the chief may authorize a permit holder to file updated 3051  
information through a surface mining permit modification process 3052  
using a surface mining permit modification form. However, the 3053  
chief may require such a permit holder to submit a complete 3054  
renewal application package. 3055

(C)(1) Upon receipt of the ~~information~~ complete renewal 3056  
application package required under division (B) of this section 3057  
and except as otherwise provided in division (C)(2) of this 3058  
section, the chief shall approve the application for renewal and 3059  
issue an order granting a renewal permit unless the chief finds 3060  
that any of the following applies: 3061

(a) The permit holder's operation is not in substantial or 3062  
material compliance with this chapter, rules adopted and orders 3063  
issued under it, and the plan of mining and reclamation under the 3064  
existing permit or renewal permit. 3065

(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. 3097  
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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. 3102  
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(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. 3105  
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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. 3110  
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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. 3118  
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(E) If an applicant for a renewal permit has complied with 3127

division (A) of this section, the applicant may continue surface 3128  
or in-stream mining operations under the existing permit or 3129  
renewal permit after its expiration date until the ~~sixty-day time~~ 3130  
period for filing ~~the information required by the chief under~~ 3131  
~~division (B) of this section~~ a complete renewal application 3132  
package has expired under division (D) of this section or until 3133  
the chief issues an order ~~under division (D) of this section~~ 3134  
denying the renewal permit. 3135

(F) A permit holder who fails to submit ~~an application a~~ 3136  
notice of intent to renew form and required permit renewal fees 3137  
within the time prescribed by division (A) of this section and a 3138  
renewal application package under division (B) of this section 3139  
shall cease surface or in-stream mining operations on the 3140  
expiration date of the existing permit or renewal permit. If such 3141  
a permit holder then submits a notice of intent to renew form, an 3142  
application for renewal, and the permit renewal fees ~~otherwise~~ 3143  
~~required by division (A) of this section~~ on or before the 3144  
thirtieth day after the expiration date of the expired permit or 3145  
renewal permit and provides the information required by the chief 3146  
under division (B) of this section within sixty days after ~~being~~ 3147  
~~notified of the information required under that division~~ the 3148  
permit expiration date, the permit holder need not submit the 3149  
final map and report required by section 1514.03 of the Revised 3150  
Code until the later of thirty days after the chief issues an 3151  
order denying the application for renewal or thirty days after the 3152  
chief's order is affirmed upon appeal under section 1513.13 or 3153  
1513.14 of the Revised Code. An applicant under this division who 3154  
fails to provide the information required by the chief under 3155  
division (B) of this section within the prescribed time period 3156  
shall submit the final map and report required by section 1514.03 3157  
of the Revised Code within thirty days after the expiration of 3158  
that prescribed period. 3159

(G) If the chief issues an order denying an application for 3160  
renewal of a permit or renewal permit after the expiration date of 3161  
the permit, the permit holder shall cease surface or in-stream 3162  
mining operations immediately and, within thirty days after the 3163  
issuance of the order, shall submit the final report and map 3164  
required under section 1514.03 of the Revised Code. The chief 3165  
shall state the reasons for denial in the order denying renewal of 3166  
the ~~application~~ permit. ~~An applicant~~ A permit holder may appeal 3167  
the chief's order denying the renewal under section 1513.13 of the 3168  
Revised Code and may continue surface or in-stream mining and 3169  
reclamation operations under the expired permit until the 3170  
reclamation commission affirms the chief's order under that 3171  
section and, if the applicant elects to appeal the order of the 3172  
commission under section 1513.14 of the Revised Code, until the 3173  
court of appeals affirms the order. 3174

(H) The approval of an application for renewal under this 3175  
section authorizes the continuation of an existing surface mining 3176  
permit or renewal permit for a term of fifteen years from the 3177  
expiration date of the existing permit. 3178

The approval of an application for renewal under this section 3179  
authorizes the continuation of an existing in-stream mining permit 3180  
or renewal permit for a term of ~~two~~ five years from the expiration 3181  
date of the existing permit. 3182

(I) Any renewal permit is subject to all the requirements of 3183  
this chapter and rules adopted under it. 3184

**Sec. 1514.03.** Within thirty days after each anniversary date 3185  
of issuance of a surface or in-stream mining permit, the operator 3186  
shall file with the chief of the division of mineral resources 3187  
management an annual report, on a form prescribed and furnished by 3188  
the chief, that, for the period covered by the report, shall state 3189  
the amount of and identify the types of minerals and coal, if any 3190

coal, produced and shall state the number of acres affected and 3191  
the number of acres estimated to be affected during the next year 3192  
of operation. An annual report is not required to be filed if a 3193  
final report is filed in lieu thereof. 3194

Each annual report for a surface mining operation shall 3195  
include a progress map indicating the location of areas of land 3196  
affected during the period of the report and the location of the 3197  
area of land estimated to be affected during the next year. The 3198  
map shall be prepared in accordance with division (A)(11) or (12) 3199  
of section 1514.02 of the Revised Code, as appropriate, except 3200  
that a map prepared in accordance with division (A)(12) of that 3201  
section may be certified by the operator or authorized agent of 3202  
the operator in lieu of certification by a professional engineer 3203  
or surveyor registered under Chapter 4733. of the Revised Code. 3204  
However, the chief may require that an annual progress map or a 3205  
final map be prepared by a registered professional engineer or 3206  
registered surveyor if the chief has reason to believe that the 3207  
operator exceeded the boundaries of the permit area or, if the 3208  
operator filed the map required under division (A)(11) of section 3209  
1514.02 of the Revised Code, that the operator extracted ten 3210  
thousand tons or more of minerals during the period covered by the 3211  
report. 3212

Each annual report for an in-stream mining operation shall 3213  
include a statement of the total tonnage removed by in-stream 3214  
mining for each month and of the surface acreage and depth of 3215  
material removed by in-stream mining and shall include a map that 3216  
identifies the area affected by the in-stream mining if the 3217  
in-stream mining for the year addressed by the report occurred 3218  
beyond the area identified in the most recent approved map, 3219  
soundings that depict the cross-sectional views of the channel 3220  
bottom of the watercourse if the soundings depict a 3221  
cross-sectional view of the channel bottom that is different from 3222



the most recent approved map, and water elevations for the 3223  
watercourse if water elevations are different from those indicated 3224  
on the most recent approved map. 3225

Each annual report shall be accompanied by a filing fee in 3226  
the amount of five hundred dollars, except in the case of an 3227  
annual report filed by a small operator or an in-stream mining 3228  
operator. A small operator, which is a surface mine operator who 3229  
intends to extract fewer than ten thousand tons of minerals and no 3230  
coal during the next year of operation under the permit, or an 3231  
in-stream mining operator shall include a filing fee in the amount 3232  
of two hundred fifty dollars with each annual report. The annual 3233  
report of any operator also shall be accompanied by an acreage fee 3234  
in the amount of seventy-five dollars multiplied by the number of 3235  
acres estimated in the report to be affected during the next year 3236  
of operation under the permit. The acreage fee shall be adjusted 3237  
by subtracting a credit of seventy-five dollars per excess acre 3238  
paid for the preceding year if the acreage paid for the preceding 3239  
year exceeds the acreage actually affected or by adding an 3240  
additional amount of seventy-five dollars per excess acre affected 3241  
if the acreage actually affected exceeds the acreage paid for the 3242  
preceding year. 3243

With each annual report the operator shall file a performance 3244  
bond in the amount, unless otherwise provided by rule, of five 3245  
hundred dollars multiplied by the number of acres estimated to be 3246  
affected during the next year of operation under the permit for 3247  
which no performance bond previously was filed. Unless otherwise 3248  
provided by rule, the bond shall be adjusted by subtracting a 3249  
credit of five hundred dollars per excess acre for which bond was 3250  
filed for the preceding year if the acreage for which the bond was 3251  
filed for the preceding year exceeds the acreage actually 3252  
affected, or by adding an amount of five hundred dollars per 3253  
excess acre affected if the acreage actually affected exceeds the 3254

acreage for which bond was filed for the preceding year. 3255

Within thirty days after the expiration of the surface or 3256  
in-stream mining permit, or completion or abandonment of the 3257  
operation, whichever occurs earlier, the operator shall submit a 3258  
final report containing the same information required in an annual 3259  
report, but covering the time from the last annual report to the 3260  
expiration of the permit, or completion or abandonment of the 3261  
operation, whichever occurs earlier. 3262

Each final report shall include a map indicating the location 3263  
of the area of land affected during the period of the report and 3264  
the location of the total area of land affected under the permit. 3265  
The map shall be prepared in accordance with division (A)(11) or 3266  
(12) of section 1514.02 of the Revised Code, as appropriate. 3267

In the case of a final report for an in-stream mining 3268  
operation, the map also shall include the information required 3269  
under division (A)(18) of section 1514.02 of the Revised Code, as 3270  
applicable. 3271

If the final report and certified map, as verified by the 3272  
chief, show that the number of acres affected under the permit is 3273  
larger than the number of acres for which the operator has paid an 3274  
acreage fee or filed a performance bond, upon notification by the 3275  
chief, the operator shall pay an additional acreage fee in the 3276  
amount of seventy-five dollars multiplied by the difference 3277  
between the number of acres affected under the permit and the 3278  
number of acres for which the operator has paid an acreage fee and 3279  
shall file an additional performance bond in the amount, unless 3280  
otherwise provided by rule, of five hundred dollars multiplied by 3281  
the difference between the number of acres affected under the 3282  
permit and the number of acres for which the operator has filed 3283  
bond. 3284

If the final report and certified map, as verified by the 3285

chief, show that the number of acres affected under the permit is 3286  
smaller than the number of acres for which the operator has filed 3287  
a performance bond, the chief shall order release of the excess 3288  
bond. However, the chief shall retain a performance bond in a 3289  
minimum amount of ten thousand dollars irrespective of the number 3290  
of acres affected under the permit. The release of the excess bond 3291  
shall be in an amount, unless otherwise provided by rule, equal to 3292  
five hundred dollars multiplied by the difference between the 3293  
number of acres affected under the permit and the number of acres 3294  
for which the operator has filed bond. 3295

The fees collected pursuant to this section and section 3296  
1514.02 of the Revised Code shall be deposited with the treasurer 3297  
of state to the credit of the surface mining fund created under 3298  
section 1514.06 of the Revised Code. 3299

If upon inspection the chief finds that any filing fee, 3300  
acreage fee, performance bond, or part thereof is not paid when 3301  
due or is paid on the basis of false or substantially inaccurate 3302  
reports, the chief may request the attorney general to recover the 3303  
unpaid amounts that are due the state, and the attorney general 3304  
shall commence appropriate legal proceedings to recover the unpaid 3305  
amounts. 3306

**Sec. 1514.05.** (A) At any time within the period allowed an 3307  
operator by section 1514.02 of the Revised Code to reclaim an area 3308  
of land affected by surface or in-stream mining, the operator may 3309  
file a request, on a form provided by the chief of the division of 3310  
mineral resources management, for inspection of the area of land 3311  
upon which the reclamation, other than any required planting, is 3312  
completed. The request shall include all of the following: 3313

(1) The location of the area and number of acres; 3314

(2) The permit number; 3315

(3) A map showing the location of the acres reclaimed, 3316  
prepared and certified in accordance with division (A)(11) or (12) 3317  
of section 1514.02 of the Revised Code, as appropriate. In the 3318  
case of an in-stream mining operation, the map also shall include, 3319  
as applicable, the information required under division (A)(18) of 3320  
section 1514.02 of the Revised Code. 3321

The chief shall make an inspection and evaluation of the 3322  
reclamation of the area of land for which the request was 3323  
submitted within ninety days after receipt of the request or, if 3324  
the operator fails to complete the reclamation or file the request 3325  
as required, as soon as the chief learns of the default. 3326  
Thereupon, if the chief approves the reclamation, other than any 3327  
required planting, as meeting the requirements of this chapter, 3328  
rules adopted thereunder, any orders issued during the mining or 3329  
reclamation, and the specifications of the plan for mining and 3330  
reclaiming, the chief shall issue an order to the operator and the 3331  
operator's surety releasing them from liability for one-half of 3332  
the total amount of their surety bond on deposit to ensure 3333  
reclamation for the area upon which reclamation is completed. If 3334  
the operator has deposited cash, an irrevocable letter of credit, 3335  
or certificates of deposit in lieu of a surety bond to ensure 3336  
reclamation, the chief shall issue an order to the operator 3337  
releasing one-half of the amount so held and promptly shall 3338  
transmit a certified copy of the order to the treasurer of state. 3339  
Upon presentation of the order to the treasurer of state by the 3340  
operator to whom it was issued, or by the operator's authorized 3341  
agent, the treasurer of state shall deliver to the operator or the 3342  
operator's authorized agent the cash, irrevocable letter of 3343  
credit, or certificates of deposit designated in the order. 3344

If the chief does not approve the reclamation, other than any 3345  
required planting, the chief shall notify the operator by 3346  
certified mail. The notice shall be an order stating the reasons 3347

for unacceptability, ordering further actions to be taken, and 3348  
setting a time limit for compliance. If the operator does not 3349  
comply with the order within the time limit specified, the chief 3350  
may order an extension of time for compliance after determining 3351  
that the operator's noncompliance is for good cause, resulting 3352  
from developments partially or wholly beyond the operator's 3353  
control. If the operator complies within the time limit or the 3354  
extension of time granted for compliance, the chief shall order 3355  
release of the performance bond in the same manner as in the case 3356  
of approval of reclamation, other than any required planting, by 3357  
the chief, and the treasurer of state shall proceed as in that 3358  
case. If the operator does not comply within the time limit and 3359  
the chief does not order an extension, or if the chief orders an 3360  
extension of time and the operator does not comply within the 3361  
extension of time granted for compliance, the chief shall issue 3362  
another order declaring that the operator has failed to reclaim 3363  
and, if the operator's permit has not already expired or been 3364  
revoked, revoking the operator's permit. The chief shall thereupon 3365  
proceed under division (C) of this section. 3366

(B) At any time within the period allowed an operator by 3367  
section 1514.02 of the Revised Code to reclaim an area affected by 3368  
surface mining, the operator may file a request, on a form 3369  
provided by the chief, for inspection of the area of land on which 3370  
all reclamation, including the successful establishment of any 3371  
required planting, is completed. The request shall include all of 3372  
the following: 3373

(1) The location of the area and number of acres; 3374

(2) The permit number; 3375

(3) The type and date of any required planting of vegetative 3376  
cover and the degree of success of growth; 3377

(4) A map showing the location of the acres reclaimed, 3378

prepared and certified in accordance with division (A)(11) or (12) 3379  
of section 1514.02 of the Revised Code, as appropriate. In the 3380  
case of an in-stream mining operation, the map also shall include 3381  
the information required under division (A)(18) of section 1514.02 3382  
of the Revised Code. 3383

The chief shall make an inspection and evaluation of the 3384  
reclamation of the area of land for which the request was 3385  
submitted within ninety days after receipt of the request or, if 3386  
the operator fails to complete the reclamation or file the request 3387  
as required, as soon as the chief learns of the default. 3388  
Thereupon, if the chief finds that the reclamation meets the 3389  
requirements of this chapter, rules adopted under it, any orders 3390  
issued during the mining and reclamation, and the specifications 3391  
of the plan for mining and reclaiming and decides to release any 3392  
remaining performance bond on deposit to ensure reclamation of the 3393  
area on which reclamation is completed, within ten days of 3394  
completing the inspection and evaluation, the chief shall order 3395  
release of the remaining performance bond in the same manner as in 3396  
the case of approval of reclamation other than required planting, 3397  
and the treasurer of state shall proceed as in that case. 3398

If the chief does not approve the reclamation performed by 3399  
the operator, the chief shall notify the operator by certified 3400  
mail within ninety days of the filing of the application for 3401  
inspection or of the date when the chief learns of the default. 3402  
The notice shall be an order stating the reasons for 3403  
unacceptability, ordering further actions to be taken, and setting 3404  
a time limit for compliance. If the operator does not comply with 3405  
the order within the time limit specified, the chief may order an 3406  
extension of time for compliance after determining that the 3407  
operator's noncompliance is for good cause, resulting from 3408  
developments partially or wholly beyond the operator's control. If 3409  
the operator complies within the time limit or the extension of 3410

time granted for compliance, the chief shall order release of the 3411  
remaining performance bond in the same manner as in the case of 3412  
approval of reclamation by the chief, and the treasurer of state 3413  
shall proceed as in that case. If the operator does not comply 3414  
within the time limit and the chief does not order an extension, 3415  
or if the chief orders an extension of time and the operator does 3416  
not comply within the extension of time granted for compliance, 3417  
the chief shall issue another order declaring that the operator 3418  
has failed to reclaim and, if the operator's permit has not 3419  
already expired or been revoked, revoking the operator's permit. 3420  
The chief then shall proceed under division (C) of this section. 3421

(C) Upon issuing an order under division (A) or (B) of this 3422  
section declaring that the operator has failed to reclaim, the 3423  
chief shall make a finding as to the number and location of the 3424  
acres of land that the operator has failed to reclaim in the 3425  
manner required by this chapter. The chief shall order the release 3426  
of the performance bond in the amount of five hundred dollars per 3427  
acre for those acres that the chief finds to have been reclaimed 3428  
in the manner required by this chapter. The release shall be 3429  
ordered in the same manner as in the case of other approval of 3430  
reclamation by the chief, and the treasurer of state shall proceed 3431  
as in that case. If the operator has on deposit cash, an 3432  
irrevocable letter of credit, or certificates of deposit to ensure 3433  
reclamation of the area of the land affected, the chief at the 3434  
same time shall issue an order declaring that the remaining cash, 3435  
irrevocable letter of credit, or certificates of deposit are the 3436  
property of the state and are available for use by the chief in 3437  
performing reclamation of the area and shall proceed in accordance 3438  
with section 1514.06 of the Revised Code. 3439

If the operator has on deposit a surety bond to ensure 3440  
reclamation of the area of land affected, the chief shall notify 3441  
the surety in writing of the operator's default and shall request 3442

the surety to perform the surety's obligation and that of the 3443  
operator. The surety, within ten days after receipt of the notice, 3444  
shall notify the chief as to whether it intends to perform those 3445  
obligations. 3446

If the surety chooses to perform, it shall arrange for work 3447  
to begin within thirty days of the day on which it notifies the 3448  
chief of its decision. If the surety completes the work as 3449  
required by this chapter, the chief shall issue an order to the 3450  
surety releasing the surety from liability under the bond in the 3451  
same manner as if the surety were an operator proceeding under 3452  
this section. If, after the surety begins the work, the chief 3453  
determines that the surety is not carrying the work forward with 3454  
reasonable progress, or that it is improperly performing the work, 3455  
or that it has abandoned the work or otherwise failed to perform 3456  
its obligation and that of the operator, the chief shall issue an 3457  
order terminating the right of the surety to perform the work and 3458  
demanding payment of the amount due as required by this chapter. 3459

If the surety chooses not to perform and so notifies the 3460  
chief, does not respond to the chief's notice within ten days of 3461  
receipt thereof, or fails to begin work within thirty days of the 3462  
day it timely notifies the chief of its decision to perform its 3463  
obligation and that of the operator, the chief shall issue an 3464  
order terminating the right of the surety to perform the work and 3465  
demanding payment of the amount due, as required by this chapter. 3466

Upon receipt of an order of the chief demanding payment of 3467  
the amount due, the surety immediately shall deposit with the 3468  
chief cash in the full amount due under the order for deposit with 3469  
the treasurer of state. If the surety fails to make an immediate 3470  
deposit, the chief shall certify it to the attorney general for 3471  
collection. When the chief has issued an order terminating the 3472  
right of the surety and has the cash on deposit, the cash is the 3473  
property of the state and is available for use by the chief, who 3474



shall proceed in accordance with section 1514.06 of the Revised Code. 3475  
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**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. 3477  
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(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. 3483  
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(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. 3490  
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(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. 3498  
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Sec. 4905.90. As used in sections 4905.90 to 4905.96 of the Revised Code:

(A) "Condensate" means liquid hydrocarbons recovered at the ground surface that result from condensation due to reduced pressure or temperature of petroleum hydrocarbons that were originally in the gaseous phase in the underground reservoir.

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

~~(C) "Gathering lines" 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 pipeline used to collect and transport wet natural gas from a well facility to the inlet of a gas processing plant. The pipeline may be upstream or downstream from a wet natural gas compressor station.

(E) "Gas processing plant" means a plant that processes wet natural gas into merchantable products, including transmission quality gas or natural gas liquids.

(F) "High pressure gas gathering pipeline" means a gas gathering pipeline that includes either of the following:

(1) A metallic gas gathering pipeline in which the MAOP produces a hoop stress of twenty per cent or more of SMYS. If the

stress level is unknown, an operator must determine the stress 3535  
level according to the applicable provisions of 49 C.F.R. part 192 3536  
subpart C. 3537

(2) A nonmetallic gas gathering pipeline in which the MAOP is 3538  
more than 125 pounds per square inch. 3539

(G) "High pressure processing plant gas stub pipeline" means 3540  
a processing plant gas stub pipeline that includes either of the 3541  
following: 3542

(1) A metallic processing plant gas stub pipeline in which 3543  
the MAOP produces a hoop stress of twenty per cent or more of 3544  
SMYS. If the stress level is unknown, an operator must determine 3545  
the stress level according to the applicable provisions of 49 3546  
C.F.R. part 192 subpart C. 3547

(2) A nonmetallic processing plant gas stub pipeline in which 3548  
the MAOP is more than 125 pounds per square inch. 3549

(H) "Intrastate pipe-line transportation" has the same 3550  
meaning as in 82 Stat. 720 (1968), 49 U.S.C.A. App. 1671, as 3551  
amended, but excludes the gathering of gas exempted by the Natural 3552  
Gas Pipeline Safety Act. 3553

~~(E)~~(I) "Low pressure gas gathering pipeline" means a gas 3554  
gathering pipeline that includes either of the following: 3555

(1) A metallic gas gathering pipeline in which the MAOP 3556  
produces a hoop stress of less than twenty per cent of SMYS. If 3557  
the stress level is unknown, an operator must determine the stress 3558  
level according to the applicable provisions of 49 C.F.R. part 192 3559  
subpart C. 3560

(2) A nonmetallic gas gathering pipeline in which the MAOP is 3561  
125 pounds per square inch or less. 3562

(J) "Low pressure processing plant gas stub pipeline" means a 3563  
processing plant gas stub pipeline that includes either of the 3564

following: 3565

(1) A metallic processing plant gas stub pipeline in which 3566  
the MAOP produces a hoop stress of less than twenty per cent of 3567  
SMYS. If the stress level is unknown, an operator must determine 3568  
the stress level according to the applicable provisions of 49 3569  
C.F.R. part 192 subpart C. 3570

(2) A nonmetallic processing plant gas stub pipeline in which 3571  
the MAOP is 125 pounds per square inch or less. 3572

(K) "MAOP" means the maximum pressure at which a gas 3573  
gathering pipeline or any segment of such a pipeline may be 3574  
operated under sections 4905.90 to 4905.96 of the Revised Code. 3575

(L) "Master-meter system" means a pipe-line system that 3576  
distributes gas within a contiguous property for which the system 3577  
operator purchases gas for resale to consumers, including tenants. 3578  
Such pipe-line system supplies consumers who purchase the gas 3579  
directly through a meter, or by paying rent, or by other means. 3580  
The term includes a master-meter system as defined in 49 C.F.R. 3581  
191.3, as amended. The term excludes a pipeline within a 3582  
manufactured home, mobile home, or a building. 3583

~~(F)~~(M) "Natural Gas Pipeline Safety Act" means the "Natural 3584  
Gas Pipeline Safety Act of 1968," 82 Stat. 720, 49 U.S.C.A. App. 3585  
1671 et seq., as amended. 3586

~~(G)~~(N) "Operator" means any of the following: 3587

(1) A gas company or natural gas company as defined in 3588  
section 4905.03 of the Revised Code, except that division (A)(5) 3589  
of that section does not authorize the public utilities commission 3590  
to relieve any producer of gas, as a gas company or natural gas 3591  
company, of compliance with sections 4905.90 to 4905.96 of the 3592  
Revised Code or the pipe-line safety code created under section 3593  
4905.91 of the Revised Code; 3594

(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)~~(O) "Operator of a master-meter system" means a person described under division ~~(F)~~(N)(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)~~(P) "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)~~(P)(1) of this section.

~~(J)~~(O) "Processing plant gas stub pipeline" means a gas

pipeline that transports transmission quality gas from the 3625  
tailgate of a gas processing plant to the inlet of an interstate 3626  
or intrastate transmission line and that is considered an 3627  
extension of the gas processing plant and is not for public use. 3628

(R) "Safety audit" means the public utilities commission's 3629  
audit of the premises, pipe-line facilities, and the records, 3630  
maps, and other relevant documents of a master-meter system to 3631  
determine the operator's compliance with sections 4905.90 to 3632  
4905.96 of the Revised Code and the pipe-line safety code. 3633

~~(K)~~(S) "Safety inspection" means any inspection, survey, or 3634  
testing of a master-meter system which is authorized or required 3635  
by sections 4905.90 to 4905.96 of the Revised Code and the 3636  
pipe-line safety code. The term includes, but is not limited to, 3637  
leak surveys, inspection of regulators and critical valves, and 3638  
monitoring of cathodic protection systems, where applicable. 3639

~~(L)~~(T) "Safety-related condition" means any safety-related 3640  
condition defined in 49 C.F.R. 191.23, as amended. 3641

~~(M)~~(U) "SMYS" mean specified minimum yield strength that is 3642  
either of the following: 3643

(1) For steel pipe manufactured in accordance with a listed 3644  
specification, the yield strength specified as a minimum in that 3645  
specification; 3646

(2) For steel pipe manufactured in accordance with an unknown 3647  
or unlisted specification, the yield strength determined in 3648  
accordance with 49 C.F.R. 192.107(b). 3649

(V) "Supervisory control and data acquisition system" means a 3650  
computer-based system or systems used by a controller in a control 3651  
room that collects and displays information about a pipeline 3652  
facility and may have the ability to send commands back to the 3653  
pipeline facility. 3654

(W) "Total Mcfs of gas it supplied or delivered" means the 3655  
sum of the following volumes of gas that an operator supplied or 3656  
delivered, measured in units per one thousand cubic feet: 3657

(1) Residential sales; 3658

(2) Commercial and industrial sales; 3659

(3) Other sales to public authorities; 3660

(4) Interdepartmental sales; 3661

(5) Sales for resale; 3662

(6) Transportation of gas. 3663

(X) "Transmission quality gas" means gas consisting 3664  
predominantly of methane that meets all downstream specifications 3665  
for transportation in an intrastate or interstate transmission 3666  
pipeline and that is suitable for use by public consumers. 3667

(Y) "Well facility" means a facility located at or near a 3668  
natural gas well that separates raw natural gas, condensate, and 3669  
water. 3670

(Z) "Wet natural gas" means natural gas with a mixture of 3671  
natural gas liquids that normally include ethane, propane, butane, 3672  
and other condensates that are liquid if the temperature is 3673  
reduced below the hydrocarbon dew point temperature of the natural 3674  
gas and which may be processed to remove any or all of the natural 3675  
gas liquids. 3676

(AA) "Wet natural gas compressor station" means a facility 3677  
that contains one or more compressors and that is used to increase 3678  
the pressure of raw natural gas for further transport by pipeline. 3679

**Sec. 4905.91.** For the purpose of protecting the public safety 3680  
with respect to intrastate pipe-line transportation by any 3681  
operator: 3682

(A) The public utilities commission shall: 3683

(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.

(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 3715  
shall be deposited to the credit of the gas pipe-line safety fund, 3716  
which is hereby created in the state treasury, to be used by the 3717  
commission for the purpose of carrying out this section. 3718

~~(C) The commission's regulation of gathering lines shall 3719  
conform to the regulation of gathering lines in 49 C.F.R. 192 and 3720  
199, as amended, and the commission's annual certification 3721  
agreements with the United States department of transportation, 3722  
except that rule 4901:1-16-03, paragraph (D) of rule 4901:1-16-05, 3723  
and rule 4901:1-16-06 of the Ohio Administrative Code shall also 3724  
apply to gathering lines. The procedural rules under chapter 3725  
4901:1-16 of the Ohio Administrative Code shall also apply to 3726  
operators of gathering lines. 3727~~

Sec. 4905.911. (A) The public utilities commission shall 3728  
require an operator of a low pressure gas gathering pipeline or 3729  
low pressure processing plant gas stub pipeline to comply with the 3730  
safety requirements of 49 C.F.R. 192, division (C) of this 3731  
section, and to do all of the following regarding that pipeline: 3732

(1) Design, install, construct, initially inspect, and 3733  
initially test the pipeline in accordance with the requirements of 3734  
49 C.F.R. 192 applicable to transmission lines if the pipeline is 3735  
new, replaced, relocated, or otherwise changed; 3736

(2) Control corrosion according to requirements of 49 C.F.R. 3737  
192 subpart I applicable to transmission lines if the pipeline is 3738  
metallic; 3739

(3) Establish and carry out a damage prevention program under 3740  
49 C.F.R. 192.614; 3741

(4) Establish and carry out a public education program under 3742  
49 C.F.R. 192.616; 3743

(5) Establish the MAOP of the pipeline under 49 C.F.R. 3744

<u>192.619;</u>	3745
<u>(6) Install and maintain pipeline markers according to the requirements for transmission lines under 49 C.F.R. 192.707;</u>	3746 3747
<u>(7) Perform leakage surveys according to requirements in 49 C.F.R. 192.706;</u>	3748 3749
<u>(8) Retain a record of each required leakage survey conducted under division (A)(7) 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.</u>	3750 3751 3752 3753
<u>(B) The commission shall require an operator of a high pressure gas gathering pipeline or a high pressure processing plant gas stub pipeline to comply with the safety requirements of 49 C.F.R. 192 applicable to transmission lines, except the operator shall not have to comply with the requirements of 49 C.F.R. 192.150 or 49 C.F.R. 192 subpart O. The commission shall also require the operator to comply with division (C) of this section and to do all of the following regarding that pipeline:</u>	3754 3755 3756 3757 3758 3759 3760 3761
<u>(1) Install safety tape at a depth of two feet below grade to warn excavators of imminent danger while excavating;</u>	3762 3763
<u>(2) Ensure the pipeline has inlet and outlet automated shutdown valves;</u>	3764 3765
<u>(3) Ensure the pipeline has a minimum setback of two hundred feet from any occupied structure, which may be waived by the owner or occupant of the structure;</u>	3766 3767 3768
<u>(4) Implement and document a protective remote supervisory control and data acquisition system.</u>	3769 3770
<u>(C) The commission shall require an operator of a pipeline subject to division (A) or (B) of this section to comply with all of the following:</u>	3771 3772 3773
<u>(1) The procedural rules under chapter 4901:1-16 of the Ohio</u>	3774

<u>Administrative Code;</u>	3775
<u>(2) Rule 4901:1-16-03 of the Ohio Administrative Code;</u>	3776
<u>(3) Paragraphs (A) to (D) of rule 4901:1-16-04 of the Ohio Administrative Code;</u>	3777 3778
<u>(4) Paragraphs (C) and (D) of rule 4901:1-16-05 of the Ohio Administrative Code;</u>	3779 3780
<u>(5) Rule 4901:1-16-06 of the Ohio Administrative Code.</u>	3781
<b>Sec. 4905.95.</b> (A) Except as otherwise provided in division	3782
(C) of this section:	3783
(1) The public utilities commission, regarding any proceeding	3784
under this section, shall provide reasonable notice and the	3785
opportunity for a hearing in accordance with rules adopted under	3786
section 4901.13 of the Revised Code.	3787
(2) Sections 4903.02 to 4903.082, 4903.09 to 4903.16, and	3788
4903.20 to 4903.23 of the Revised Code apply to all proceedings	3789
and orders of the commission under this section and to all	3790
operators subject to those proceedings and orders.	3791
(B) If, pursuant to a proceeding it specially initiates or to	3792
any other proceeding and after the hearing provided for under	3793
division (A) of this section, the commission finds that:	3794
(1) An operator has violated or failed to comply with, or is	3795
violating or failing to comply with, sections 4905.90 to 4905.96	3796
of the Revised Code or the pipe-line safety code, the commission	3797
by order:	3798
(a) Shall require the operator to comply and to undertake	3799
corrective action necessary to protect the public safety;	3800
(b) May assess upon the operator forfeitures of not more than	3801
one hundred thousand dollars for each day of each violation or	3802
noncompliance, except that the aggregate of such forfeitures shall	3803

not exceed ~~five hundred thousand~~ one million dollars for any 3804  
related series of violations or noncompliances. In determining the 3805  
amount of any such forfeiture, the commission shall consider all 3806  
of the following: 3807

(i) The gravity of the violation or noncompliance; 3808

(ii) The operator's history of prior violations or 3809  
noncompliances; 3810

(iii) The operator's good faith efforts to comply and 3811  
undertake corrective action; 3812

(iv) The operator's ability to pay the forfeiture; 3813

(v) The effect of the forfeiture on the operator's ability to 3814  
continue as an operator; 3815

(vi) Such other matters as justice may require. 3816

All forfeitures collected under this division or section 4905.96 3817  
of the Revised Code shall be deposited in the state treasury to 3818  
the credit of the general revenue fund. 3819

(c) May direct the attorney general to seek the remedies 3820  
provided in section 4905.96 of the Revised Code. 3821

(2) An intrastate pipe-line transportation facility is 3822  
hazardous to life or property, the commission by order: 3823

(a) Shall require the operator of the facility to take 3824  
corrective action to remove the hazard. Such corrective action may 3825  
include suspended or restricted use of the facility, physical 3826  
inspection, testing, repair, replacement, or other action. 3827

(b) May direct the attorney general to seek the remedies 3828  
provided in section 4905.96 of the Revised Code. 3829

(C) If, pursuant to a proceeding it specially initiates or to 3830  
any other proceeding, the commission finds that an emergency 3831  
exists due to a condition on an intrastate pipe-line 3832

transportation facility posing a clear and immediate danger to 3833  
life or health or threatening a significant loss of property and 3834  
requiring immediate corrective action to protect the public 3835  
safety, the commission may issue, without notice or prior hearing, 3836  
an order reciting its finding and may direct the attorney general 3837  
to seek the remedies provided in section 4905.96 of the Revised 3838  
Code. The order shall remain in effect for not more than forty 3839  
days after the date of its issuance. The order shall provide for a 3840  
hearing as soon as possible, but not later than thirty days after 3841  
the date of its issuance. After the hearing the commission shall 3842  
continue, revoke, or modify the order and may make findings under 3843  
and seek appropriate remedies as provided in division (B) of this 3844  
section. 3845

**Sec. 4906.01.** As used in Chapter 4906. of the Revised Code: 3846

(A) "Person" means an individual, corporation, business 3847  
trust, association, estate, trust, or partnership or any officer, 3848  
board, commission, department, division, or bureau of the state or 3849  
a political subdivision of the state, or any other entity. 3850

(B)(1) "Major utility facility" means: 3851

(a) Electric generating plant and associated facilities 3852  
designed for, or capable of, operation at a capacity of fifty 3853  
megawatts or more; 3854

(b) An electric transmission line and associated facilities 3855  
of a design capacity of one hundred twenty-five kilovolts or more; 3856

(c) A gas ~~or natural gas~~ transmission line and pipeline, 3857  
including its associated facilities, that meets either of the 3858  
following requirements: 3859

(i) It is more than nine inches in outside diameter and is 3860  
designed for, or capable of, transporting gas ~~or natural gas~~ at 3861  
pressures in excess of one hundred twenty-five pounds per square 3862

inch. 3863

(ii) It is designed for, or capable of, transporting gas at pressures in excess of 300 pounds per square inch. 3864  
3865

(2) "Major utility facility" does not include ~~gas or natural gas~~ any of the following: 3866  
3867

(a) Gas transmission lines over which an agency of the United States has exclusive jurisdiction, ~~any;~~ 3868  
3869

(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;~~ 3870  
3871  
3872

~~(a)(c)~~ (c) Electric, ~~gas, natural gas~~ distributing lines and ~~gas or natural gas gathering lines and~~ associated facilities as defined by the power siting board; 3873  
3874  
3875

~~(b)(d)~~ (d) Any manufacturing facility that creates byproducts that may be used in the generation of electricity as defined by the power siting board; 3876  
3877  
3878

(e) Gas gathering pipelines and processing plant gas stub pipelines as defined in section 4905.90 of the Revised Code; 3879  
3880

(f) Any gas processing plant as defined in section 4905.90 of the Revised Code; 3881  
3882

(g) Natural gas liquids finished products pipelines; 3883

(h) Pipelines from a natural gas liquids processing plant to an interstate or intrastate gas pipeline; 3884  
3885

(i) Any natural gas liquids fractionation plant. 3886

(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 3887  
3888  
3889  
3890  
3891

in securing geological data, including necessary borings to 3892  
ascertain foundation conditions. 3893

(D) "Certificate" means a certificate of environmental 3894  
compatibility and public need issued by the power siting board 3895  
under section 4906.10 of the Revised Code or a construction 3896  
certificate issued by the board under rules adopted under division 3897  
(E) or (F) of section 4906.03 of the Revised Code. 3898

(E) "Gas" means natural gas, flammable gas, or gas that is 3899  
toxic or corrosive. 3900

(F) "Natural gas liquids finished product pipeline" means a 3901  
pipeline that carries finished product natural gas liquids to the 3902  
inlet of an interstate or intrastate finished product natural gas 3903  
liquid transmission pipeline, rail loading facility, or other 3904  
petrochemical or refinery facility. 3905

(G) "Natural gas liquids fractionation plant" means a 3906  
facility that takes a feed of raw natural gas liquids and produces 3907  
finished product natural gas liquids. 3908

(H) "Raw natural gas" means hydrocarbons that are produced in 3909  
a gaseous state from gas wells and that generally include methane, 3910  
ethane, propane, butanes, pentanes, hexanes, heptanes, octanes, 3911  
nonanes, and decanes, plus other naturally occurring impurities 3912  
like water, carbon dioxide, hydrogen sulfide, nitrogen, oxygen, 3913  
and helium. 3914

(I) "Raw natural gas liquids" means naturally occurring 3915  
hydrocarbons contained in raw natural gas that are extracted in a 3916  
gas processing plant and liquefied and generally include mixtures 3917  
of ethane, propane, butanes, and natural gasoline. 3918

(J) "Finished product natural gas liquids" means an 3919  
individual finished product produced by a natural gas liquids 3920  
fractionation plant as a liquid that meets the specifications for 3921  
commercial products as defined by the gas processors association. 3922

Those products include ethane, propane, iso-butane, normal butane, 3923  
and natural gasoline. 3924

**Sec. 4906.03.** The power siting board shall: 3925

(A) Require such information from persons subject to its 3926  
jurisdiction as it considers necessary to assist in the conduct of 3927  
hearings and any investigations or studies it may undertake; 3928

(B) Conduct any studies or investigations that it considers 3929  
necessary or appropriate to carry out its responsibilities under 3930  
this chapter; 3931

(C) Adopt rules establishing criteria for evaluating the 3932  
effects on environmental values of proposed and alternative sites, 3933  
and projected needs for electric power, and such other rules as 3934  
are necessary and convenient to implement this chapter, including 3935  
rules governing application fees, supplemental application fees, 3936  
and other reasonable fees to be paid by persons subject to the 3937  
board's jurisdiction. The board shall make an annual accounting of 3938  
its collection and use of these fees and shall issue an annual 3939  
report of its accounting, in the form and manner prescribed by its 3940  
rules, not later than the last day of June of the year following 3941  
the calendar year to which the report applies. 3942

(D) Approve ~~or~~, disapprove, or modify and approve 3943  
applications for certificates; 3944

(E) Notwithstanding sections 4906.06 to 4906.14 of the 3945  
Revised Code, the board may adopt rules to provide for an 3946  
~~abbreviated~~ accelerated review of an application for a 3947  
construction certificate for construction of a major utility 3948  
facility related to a coal research and development project as 3949  
defined in section 1555.01 of the Revised Code, or to a coal 3950  
development project as defined in section 1551.30 of the Revised 3951  
Code, submitted to the Ohio coal development office for review 3952



under division (B)(7) of section 1551.33 of the Revised Code. 3953  
Applications for construction certificates for construction of 3954  
major utility facilities for Ohio coal research and development 3955  
shall be filed with the board on the same day as the proposed 3956  
facility or project is submitted to the Ohio coal development 3957  
office for review. 3958

The board shall render a decision on an application for a 3959  
construction certificate within ninety days after receipt of the 3960  
application and all of the data and information it may require 3961  
from the applicant. In rendering a decision on an application for 3962  
a construction certificate, the board shall only consider the 3963  
criteria and make the findings and determinations set forth in 3964  
divisions (A)(2), (3), (5), and (7) and division (B) of section 3965  
4906.10 of the Revised Code. 3966

(F) Notwithstanding sections 4906.06 to 4906.14 of the 3967  
Revised Code, the board shall adopt rules to provide for an 3968  
accelerated review of an application for a construction 3969  
certificate for any of the following: 3970

(1) An electric transmission line that is not more than two 3971  
miles in length; 3972

(2) An electric generating facility that uses waste heat and 3973  
is primarily within the current boundary of an existing industrial 3974  
facility; 3975

(3) A gas pipeline that is not more than five miles in 3976  
length. 3977

The board shall adopt rules that provide for the automatic 3978  
certification to any entity described in this division when an 3979  
application by any such entity is not suspended by the board, an 3980  
administrative law judge, or the chairperson or executive director 3981  
of the board for good cause shown, within ninety days of 3982  
submission of the application. If an application is suspended, the 3983

board shall approve, disapprove, or modify and approve the 3984  
application not later than ninety days after the date of the 3985  
suspension. 3986

**Sec. 4906.05.** No certificate is required for a major utility 3987  
facility on which construction had already commenced on October 3988  
23, 1972, or within two years thereafter. This section does not 3989  
exempt such a facility from any other requirements of state and 3990  
local laws and regulations. 3991

No certificate is required for any major utility facility 3992  
already in operation on October 23, 1972, and the facility shall 3993  
not be exempt from any applicable state or local laws or 3994  
regulations. A certificate is required for any substantial 3995  
addition to a facility already in operation. "Substantial 3996  
addition" shall be defined by the power siting board. 3997

Any electric generating plant and associated facilities, 3998  
electric transmission line and associated facilities, or gas ~~or~~ 3999  
~~natural gas transmission line~~ pipeline and associated facilities 4000  
which is not a major utility facility is not exempt from state or 4001  
local laws or regulations. 4002

**Sec. 4906.06.** (A) An applicant for a certificate shall file 4003  
with the office of the chairperson of the power siting board an 4004  
application, in such form as the board prescribes, containing the 4005  
following information: 4006

(1) A description of the location and of the major utility 4007  
facility; 4008

(2) A summary of any studies that have been made by or for 4009  
the applicant of the environmental impact of the facility; 4010

(3) A statement explaining the need for the facility; 4011

(4) A statement of the reasons why the proposed location is 4012

best suited for the facility; 4013

(5) A statement of how the facility fits into the applicant's 4014  
forecast contained in the report submitted under section 4935.04 4015  
of the Revised Code; 4016

(6) Such other information as the applicant may consider 4017  
relevant or as the board by rule or order may require. Copies of 4018  
the studies referred to in division (A)(2) of this section shall 4019  
be filed with the office of the chairperson, if ordered, and shall 4020  
be available for public inspection. 4021

The application shall be filed not ~~less than one year nor~~ 4022  
more than five years prior to the planned date of commencement of 4023  
construction. ~~Either~~ The five-year period may be waived by the 4024  
board for good cause shown. 4025

(B) Each application shall be accompanied by proof of service 4026  
of a copy of such application on the chief executive officer of 4027  
each municipal corporation and county, and the head of each public 4028  
agency charged with the duty of protecting the environment or of 4029  
planning land use, in the area in which any portion of such 4030  
facility is to be located. 4031

(C) Each applicant within fifteen days after the date of the 4032  
filing of the application shall give public notice to persons 4033  
residing in the municipal corporations and counties entitled to 4034  
receive notice under division (B) of this section, by the 4035  
publication of a summary of the application in newspapers of 4036  
general circulation in such area. Proof of such publication shall 4037  
be filed with the office of the chairperson. 4038

(D) Inadvertent failure of service on, or notice to, any of 4039  
the persons identified in divisions (B) and (C) of this section 4040  
may be cured pursuant to orders of the board designed to afford 4041  
them adequate notice to enable them to participate effectively in 4042  
the proceeding. In addition, the board, after filing, may require 4043

the applicant to serve notice of the application or copies thereof 4044  
or both upon such other persons, and file proof thereof, as the 4045  
board considers appropriate. 4046

(E) An application for an amendment of a certificate shall be 4047  
in such form and contain such information as the board prescribes. 4048  
Notice of such an application shall be given as required in 4049  
divisions (B) and (C) of this section. 4050

(F) Each application for certificate or an amendment shall be 4051  
accompanied by the application fee prescribed by board rule. All 4052  
application fees, supplemental application fees, and other fees 4053  
collected by the board shall be deposited in the state treasury to 4054  
the credit of the power siting board fund, which is hereby 4055  
created. The chairperson shall administer and authorize 4056  
expenditures from the fund for any of the purposes of this 4057  
chapter. If the chairperson determines that moneys credited to the 4058  
fund from an applicant's fee are not sufficient to pay the board's 4059  
expenses associated with its review of the application, the 4060  
chairperson shall request the approval of the controlling board to 4061  
assess a supplemental application fee upon an applicant to pay 4062  
anticipated additional expenses associated with the board's review 4063  
of the application or an amendment to an application. If the 4064  
chairperson finds that an application fee exceeds the amount 4065  
needed to pay the board's expenses for review of the application, 4066  
the chairperson shall cause a refund of the excess amount to be 4067  
issued to the applicant from the fund. 4068

**Sec. 4906.07.** (A) Upon the receipt of an application 4069  
complying with section 4906.06 of the Revised Code, the power 4070  
siting board shall promptly fix a date for a public hearing 4071  
thereon, not less than sixty nor more than ninety days after such 4072  
receipt, and shall conclude the proceeding as expeditiously as 4073  
practicable. 4074

(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. 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 4107  
and conditions of its certificate is unable to operate in 4108  
compliance with all applicable requirements of state laws, rules, 4109  
and standards pertaining to air pollution, the facility may apply 4110  
to the director of environmental protection for a conditional 4111  
operating permit under division (G) of section 3704.03 of the 4112  
Revised Code and the rules adopted thereunder. The operation of a 4113  
major utility facility in compliance with a conditional operating 4114  
permit is not in violation of its certificate. After the 4115  
expiration of the period of initial operation of a major utility 4116  
facility, the facility shall be under the jurisdiction of the 4117  
environmental protection agency and shall comply with all laws, 4118  
rules, and standards pertaining to air pollution, water pollution, 4119  
and solid and hazardous waste disposal. 4120

The board shall not grant a certificate for the construction, 4121  
operation, and maintenance of a major utility facility, either as 4122  
proposed or as modified by the board, unless it finds and 4123  
determines all of the following: 4124

(1) The basis of the need for the facility if the facility is 4125  
an electric transmission line or gas ~~or natural gas transmission~~ 4126  
line pipeline; 4127

(2) The nature of the probable environmental impact; 4128

(3) That the facility represents the minimum adverse 4129  
environmental impact, considering the state of available 4130  
technology and the nature and economics of the various 4131  
alternatives, and other pertinent considerations; 4132

(4) In the case of an electric transmission line or 4133  
generating facility, that the facility is consistent with regional 4134  
plans for expansion of the electric power grid of the electric 4135  
systems serving this state and interconnected utility systems and 4136  
that the facility will serve the interests of electric system 4137

economy and reliability; 4138

(5) That the facility will comply with Chapters 3704., 3734., 4139  
and 6111. of the Revised Code and all rules and standards adopted 4140  
under those chapters and under sections 1501.33, 1501.34, and 4141  
4561.32 of the Revised Code. In determining whether the facility 4142  
will comply with all rules and standards adopted under section 4143  
4561.32 of the Revised Code, the board shall consult with the 4144  
office of aviation of the division of multi-modal planning and 4145  
programs of the department of transportation under section 4146  
4561.341 of the Revised Code. 4147

(6) That the facility will serve the public interest, 4148  
convenience, and necessity; 4149

(7) In addition to the provisions contained in divisions 4150  
(A)(1) to (6) of this section and rules adopted under those 4151  
divisions, what its impact will be on the viability as 4152  
agricultural land of any land in an existing agricultural district 4153  
established under Chapter 929. of the Revised Code that is located 4154  
within the site and alternative site of the proposed major utility 4155  
facility. Rules adopted to evaluate impact under division (A)(7) 4156  
of this section shall not require the compilation, creation, 4157  
submission, or production of any information, document, or other 4158  
data pertaining to land not located within the site and 4159  
alternative site. 4160

(8) That the facility incorporates maximum feasible water 4161  
conservation practices as determined by the board, considering 4162  
available technology and the nature and economics of the various 4163  
alternatives. 4164

(B) If the board determines that the location of all or a 4165  
part of the proposed facility should be modified, it may condition 4166  
its certificate upon that modification, provided that the 4167  
municipal corporations and counties, and persons residing therein, 4168

affected by the modification shall have been given reasonable 4169  
notice thereof. 4170

(C) A copy of the decision and any opinion issued therewith 4171  
shall be served upon each party. 4172

**Sec. 4906.20.** (A) No person shall commence to construct an 4173  
economically significant wind farm in this state without first 4174  
having obtained a certificate from the power siting board. An 4175  
economically significant wind farm with respect to which such a 4176  
certificate is required shall be constructed, operated, and 4177  
maintained in conformity with that certificate and any terms, 4178  
conditions, and modifications it contains. A certificate shall be 4179  
issued only pursuant to this section. The certificate may be 4180  
transferred, subject to the approval of the board, to a person 4181  
that agrees to comply with those terms, conditions, and 4182  
modifications. 4183

(B) The board shall adopt rules governing the certificating 4184  
of economically significant wind farms under this section. Initial 4185  
rules shall be adopted within one hundred twenty days after ~~this~~ 4186  
~~section's effective date~~ June 24, 2008. 4187

(1) The rules shall provide for an application process for 4188  
certificating economically significant wind farms that is 4189  
identical to the extent practicable to the process applicable to 4190  
certificating major utility facilities under sections 4906.06, 4191  
4906.07, 4906.08, 4906.09, 4906.10, 4906.11, and 4906.12 of the 4192  
Revised Code and shall prescribe a reasonable schedule of 4193  
application filing fees structured in the manner of the schedule 4194  
of filing fees required for major utility facilities. 4195

(2) Additionally, the rules shall prescribe reasonable 4196  
regulations regarding any wind turbines and associated facilities 4197  
of an economically significant wind farm, including, but not 4198  
limited to, their location, erection, construction, 4199



reconstruction, change, alteration, maintenance, removal, use, or 4200  
enlargement and including erosion control, aesthetics, 4201  
recreational land use, wildlife protection, interconnection with 4202  
power lines and with regional transmission organizations, 4203  
independent transmission system operators, or similar 4204  
organizations, ice throw, sound and noise levels, blade shear, 4205  
shadow flicker, decommissioning, and necessary cooperation for 4206  
site visits and enforcement investigations. The rules also shall 4207  
prescribe a minimum setback for a wind turbine of an economically 4208  
significant wind farm. That minimum shall be equal to a horizontal 4209  
distance, from the turbine's base to the property line of the wind 4210  
farm property, equal to one and one-tenth times the total height 4211  
of the turbine structure as measured from its base to the tip of 4212  
its highest blade and be at least seven hundred fifty feet in 4213  
horizontal distance from the tip of the turbine's nearest blade at 4214  
ninety degrees to the exterior of the nearest, habitable, 4215  
residential structure, if any, located on adjacent property at the 4216  
time of the certification application. The setback shall apply in 4217  
all cases except those in which all owners of property adjacent to 4218  
the wind farm property waive application of the setback to that 4219  
property pursuant to a procedure the board shall establish by rule 4220  
and except in which, in a particular case, the board determines 4221  
that a setback greater than the minimum is necessary. 4222

~~(C) The board shall approve, or may modify and approve, an 4223  
application for economically significant wind farm certification 4224  
if it finds that the construction, operation, and maintenance of 4225  
the economically significant wind farm will comply with the rules 4226  
adopted under division (B) of this section. The certificate shall 4227  
be conditioned upon the economically significant wind farm 4228  
complying with rules adopted under section 4561.32 of the Revised 4229  
Code. 4230~~

**Sec. 4906.99.** Whoever willfully violates any provision of 4231

section 4906.98 of the Revised Code may be fined not ~~less than one~~ 4232  
~~thousand dollars nor~~ more than ~~ten~~ one hundred thousand dollars 4233  
for each day of each violation, or imprisoned for not more than 4234  
one year, or both. 4235

**Sec. 4928.01.** (A) As used in this chapter: 4236

(1) "Ancillary service" means any function necessary to the 4237  
provision of electric transmission or distribution service to a 4238  
retail customer and includes, but is not limited to, scheduling, 4239  
system control, and dispatch services; reactive supply from 4240  
generation resources and voltage control service; reactive supply 4241  
from transmission resources service; regulation service; frequency 4242  
response service; energy imbalance service; operating 4243  
reserve-spinning reserve service; operating reserve-supplemental 4244  
reserve service; load following; back-up supply service; 4245  
real-power loss replacement service; dynamic scheduling; system 4246  
black start capability; and network stability service. 4247

(2) "Billing and collection agent" means a fully independent 4248  
agent, not affiliated with or otherwise controlled by an electric 4249  
utility, electric services company, electric cooperative, or 4250  
governmental aggregator subject to certification under section 4251  
4928.08 of the Revised Code, to the extent that the agent is under 4252  
contract with such utility, company, cooperative, or aggregator 4253  
solely to provide billing and collection for retail electric 4254  
service on behalf of the utility company, cooperative, or 4255  
aggregator. 4256

(3) "Certified territory" means the certified territory 4257  
established for an electric supplier under sections 4933.81 to 4258  
4933.90 of the Revised Code. 4259

(4) "Competitive retail electric service" means a component 4260  
of retail electric service that is competitive as provided under 4261  
division (B) of this section. 4262

(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. 4294  
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(12) "Firm electric service" means electric service other than nonfirm electric service. 4296  
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(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. 4298  
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(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. 4303  
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(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. 4308  
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(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. 4318  
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(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 4322  
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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 4355  
facilitate the generation or use of electricity or energy and that 4356  
reduce or support the reduction of energy consumption or support 4357  
the production of clean, renewable energy for industrial, 4358  
distribution, commercial, institutional, governmental, research, 4359  
not-for-profit, or residential energy users, including, but not 4360  
limited to, advanced energy resources and renewable energy 4361  
resources. "Advanced energy project" also includes any project 4362  
described in division (A), (B), or (C) of section 4928.621 of the 4363  
Revised Code. 4364

(26) "Regulatory assets" means the unamortized net regulatory 4365  
assets that are capitalized or deferred on the regulatory books of 4366  
the electric utility, pursuant to an order or practice of the 4367  
public utilities commission or pursuant to generally accepted 4368  
accounting principles as a result of a prior commission 4369  
rate-making decision, and that would otherwise have been charged 4370  
to expense as incurred or would not have been capitalized or 4371  
otherwise deferred for future regulatory consideration absent 4372  
commission action. "Regulatory assets" includes, but is not 4373  
limited to, all deferred demand-side management costs; all 4374  
deferred percentage of income payment plan arrears; 4375  
post-in-service capitalized charges and assets recognized in 4376  
connection with statement of financial accounting standards no. 4377  
109 (receivables from customers for income taxes); future nuclear 4378  
decommissioning costs and fuel disposal costs as those costs have 4379  
been determined by the commission in the electric utility's most 4380  
recent rate or accounting application proceeding addressing such 4381  
costs; the undepreciated costs of safety and radiation control 4382  
equipment on nuclear generating plants owned or leased by an 4383  
electric utility; and fuel costs currently deferred pursuant to 4384  
the terms of one or more settlement agreements approved by the 4385  
commission. 4386

(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, 4417  
whether the facility is installed or operated by the owner or by 4418  
an agent under a contract. 4419

(33) "Rate plan" means the standard service offer in effect 4420  
on the effective date of the amendment of this section by S.B. 221 4421  
of the 127th general assembly, July 31, 2008. 4422

(34) "Advanced energy resource" means any of the following: 4423

(a) Any method or any modification or replacement of any 4424  
property, process, device, structure, or equipment that increases 4425  
the generation output of an electric generating facility to the 4426  
extent such efficiency is achieved without additional carbon 4427  
dioxide emissions by that facility; 4428

(b) Any distributed generation system consisting of customer 4429  
cogeneration of electricity and thermal output simultaneously; 4430

(c) Clean coal technology that includes a carbon-based 4431  
product that is chemically altered before combustion to 4432  
demonstrate a reduction, as expressed as ash, in emissions of 4433  
nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or 4434  
sulfur trioxide in accordance with the American society of testing 4435  
and materials standard D1757A or a reduction of metal oxide 4436  
emissions in accordance with standard D5142 of that society, or 4437  
clean coal technology that includes the design capability to 4438  
control or prevent the emission of carbon dioxide, which design 4439  
capability the commission shall adopt by rule and shall be based 4440  
on economically feasible best available technology or, in the 4441  
absence of a determined best available technology, shall be of the 4442  
highest level of economically feasible design capability for which 4443  
there exists generally accepted scientific opinion; 4444

(d) Advanced nuclear energy technology consisting of 4445  
generation III technology as defined by the nuclear regulatory 4446  
commission; other, later technology; or significant improvements 4447



to existing facilities; 4448

(e) Any fuel cell used in the generation of electricity, 4449  
including, but not limited to, a proton exchange membrane fuel 4450  
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or 4451  
solid oxide fuel cell; 4452

(f) Advanced solid waste or construction and demolition 4453  
debris conversion technology, including, but not limited to, 4454  
advanced stoker technology, and advanced fluidized bed 4455  
gasification technology, that results in measurable greenhouse gas 4456  
emissions reductions as calculated pursuant to the United States 4457  
environmental protection agency's waste reduction model (WARM). 4458

(g) Demand-side management and any energy efficiency 4459  
improvement. 4460

"Advanced energy resource" does not include a waste energy 4461  
recovery system that is, or has been, included in an energy 4462  
efficiency program of an electric distribution utility pursuant to 4463  
requirements under section 4928.66 of the Revised Code. 4464

(35) "Renewable energy resource" means solar photovoltaic or 4465  
solar thermal energy, wind energy, power produced by a 4466  
hydroelectric facility, geothermal energy, fuel derived from solid 4467  
wastes, as defined in section 3734.01 of the Revised Code, through 4468  
fractionation, biological decomposition, or other process that 4469  
does not principally involve combustion, biomass energy, 4470  
biologically derived methane gas, or energy derived from 4471  
nontreated by-products of the pulping process or wood 4472  
manufacturing process, including bark, wood chips, sawdust, and 4473  
lignin in spent pulping liquors. "Renewable energy resource" 4474  
includes, but is not limited to, any fuel cell used in the 4475  
generation of electricity, including, but not limited to, a proton 4476  
exchange membrane fuel cell, phosphoric acid fuel cell, molten 4477  
carbonate fuel cell, or solid oxide fuel cell; wind turbine 4478

located in the state's territorial waters of Lake Erie; methane 4479  
gas emitted from an abandoned coal mine; waste energy recovery 4480  
system; storage facility that will promote the better utilization 4481  
of a renewable energy resource that primarily generates off peak; 4482  
or distributed generation system used by a customer to generate 4483  
electricity from any such energy. "Renewable energy resource" does 4484  
not include a waste energy recovery system that is, or has been, 4485  
included in an energy efficiency program of an electric 4486  
distribution utility pursuant to requirements under section 4487  
4928.66 of the Revised Code. As used in division (A)(35) of this 4488  
section, "hydroelectric facility" means a hydroelectric generating 4489  
facility that is located at a dam on a river, or on any water 4490  
discharged to a river, that is within or bordering this state or 4491  
within or bordering an adjoining state and meets all of the 4492  
following standards: 4493

(a) The facility provides for river flows that are not 4494  
detrimental for fish, wildlife, and water quality, including 4495  
seasonal flow fluctuations as defined by the applicable licensing 4496  
agency for the facility. 4497

(b) The facility demonstrates that it complies with the water 4498  
quality standards of this state, which compliance may consist of 4499  
certification under Section 401 of the "Clean Water Act of 1977," 4500  
91 Stat. 1598, 1599, 33 U.S.C. 1341, and demonstrates that it has 4501  
not contributed to a finding by this state that the river has 4502  
impaired water quality under Section 303(d) of the "Clean Water 4503  
Act of 1977," 114 Stat. 870, 33 U.S.C. 1313. 4504

(c) The facility complies with mandatory prescriptions 4505  
regarding fish passage as required by the federal energy 4506  
regulatory commission license issued for the project, regarding 4507  
fish protection for riverine, anadromous, and catadromous fish. 4508

(d) The facility complies with the recommendations of the 4509  
Ohio environmental protection agency and with the terms of its 4510

federal energy regulatory commission license regarding watershed protection, mitigation, or enhancement, to the extent of each agency's respective jurisdiction over the facility.

(e) 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) 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) 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) 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.

(36) "Waste energy recovery system" means a facility that generates electricity through the conversion of energy from either of the following:

(a) 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;

(b) 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 4542  
fuels. 4543

(37) "Smart grid" means capital improvements to an electric 4544  
distribution utility's distribution infrastructure, including, but 4545  
not limited to, advanced metering and automation of system 4546  
functions. 4547

(B) For the purposes of this chapter, a retail electric 4548  
service component shall be deemed a competitive retail electric 4549  
service if the service component is competitive pursuant to a 4550  
declaration by a provision of the Revised Code or pursuant to an 4551  
order of the public utilities commission authorized under division 4552  
(A) of section 4928.04 of the Revised Code. Otherwise, the service 4553  
component shall be deemed a noncompetitive retail electric 4554  
service. 4555

**Sec. 4928.02.** It is the policy of this state to do the 4556  
following throughout this state: 4557

(A) Ensure the availability to consumers of adequate, 4558  
reliable, safe, efficient, nondiscriminatory, and reasonably 4559  
priced retail electric service; 4560

(B) Ensure the availability of unbundled and comparable 4561  
retail electric service that provides consumers with the supplier, 4562  
price, terms, conditions, and quality options they elect to meet 4563  
their respective needs; 4564

(C) Ensure diversity of electricity supplies and suppliers, 4565  
by giving consumers effective choices over the selection of those 4566  
supplies and suppliers and by encouraging the development of 4567  
distributed and small generation facilities; 4568

(D) Encourage innovation and market access for cost-effective 4569  
supply- and demand-side retail electric service including, but not 4570  
limited to, demand-side management, time-differentiated pricing, 4571

waste energy recovery systems, smart grid programs, and 4572  
implementation of advanced metering infrastructure; 4573

(E) Encourage cost-effective and efficient access to 4574  
information regarding the operation of the transmission and 4575  
distribution systems of electric utilities in order to promote 4576  
both effective customer choice of retail electric service and the 4577  
development of performance standards and targets for service 4578  
quality for all consumers, including annual achievement reports 4579  
written in plain language; 4580

(F) Ensure that an electric utility's transmission and 4581  
distribution systems are available to a customer-generator or 4582  
owner of distributed generation, so that the customer-generator or 4583  
owner can market and deliver the electricity it produces; 4584

(G) Recognize the continuing emergence of competitive 4585  
electricity markets through the development and implementation of 4586  
flexible regulatory treatment; 4587

(H) Ensure effective competition in the provision of retail 4588  
electric service by avoiding anticompetitive subsidies flowing 4589  
from a noncompetitive retail electric service to a competitive 4590  
retail electric service or to a product or service other than 4591  
retail electric service, and vice versa, including by prohibiting 4592  
the recovery of any generation-related costs through distribution 4593  
or transmission rates; 4594

(I) Ensure retail electric service consumers protection 4595  
against unreasonable sales practices, market deficiencies, and 4596  
market power; 4597

(J) Provide coherent, transparent means of giving appropriate 4598  
incentives to technologies that can adapt successfully to 4599  
potential environmental mandates; 4600

(K) Encourage implementation of distributed generation across 4601  
customer classes through regular review and updating of 4602

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. The commission shall evaluate the distribution and transmission infrastructure and shall order any necessary upgrades, additions, or improvements to ensure adequate and reliable service, enable new electric generation, and promote new industry in this state.

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

section. The utility may file that application prior to the 4633  
effective date of any rules the commission may adopt for the 4634  
purpose of this section, and, as the commission determines 4635  
necessary, the utility immediately shall conform its filing to 4636  
those rules upon their taking effect. 4637

(B) Notwithstanding any other provision of Title XLIX of the 4638  
Revised Code to the contrary except division (D) of this section, 4639  
divisions (I), (J), and (K) of section 4928.20, division (E) of 4640  
section 4928.64, and section 4928.69 of the Revised Code: 4641

(1) An electric security plan shall include provisions 4642  
relating to the supply and pricing of electric generation service. 4643  
In addition, if the proposed electric security plan has a term 4644  
longer than three years, it may include provisions in the plan to 4645  
permit the commission to test the plan pursuant to division (E) of 4646  
this section and any transitional conditions that should be 4647  
adopted by the commission if the commission terminates the plan as 4648  
authorized under that division. 4649

(2) The plan may provide for or include, without limitation, 4650  
any of the following: 4651

(a) Automatic recovery of any of the following costs of the 4652  
electric distribution utility, provided the cost is prudently 4653  
incurred: the cost of fuel used to generate the electricity 4654  
supplied under the offer; the cost of purchased power supplied 4655  
under the offer, including the cost of energy and capacity, and 4656  
including purchased power acquired from an affiliate; the cost of 4657  
emission allowances; and the cost of federally mandated carbon or 4658  
energy taxes; 4659

(b) A reasonable allowance for construction work in progress 4660  
for any of the electric distribution utility's cost of 4661  
constructing an electric generating facility or for an 4662  
environmental expenditure for any electric generating facility of 4663

the electric distribution utility, provided the cost is incurred 4664  
or the expenditure occurs on or after January 1, 2009. Any such 4665  
allowance shall be subject to the construction work in progress 4666  
allowance limitations of division (A) of section 4909.15 of the 4667  
Revised Code, except that the commission may authorize such an 4668  
allowance upon the incurrence of the cost or occurrence of the 4669  
expenditure. No such allowance for generating facility 4670  
construction shall be authorized, however, unless the commission 4671  
first determines ~~in the proceeding~~ that there is need for the 4672  
facility based on ~~resource planning projections~~ the long-term 4673  
forecast report submitted by the electric distribution utility 4674  
pursuant to division (C) of section 4935.04 of the Revised Code 4675  
and any hearing record produced under that section. Further, no 4676  
such allowance shall be authorized unless the facility's 4677  
construction was sourced through a competitive bid process, 4678  
regarding which process the commission may adopt rules. An 4679  
allowance approved under division (B)(2)(b) of this section shall 4680  
be established as a nonbypassable surcharge for the life of the 4681  
facility. 4682

(c) The establishment of a nonbypassable surcharge for the 4683  
life of an electric generating facility that is owned or operated 4684  
by the electric distribution utility, was sourced through a 4685  
competitive bid process subject to any such rules as the 4686  
commission adopts under division (B)(2)(b) of this section, and is 4687  
newly used and useful on or after January 1, 2009, which surcharge 4688  
shall cover all costs of the utility specified in the application, 4689  
excluding costs recovered through a surcharge under division 4690  
(B)(2)(b) of this section. However, no surcharge shall be 4691  
authorized unless the commission first determines ~~in the~~ 4692  
~~proceeding~~ that there is need for the facility based on ~~resource~~ 4693  
~~planning projections~~ the long-term forecast report submitted by 4694  
the electric distribution utility pursuant to division (C) of 4695  
section 4935.04 of the Revised Code and any hearing record 4696



produced under that section. Additionally, if a surcharge is 4697  
authorized for a facility pursuant to plan approval under division 4698  
(C) of this section and as a condition of the continuation of the 4699  
surcharge, the electric distribution utility shall dedicate to 4700  
Ohio consumers the capacity and energy and the rate associated 4701  
with the cost of that facility. Before the commission authorizes 4702  
any surcharge pursuant to this division, it may consider, as 4703  
applicable, the effects of any decommissioning, deratings, and 4704  
retirements. 4705

(d) Terms, conditions, or charges relating to limitations on 4706  
customer shopping for retail electric generation service, 4707  
bypassability, standby, back-up, or supplemental power service, 4708  
default service, carrying costs, amortization periods, and 4709  
accounting or deferrals, including future recovery of such 4710  
deferrals, as would have the effect of stabilizing or providing 4711  
certainty regarding retail electric service; 4712

(e) Automatic increases or decreases in any component of the 4713  
standard service offer price; 4714

(f) Consistent with sections 4928.23 to 4928.2318 of the 4715  
Revised Code, both of the following: 4716

(i) Provisions for the electric distribution utility to 4717  
securitize any phase-in, inclusive of carrying charges, of the 4718  
utility's standard service offer price, which phase-in is 4719  
authorized in accordance with section 4928.144 of the Revised 4720  
Code; 4721

(ii) Provisions for the recovery of the utility's cost of 4722  
securitization. 4723

(g) Provisions relating to transmission, ancillary, 4724  
congestion, or any related service required for the standard 4725  
service offer, including provisions for the recovery of any cost 4726  
of such service that the electric distribution utility incurs on 4727

or after that date pursuant to the standard service offer; 4728

(h) Provisions regarding the utility's distribution service, 4729  
including, without limitation and notwithstanding any provision of 4730  
Title XLIX of the Revised Code to the contrary, provisions 4731  
regarding single issue ratemaking, a revenue decoupling mechanism 4732  
or any other incentive ratemaking, and provisions regarding 4733  
distribution infrastructure and modernization incentives for the 4734  
electric distribution utility. The latter may include a long-term 4735  
energy delivery infrastructure modernization plan for that utility 4736  
or any plan providing for the utility's recovery of costs, 4737  
including lost revenue, shared savings, and avoided costs, and a 4738  
just and reasonable rate of return on such infrastructure 4739  
modernization. As part of its determination as to whether to allow 4740  
in an electric distribution utility's electric security plan 4741  
inclusion of any provision described in division (B)(2)(h) of this 4742  
section, the commission shall examine the reliability of the 4743  
electric distribution utility's distribution system and ensure 4744  
that customers' and the electric distribution utility's 4745  
expectations are aligned and that the electric distribution 4746  
utility is placing sufficient emphasis on and dedicating 4747  
sufficient resources to the reliability of its distribution 4748  
system. 4749

(i) Provisions under which the electric distribution utility 4750  
may implement economic development, job retention, and energy 4751  
efficiency programs, which provisions may allocate program costs 4752  
across all classes of customers of the utility and those of 4753  
electric distribution utilities in the same holding company 4754  
system. 4755

(C)(1) The burden of proof in the proceeding shall be on the 4756  
electric distribution utility. The commission shall issue an order 4757  
under this division for an initial application under this section 4758  
not later than one hundred fifty days after the application's 4759

filing date and, for any subsequent application by the utility 4760  
under this section, not later than two hundred seventy-five days 4761  
after the application's filing date. Subject to division (D) of 4762  
this section, the commission by order shall approve or modify and 4763  
approve an application filed under division (A) of this section if 4764  
it finds that the electric security plan so approved, including 4765  
its pricing and all other terms and conditions, including any 4766  
deferrals and any future recovery of deferrals, is more favorable 4767  
in the aggregate as compared to the expected results that would 4768  
otherwise apply under section 4928.142 of the Revised Code. 4769  
Additionally, if the commission so approves an application that 4770  
contains a surcharge under division (B)(2)(b) or (c) of this 4771  
section, the commission shall ensure that the benefits derived for 4772  
any purpose for which the surcharge is established are reserved 4773  
and made available to those that bear the surcharge. Otherwise, 4774  
the commission by order shall disapprove the application. 4775

(2)(a) If the commission modifies and approves an application 4776  
under division (C)(1) of this section, the electric distribution 4777  
utility may withdraw the application, thereby terminating it, and 4778  
may file a new standard service offer under this section or a 4779  
standard service offer under section 4928.142 of the Revised Code. 4780

(b) If the utility terminates an application pursuant to 4781  
division (C)(2)(a) of this section or if the commission 4782  
disapproves an application under division (C)(1) of this section, 4783  
the commission shall issue such order as is necessary to continue 4784  
the provisions, terms, and conditions of the utility's most recent 4785  
standard service offer, along with any expected increases or 4786  
decreases in fuel costs from those contained in that offer, until 4787  
a subsequent offer is authorized pursuant to this section or 4788  
section 4928.142 of the Revised Code, respectively. 4789

(D) Regarding the rate plan requirement of division (A) of 4790  
section 4928.141 of the Revised Code, if an electric distribution 4791

utility that has a rate plan that extends beyond December 31, 4792  
2008, files an application under this section for the purpose of 4793  
its compliance with division (A) of section 4928.141 of the 4794  
Revised Code, that rate plan and its terms and conditions are 4795  
hereby incorporated into its proposed electric security plan and 4796  
shall continue in effect until the date scheduled under the rate 4797  
plan for its expiration, and that portion of the electric security 4798  
plan shall not be subject to commission approval or disapproval 4799  
under division (C) of this section, and the earnings test provided 4800  
for in division (F) of this section shall not apply until after 4801  
the expiration of the rate plan. However, that utility may include 4802  
in its electric security plan under this section, and the 4803  
commission may approve, modify and approve, or disapprove subject 4804  
to division (C) of this section, provisions for the incremental 4805  
recovery or the deferral of any costs that are not being recovered 4806  
under the rate plan and that the utility incurs during that 4807  
continuation period to comply with section 4928.141, division (B) 4808  
of section 4928.64, or division (A) of section 4928.66 of the 4809  
Revised Code. 4810

(E) If an electric security plan approved under division (C) 4811  
of this section, except one withdrawn by the utility as authorized 4812  
under that division, has a term, exclusive of phase-ins or 4813  
deferrals, that exceeds three years from the effective date of the 4814  
plan, the commission shall test the plan in the fourth year, and 4815  
if applicable, every fourth year thereafter, to determine whether 4816  
the plan, including its then-existing pricing and all other terms 4817  
and conditions, including any deferrals and any future recovery of 4818  
deferrals, continues to be more favorable in the aggregate and 4819  
during the remaining term of the plan as compared to the expected 4820  
results that would otherwise apply under section 4928.142 of the 4821  
Revised Code. The commission shall also determine the prospective 4822  
effect of the electric security plan to determine if that effect 4823  
is substantially likely to provide the electric distribution 4824

utility with a return on common equity that is significantly in 4825  
excess of the return on common equity that is likely to be earned 4826  
by publicly traded companies, including utilities, that face 4827  
comparable business and financial risk, with such adjustments for 4828  
capital structure as may be appropriate. The burden of proof for 4829  
demonstrating that significantly excessive earnings will not occur 4830  
shall be on the electric distribution utility. If the test results 4831  
are in the negative or the commission finds that continuation of 4832  
the electric security plan will result in a return on equity that 4833  
is significantly in excess of the return on common equity that is 4834  
likely to be earned by publicly traded companies, including 4835  
utilities, that will face comparable business and financial risk, 4836  
with such adjustments for capital structure as may be appropriate, 4837  
during the balance of the plan, the commission may terminate the 4838  
electric security plan, but not until it shall have provided 4839  
interested parties with notice and an opportunity to be heard. The 4840  
commission may impose such conditions on the plan's termination as 4841  
it considers reasonable and necessary to accommodate the 4842  
transition from an approved plan to the more advantageous 4843  
alternative. In the event of an electric security plan's 4844  
termination pursuant to this division, the commission shall permit 4845  
the continued deferral and phase-in of any amounts that occurred 4846  
prior to that termination and the recovery of those amounts as 4847  
contemplated under that electric security plan. 4848

(F) With regard to the provisions that are included in an 4849  
electric security plan under this section, the commission shall 4850  
consider, following the end of each annual period of the plan, if 4851  
any such adjustments resulted in excessive earnings as measured by 4852  
whether the earned return on common equity of the electric 4853  
distribution utility is significantly in excess of the return on 4854  
common equity that was earned during the same period by publicly 4855  
traded companies, including utilities, that face comparable 4856  
business and financial risk, with such adjustments for capital 4857

structure as may be appropriate. Consideration also shall be given 4858  
to the capital requirements of future committed investments in 4859  
this state. The burden of proof for demonstrating that 4860  
significantly excessive earnings did not occur shall be on the 4861  
electric distribution utility. If the commission finds that such 4862  
adjustments, in the aggregate, did result in significantly 4863  
excessive earnings, it shall require the electric distribution 4864  
utility to return to consumers the amount of the excess by 4865  
prospective adjustments; provided that, upon making such 4866  
prospective adjustments, the electric distribution utility shall 4867  
have the right to terminate the plan and immediately file an 4868  
application pursuant to section 4928.142 of the Revised Code. Upon 4869  
termination of a plan under this division, rates shall be set on 4870  
the same basis as specified in division (C)(2)(b) of this section, 4871  
and the commission shall permit the continued deferral and 4872  
phase-in of any amounts that occurred prior to that termination 4873  
and the recovery of those amounts as contemplated under that 4874  
electric security plan. In making its determination of 4875  
significantly excessive earnings under this division, the 4876  
commission shall not consider, directly or indirectly, the 4877  
revenue, expenses, or earnings of any affiliate or parent company. 4878

**Sec. 4928.61.** (A) There is hereby established in the state 4879  
treasury the advanced energy fund, into which shall be deposited 4880  
all advanced energy revenues remitted to the director of 4881  
development under division (B) of this section, for the exclusive 4882  
purposes of funding the advanced energy program created under 4883  
section 4928.62 of the Revised Code and paying the program's 4884  
administrative costs. Interest on the fund shall be credited to 4885  
the fund. 4886

(B) Advanced energy revenues shall include all of the 4887  
following: 4888

(1) Revenues remitted to the director after collection by 4889  
each electric distribution utility in this state of a temporary 4890  
rider on retail electric distribution service rates as such rates 4891  
are determined by the public utilities commission pursuant to this 4892  
chapter. The rider shall be a uniform amount statewide, determined 4893  
by the director of development, after consultation with the public 4894  
benefits advisory board created by section 4928.58 of the Revised 4895  
Code. The amount shall be determined by dividing an aggregate 4896  
revenue target for a given year as determined by the director, 4897  
after consultation with the advisory board, by the number of 4898  
customers of electric distribution utilities in this state in the 4899  
prior year. Such aggregate revenue target shall not exceed more 4900  
than fifteen million dollars in any year through 2005 and shall 4901  
not exceed more than five million dollars in any year after 2005. 4902  
The rider shall be imposed beginning on the effective date of the 4903  
amendment of this section by Sub. H.B. 251 of the 126th general 4904  
assembly, January 4, 2007, and shall terminate at the end of ten 4905  
years following the starting date of competitive retail electric 4906  
service or until the advanced energy fund, including interest, 4907  
reaches one hundred million dollars, whichever is first. 4908

(2) Revenues from payments, repayments, and collections under 4909  
the advanced energy program and from program income; 4910

(3) Revenues remitted to the director after collection by a 4911  
municipal electric utility or electric cooperative in this state 4912  
upon the utility's or cooperative's decision to participate in the 4913  
advanced energy fund; 4914

(4) Revenues from renewable energy compliance payments as 4915  
provided under division (C)(2) of section 4928.64 of the Revised 4916  
Code; 4917

(5) Revenue from forfeitures under division (C) of section 4918  
4928.66 of the Revised Code; 4919

(6) Funds transferred pursuant to division (B) of Section 4920  
512.10 of S.B. . . . of the 129th general assembly; 4921

(7) Interest earnings on the advanced energy fund. 4922

(C)(1) Each electric distribution utility in this state shall 4923  
remit to the director on a quarterly basis the revenues described 4924  
in divisions (B)(1) and (2) of this section. Such remittances 4925  
shall occur within thirty days after the end of each calendar 4926  
quarter. 4927

(2) Each participating electric cooperative and participating 4928  
municipal electric utility shall remit to the director on a 4929  
quarterly basis the revenues described in division (B)(3) of this 4930  
section. Such remittances shall occur within thirty days after the 4931  
end of each calendar quarter. For the purpose of division (B)(3) 4932  
of this section, the participation of an electric cooperative or 4933  
municipal electric utility in the energy efficiency revolving loan 4934  
program as it existed immediately prior to the effective date of 4935  
the amendment of this section by Sub. H.B. 251 of the 126th 4936  
general assembly, January 4, 2007, does not constitute a decision 4937  
to participate in the advanced energy fund under this section as 4938  
so amended. 4939

(3) All remittances under divisions (C)(1) and (2) of this 4940  
section shall continue only until the end of ten years following 4941  
the starting date of competitive retail electric service or until 4942  
the advanced energy fund, including interest, reaches one hundred 4943  
million dollars, whichever is first. 4944

(D) Any moneys collected in rates for non-low-income customer 4945  
energy efficiency programs, as of October 5, 1999, and not 4946  
contributed to the energy efficiency revolving loan fund 4947  
authorized under this section prior to the effective date of its 4948  
amendment by Sub. H.B. 251 of the 126th general assembly, January 4949  
4, 2007, shall be used to continue to fund cost-effective, 4950



residential energy efficiency programs, be contributed into the 4951  
universal service fund as a supplement to that required under 4952  
section 4928.53 of the Revised Code, or be returned to ratepayers 4953  
in the form of a rate reduction at the option of the affected 4954  
electric distribution utility. 4955

**Sec. 4928.62.** (A) There is hereby created the advanced energy 4956  
program, which shall be administered by the director of 4957  
development. Under the program, the director may authorize the use 4958  
of moneys in the advanced energy fund for financial, technical, 4959  
and related assistance for advanced energy projects in this state 4960  
or for economic development assistance, in furtherance of the 4961  
purposes set forth in section 4928.63 of the Revised Code. ~~To~~ 4962

(1) To the extent feasible given approved applications for 4963  
assistance, the assistance shall be distributed among the 4964  
certified territories of electric distribution utilities and 4965  
participating electric cooperatives, and among the service areas 4966  
of participating municipal electric utilities, in amounts 4967  
proportionate to the remittances of each utility and cooperative 4968  
under divisions (B)(1) and (3) of section 4928.61 of the Revised 4969  
Code. 4970

(2) The funds described in division (B)(6) of section 4928.61 4971  
of the Revised Code shall not be subject to the territorial 4972  
requirements of division (A)(1) of this section. 4973

(3) The director shall not authorize financial assistance for 4974  
an advanced energy project under the program unless the director 4975  
first determines that the project will create new jobs or preserve 4976  
existing jobs in this state or use innovative technologies or 4977  
materials. 4978

(B) In carrying out sections 4928.61 to 4928.63 of the 4979  
Revised Code, the director may do all of the following to further 4980  
the public interest in advanced energy projects and economic 4981

development:	4982
(1) Award grants, contracts, loans, loan participation agreements, linked deposits, and energy production incentives;	4983 4984
(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;	4985 4986 4987 4988
(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;	4989 4990 4991 4992
(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;	4993 4994 4995 4996 4997
(5) Adopt rules prescribing the application procedures for financial assistance under the advanced energy program; the <u>fees, charges, interest rates, payment schedules, local match requirements, and other</u> 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;	4998 4999 5000 5001 5002 5003 5004 5005
(6) Do all things necessary and appropriate for the operation of the program.	5006 5007
(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	5008 5009 5010 5011 5012

allowances to further the public interest in advanced energy 5013  
projects or for economic development. 5014

(D) Financial statements, financial data, and trade secrets 5015  
submitted to or received by the director from an applicant or 5016  
recipient of financial assistance under sections 4928.61 to 5017  
4928.63 of the Revised Code, or any information taken from those 5018  
statements, data, or trade secrets for any purpose, are not public 5019  
records for the purpose of section 149.43 of the Revised Code. 5020

(E) Nothing in the amendments of sections 4928.61, 4928.62, 5021  
and 4928.63 of the Revised Code by Sub. H.B. 251 of the 126th 5022  
general assembly shall affect any pending or effected assistance, 5023  
pending or effected purchases or exchanges of property made, or 5024  
pending or effected contracts or agreements entered into pursuant 5025  
to division (A) or (B) of this section as the section existed 5026  
prior to the effective date of those amendments, January 4, 2007, 5027  
or shall affect the exemption provided under division (C) of this 5028  
section as the section existed prior to that effective date. 5029

(F) Any assistance a school district receives for an advanced 5030  
energy project, including a geothermal heating, ventilating, and 5031  
air conditioning system, shall be in addition to any assistance 5032  
provided under Chapter 3318. of the Revised Code and shall not be 5033  
included as part of the district or state portion of the basic 5034  
project cost under that chapter. 5035

**Sec. 4928.66.** (A)(1)(a) Beginning in 2009, an electric 5036  
distribution utility shall implement energy efficiency programs, 5037  
which may include a waste energy recovery system placed into 5038  
service or retrofitted on or after January 1, 2006, that achieve 5039  
energy savings equivalent to at least three-tenths of one per cent 5040  
of the total, annual average, and normalized kilowatt-hour sales 5041  
hours distributed to retail customers of the electric distribution 5042  
utility during the preceding three calendar years to customers in 5043

this state. For a waste energy recovery system, the savings shall 5044  
be as estimated by the public utilities commission. The savings 5045  
requirement, using such a three-year average, shall increase to an 5046  
additional five-tenths of one per cent in 2010, seven-tenths of 5047  
one per cent in 2011, eight-tenths of one per cent in 2012, 5048  
nine-tenths of one per cent in 2013, one per cent from 2014 to 5049  
2018, and two per cent each year thereafter, achieving a 5050  
cumulative, annual energy savings in excess of twenty-two per cent 5051  
by the end of 2025. 5052

(b) Beginning in 2009, an electric distribution utility shall 5053  
implement peak demand reduction programs designed to achieve a one 5054  
per cent reduction in peak demand in 2009 and an additional 5055  
seventy-five hundredths of one per cent reduction each year 5056  
through 2018. In 2018, the standing committees in the house of 5057  
representatives and the senate primarily dealing with energy 5058  
issues shall make recommendations to the general assembly 5059  
regarding future peak demand reduction targets. 5060

(2) For the purposes of divisions (A)(1)(a) and (b) of this 5061  
section: 5062

(a) The baseline for energy savings under division (A)(1)(a) 5063  
of this section shall be the average of the total kilowatt hours 5064  
the electric distribution utility sold in the preceding three 5065  
calendar years, and the baseline for a peak demand reduction under 5066  
division (A)(1)(b) of this section shall be the average peak 5067  
demand on the utility in the preceding three calendar years, 5068  
except that the commission may reduce either baseline to adjust 5069  
for new economic growth in the utility's certified territory. 5070

(b) The commission may amend the benchmarks set forth in 5071  
division (A)(1)(a) or (b) of this section if, after application by 5072  
the electric distribution utility, the commission determines that 5073  
the amendment is necessary because the utility cannot reasonably 5074

achieve the benchmarks due to regulatory, economic, or 5075  
technological reasons beyond its reasonable control. 5076

(c) Compliance with divisions (A)(1)(a) and (b) of this 5077  
section shall be measured by including the effects of all 5078  
demand-response programs for mercantile customers of the subject 5079  
electric distribution utility, all waste energy recovery systems, 5080  
and all such mercantile customer-sited energy efficiency, 5081  
including waste energy recovery, and peak demand reduction 5082  
programs, adjusted upward by the appropriate loss factors. Any 5083  
mechanism designed to recover the cost of energy efficiency, 5084  
including waste energy recovery, and peak demand reduction 5085  
programs under divisions (A)(1)(a) and (b) of this section may 5086  
exempt mercantile customers that commit their demand-response or 5087  
other customer-sited capabilities, whether existing or new, for 5088  
integration into the electric distribution utility's 5089  
demand-response, energy efficiency, including waste energy 5090  
recovery, or peak demand reduction programs, if the commission 5091  
determines that that exemption reasonably encourages such 5092  
customers to commit those capabilities to those programs. If a 5093  
mercantile customer makes such existing or new demand-response, 5094  
energy efficiency, including waste energy recovery, or peak demand 5095  
reduction capability available to an electric distribution utility 5096  
pursuant to division (A)(2)(c) of this section, the electric 5097  
utility's baseline under division (A)(2)(a) of this section shall 5098  
be adjusted to exclude the effects of all such demand-response, 5099  
energy efficiency, including waste energy recovery, or peak demand 5100  
reduction programs that may have existed during the period used to 5101  
establish the baseline. The baseline also shall be normalized for 5102  
changes in numbers of customers, sales, weather, peak demand, and 5103  
other appropriate factors so that the compliance measurement is 5104  
not unduly influenced by factors outside the control of the 5105  
electric distribution utility. 5106

(d) Programs implemented by a utility may include 5107  
demand-response programs, smart grid investment programs, provided 5108  
that such programs are demonstrated to be cost-beneficial, 5109  
customer-sited programs, including waste energy recovery systems, 5110  
and transmission and distribution infrastructure improvements that 5111  
reduce line losses. Division (A)(2)(c) of this section shall be 5112  
applied to include facilitating efforts by a mercantile customer 5113  
or group of those customers to offer customer-sited 5114  
demand-response, energy efficiency, including waste energy 5115  
recovery, or peak demand reduction capabilities to the electric 5116  
distribution utility as part of a reasonable arrangement submitted 5117  
to the commission pursuant to section 4905.31 of the Revised Code. 5118

(e) No programs or improvements described in division 5119  
(A)(2)(d) of this section shall conflict with any statewide 5120  
building code adopted by the board of building standards. 5121

(B) In accordance with rules it shall adopt, the public 5122  
utilities commission shall produce and docket at the commission an 5123  
annual report containing the results of its verification of the 5124  
annual levels of energy efficiency and of peak demand reductions 5125  
achieved by each electric distribution utility pursuant to 5126  
division (A) of this section. A copy of the report shall be 5127  
provided to the consumers' counsel. 5128

(C) If the commission determines, after notice and 5129  
opportunity for hearing and based upon its report under division 5130  
(B) of this section, that an electric distribution utility has 5131  
failed to comply with an energy efficiency or peak demand 5132  
reduction requirement of division (A) of this section, the 5133  
commission shall assess a forfeiture on the utility as provided 5134  
under sections 4905.55 to 4905.60 and 4905.64 of the Revised Code, 5135  
either in the amount, per day per undercompliance or 5136  
noncompliance, relative to the period of the report, equal to that 5137  
prescribed for noncompliances under section 4905.54 of the Revised 5138

Code, or in an amount equal to the then existing market value of 5139  
one renewable energy credit per megawatt hour of undercompliance 5140  
or noncompliance. Revenue from any forfeiture assessed under this 5141  
division shall be deposited to the credit of the advanced energy 5142  
fund created under section 4928.61 of the Revised Code. 5143

(D) The commission may establish rules regarding the content 5144  
of an application by an electric distribution utility for 5145  
commission approval of a revenue decoupling mechanism under this 5146  
division. Such an application shall not be considered an 5147  
application to increase rates and may be included as part of a 5148  
proposal to establish, continue, or expand energy efficiency or 5149  
conservation programs. The commission by order may approve an 5150  
application under this division if it determines both that the 5151  
revenue decoupling mechanism provides for the recovery of revenue 5152  
that otherwise may be ~~foregone~~ forgone by the utility as a result 5153  
of or in connection with the implementation by the electric 5154  
distribution utility of any energy efficiency or energy 5155  
conservation programs and reasonably aligns the interests of the 5156  
utility and of its customers in favor of those programs. 5157

(E) The commission additionally shall adopt rules that 5158  
require an electric distribution utility to provide a customer 5159  
upon request with two years' consumption data in an accessible 5160  
form. 5161

Sec. 4928.70. (A) The public utilities commission may 5162  
periodically review any green pricing program offered in this 5163  
state as part of retail electric service. At the conclusion of a 5164  
review, the commission may make recommendations to improve or 5165  
expand the program subject of the review. 5166

(B) The commission shall adopt rules necessary to carry out 5167  
purposes of this section. 5168

Sec. 4928.71. The public utilities commission shall study 5169  
whether increased energy efficiency, demand response, generation, 5170  
and transmission provide increased opportunities for customer 5171  
choice. The commission shall include in the study an evaluation of 5172  
emerging technologies. The commission shall commence the study not 5173  
later than eighteen months after the effective date of this 5174  
section. At the conclusion of the study, the commission shall 5175  
prepare a report of its findings and make the report available on 5176  
its web site. 5177

Sec. 4928.72. The public utilities commission may, in 5178  
cooperation with the department of transportation, work with other 5179  
states to develop a multi-state study on the development of 5180  
compressed natural gas infrastructures for transportation. 5181

**Sec. 4935.04.** (A) As used in this chapter: 5182

(1) "Major utility facility" means: 5183

(a) An electric transmission line and associated facilities 5184  
of a design capacity of one hundred twenty-five kilovolts or more; 5185

(b) A gas or natural gas transmission line and associated 5186  
facilities designed for, or capable of, transporting gas or 5187  
natural gas at pressures in excess of one hundred twenty-five 5188  
pounds per square inch. 5189

"Major utility facility" does not include electric, gas, or 5190  
natural gas distributing lines and gas or natural gas gathering 5191  
lines and associated facilities as defined by the public utilities 5192  
commission; facilities owned or operated by industrial firms, 5193  
persons, or institutions that produce or transmit gas or natural 5194  
gas, or electricity primarily for their own use or as a byproduct 5195  
of their operations; gas or natural gas transmission lines and 5196  
associated facilities over which an agency of the United States 5197



has certificate jurisdiction; facilities owned or operated by a 5198  
person furnishing gas or natural gas directly to fifteen thousand 5199  
or fewer customers within this state. 5200

(2) "Person" has the meaning set forth in section 4906.01 of 5201  
the Revised Code. 5202

(B) Each person owning or operating a gas or natural gas 5203  
transmission line and associated facilities within this state over 5204  
which an agency of the United States has certificate jurisdiction 5205  
shall furnish to the commission a copy of the energy information 5206  
filed by the person with that agency of the United States. 5207

(C) Each person owning or operating a major utility facility 5208  
within this state, or furnishing gas, natural gas, or electricity 5209  
directly to more than fifteen thousand customers within this state 5210  
shall furnish a report to the commission for its review. The 5211  
report shall be furnished annually, except that for a gas or 5212  
natural gas company the report shall be furnished every three 5213  
years. The report shall be termed the long-term forecast report 5214  
and shall contain: 5215

(1) A year-by-year, ten-year forecast of annual energy 5216  
demand, peak load, reserves, and a general description of the 5217  
resource ~~plan~~ planning projections to meet demand; 5218

(2) A range of projected loads during the period; 5219

(3) A description of major utility facilities planned to be 5220  
added or taken out of service in the next ten years, including, to 5221  
the extent the information is available, prospective sites for 5222  
transmission line locations; 5223

(4) For gas and natural gas, a projection of anticipated 5224  
supply, supply prices, and sources of supply over the forecast 5225  
period; 5226

(5) A description of proposed changes in the transmission 5227

system planned for the next five years; 5228

(6) A month-by-month forecast of both energy demand and peak 5229  
load for electric utilities, and gas sendout for gas and natural 5230  
gas utilities, for the next two years. The report shall describe 5231  
the major utility facilities that, in the judgment of such person, 5232  
will be required to supply system demands during the forecast 5233  
period. The report from a gas or natural gas utility shall cover 5234  
the ten- and five-year periods next succeeding the date of the 5235  
report, and the report from an electric utility shall cover the 5236  
twenty-, ten-, and five-year periods next succeeding the date of 5237  
the report. Each report shall be made available to the public and 5238  
furnished upon request to municipal corporations and governmental 5239  
agencies charged with the duty of protecting the environment or of 5240  
planning land use. The report shall be in such form and shall 5241  
contain such information as may be prescribed by the commission. 5242

Each person not owning or operating a major utility facility 5243  
within this state and serving fifteen thousand or fewer gas or 5244  
natural gas, or electric customers within this state shall furnish 5245  
such information as the commission requires. 5246

(D) The commission shall: 5247

(1) Review and comment on the reports filed under division 5248  
(C) of this section, and make the information contained in the 5249  
reports readily available to the public and other interested 5250  
government agencies; 5251

(2) Compile and publish each year the general locations of 5252  
proposed and existing transmission line routes within its 5253  
jurisdiction as identified in the reports filed under division (C) 5254  
of this section, identifying the general location of such sites 5255  
and routes and the approximate year when construction is expected 5256  
to commence, and to make such information readily available to the 5257  
public, to each newspaper of daily or weekly circulation within 5258

the area affected by the proposed site and route, and to 5259  
interested federal, state, and local agencies; 5260

(3) Hold a public hearing upon the showing of good cause to 5261  
the commission by an interested party. 5262

If a hearing is held, the commission shall fix a time for the 5263  
hearing, which shall be not later than ninety days after the 5264  
report is filed, and publish notice of the date, time of day, and 5265  
location of the hearing in a newspaper of general circulation in 5266  
each county in which the person furnishing the report has or 5267  
intends to locate a major utility facility and will provide 5268  
service during the period covered by the report. The notice shall 5269  
be published not less than fifteen nor more than thirty days 5270  
before the hearing and shall state the matters to be considered. 5271

(4) Require such information from persons subject to its 5272  
jurisdiction as necessary to assist in the conduct of hearings and 5273  
any investigation or studies it may undertake; 5274

(5) Conduct any studies or investigations that are necessary 5275  
or appropriate to carry out its responsibilities under this 5276  
section. 5277

(E)(1) The scope of the hearing held under division (D)(3) of 5278  
this section shall be limited to issues relating to forecasting. 5279  
The power siting board, the office of consumers' counsel, and all 5280  
other persons having an interest in the proceedings shall be 5281  
afforded the opportunity to be heard and to be represented by 5282  
counsel. The commission may adjourn the hearing from time to time. 5283

(2) The hearing shall include, but not be limited to, a 5284  
review of: 5285

(a) The projected loads and energy requirements for each year 5286  
of the period; 5287

(b) The estimated installed capacity and supplies to meet the 5288

projected load requirements. 5289

(F) Based upon the report furnished pursuant to division (C) 5290  
of this section and the hearing record, the commission, within 5291  
ninety days from the close of the record in the hearing, shall 5292  
determine if: 5293

(1) All information relating to current activities, 5294  
facilities agreements, and published energy policies of the state 5295  
has been completely and accurately represented; 5296

(2) The load requirements are based on substantially accurate 5297  
historical information and adequate methodology; 5298

(3) The forecasting methods consider the relationships 5299  
between price and energy consumption; 5300

(4) The report identifies and projects reductions in energy 5301  
demands due to energy conservation measures in the industrial, 5302  
commercial, residential, transportation, and energy production 5303  
sectors in the service area; 5304

(5) Utility company forecasts of loads and resources are 5305  
reasonable in relation to population growth estimates made by 5306  
state and federal agencies, transportation, and economic 5307  
development plans and forecasts, and make recommendations where 5308  
possible for necessary and reasonable alternatives to meet 5309  
forecasted electric power demand; 5310

(6) The report considers plans for expansion of the regional 5311  
power grid and the planned facilities of other utilities in the 5312  
state; 5313

(7) All assumptions made in the forecast are reasonable and 5314  
adequately documented. 5315

(G) The commission shall adopt rules under section 111.15 of 5316  
the Revised Code to establish criteria for evaluating the 5317  
long-term forecasts of needs for gas and electric transmission 5318

service, to conduct hearings held under this section, to establish 5319  
reasonable fees to defray the direct cost of the hearings and the 5320  
review process, and such other rules as are necessary and 5321  
convenient to implement this section. 5322

(H) The hearing record produced under this section and the 5323  
determinations of the commission shall be introduced into evidence 5324  
and shall be considered in determining the basis of need for power 5325  
siting board deliberations under division (A)(1) of section 5326  
4906.10 of the Revised Code. The hearing record produced under 5327  
this section shall be introduced into evidence and shall be 5328  
considered by the ~~public utilities~~ commission in its initiation of 5329  
programs, examinations, and findings under section 4905.70 of the 5330  
Revised Code, and shall be considered in the commission's 5331  
determinations with respect to the establishment of just and 5332  
reasonable rates under section 4909.15 of the Revised Code and 5333  
financing utility facilities and authorizing issuance of all 5334  
securities under sections 4905.40, 4905.401, 4905.41, and 4905.42 5335  
of the Revised Code. The forecast findings also shall serve as the 5336  
basis for all other energy planning and development activities of 5337  
the state government where electric and gas data are required. 5338

(I)(1) No court other than the supreme court shall have power 5339  
to review, suspend, or delay any determination made by the 5340  
commission under this section, or enjoin, restrain, or interfere 5341  
with the commission in the performance of official duties. A writ 5342  
of mandamus shall not be issued against the commission by any 5343  
court other than the supreme court. 5344

(2) A final determination made by the commission shall be 5345  
reversed, vacated, or modified by the supreme court on appeal, if, 5346  
upon consideration of the record, such court is of the opinion 5347  
that such determination was unreasonable or unlawful. 5348

The proceeding to obtain such reversal, vacation, or 5349  
modification shall be by notice of appeal, filed with the 5350

commission by any party to the proceeding before it, against the 5351  
commission, setting forth the determination appealed from and 5352  
errors complained of. The notice of appeal shall be served, unless 5353  
waived, upon the commission by leaving a copy at the office of the 5354  
chairperson of the commission at Columbus. The court may permit an 5355  
interested party to intervene by cross-appeal. 5356

(3) No proceeding to reverse, vacate, or modify a 5357  
determination of the commission is commenced unless the notice of 5358  
appeal is filed within sixty days after the date of the 5359  
determination. 5360

**Sec. 6111.30.** (A) Applications for a section 401 water 5361  
quality certification required under division (P) of section 5362  
6111.03 of the Revised Code shall be submitted on forms provided 5363  
by the director of environmental protection and shall include all 5364  
information required on those forms as well as all of the 5365  
following: 5366

(1) A copy of a letter from the United States army corps of 5367  
engineers documenting its jurisdiction over the wetlands, streams, 5368  
or other waters of the state that are the subject of the section 5369  
401 water quality certification application; 5370

(2) If the project involves impacts to a wetland, a wetland 5371  
characterization analysis consistent with the Ohio rapid 5372  
assessment method; 5373

(3) If the project involves a stream for which a specific 5374  
aquatic life use designation has not been made, a use 5375  
attainability analysis; 5376

(4) A specific and detailed mitigation proposal, including 5377  
the location and proposed legal mechanism for protecting the 5378  
property in perpetuity; 5379

(5) Applicable fees; 5380

(6) Site photographs;	5381
(7) Adequate documentation confirming that the applicant has requested comments from the department of natural resources and the United States fish and wildlife service regarding threatened and endangered species, including the presence or absence of critical habitat;	5382 5383 5384 5385 5386
(8) Descriptions, schematics, and appropriate economic information concerning the applicant's preferred alternative, nondegradation alternatives, and minimum degradation alternatives for the design and operation of the project;	5387 5388 5389 5390
(9) The applicant's investigation report of the waters of the United States in support of a section 404 permit application concerning the project;	5391 5392 5393
(10) A copy of the United States army corps of engineers' public notice regarding the section 404 permit application concerning the project.	5394 5395 5396
(B) Not later than fifteen business days after the receipt of an application for a section 401 water quality certification, the director shall review the application to determine if it is complete and shall notify the applicant in writing as to whether the application is complete. If the director fails to notify the applicant within fifteen business days regarding the completeness of the application, the application is considered complete. If the director determines that the application is not complete, the director shall include with the written notification an itemized list of the information or materials that are necessary to complete the application. If the applicant fails to provide the information or materials within sixty days after the director's receipt of the application, the director may return the incomplete application to the applicant and take no further action on the application. If the application is returned to the applicant	5397 5398 5399 5400 5401 5402 5403 5404 5405 5406 5407 5408 5409 5410 5411

because it is incomplete, the director shall return the review fee 5412  
levied under division (A)(1), (2), or (3) of section 3745.114 of 5413  
the Revised Code to the applicant, but shall retain the 5414  
application fee levied under that section. 5415

(C) Not later than twenty-one days after a determination that 5416  
an application is complete under division (B) of this section, the 5417  
applicant shall publish public notice of the director's receipt of 5418  
the complete application in a newspaper of general circulation in 5419  
the county in which the project that is the subject of the 5420  
application is located. The public notice shall be in a form 5421  
acceptable to the director. The applicant shall promptly provide 5422  
the director with proof of publication. The applicant may choose, 5423  
subject to review by and approval of the director, to include in 5424  
the public notice an advertisement for an antidegradation public 5425  
hearing on the application pursuant to section 6111.12 of the 5426  
Revised Code. There shall be a public comment period of thirty 5427  
days following the publication of the public notice. 5428

(D) If the director determines that there is significant 5429  
public interest in a public hearing as evidenced by the public 5430  
comments received concerning the application and by other requests 5431  
for a public hearing on the application, the director or the 5432  
director's representative shall conduct a public hearing 5433  
concerning the application. Notice of the public hearing shall be 5434  
published by the applicant, subject to review and approval by the 5435  
director, at least thirty days prior to the date of the hearing in 5436  
a newspaper of general circulation in the county in which the 5437  
project that is the subject of the application is to take place. 5438  
If a public hearing is requested concerning an application, the 5439  
director shall accept comments concerning the application until 5440  
five business days after the public hearing. A public hearing 5441  
conducted under this division shall take place not later than one 5442  
hundred days after the application is determined to be complete. 5443



(E) The director shall forward all public comments concerning 5444  
an application submitted under this section that are received 5445  
through the public involvement process required by rules adopted 5446  
under this chapter to the applicant not later than five business 5447  
days after receipt of the comments by the director. 5448

(F) The applicant shall respond in writing to written 5449  
comments or to deficiencies identified by the director during the 5450  
course of reviewing the application not later than fifteen days 5451  
after receiving or being notified of them. 5452

(G) The director shall issue or deny a section 401 water 5453  
quality certification not later than one hundred eighty days after 5454  
the complete application for the certification is received. The 5455  
director shall provide an applicant for a section 401 water 5456  
quality certification with an opportunity to review the 5457  
certification prior to its issuance. 5458

(H) The director shall maintain an accessible database that 5459  
includes environmentally beneficial water restoration and 5460  
protection projects that may serve as potential mitigation 5461  
projects for projects in the state for which a section 401 water 5462  
quality certification is required. A project's inclusion in the 5463  
database does not constitute an approval of the project. 5464

(I) As used in this section and ~~sections~~ section 6111.31 and 5465  
~~6111.32~~ of the Revised Code, "section 401 water quality 5466  
certification" means certification pursuant to section 401 of the 5467  
Federal Water Pollution Control Act and this chapter and rules 5468  
adopted under it that any discharge, as set forth in section 401, 5469  
will comply with sections 301, 302, 303, 306, and 307 of the 5470  
Federal Water Pollution Control Act. 5471

Sec. 6111.32. (A) The director of environmental protection, 5472  
on behalf of the state, may apply for approval from the United 5473  
States environmental protection agency, in accordance with 33 5474

U.S.C 1344(g)(1), for the state to assume responsibility for 5475  
administering the section 404 permitting program for the discharge 5476  
of dredged or fill material into navigable waters established 5477  
under the Federal Water Pollution Control Act. 5478

(B) Upon approval by the United States environmental 5479  
protection agency of the state's application to assume 5480  
responsibility for administering the section 404 permitting 5481  
program, the director shall administer the program consistent with 5482  
and in the manner required by the Federal Water Pollution Control 5483  
Act. 5484

(C) The director may adopt rules in accordance with Chapter 5485  
119. of the Revised Code that are necessary to obtain approval to 5486  
administer the section 404 permitting program and to administer 5487  
the program upon receiving approval to do so. The rules shall 5488  
govern or establish all of the following, without limitation: 5489

(1) The issuance of permits. The rules adopted under division 5490  
(C)(1) of this section shall do all of the following: 5491

(a) Require compliance with any applicable requirements of 33 5492  
U.S.C. 1317 and 33 U.S.C. 1344, including, but not limited to, the 5493  
guidelines established under 33 U.S.C. 1344(b)(1); 5494

(b) Require a permit to be issued for a fixed term not to 5495  
exceed five years; 5496

(c) Specify that a permit may be terminated or modified for 5497  
cause, including, but not limited to, all the following: 5498

(i) A violation of any condition of the permit; 5499

(ii) Obtaining a permit by misrepresentation or failure to 5500  
disclose fully all relevant facts related to the permit; 5501

(iii) A change in any condition that requires either a 5502  
temporary or permanent reduction or elimination of the permitted 5503  
discharge. 5504

(2) Requirements that ensure compliance with 33 U.S.C. 1318, including requirements for the inspection of, monitoring of, and right to enter property that is the subject of a section 404 permit and requirements governing the content and submission of reports; 5505  
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(3) The provision of notice regarding the receipt of an application for a section 404 permit to the public, any other state with waters that may be affected by the issuance of the permit, and the administrator of the United States environmental protection agency; 5510  
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(4) The opportunity for a public hearing regarding an application for a section 404 permit to be conducted before issuance or denial of the permit; 5515  
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(5) Requirements that authorize any other state with waters that may be affected by the issuance of a section 404 permit by the director to submit written recommendations to the director and the administrator of the United States environmental protection agency with respect to the permit application. The rules shall require the director to notify a state that has submitted recommendations if any or all of the recommendations are not accepted by the director and the reasons that the recommendations are not accepted. The rules shall require the notice to be in writing and a copy of the notice to be provided to the administrator. 5518  
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(6) Requirements that the director ensure that a section 404 permit will not be issued if anchorage and navigation of any navigable waters would be substantially impaired. The rules shall require the director to do so based on the judgment of the secretary of the United States army after consultation with the secretary of the department of the federal government under which the United States coast guard is operating at the time that the application for the permit is submitted. 5529  
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(7) Enforcement with regard to a violation of the terms of a permit or a violation of the permit program administered under this section. The rules adopted under division (C)(7) of this section shall establish requirements governing abatements of violations, civil and criminal penalties, and other means of enforcement. 5537  
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(8) Coordination with federal and state water-related planning and review processes. 5543  
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(D) This section is intended solely to authorize the environmental protection agency to assume the role of the United States army corps of engineers in the regulation of the navigable waters of this state. Nothing in this section shall be construed as a preemption, modification, or amendment of Title 33 of the United States Code. This section shall not be enforced as an expansion of the laws, regulations, rules, or regulatory authority of the federal government. Any rule, policy, or permit adopted or issued by the director under this section shall not conflict with existing federal law and shall not exceed the limitations placed by the United States congress on the United States army corps of engineers. 5545  
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**Section 101.02.** That existing sections 122.075, 123.011, 125.836, 133.06, 156.01, 156.02, 156.03, 156.04, 303.213, 1505.09, 1509.01, 1509.02, 1509.03, 1509.06, 1509.07, 1509.10, 1509.11, 1509.22, 1509.221, 1509.222, 1509.223, 1509.23, 1509.31, 1509.50, 1514.01, 1514.02, 1514.021, 1514.03, 1514.05, 3706.27, 4905.90, 4905.91, 4905.95, 4906.01, 4906.03, 4906.05, 4906.06, 4906.07, 4906.10, 4906.20, 4906.99, 4928.01, 4928.02, 4928.143, 4928.61, 4928.62, 4928.66, 4935.04, and 6111.30 of the Revised Code are hereby repealed. 5557  
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**Section 512.10.** As soon as possible after the effective date 5566

of this section, the Director of Budget and Management shall do 5567  
both of the following: 5568

(A) Transfer any unexpended and unencumbered amounts received 5569  
from the repayment of loans made from money in the Advanced Energy 5570  
Research and Development Taxable Fund (Fund 7004), except for such 5571  
amounts in the Facilities Establishment Fund (Fund 7037), to the 5572  
Alternative Fuel Transportation Fund (Fund 5CG0); and 5573

(B) Transfer any unexpended and unencumbered amounts in the 5574  
Advanced Energy Research and Development Taxable Fund (Fund 7004) 5575  
and the Advanced Energy Research and Development Fund (Fund 7005) 5576  
to the Advanced Energy Fund (Fund 5M50). 5577

**Section 701.10.** The Department of Administrative Services and 5578  
the Department of Transportation cooperatively shall analyze their 5579  
respective motor vehicle fleets to determine whether it is 5580  
beneficial to establish standards for vehicle replacement in order 5581  
to increase the overall efficiency of the state motor vehicle 5582  
fleet. Not later than September 1, 2012, the Department of 5583  
Administrative Services and the Department of Transportation shall 5584  
produce a joint report with their findings and shall deliver the 5585  
report to the Speaker of the House of Representatives, the 5586  
Minority Leader of the House of Representatives, the President of 5587  
the Senate, the Minority Leader of the Senate, and the Governor. 5588

**Section 715.10.** The injection well disposal fees levied by 5589  
section 1509.22 of the Revised Code, as amended by this act, are a 5590  
continuation of the injection well disposal fees levied by section 5591  
1509.221 of the Revised Code as that section existed prior to its 5592  
amendment by this act except insofar as the fees are increased by 5593  
the amendment. 5594

**Section 737.10.** (A) The Director of Environmental Protection, 5595

in coordination with the Department of Natural Resources, the 5596  
United States Environmental Protection Agency, and other entities 5597  
as determined appropriate by the Director, shall coordinate the 5598  
evaluation of emerging wastewater treatment and recycling 5599  
technologies that may reduce reliance on underground injection 5600  
wells and may assist in the advancement of industry in this state, 5601  
including the exploration and production of oil and gas. As part 5602  
of the evaluation, the Director may initiate, participate in, 5603  
oversee, or consult on pilot projects regarding wastewater 5604  
treatment and recycling technologies. 5605

(B) The Director of Environmental Protection, in coordination 5606  
with the Public Utilities Commission of Ohio, the United States 5607  
Environmental Protection Agency, and other entities as determined 5608  
appropriate by the Director, shall conduct a study that identifies 5609  
current and future environmental regulatory requirements and how 5610  
those requirements may impact current and future power generation 5611  
and transmission in this state. 5612

**Section 755.10.** The Department of Transportation and the 5613  
Public Utilities Commission cooperatively shall analyze the cost 5614  
effectiveness of purchasing vehicles that operate on compressed 5615  
natural gas and the conversion of certain state motor vehicles to 5616  
operate on compressed natural gas. Not later than January 30, 5617  
2013, the Department and the Commission shall produce a joint 5618  
report with their findings and shall deliver the report to the 5619  
Speaker of the House of Representatives, the Minority Leader of 5620  
the House of Representatives, the President of the Senate, the 5621  
Minority Leader of the Senate, and the Governor. 5622

**Section 812.20. Section exempt from referendum: general** 5623  
**effective date.** The amendment by this act of section 133.06 of the 5624  
Revised Code and Section 701.10 of this act are exempt from the 5625

referendum under Ohio Constitution, Article II, Section 1d and 5626  
section 1.471 of the Revised Code and therefore take effect 5627  
immediately when this act becomes law. 5628

**Section 815.10.** Section 4928.01 of the Revised Code is 5629  
presented in this act as a composite of the section as amended by 5630  
both Am. Sub. S.B. 181 and Am. Sub. S.B. 232 of the 128th General 5631  
Assembly. The General Assembly, applying the principle stated in 5632  
division (B) of section 1.52 of the Revised Code that amendments 5633  
are to be harmonized if reasonably capable of simultaneous 5634  
operation, finds that the composite is the resulting version of 5635  
the section in effect prior to the effective date of the section 5636  
as presented in this act. 5637