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Am. Sub. S. B. No. 315

**Senator Jones
(By Request)**

**Cosponsors: Senators Coley, Bacon, Balderson, Beagle, Eklund, Lehner,
Niehaus, Peterson, Schaffer**

**Representatives Stautberg, Beck, Blair, Brenner, Bulp, Buchy, Combs,
Conditt, Derickson, DeVitis, Grossman, Hackett, Hagan, C., Hall, Hayes, Hill,
Huffman, Johnson, Kozlowski, Landis, Luckie, Martin, McClain, McGregor,
Patmon, Pelanda, Roegner, Sears, Smith, Sprague, Stebelton, Terhar,
Thompson, Uecker, Williams**

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A B I L L

To amend sections 122.075, 123.011, 125.836, 131.50, 1
133.06, 156.01, 156.02, 156.03, 156.04, 303.213, 2
905.40, 1509.01, 1509.02, 1509.03, 1509.04, 3
1509.06, 1509.07, 1509.10, 1509.11, 1509.22, 4
1509.221, 1509.222, 1509.223, 1509.23, 1509.28, 5
1509.33, 1509.99, 1514.01, 1514.02, 1514.021, 6
1514.03, 1514.05, 3706.27, 4905.03, 4905.90, 7
4905.91, 4905.95, 4906.01, 4906.03, 4906.05, 8
4906.06, 4906.07, 4906.10, 4906.20, 4928.01, 9
4928.02, 4928.2314, 4928.61, 4928.62, 4928.64, 10
4928.66, 4935.04, 5703.21, and 5751.01; to amend, 11
for the purpose of adopting a new section number 12
as indicated in parentheses, section 905.461 13
(905.411); and to enact sections 905.41, 3737.832, 14
4905.911, 4928.111, 4928.70, 4928.71, 4928.72, and 15
6301.12 of the Revised Code to make changes to the 16

energy and natural resources laws and related 17
programs of the state. 18

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

Section 101.01. That sections 122.075, 123.011, 125.836, 19
131.50, 133.06, 156.01, 156.02, 156.03, 156.04, 303.213, 905.40, 20
1509.01, 1509.02, 1509.03, 1509.04, 1509.06, 1509.07, 1509.10, 21
1509.11, 1509.22, 1509.221, 1509.222, 1509.223, 1509.23, 1509.28, 22
1509.33, 1509.99, 1514.01, 1514.02, 1514.021, 1514.03, 1514.05, 23
3706.27, 4905.03, 4905.90, 4905.91, 4905.95, 4906.01, 4906.03, 24
4906.05, 4906.06, 4906.07, 4906.10, 4906.20, 4928.01, 4928.02, 25
4928.2314, 4928.61, 4928.62, 4928.64, 4928.66, 4935.04, 5703.21, 26
and 5751.01 be amended; section 905.461 (905.411) be amended for 27
the purpose of adopting a new section number as indicated in 28
parentheses; and sections 905.41, 3737.832, 4905.911, 4928.111, 29
4928.70, 4928.71, 4928.72, and 6301.12 of the Revised Code be 30
enacted to read as follows: 31

Sec. 122.075. (A) As used in this section: 32

(1) "Alternative fuel" has the same meaning as in section 33
125.831 of the Revised Code. 34

(2) "Biodiesel" means a mono-alkyl ester combustible liquid 35
fuel that is derived from vegetable oils or animal fats, or any 36
combination of those reagents, and that meets American society for 37
testing and materials specification D6751-03a for biodiesel fuel 38
(B100) blend stock distillate fuels. 39

(3) "Diesel fuel" and "gasoline" have the same meanings as in 40
section 5735.01 of the Revised Code. 41

(4) "Ethanol" has the same meaning as in section 5733.46 of 42
the Revised Code. 43

(5) "Blended biodiesel" means diesel fuel containing at least 44
twenty per cent biodiesel by volume. 45

(6) "Blended gasoline" means gasoline containing at least 46
eighty-five per cent ethanol by volume. 47

(7) "Incremental cost" means either of the following: 48

(a) The difference in cost between blended gasoline and 49
gasoline containing ten per cent or less ethanol at the time that 50
the blended gasoline is purchased; 51

(b) The difference in cost between blended biodiesel and 52
diesel fuel containing two per cent or less biodiesel at the time 53
that the blended biodiesel is purchased. 54

(B) For the purpose of improving the air quality in this 55
state, the director of development shall establish an alternative 56
fuel transportation ~~grant~~ program under which the director may 57
make grants and loans to businesses, nonprofit organizations, 58
public school systems, or local governments for the purchase and 59
installation of alternative fuel refueling or distribution 60
facilities and terminals, for the purchase and use of alternative 61
fuel, and to pay the costs of educational and promotional 62
materials and activities intended for prospective alternative fuel 63
consumers, fuel marketers, and others in order to increase the 64
availability and use of alternative fuel. 65

(C) The director, in consultation with the director of 66
agriculture, shall adopt rules in accordance with Chapter 119. of 67
the Revised Code that are necessary for the administration of the 68
alternative fuel transportation ~~grant~~ program. The rules shall 69
establish at least all of the following: 70

(1) An application form and procedures governing the 71
application process for a ~~grant~~ receiving funds under the program; 72

(2) A procedure for prioritizing the award of grants and 73

<u>loans</u> under the program. The procedures shall give preference to	74
all of the following:	75
(a) Publicly accessible refueling facilities;	76
(b) Entities seeking grants <u>applying to the program</u> that have	77
secured funding from other sources, including, but not limited to,	78
private or federal grants <u>incentives</u> ;	79
(c) Entities that have presented compelling evidence of	80
demand in the market in which the facilities or terminals will be	81
located;	82
(d) Entities that have committed to utilizing purchased or	83
installed facilities or terminals for the greatest number of	84
years;	85
(e) Entities that will be purchasing or installing facilities	86
or terminals for any type of alternative fuel.	87
(3) A requirement that the maximum grant <u>grant incentive</u> for the	88
purchase and installation of an alternative fuel refueling or	89
distribution facility or terminal be eighty per cent of the cost	90
of the facility or terminal, except that at least twenty per cent	91
of the total net cost of the facility or terminal shall be	92
incurred by the grant recipient and not compensated for by any	93
other source;	94
(4) A requirement that the maximum grant <u>grant incentive</u> for the	95
purchase of alternative fuel be eighty per cent of the cost of the	96
fuel or, in the case of blended biodiesel or blended gasoline,	97
eighty per cent of the incremental cost of the blended biodiesel	98
or blended gasoline;	99
(5) Any other criteria, procedures, or guidelines that the	100
director determines are necessary to administer the program,	101
<u>including fees, charges, interest rates, and payment schedules.</u>	102
(D) An applicant for a grant <u>or loan</u> under this section that	103

sells motor vehicle fuel at retail shall agree that if the 104
applicant receives a ~~grant~~ funding, the applicant will report to 105
the director the gallon or gallon equivalent amounts of 106
alternative fuel the applicant sells at retail in this state for a 107
period of three years after the ~~grant is awarded~~ project is
completed. 108
109

The director shall enter into a written confidentiality 110
agreement with the applicant regarding the gallon or gallon 111
equivalent amounts sold as described in this division, and upon 112
execution of the agreement this information is not a public 113
record. 114

(E) There is hereby created in the state treasury the 115
alternative fuel transportation ~~grant~~ fund. The fund shall consist 116
of money transferred to the fund under division (C) of section 117
125.836 and under division (B)(2) of section 3706.27 of the 118
Revised Code, money that is appropriated to it by the general 119
assembly, and money as may be specified by the general assembly 120
from the advanced energy fund created by section 4928.61 of the 121
Revised Code. Money in the fund shall be used to make grants and
loans under the alternative fuel transportation ~~grant~~ program and 122
by the director in the administration of that program. 123
124

Sec. 123.011. (A) As used in this section: 125

(1) "Construct" includes reconstruct, improve, renovate, 126
enlarge, or otherwise alter. 127

(2) "Energy consumption analysis" means the evaluation of all 128
energy consuming systems, components, and equipment by demand and 129
type of energy, including the internal energy load imposed on a 130
facility by its occupants and the external energy load imposed by 131
climatic conditions. 132

(3) "Energy performance index" means a number describing the 133

energy requirements of a facility per square foot of floor space 134
or per cubic foot of occupied volume as appropriate under defined 135
internal and external ambient conditions over an entire seasonal 136
cycle. 137

(4) "Facility" means a building or other structure, or part 138
of a building or other structure, that includes provision for a 139
heating, refrigeration, ventilation, cooling, lighting, hot water, 140
or other major energy consuming system, component, or equipment. 141

(5) "Life-cycle cost analysis" means a general approach to 142
economic evaluation that takes into account all dollar costs 143
related to owning, operating, maintaining, and ultimately 144
disposing of a project over the appropriate study period. 145

(6) "Political subdivision" means a county, township, 146
municipal corporation, board of education of any school district, 147
or any other body corporate and politic that is responsible for 148
government activities in a geographic area smaller than that of 149
the state. 150

(7) "State funded" means funded in whole or in part through 151
appropriation by the general assembly or through the use of any 152
guarantee provided by this state. 153

(8) "State institution of higher education" has the same 154
meaning as in section 3345.011 of the Revised Code. 155

(9) "Cogeneration" means the simultaneous production of 156
thermal energy and electricity for use primarily within a building 157
or complex of buildings. 158

(B) There is hereby created within the department of 159
administrative services the office of energy services. The office 160
shall be under the supervision of a manager, who shall be 161
appointed by the director of administrative services. The director 162
shall assign to the office such number of employees and furnish 163
such equipment and supplies as are necessary for the performance 164

of the office's duties. 165

The office shall develop energy efficiency and conservation 166
programs in each of the following areas: 167

(1) New construction design and review; 168

(2) Existing building audit and retrofit; 169

(3) Energy efficient procurement; 170

(4) Alternative fuel vehicles. 171

The office may accept and administer grants from public and 172
private sources for carrying out any of its duties under this 173
section. 174

(C) No state agency, department, division, bureau, office, 175
unit, board, commission, authority, quasi-governmental entity, or 176
institution, including those agencies otherwise excluded from the 177
jurisdiction of the department under division (A)(3) of section 178
123.01 of the Revised Code, shall lease, construct, or cause to be 179
leased or constructed, within the limits prescribed in this 180
section, a state-funded facility, without a proper life-cycle cost 181
analysis or, in the case of a lease, an energy consumption 182
analysis, as computed or prepared by a qualified architect or 183
engineer in accordance with the rules required by division (D) of 184
this section. 185

Construction shall proceed only upon the disclosure to the 186
office, for the facility chosen, of the life-cycle costs as 187
determined in this section and the capitalization of the initial 188
construction costs of the building. The results of life-cycle cost 189
analysis shall be a primary consideration in the selection of a 190
building design. That analysis shall be required only for 191
construction of buildings with an area of five thousand square 192
feet or greater. For projects with an estimated construction cost 193
exceeding fifty million dollars, the analysis shall include a 194

review of cogeneration as an energy source. An energy consumption 195
analysis for the term of a proposed lease shall be required only 196
for the leasing of an area of twenty thousand square feet or 197
greater within a given building boundary. That analysis shall be a 198
primary consideration in the selection of a facility to be leased. 199

Nothing in this section shall deprive or limit any state 200
agency that has review authority over design, construction, or 201
leasing plans from requiring a life-cycle cost analysis or energy 202
consumption analysis. 203

(D) For the purposes of assisting the department in its 204
responsibility for state-funded facilities pursuant to section 205
123.01 of the Revised Code and of cost-effectively reducing the 206
energy consumption of those and any other state-funded facilities, 207
thereby promoting fiscal, economic, and environmental benefits to 208
this state, the office shall promulgate rules specifying 209
cost-effective, energy efficiency and conservation standards that 210
may govern the lease, design, construction, operation, and 211
maintenance of all state-funded facilities, except facilities of 212
state institutions of higher education or facilities operated by a 213
political subdivision. The office of energy efficiency in the 214
department of development shall cooperate in providing information 215
and technical expertise to the office of energy services to ensure 216
promulgation of rules of maximum effectiveness. The standards 217
prescribed by rules promulgated under this division may draw from 218
or incorporate, by reference or otherwise and in whole or in part, 219
standards already developed or implemented by any competent, 220
public or private standards organization or program. The rules 221
also may include any of the following: 222

(1) Specifications for a life-cycle cost analysis that shall 223
determine, for the economic life of such state-funded facility, 224
the reasonably expected costs of facility ownership, operation, 225
and maintenance including labor and materials. Life-cycle cost may 226

be expressed as an annual cost for each year of the facility's 227
use. 228

A life-cycle cost analysis additionally may include an energy 229
consumption analysis that conforms to division (D)(2) of this 230
section. 231

(2) Specifications for an energy consumption analysis of the 232
facility's heating, refrigeration, ventilation, cooling, lighting, 233
hot water, and other major energy consuming systems, components, 234
and equipment. 235

A life-cycle cost analysis and energy consumption analysis 236
shall be based on the best currently available methods of 237
analysis, such as those of the national institute of standards and 238
technology, the United States department of energy or other 239
federal agencies, professional societies, and directions developed 240
by the department. 241

(3) Specifications for energy performance indices, to be used 242
to audit and evaluate competing design proposals submitted to the 243
state. 244

(4) A requirement that, not later than two years after April 245
6, 2007, each state-funded facility, except a facility of a state 246
institution of higher education or a facility operated by a 247
political subdivision, is managed by at least one building 248
operator certified under the building operator certification 249
program or any equivalent program or standards as shall be 250
prescribed in the rules and considered reasonably equivalent. 251

(5) An application process by which a manager of a specified 252
state-funded facility, except a facility of a state institution of 253
higher education or a facility operated by a political 254
subdivision, may apply for a waiver of compliance with any 255
provision of the rules required by divisions (D)(1) to (4) of this 256
section. 257

(E) The office of energy services shall promulgate rules to 258
ensure that energy efficiency and conservation will be considered 259
in the purchase of products and equipment, except motor vehicles, 260
by any state agency, department, division, bureau, office, unit, 261
board, commission, authority, quasi-governmental entity, or 262
institution. Minimum energy efficiency standards for purchased 263
products and equipment may be required, based on federal testing 264
and labeling where available or on standards developed by the 265
office. The rules shall apply to the competitive selection of 266
energy consuming systems, components, and equipment under Chapter 267
125. of the Revised Code where possible. 268

The office also shall ensure energy efficient and energy 269
conserving purchasing practices by doing all of the following: 270

(1) Cooperatively with the office of energy efficiency, 271
identifying available energy efficiency and conservation 272
opportunities; 273

(2) Providing for interchange of information among purchasing 274
agencies; 275

(3) Identifying laws, policies, rules, and procedures that 276
need modification; 277

(4) Monitoring experience with and the cost-effectiveness of 278
this state's purchase and use of motor vehicles and of major 279
energy-consuming systems, components, equipment, and products 280
having a significant impact on energy consumption by government; 281

(5) Cooperatively with the office of energy efficiency, 282
providing technical assistance and training to state employees 283
involved in the purchasing process. 284

The department of development shall make recommendations to 285
the office regarding planning and implementation of purchasing 286
policies and procedures supportive of energy efficiency and 287
conservation. 288

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

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

(a) The total number of passenger vehicles acquired during the fiscal year, except for those passenger vehicles acquired for use in law enforcement or emergency rescue work, by

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

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

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

As used in division (F)(2) of this section, "acquired" means 320
leased for a period of sixty continuous days or more, or 321
purchased. 322

(G) Each state agency, department, division, bureau, office, 323
unit, board, commission, authority, quasi-governmental entity, 324
institution, and state institution of higher education shall 325
comply with any applicable provision of this section or of a rule 326
promulgated pursuant to division (D) or (F) of this section. 327

Sec. 125.836. (A) As used in this section: 328

(1) "Biodiesel," "blended biodiesel," and "diesel fuel" have 329
the same meanings as in section 125.831 of the Revised Code. 330

(2) "Credit" means a credit generated by the acquisition of 331
alternative fueled vehicles in accordance with the "Energy Policy 332
Act of 1992," 106 Stat. 2897, 42 U.S.C. 13257. 333

(3) "Incremental cost" means the difference in cost between 334
blended biodiesel and conventional petroleum-based diesel fuel at 335
the time the blended biodiesel is purchased. 336

(B) The department of administrative services shall establish 337
and administer a credit banking and selling program. The 338
department may sell or trade credits in accordance with procedures 339
established pursuant to the "Energy Policy Act of 1992," 106 Stat. 340
2897, 42 U.S.C. 13258. 341

(C) There is hereby created in the state treasury the 342
"biodiesel revolving fund," to which shall be credited moneys 343
received from the sale of credits under this section, any moneys 344
appropriated to the fund by the general assembly, and any other 345
moneys obtained or accepted by the department for crediting to the 346
fund. Moneys credited to the fund shall be used to pay for the 347
incremental cost of biodiesel for use in vehicles owned or leased 348
by the state that use diesel fuel. The director of administrative 349

services, after consultation with the director of development, may 350
direct the director of budget and management to transfer available 351
moneys in the biodiesel revolving fund to the alternative fuel 352
transportation ~~grant~~ fund created in section 122.075 of the 353
Revised Code to be used by the department of development for the 354
purposes specified in that section. 355

(D) The director of administrative services shall adopt rules 356
under Chapter 119. of the Revised Code that are necessary for the 357
administration of the credit banking and selling program. 358

Sec. 131.50. (A) There is hereby created in the state 359
treasury the state land royalty fund consisting of money credited 360
to it under section 1509.73 of the Revised Code. Any investment 361
proceeds earned on money in the fund shall be credited to the fund 362
and used as required in division (B) or (C) of this section. 363

(B) ~~Money~~ Except as provided in division (C) of this section, 364
money in the state land royalty fund shall be used by state 365
agencies to acquire land and to pay capital costs of state 366
agencies, including equipment and renovations and repairs of 367
facilities, that have contributed to the fund under section 368
1509.73 of the Revised Code. Such a state agency is entitled to 369
receive from the fund the amount that the state agency contributed 370
and a share of the investment earnings of the fund in an amount 371
that is equivalent to the proportionate share of contributions 372
made by the state agency to the fund. 373

(C) Money in the fund that is allocated to a state college or 374
university may be used to pay for operating expenses associated 375
with any property that is owned by the college or university and 376
that is at least partially used for the exploration, development, 377
and production of oil or gas if both of the following apply: 378

(1) The state college or university is engaged in research at 379
the property or in education or outreach regarding the property. 380

(2) The research, education, or outreach is associated with 381
furthering the public understanding of how oil and gas 382
exploration, development, or production potentially benefits the 383
public and impacts the use of the state's natural resources. 384

(D) As used in this section, "state agency" has the same 385
meaning as in section 1509.70 of the Revised Code. 386

Sec. 133.06. (A) A school district shall not incur, without a 387
vote of the electors, net indebtedness that exceeds an amount 388
equal to one-tenth of one per cent of its tax valuation, except as 389
provided in divisions (G) and (H) of this section and in division 390
(C) of section 3313.372 of the Revised Code, or as prescribed in 391
section 3318.052 or 3318.44 of the Revised Code, or as provided in 392
division (J) of this section. 393

(B) Except as provided in divisions (E), (F), and (I) of this 394
section, a school district shall not incur net indebtedness that 395
exceeds an amount equal to nine per cent of its tax valuation. 396

(C) A school district shall not submit to a vote of the 397
electors the question of the issuance of securities in an amount 398
that will make the district's net indebtedness after the issuance 399
of the securities exceed an amount equal to four per cent of its 400
tax valuation, unless the superintendent of public instruction, 401
acting under policies adopted by the state board of education, and 402
the tax commissioner, acting under written policies of the 403
commissioner, consent to the submission. A request for the 404
consents shall be made at least one hundred twenty days prior to 405
the election at which the question is to be submitted. 406

The superintendent of public instruction shall certify to the 407
district the superintendent's and the tax commissioner's decisions 408
within thirty days after receipt of the request for consents. 409

If the electors do not approve the issuance of securities at 410

the election for which the superintendent of public instruction 411
and tax commissioner consented to the submission of the question, 412
the school district may submit the same question to the electors 413
on the date that the next special election may be held under 414
section 3501.01 of the Revised Code without submitting a new 415
request for consent. If the school district seeks to submit the 416
same question at any other subsequent election, the district shall 417
first submit a new request for consent in accordance with this 418
division. 419

(D) In calculating the net indebtedness of a school district, 420
none of the following shall be considered: 421

(1) Securities issued to acquire school buses and other 422
equipment used in transporting pupils or issued pursuant to 423
division (D) of section 133.10 of the Revised Code; 424

(2) Securities issued under division (F) of this section, 425
under section 133.301 of the Revised Code, and, to the extent in 426
excess of the limitation stated in division (B) of this section, 427
under division (E) of this section; 428

(3) Indebtedness resulting from the dissolution of a joint 429
vocational school district under section 3311.217 of the Revised 430
Code, evidenced by outstanding securities of that joint vocational 431
school district; 432

(4) Loans, evidenced by any securities, received under 433
sections 3313.483, 3317.0210, 3317.0211, and 3317.64 of the 434
Revised Code; 435

(5) Debt incurred under section 3313.374 of the Revised Code; 436

(6) Debt incurred pursuant to division (B)(5) of section 437
3313.37 of the Revised Code to acquire computers and related 438
hardware; 439

(7) Debt incurred under section 3318.042 of the Revised Code. 440

(E) A school district may become a special needs district as 441
to certain securities as provided in division (E) of this section. 442

(1) A board of education, by resolution, may declare its 443
school district to be a special needs district by determining both 444
of the following: 445

(a) The student population is not being adequately serviced 446
by the existing permanent improvements of the district. 447

(b) The district cannot obtain sufficient funds by the 448
issuance of securities within the limitation of division (B) of 449
this section to provide additional or improved needed permanent 450
improvements in time to meet the needs. 451

(2) The board of education shall certify a copy of that 452
resolution to the superintendent of public instruction with a 453
statistical report showing all of the following: 454

(a) The history of and a projection of the growth of the tax 455
valuation; 456

(b) The projected needs; 457

(c) The estimated cost of permanent improvements proposed to 458
meet such projected needs. 459

(3) The superintendent of public instruction shall certify 460
the district as an approved special needs district if the 461
superintendent finds both of the following: 462

(a) The district does not have available sufficient 463
additional funds from state or federal sources to meet the 464
projected needs. 465

(b) The projection of the potential average growth of tax 466
valuation during the next five years, according to the information 467
certified to the superintendent and any other information the 468
superintendent obtains, indicates a likelihood of potential 469
average growth of tax valuation of the district during the next 470

five years of an average of not less than one and one-half per 471
cent per year. The findings and certification of the 472
superintendent shall be conclusive. 473

(4) An approved special needs district may incur net 474
indebtedness by the issuance of securities in accordance with the 475
provisions of this chapter in an amount that does not exceed an 476
amount equal to the greater of the following: 477

(a) Twelve per cent of the sum of its tax valuation plus an 478
amount that is the product of multiplying that tax valuation by 479
the percentage by which the tax valuation has increased over the 480
tax valuation on the first day of the sixtieth month preceding the 481
month in which its board determines to submit to the electors the 482
question of issuing the proposed securities; 483

(b) Twelve per cent of the sum of its tax valuation plus an 484
amount that is the product of multiplying that tax valuation by 485
the percentage, determined by the superintendent of public 486
instruction, by which that tax valuation is projected to increase 487
during the next ten years. 488

(F) A school district may issue securities for emergency 489
purposes, in a principal amount that does not exceed an amount 490
equal to three per cent of its tax valuation, as provided in this 491
division. 492

(1) A board of education, by resolution, may declare an 493
emergency if it determines both of the following: 494

(a) School buildings or other necessary school facilities in 495
the district have been wholly or partially destroyed, or condemned 496
by a constituted public authority, or that such buildings or 497
facilities are partially constructed, or so constructed or planned 498
as to require additions and improvements to them before the 499
buildings or facilities are usable for their intended purpose, or 500
that corrections to permanent improvements are necessary to remove 501

or prevent health or safety hazards. 502

(b) Existing fiscal and net indebtedness limitations make 503
adequate replacement, additions, or improvements impossible. 504

(2) Upon the declaration of an emergency, the board of 505
education may, by resolution, submit to the electors of the 506
district pursuant to section 133.18 of the Revised Code the 507
question of issuing securities for the purpose of paying the cost, 508
in excess of any insurance or condemnation proceeds received by 509
the district, of permanent improvements to respond to the 510
emergency need. 511

(3) The procedures for the election shall be as provided in 512
section 133.18 of the Revised Code, except that: 513

(a) The form of the ballot shall describe the emergency 514
existing, refer to this division as the authority under which the 515
emergency is declared, and state that the amount of the proposed 516
securities exceeds the limitations prescribed by division (B) of 517
this section; 518

(b) The resolution required by division (B) of section 133.18 519
of the Revised Code shall be certified to the county auditor and 520
the board of elections at least one hundred days prior to the 521
election; 522

(c) The county auditor shall advise and, not later than 523
ninety-five days before the election, confirm that advice by 524
certification to, the board of education of the information 525
required by division (C) of section 133.18 of the Revised Code; 526

(d) The board of education shall then certify its resolution 527
and the information required by division (D) of section 133.18 of 528
the Revised Code to the board of elections not less than ninety 529
days prior to the election. 530

(4) Notwithstanding division (B) of section 133.21 of the 531

Revised Code, the first principal payment of securities issued 532
under this division may be set at any date not later than sixty 533
months after the earliest possible principal payment otherwise 534
provided for in that division. 535

(G) The board of education may contract with an architect, 536
professional engineer, or other person experienced in the design 537
and implementation of energy conservation measures for an analysis 538
and recommendations pertaining to installations, modifications of 539
installations, or remodeling that would significantly reduce 540
energy consumption in buildings owned by the district. The report 541
shall include estimates of all costs of such installations, 542
modifications, or remodeling, including costs of design, 543
engineering, installation, maintenance, repairs, and debt service, 544
forgone residual value of materials or equipment replaced by the 545
energy conservation measure, as defined by the Ohio school 546
facilities commission, a baseline analysis of actual energy 547
consumption data for the preceding ~~five~~ three years, and estimates 548
of the amounts by which energy consumption and resultant 549
operational and maintenance costs, as defined by the commission, 550
would be reduced. 551

If the board finds after receiving the report that the amount 552
of money the district would spend on such installations, 553
modifications, or remodeling is not likely to exceed the amount of 554
money it would save in energy and resultant operational and 555
maintenance costs over the ensuing fifteen years, the board may 556
submit to the commission a copy of its findings and a request for 557
approval to incur indebtedness to finance the making or 558
modification of installations or the remodeling of buildings for 559
the purpose of significantly reducing energy consumption. 560

If the commission determines that the board's findings are 561
reasonable, it shall approve the board's request. Upon receipt of 562
the commission's approval, the district may issue securities 563

without a vote of the electors in a principal amount not to exceed 564
nine-tenths of one per cent of its tax valuation for the purpose 565
of making such installations, modifications, or remodeling, but 566
the total net indebtedness of the district without a vote of the 567
electors incurred under this and all other sections of the Revised 568
Code, except section 3318.052 of the Revised Code, shall not 569
exceed one per cent of the district's tax valuation. 570

So long as any securities issued under division (G) of this 571
section remain outstanding, the board of education shall monitor 572
the energy consumption and resultant operational and maintenance 573
costs of buildings in which installations or modifications have 574
been made or remodeling has been done pursuant to division (G) of 575
this section and shall maintain and annually update a report 576
documenting the reductions in energy consumption and resultant 577
operational and maintenance cost savings attributable to such 578
installations, modifications, or remodeling. The report shall be 579
certified by an architect or engineer independent of any person 580
that provided goods or services to the board in connection with 581
the energy conservation measures that are the subject of the 582
report. The resultant operational and maintenance cost savings 583
shall be certified by the school district treasurer. The report 584
shall be submitted annually to the commission. 585

(H) With the consent of the superintendent of public 586
instruction, a school district may incur without a vote of the 587
electors net indebtedness that exceeds the amounts stated in 588
divisions (A) and (G) of this section for the purpose of paying 589
costs of permanent improvements, if and to the extent that both of 590
the following conditions are satisfied: 591

(1) The fiscal officer of the school district estimates that 592
receipts of the school district from payments made under or 593
pursuant to agreements entered into pursuant to section 725.02, 594
1728.10, 3735.671, 5709.081, 5709.082, 5709.40, 5709.41, 5709.62, 595

5709.63, 5709.632, 5709.73, 5709.78, or 5709.82 of the Revised 596
Code, or distributions under division (C) of section 5709.43 of 597
the Revised Code, or any combination thereof, are, after 598
accounting for any appropriate coverage requirements, sufficient 599
in time and amount, and are committed by the proceedings, to pay 600
the debt charges on the securities issued to evidence that 601
indebtedness and payable from those receipts, and the taxing 602
authority of the district confirms the fiscal officer's estimate, 603
which confirmation is approved by the superintendent of public 604
instruction; 605

(2) The fiscal officer of the school district certifies, and 606
the taxing authority of the district confirms, that the district, 607
at the time of the certification and confirmation, reasonably 608
expects to have sufficient revenue available for the purpose of 609
operating such permanent improvements for their intended purpose 610
upon acquisition or completion thereof, and the superintendent of 611
public instruction approves the taxing authority's confirmation. 612

The maximum maturity of securities issued under division (H) 613
of this section shall be the lesser of twenty years or the maximum 614
maturity calculated under section 133.20 of the Revised Code. 615

(I) A school district may incur net indebtedness by the 616
issuance of securities in accordance with the provisions of this 617
chapter in excess of the limit specified in division (B) or (C) of 618
this section when necessary to raise the school district portion 619
of the basic project cost and any additional funds necessary to 620
participate in a project under Chapter 3318. of the Revised Code, 621
including the cost of items designated by the Ohio school 622
facilities commission as required locally funded initiatives, the 623
cost of other locally funded initiatives in an amount that does 624
not exceed fifty per cent of the district's portion of the basic 625
project cost, and the cost for site acquisition. The school 626
facilities commission shall notify the superintendent of public 627

instruction whenever a school district will exceed either limit 628
pursuant to this division. 629

(J) A school district whose portion of the basic project cost 630
of its classroom facilities project under sections 3318.01 to 631
3318.20 of the Revised Code is greater than or equal to one 632
hundred million dollars may incur without a vote of the electors 633
net indebtedness in an amount up to two per cent of its tax 634
valuation through the issuance of general obligation securities in 635
order to generate all or part of the amount of its portion of the 636
basic project cost if the controlling board has approved the 637
school facilities commission's conditional approval of the project 638
under section 3318.04 of the Revised Code. The school district 639
board and the Ohio school facilities commission shall include the 640
dedication of the proceeds of such securities in the agreement 641
entered into under section 3318.08 of the Revised Code. No state 642
moneys shall be released for a project to which this section 643
applies until the proceeds of any bonds issued under this section 644
that are dedicated for the payment of the school district portion 645
of the project are first deposited into the school district's 646
project construction fund. 647

Sec. 156.01. As used in sections 156.01 to 156.05 of the 648
Revised Code: 649

(A) "Avoided capital costs" means a measured reduction in the 650
cost of future equipment or other capital purchases that results 651
from implementation of one or more energy or water conservation 652
measures, when compared to an established baseline for previous 653
such cost. 654

(B) "Energy conservation measure" means an installation or 655
modification of an installation in, or a remodeling of, an 656
existing building in order to reduce energy consumption and 657
operating costs. The term includes any of the following: 658

(1) Installation or modification of insulation in the building structure and systems within the building;	659 660
(2) Installation or modification of storm windows and doors, multiglazed windows and doors, and heat absorbing or heat reflective glazed and coated window and door systems; installation of additional glazing; reductions in glass area; and other window and door system modifications that reduce energy consumption and operating costs;	661 662 663 664 665 666
(3) Installation or modification of automatic energy control systems;	667 668
(4) Replacement or modification of heating, ventilating, or air conditioning systems;	669 670
(5) Application of caulking and weather stripping;	671
(6) Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a building unless the increase in illumination is necessary to conform to the applicable state or local building code for the proposed lighting system;	672 673 674 675 676
(7) Installation or modification of energy recovery systems;	677
(8) Installation or modification of cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;	678 679 680 681
(9) <u>Installation or modification of trigeneration systems that produce heat and cooling, as well as electricity, for use primarily within a building or complex of buildings;</u>	682 683 684
(10) <u>Installation or modification of systems that harvest renewable energy from solar, wind, water, biomass, bio-gas, or geothermal sources, for use primarily within a building or complex of buildings;</u>	685 686 687 688

(11) Retro-commissioning or recommissioning energy-related systems to verify that they are installed and calibrated to optimize energy and operational performance within a building or complex of buildings; 689
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(12) Consolidation, virtualization, and optimization of computer servers, data storage devices, or other information technology hardware and infrastructure; 693
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(13) Any other modification, installation, or remodeling approved by the director of administrative services as an energy conservation measure for one or more buildings owned by ~~the~~ either of the following: 696
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(a) The state; 700

(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. 701
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(C) "Energy saving measure" means the acquisition and installation, by purchase, lease, lease-purchase, lease with an option to buy, or installment purchase, of an energy conservation measure and any attendant architectural and engineering consulting services. 704
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(D) "Energy, water, or wastewater cost savings" means a measured reduction in, as applicable, the cost of fuel, energy or water consumption, wastewater production, or stipulated operation or maintenance resulting from the implementation of one or more energy or water conservation measures, when compared to an established baseline for previous such costs, respectively. 709
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(E) "Operating cost savings" means a measured reduction in the cost of stipulated operation or maintenance created by the installation of new equipment or implementation of a new service, when compared with an established baseline for previous such stipulated costs. 715
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(F) "Water conservation measure" means an installation or 720
modification of an installation in, or a remodeling of, an 721
existing building or the surrounding grounds in order to reduce 722
water consumption. The term includes any of the following: 723

(1) Water-conserving fixture, appliance, or equipment, or the 724
substitution of a nonwater-using fixture, appliance, or equipment; 725

(2) Water-conserving, landscape irrigation equipment; 726

(3) Landscaping measure that reduces storm water runoff 727
demand and capture and hold applied water and rainfall, including 728
landscape contouring such as the use of a berm, swale, or terrace 729
and including the use of a soil amendment, including compost, that 730
increases the water-holding capacity of the soil; 731

(4) Rainwater harvesting equipment or equipment to make use 732
of water collected as part of a storm water system installed for 733
water quality control; 734

(5) Equipment for recycling or reuse of water originating on 735
the premises or from another source, including treated, municipal 736
effluent; 737

(6) Equipment needed to capture water for nonpotable uses 738
from any nonconventional, alternate source, including air 739
conditioning condensate or gray water; 740

(7) Any other modification, installation, or remodeling 741
~~approved by the board of trustees of a state institution of higher~~ 742
~~education as defined in section 3345.011 of the Revised Code~~ 743
director of administrative services as a water conservation 744
measure for one or more buildings or the surrounding grounds owned 745
by either of the following: 746

(a) The state; 747

(b) A state institution of higher education as defined in 748
section 3345.011 of the Revised Code that implements the water 749

conservation measure in consultation with the director. 750

(G) "Water saving measure" means the acquisition and 751
installation, by the purchase, lease, lease-purchase, lease with 752
an option to buy, or installment purchases of a water conservation 753
measure and any attendant architectural and engineering consulting 754
services. 755

Sec. 156.02. ~~(A) The director of administrative services may 756
contract with an energy services company, contractor, architect, 757
professional engineer, or other person experienced in the design 758
and implementation of energy conservation measures for a report 759
containing an analysis and recommendations pertaining to the 760
implementation of energy conservation measures that would 761
significantly reduce energy consumption and operating costs in any 762
buildings owned by the state. The report shall include estimates 763
of all costs of such measures, including the costs of design, 764
engineering, installation, maintenance, repairs, and debt service, 765
and estimates of the amounts by which energy consumption and 766
operating costs would be reduced. 767~~

~~(B) Upon the request of the board of trustees or managing 768
authority of a state institution of higher education as defined in 769
section 3345.011 of the Revised Code, the director may contract 770
with or a water services company, architect, professional 771
engineer, contractor, or other person experienced in the design 772
and implementation of energy or water conservation measures for a 773
report containing an analysis and recommendations pertaining to 774
the implementation of energy or water conservation measures that 775
result in energy, water, or wastewater cost savings, operating 776
cost savings, or avoided capital costs for the institution. The 777
report shall include estimates of all costs of such installations, 778
including the costs of design, engineering, installation, 779
maintenance, repairs, and debt service, and estimates of the 780~~

energy, water, or wastewater cost savings, operating cost savings, 781
and avoided capital costs created. 782

Sec. 156.03. (A) If the director of administrative services 783
wishes to enter into an installment payment contract pursuant to 784
section 156.04 of the Revised Code or any other contract to 785
implement one or more ~~energy saving measures or, in the case of a~~ 786
~~state institution of higher education pursuant to division (B) of~~ 787
~~section 156.02 of the Revised Code,~~ energy or water saving 788
measures, the director may proceed under Chapter 153. of the 789
Revised Code, or, alternatively, the director may request the 790
controlling board to exempt the contract from Chapter 153. of the 791
Revised Code. 792

If the controlling board by a majority vote approves an 793
exemption, that chapter shall not apply to the contract and 794
instead the director shall request proposals from at least three 795
parties for the implementation of the energy or water saving 796
measures. Prior to providing any interested party a copy of any 797
such request, the director shall advertise, in a newspaper of 798
general circulation in the county where the contract is to be 799
performed, and may advertise by electronic means pursuant to rules 800
adopted by the director, the director's intent to request 801
proposals for the implementation of the energy or water saving 802
measures. The notice shall invite interested parties to submit 803
proposals for consideration and shall be published at least thirty 804
days prior to the date for accepting proposals. 805

(B) Upon receiving the proposals, the director shall analyze 806
them and, after considering the cost estimates of each proposal 807
and the availability of funds to pay for each with current 808
appropriations or by financing the cost of each through an 809
installment payment contract under section 156.04 of the Revised 810
Code, may select one or more proposals or reject all proposals. In 811

selecting proposals, the director shall select the one or more 812
proposals most likely to result in the greatest savings when the 813
~~cost of the proposal is compared to the reduced energy and~~ 814
~~operating costs that will result from implementing the proposal.~~ 815
~~However, in the case of a state institution of higher education~~ 816
~~pursuant to division (B) of section 156.02 of the Revised Code,~~ 817
~~the director shall select the one or more proposals most likely to~~ 818
~~result in the greatest energy, water, or wastewater savings,~~ 819
~~operating costs savings, and avoided capital costs created.~~ 820

(C)~~(1)~~ No contract shall be awarded to implement energy or 821
water saving measures under this section, ~~other than in the case~~ 822
~~of a state institution of higher education, unless the director~~ 823
~~finds that one or both of the following circumstances exists, as~~ 824
~~applicable:~~ 825

~~(a) In the case of a contract for a cogeneration system~~ 826
~~described in division (H) of section 156.01 of the Revised Code,~~ 827
~~the cost of the contract is not likely to exceed the amount of~~ 828
~~money that would be saved in energy and operating costs over no~~ 829
~~more than five years;~~ 830

~~(b) In the case of any contract for any energy saving measure~~ 831
~~other than a cogeneration system, the cost of the contract is not~~ 832
~~likely to exceed the amount of money that would be saved in energy~~ 833
~~and operating costs over no more than ten years.~~ 834

~~(2) In the case of a state institution of higher education~~ 835
~~pursuant to division (B) of section 156.02 of the Revised Code, no~~ 836
~~contract shall be awarded to implement energy or water saving~~ 837
~~measures for the institution under this section unless the~~ 838
~~director finds that both of the following circumstances exists:~~ 839

~~(a)(1) Not less than one-fifteenth of the costs of the~~ 840
~~contract shall be paid within two years from the date of purchase;~~ 841

~~(b) The (2) In the case of a contract for a cogeneration~~ 842

system described in division (B)(8) of section 156.01 of the 843
Revised Code, the remaining balance of the cost of the contract 844
shall be paid within ~~fifteen~~ twenty years from the date of 845
purchase, and, in the case of all other contracts, fifteen years. 846

Sec. 156.04. (A) In accordance with this section and section 847
156.03 of the Revised Code, the director of administrative 848
services may enter into an installment payment contract for the 849
implementation of one or more energy or water saving measures. If 850
the director wishes an installment payment contract to be exempted 851
from Chapter 153. of the Revised Code, the director shall proceed 852
pursuant to section 156.03 of the Revised Code. 853

~~(B)(1) Any installment payment contract under this section,~~ 854
~~other than in the case of a state institution of higher education,~~ 855
~~for one or more energy saving measures shall provide that all~~ 856
~~payments, except payments for repairs and obligations on~~ 857
~~termination of the contract prior to its expiration, are to be a~~ 858
~~stated percentage of calculated savings of energy and operating~~ 859
~~costs attributable to the one or more measures over a defined~~ 860
~~period of time and are to be made only to the extent that those~~ 861
~~savings actually occur. No such contract shall contain any of the~~ 862
~~following:~~ 863

~~(a) A requirement of any additional capital investment or~~ 864
~~contribution of funds, other than funds available from state or~~ 865
~~federal grants;~~ 866

~~(b) In the case of a contract for an energy saving measure~~ 867
~~that is a cogeneration system described in division (H) of section~~ 868
~~156.01 of the Revised Code, a payment term longer than five years;~~ 869

~~(c) In the case of a contract for any energy saving measure~~ 870
~~that is not a cogeneration system, a payment term longer than ten~~ 871
~~years.~~ 872

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

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

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

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

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

Sec. 303.213. (A) As used in this section, "small wind farm" 904
means wind turbines and associated facilities with a single 905
interconnection to the electrical grid and designed for, or 906
capable of, operation at an aggregate capacity of less than five 907
megawatts. 908

(B) Notwithstanding division (A) of section 303.211 of the 909
Revised Code, sections 303.01 to 303.25 of the Revised Code confer 910
power on a board of county commissioners or board of zoning 911
appeals to adopt zoning regulations governing the location, 912
erection, construction, reconstruction, change, alteration, 913
maintenance, removal, use, or enlargement of any small wind farm, 914
whether publicly or privately owned, or the use of land for that 915
purpose, which regulations may be more strict than the regulations 916
prescribed in rules adopted under division ~~(C)~~(B)(2) of section 917
4906.20 of the Revised Code. 918

(C) The designation under this section of a small wind farm 919
as a public utility for purposes of sections 303.01 to 303.25 of 920
the Revised Code shall not affect the classification of a small 921
wind farm for purposes of state or local taxation. 922

(D) Nothing in division (C) of this section shall be 923
construed as affecting the classification of a telecommunications 924
tower as defined in division (B) or (E) of section 303.211 of the 925
Revised Code or any other public utility for purposes of state and 926
local taxation. 927

Sec. 905.40. The director of agriculture ~~may promulgate,~~ 928
shall adopt, and enforce uniform rules: 929

(A) Governing the storing and handling of fertilizers; 930

(B) For safety in the design, construction, location, 931
installation, or operation of equipment for storing, handling, 932
transporting, and utilizing anhydrous ammonia, aqueous ammonia, or 933

other solutions for use as agricultural fertilizers. In addition, 934
with regard to anhydrous ammonia that is used for agricultural 935
purposes, the rules shall establish standards and procedures for 936
the approval or disapproval of the design and construction of 937
storage facilities for anhydrous ammonia and procedures for 938
applying for such approval, including the form of the application. 939

(C) To prohibit the reselling or reuse of such containers 940
without authorization by the owner thereof; 941

(D) Requiring that guaranteed analysis be stated in a form 942
other than that defined in section 905.31 of the Revised Code when 943
another form will not impose an economic hardship on 944
manufacturers, distributors, and users of fertilizer by reason of 945
conflicting labeling requirements among the states. 946

Sec. 905.41. (A) A storage facility for anhydrous ammonia 947
that is used for agricultural purposes shall be designed and 948
constructed in accordance with rules adopted under section 905.40 949
of the Revised Code. On and after the effective date of this 950
section, no person shall construct a storage facility for 951
anhydrous ammonia that is used for agricultural purposes without 952
applying for and receiving approval of the design of the facility 953
and approval to construct the facility from the director of 954
agriculture in accordance with those rules. 955

(B) Upon the submission of an application to the director for 956
the approval of the design and construction of a storage facility 957
for anhydrous ammonia that is used for agricultural purposes in 958
accordance with rules adopted under section 905.40 of the Revised 959
Code, the applicant shall submit written notification of the 960
application to all of the following: 961

(1) The board of township trustees of the township or the 962
legislative authority of the municipal corporation, as applicable, 963
in which the storage facility is proposed to be located; 964

(2) The county sheriff, or the police chief of the police department of a municipal corporation, township, or township or joint township police district, as applicable, with jurisdiction over the location where the storage facility is proposed to be located; 965
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(3) The fire chief of the fire department with jurisdiction over the location where the storage facility is proposed to be located. 970
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(C) Prior to approving or disapproving a storage facility for anhydrous ammonia that is used for agricultural purposes, the director may take into consideration any past violations of an applicable state or federal law pertaining to environmental protection or the environmental laws of another country or any conviction of or guilty plea to a violation of section 901.511 of the Revised Code or a felony drug offense as defined in section 2925.01 of the Revised Code related to the use and storage of chemicals used for agriculture by the owner of the storage facility. 973
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Sec. ~~905.461~~ 905.411. The director of agriculture may issue an order prohibiting the use of anhydrous ammonia equipment found not to comply with rules adopted under division (B) of section 905.40 of the Revised Code. No person shall use the equipment until a release in writing is issued by the director. 983
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The director shall not issue a release until both of the following have occurred: 988
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(A) The director has inspected the anhydrous ammonia equipment and has found that the equipment complies with rules adopted under division (B) of section 905.40 of the Revised Code; 990
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(B) The person in control of the anhydrous ammonia equipment at the time of the noncompliance has paid the director in an 993
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amount equal to all expenses incurred by the director due to the 995
order prohibiting use of the equipment. 996

Sec. 1509.01. As used in this chapter: 997

(A) "Well" means any borehole, whether drilled or bored, 998
within the state for production, extraction, or injection of any 999
gas or liquid mineral, excluding potable water to be used as such, 1000
but including natural or artificial brines and oil field waters. 1001

(B) "Oil" means crude petroleum oil and all other 1002
hydrocarbons, regardless of gravity, that are produced in liquid 1003
form by ordinary production methods, but does not include 1004
hydrocarbons that were originally in a gaseous phase in the 1005
reservoir. 1006

(C) "Gas" means all natural gas and all other fluid 1007
hydrocarbons that are not oil, including condensate. 1008

(D) "Condensate" means liquid hydrocarbons ~~that were~~ 1009
originally in the gaseous phase in the reservoir separated at or 1010
near the well pad or along the gas production or gathering system 1011
prior to gas processing. 1012

(E) "Pool" means an underground reservoir containing a common 1013
accumulation of oil or gas, or both, but does not include a gas 1014
storage reservoir. Each zone of a geological structure that is 1015
completely separated from any other zone in the same structure may 1016
contain a separate pool. 1017

(F) "Field" means the general area underlaid by one or more 1018
pools. 1019

(G) "Drilling unit" means the minimum acreage on which one 1020
well may be drilled, but does not apply to a well for injecting 1021
gas into or removing gas from a gas storage reservoir. 1022

(H) "Waste" includes all of the following: 1023

(1) Physical waste, as that term generally is understood in the oil and gas industry;	1024 1025
(2) Inefficient, excessive, or improper use, or the unnecessary dissipation, of reservoir energy;	1026 1027
(3) Inefficient storing of oil or gas;	1028
(4) Locating, drilling, equipping, operating, or producing an oil or gas well in a manner that reduces or tends to reduce the quantity of oil or gas ultimately recoverable under prudent and proper operations from the pool into which it is drilled or that causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas;	1029 1030 1031 1032 1033 1034
(5) Other underground or surface waste in the production or storage of oil, gas, or condensate, however caused.	1035 1036
(I) "Correlative rights" means the reasonable opportunity to every person entitled thereto to recover and receive the oil and gas in and under the person's tract or tracts, or the equivalent thereof, without having to drill unnecessary wells or incur other unnecessary expense.	1037 1038 1039 1040 1041
(J) "Tract" means a single, individually taxed parcel of land appearing on the tax list.	1042 1043
(K) "Owner," unless referring to a mine, means the person who has the right to drill on a tract or drilling unit, to drill into and produce from a pool, and to appropriate the oil or gas produced therefrom either for the person or for others, except that a person ceases to be an owner with respect to a well when the well has been plugged in accordance with applicable rules adopted and orders issued under this chapter. "Owner" does not include a person who obtains a lease of the mineral rights for oil and gas on a parcel of land if the person does not attempt to produce or produce oil or gas from a well or obtain a permit under this chapter for a well or if the entire interest of a well is	1044 1045 1046 1047 1048 1049 1050 1051 1052 1053 1054

transferred to the person in accordance with division (B) of 1055
section 1509.31 of the Revised Code. 1056

(L) "Royalty interest" means the fee holder's share in the 1057
production from a well. 1058

(M) "Discovery well" means the first well capable of 1059
producing oil or gas in commercial quantities from a pool. 1060

(N) "Prepared clay" means a clay that is plastic and is 1061
thoroughly saturated with fresh water to a weight and consistency 1062
great enough to settle through saltwater in the well in which it 1063
is to be used, except as otherwise approved by the chief of the 1064
division of oil and gas resources management. 1065

(O) "Rock sediment" means the combined cutting and residue 1066
from drilling sedimentary rocks and formation. 1067

(P) "Excavations and workings," "mine," and "pillar" have the 1068
same meanings as in section 1561.01 of the Revised Code. 1069

(Q) "Coal bearing township" means a township designated as 1070
such by the chief of the division of mineral resources management 1071
under section 1561.06 of the Revised Code. 1072

(R) "Gas storage reservoir" means a continuous area of a 1073
subterranean porous sand or rock stratum or strata into which gas 1074
is or may be injected for the purpose of storing it therein and 1075
removing it therefrom and includes a gas storage reservoir as 1076
defined in section 1571.01 of the Revised Code. 1077

(S) "Safe Drinking Water Act" means the "Safe Drinking Water 1078
Act," 88 Stat. 1661 (1974), 42 U.S.C.A. 300(f), as amended by the 1079
"Safe Drinking Water Amendments of 1977," 91 Stat. 1393, 42 1080
U.S.C.A. 300(f), the "Safe Drinking Water Act Amendments of 1986," 1081
100 Stat. 642, 42 U.S.C.A. 300(f), and the "Safe Drinking Water 1082
Act Amendments of 1996," 110 Stat. 1613, 42 U.S.C.A. 300(f), and 1083
regulations adopted under those acts. 1084

(T) "Person" includes any political subdivision, department, 1085
agency, or instrumentality of this state; the United States and 1086
any department, agency, or instrumentality thereof; and any legal 1087
entity defined as a person under section 1.59 of the Revised Code. 1088

(U) "Brine" means all saline geological formation water 1089
resulting from, obtained from, or produced in connection with 1090
exploration, drilling, well stimulation, production of oil or gas, 1091
or plugging of a well. 1092

(V) "Waters of the state" means all streams, lakes, ponds, 1093
marshes, watercourses, waterways, springs, irrigation systems, 1094
drainage systems, and other bodies of water, surface or 1095
underground, natural or artificial, that are situated wholly or 1096
partially within this state or within its jurisdiction, except 1097
those private waters that do not combine or effect a junction with 1098
natural surface or underground waters. 1099

(W) "Exempt Mississippian well" means a well that meets all 1100
of the following criteria: 1101

(1) Was drilled and completed before January 1, 1980; 1102

(2) Is located in an unglaciated part of the state; 1103

(3) Was completed in a reservoir no deeper than the 1104
Mississippian Big Injun sandstone in areas underlain by 1105
Pennsylvanian or Permian stratigraphy, or the Mississippian Berea 1106
sandstone in areas directly underlain by Permian stratigraphy; 1107

(4) Is used primarily to provide oil or gas for domestic use. 1108

(X) "Exempt domestic well" means a well that meets all of the 1109
following criteria: 1110

(1) Is owned by the owner of the surface estate of the tract 1111
on which the well is located; 1112

(2) Is used primarily to provide gas for the owner's domestic 1113
use; 1114

(3) Is located more than two hundred feet horizontal distance 1115
from any inhabited private dwelling house other than an inhabited 1116
private dwelling house located on the tract on which the well is 1117
located; 1118

(4) Is located more than two hundred feet horizontal distance 1119
from any public building that may be used as a place of resort, 1120
assembly, education, entertainment, lodging, trade, manufacture, 1121
repair, storage, traffic, or occupancy by the public. 1122

(Y) "Urbanized area" means an area where a well or production 1123
facilities of a well are located within a municipal corporation or 1124
within a township that has an unincorporated population of more 1125
than five thousand in the most recent federal decennial census 1126
prior to the issuance of the permit for the well or production 1127
facilities. 1128

(Z) "Well stimulation" or "stimulation of a well" means the 1129
process of enhancing well productivity, including hydraulic 1130
fracturing operations. 1131

(AA) "Production operation" means all operations and 1132
activities and all related equipment, facilities, and other 1133
structures that may be used in or associated with the exploration 1134
and production of oil, gas, or other mineral resources that are 1135
regulated under this chapter, including operations and activities 1136
associated with site preparation, site construction, access road 1137
construction, well drilling, well completion, well stimulation, 1138
well site activities, reclamation, and plugging. "Production 1139
operation" also includes all of the following: 1140

(1) The piping, equipment, and facilities used for the 1141
production and preparation of hydrocarbon gas or liquids for 1142
transportation or delivery; 1143

(2) The processes of extraction and recovery, lifting, 1144
stabilization, treatment, separation, production processing, 1145

storage, waste disposal, and measurement of hydrocarbon gas and liquids, including related equipment and facilities;

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

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

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

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

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

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

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

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

(4) Failure to plug an abandoned well or idle and orphaned well unless the well has been granted temporary inactive status

under section 1509.062 of the Revised Code or the chief of the 1176
division of oil and gas resources management has approved another 1177
option concerning the abandoned well or idle and orphaned well; 1178

(5) Failure to restore a disturbed land surface as required 1179
by section 1509.072 of the Revised Code; 1180

(6) Failure to reimburse the oil and gas well fund pursuant 1181
to a final order issued under section 1509.071 of the Revised 1182
Code; 1183

(7) Failure to comply with a final nonappealable order of the 1184
chief issued under section 1509.04 of the Revised Code; 1185

(8) Failure to submit a report, test result, fee, or document 1186
that is required in this chapter or rules adopted under it. 1187

(FF) "Severer" has the same meaning as in section 5749.01 of 1188
the Revised Code. 1189

(GG) "Horizontal well" means a well that is drilled for the 1190
production of oil or gas in which the wellbore reaches a 1191
horizontal or near horizontal position in the Point Pleasant, 1192
Utica, or Marcellus formation and the well is stimulated. 1193

(HH) "Well pad" means the area that is cleared or prepared 1194
for the drilling of one or more horizontal wells. 1195

Sec. 1509.02. There is hereby created in the department of 1196
natural resources the division of oil and gas resources 1197
management, which shall be administered by the chief of the 1198
division of oil and gas resources management. The division has 1199
sole and exclusive authority to regulate the permitting, location, 1200
and spacing of oil and gas wells and production operations within 1201
the state, excepting only those activities regulated under federal 1202
laws for which oversight has been delegated to the environmental 1203
protection agency and activities regulated under sections 6111.02 1204
to 6111.029 of the Revised Code. The regulation of oil and gas 1205

activities is a matter of general statewide interest that requires 1206
uniform statewide regulation, and this chapter and rules adopted 1207
under it constitute a comprehensive plan with respect to all 1208
aspects of the locating, drilling, well stimulation, completing, 1209
and operating of oil and gas wells within this state, including 1210
site construction and restoration, permitting related to those 1211
activities, and the disposal of wastes from those wells. In order 1212
to assist the division in the furtherance of its sole and 1213
exclusive authority as established in this section, the chief may 1214
enter into cooperative agreements with other state agencies for 1215
advice and consultation, including visitations at the surface 1216
location of a well on behalf of the division. Such cooperative 1217
agreements do not confer on other state agencies any authority to 1218
administer or enforce this chapter and rules adopted under it. In 1219
addition, such cooperative agreements shall not be construed to 1220
dilute or diminish the division's sole and exclusive authority as 1221
established in this section. Nothing in this section affects the 1222
authority granted to the director of transportation and local 1223
authorities in section 723.01 or 4513.34 of the Revised Code, 1224
provided that the authority granted under those sections shall not 1225
be exercised in a manner that discriminates against, unfairly 1226
impedes, or obstructs oil and gas activities and operations 1227
regulated under this chapter. 1228

The chief shall not hold any other public office, nor shall 1229
the chief be engaged in any occupation or business that might 1230
interfere with or be inconsistent with the duties as chief. 1231

All moneys collected by the chief pursuant to sections 1232
1509.06, 1509.061, 1509.062, 1509.071, 1509.13, 1509.22, ~~1509.221,~~ 1233
1509.222, 1509.28, 1509.34, and 1509.50 of the Revised Code, 1234
ninety per cent of moneys received by the treasurer of state from 1235
the tax levied in divisions (A)(5) and (6) of section 5749.02 of 1236
the Revised Code, all civil penalties paid under section 1509.33 1237

of the Revised Code, and, notwithstanding any section of the 1238
Revised Code relating to the distribution or crediting of fines 1239
for violations of the Revised Code, all fines imposed under 1240
divisions (A) and (B) of section 1509.99 of the Revised Code and 1241
fines imposed under divisions (C) and (D) of section 1509.99 of 1242
the Revised Code for all violations prosecuted by the attorney 1243
general and for violations prosecuted by prosecuting attorneys 1244
that do not involve the transportation of brine by vehicle shall 1245
be deposited into the state treasury to the credit of the oil and 1246
gas well fund, which is hereby created. Fines imposed under 1247
divisions (C) and (D) of section 1509.99 of the Revised Code for 1248
violations prosecuted by prosecuting attorneys that involve the 1249
transportation of brine by vehicle and penalties associated with a 1250
compliance agreement entered into pursuant to this chapter shall 1251
be paid to the county treasury of the county where the violation 1252
occurred. 1253

The fund shall be used solely and exclusively for the 1254
purposes enumerated in division (B) of section 1509.071 of the 1255
Revised Code, for the expenses of the division associated with the 1256
administration of this chapter and Chapter 1571. of the Revised 1257
Code and rules adopted under them, and for expenses that are 1258
critical and necessary for the protection of human health and 1259
safety and the environment related to oil and gas production in 1260
this state. The expenses of the division in excess of the moneys 1261
available in the fund shall be paid from general revenue fund 1262
appropriations to the department. 1263

Sec. 1509.03. (A) The chief of the division of oil and gas 1264
resources management shall adopt, rescind, and amend, in 1265
accordance with Chapter 119. of the Revised Code, rules for the 1266
administration, implementation, and enforcement of this chapter. 1267
The rules shall include an identification of the subjects that the 1268
chief shall address when attaching terms and conditions to a 1269

permit with respect to a well and production facilities of a well 1270
that are located within an urbanized area or with respect to a 1271
horizontal well and production facilities associated with a 1272
horizontal well. The subjects shall include all of the following: 1273

(1) Safety concerning the drilling or operation of a well; 1274

(2) Protection of the public and private water supply, 1275
including the amount of water used and the source or sources of 1276
the water; 1277

(3) Fencing and screening of surface facilities of a well; 1278

(4) Containment and disposal of drilling and production 1279
wastes; 1280

(5) Construction of access roads for purposes of the drilling 1281
and operation of a well; 1282

(6) Noise mitigation for purposes of the drilling of a well 1283
and the operation of a well, excluding safety and maintenance 1284
operations. 1285

No person shall violate any rule of the chief adopted under 1286
this chapter. 1287

(B)(1) Any order issuing, denying, or modifying a permit or 1288
notices required to be made by the chief pursuant to this chapter 1289
shall be made in compliance with Chapter 119. of the Revised Code, 1290
except that personal service may be used in lieu of service by 1291
mail. Every order issuing, denying, or modifying a permit under 1292
this chapter and described as such shall be considered an 1293
adjudication order for purposes of Chapter 119. of the Revised 1294
Code. Division (B)(1) of this section does not apply to a permit 1295
issued under section 1509.06 of the Revised Code. 1296

(2) Where notice to the owners is required by this chapter, 1297
the notice shall be given as prescribed by a rule adopted by the 1298
chief to govern the giving of notices. The rule shall provide for 1299

notice by publication except in those cases where other types of 1300
notice are necessary in order to meet the requirements of the law. 1301

(C) The chief or the chief's authorized representative may at 1302
any time enter upon lands, public or private, for the purpose of 1303
administration or enforcement of this chapter, the rules adopted 1304
or orders made thereunder, or terms or conditions of permits or 1305
registration certificates issued thereunder and may examine and 1306
copy records pertaining to the drilling, conversion, or operation 1307
of a well for injection of fluids and logs required by division 1308
(C) of section 1509.223 of the Revised Code. No person shall 1309
prevent or hinder the chief or the chief's authorized 1310
representative in the performance of official duties. If entry is 1311
prevented or hindered, the chief or the chief's authorized 1312
representative may apply for, and the court of common pleas may 1313
issue, an appropriate inspection warrant necessary to achieve the 1314
purposes of this chapter within the court's territorial 1315
jurisdiction. 1316

(D) The chief may issue orders to enforce this chapter, rules 1317
adopted thereunder, and terms or conditions of permits issued 1318
thereunder. Any such order shall be considered an adjudication 1319
order for the purposes of Chapter 119. of the Revised Code. No 1320
person shall violate any order of the chief issued under this 1321
chapter. No person shall violate a term or condition of a permit 1322
or registration certificate issued under this chapter. 1323

(E) Orders of the chief denying, suspending, or revoking a 1324
registration certificate; approving or denying approval of an 1325
application for revision of a registered transporter's plan for 1326
disposal; or to implement, administer, or enforce division (A) of 1327
section 1509.224 and sections 1509.22, 1509.222, 1509.223, 1328
1509.225, and 1509.226 of the Revised Code pertaining to the 1329
transportation of brine by vehicle and the disposal of brine so 1330
transported are not adjudication orders for purposes of Chapter 1331

119. of the Revised Code. The chief shall issue such orders under 1332
division (A) or (B) of section 1509.224 of the Revised Code, as 1333
appropriate. 1334

Sec. 1509.04. (A) The chief of the division of oil and gas 1335
resources management, or the chief's authorized representatives, 1336
shall enforce this chapter and the rules, terms and conditions of 1337
permits and registration certificates, and orders adopted or 1338
issued pursuant thereto, except that any peace officer, as defined 1339
in section 2935.01 of the Revised Code, may arrest for violations 1340
of this chapter involving transportation of brine by vehicle. The 1341
enforcement authority of the chief includes the authority to issue 1342
compliance notices and to enter into compliance agreements. 1343

(B)(1) The chief or the chief's authorized representative may 1344
issue an administrative order to an owner for a violation of this 1345
chapter or rules adopted under it, terms and conditions of a 1346
permit issued under it, a registration certificate that is 1347
required under this chapter, or orders issued under this chapter. 1348

(2)(a) If an owner or other person who is required to submit 1349
a report, test result, fee, or document by this chapter or rules 1350
adopted under it submits a request for an extension of time to 1351
submit the report, test result, fee, or document to the chief 1352
prior to the date on which the report, test result, fee, or 1353
document is due, the chief may grant an extension of not more than 1354
sixty additional days from the original date on which the report, 1355
test result, fee, or document is due. 1356

(b) If an owner or other person who is required to submit a 1357
report, test result, fee, or document by this chapter or rules 1358
adopted under it fails to submit the report, test result, fee, or 1359
document before or on the date on which it is due and the chief 1360
has not granted an extension of time under division (B)(2)(a) of 1361
this section, the chief shall make reasonable attempts to notify 1362

the owner or other person of the failure to submit the report, 1363
test result, fee, or document. If an owner or other person who 1364
receives such a notification fails to submit the report, test 1365
result, fee, or document on or before thirty days after the date 1366
on which the chief so notified the owner or other person, the 1367
chief may issue an order under division (B)(2)(c) of this section. 1368
The 1369

(c) The chief may issue an order finding that an owner has 1370
committed a material and substantial violation. 1371

(C) The chief, by order, immediately may suspend drilling, 1372
operating, or plugging activities that are related to a material 1373
and substantial violation and suspend and revoke an unused permit 1374
after finding either of the following: 1375

(1) An owner has failed to comply with an order issued under 1376
division (B)(2)(c) of this section that is final and 1377
nonappealable. 1378

(2) An owner is causing, engaging in, or maintaining a 1379
condition or activity that the chief determines presents an 1380
imminent danger to the health or safety of the public or that 1381
results in or is likely to result in immediate substantial damage 1382
to the natural resources of this state. 1383

(D)(1) The chief may issue an order under division (C) of 1384
this section without prior notification if reasonable attempts to 1385
notify the owner have failed or if the owner is currently in 1386
material breach of a prior order, but in such an event 1387
notification shall be given as soon thereafter as practical. 1388

(2) Not later than five days after the issuance of an order 1389
under division (C) of this section, the chief shall provide the 1390
owner an opportunity to be heard and to present evidence that one 1391
of the following applies: 1392

(a) The condition or activity does not present an imminent 1393

danger to the public health or safety or is not likely to result 1394
in immediate substantial damage to natural resources. 1395

(b) Required records, reports, or logs have been submitted. 1396

(3) If the chief, after considering evidence presented by the 1397
owner under division (D)(2)(a) of this section, determines that 1398
the activities do not present such a threat or that the required 1399
records, reports, or logs have been submitted under division 1400
(D)(2)(b) of this section, the chief shall revoke the order. The 1401
owner may appeal an order to the court of common pleas of the 1402
county in which the activity that is the subject of the order is 1403
located. 1404

(E) The chief may issue a bond forfeiture order pursuant to 1405
section 1509.071 of the Revised Code for failure to comply with a 1406
final nonappealable order issued or compliance agreement entered 1407
into under this section. 1408

(F) The chief may notify drilling contractors, transporters, 1409
service companies, or other similar entities of the compliance 1410
status of an owner. 1411

If the owner fails to comply with a prior enforcement action 1412
of the chief, the chief may issue a suspension order without prior 1413
notification, but in such an event the chief shall give notice as 1414
soon thereafter as practical. Not later than five calendar days 1415
after the issuance of an order, the chief shall provide the owner 1416
an opportunity to be heard and to present evidence that required 1417
records, reports, or logs have been submitted. If the chief, after 1418
considering the evidence presented by the owner, determines that 1419
the requirements have been satisfied, the chief shall revoke the 1420
suspension order. The owner may appeal a suspension order to the 1421
court of common pleas of the county in which the activity that is 1422
the subject of the suspension order is located. 1423

(G) The prosecuting attorney of the county or the attorney 1424

general, upon the request of the chief, may apply to the court of 1425
common pleas in the county in which any of the provisions of this 1426
chapter or any rules, terms or conditions of a permit or 1427
registration certificate, or orders adopted or issued pursuant to 1428
this chapter are being violated for a temporary restraining order, 1429
preliminary injunction, or permanent injunction restraining any 1430
person from such violation. 1431

Sec. 1509.06. (A) An application for a permit to drill a new 1432
well, drill an existing well deeper, reopen a well, convert a well 1433
to any use other than its original purpose, or plug back a well to 1434
a different source of supply, including associated production 1435
operations, shall be filed with the chief of the division of oil 1436
and gas resources management upon such form as the chief 1437
prescribes and shall contain each of the following that is 1438
applicable: 1439

(1) The name and address of the owner and, if a corporation, 1440
the name and address of the statutory agent; 1441

(2) The signature of the owner or the owner's authorized 1442
agent. When an authorized agent signs an application, it shall be 1443
accompanied by a certified copy of the appointment as such agent. 1444

(3) The names and addresses of all persons holding the 1445
royalty interest in the tract upon which the well is located or is 1446
to be drilled or within a proposed drilling unit; 1447

(4) The location of the tract or drilling unit on which the 1448
well is located or is to be drilled identified by section or lot 1449
number, city, village, township, and county; 1450

(5) Designation of the well by name and number; 1451

(6)(a) The geological formation to be tested or used and the 1452
proposed total depth of the well; 1453

(b) If the well is for the injection of a liquid, identity of 1454

the geological formation to be used as the injection zone and the 1455
composition of the liquid to be injected. 1456

(7) The type of drilling equipment to be used; 1457

~~(8) If the well is for the injection of a liquid, identity of 1458
the geological formation to be used as the injection zone and the 1459
composition of the liquid to be injected; 1460~~

(a) An identification, to the best of the owner's knowledge, 1461
of each proposed source of ground water and surface water that 1462
will be used in the production operations of the well. The 1463
identification of each proposed source of water shall indicate if 1464
the water will be withdrawn from the Lake Erie watershed or the 1465
Ohio river watershed. In addition, the owner shall provide, to the 1466
best of the owner's knowledge, the proposed estimated rate and 1467
volume of the water withdrawal for the production operations. If 1468
recycled water will be used in the production operations, the 1469
owner shall provide the estimated volume of recycled water to be 1470
used. The owner shall submit to the chief an update of any of the 1471
information that is required by division (A)(8)(a) of this section 1472
if any of that information changes before the chief issues a 1473
permit for the application. 1474

(b) Except as provided in division (A)(8)(c) of this section, 1475
for an application for a permit to drill a new well within an 1476
urbanized area, the results of sampling of water wells within 1477
three hundred feet of the proposed well prior to commencement of 1478
drilling. In addition, the owner shall include a list that 1479
identifies the location of each water well where the owner of the 1480
property on which the water well is located denied the owner 1481
access to sample the water well. The sampling shall be conducted 1482
in accordance with the guidelines established in "Best Management 1483
Practices For Pre-drilling Water Sampling" in effect at the time 1484
that the application is submitted. The division shall furnish 1485
those guidelines upon request and shall make them available on the 1486

division's web site. If the chief determines that conditions at 1487
the proposed well site warrant a revision, the chief may revise 1488
the distance established in this division for purposes of 1489
pre-drilling water sampling. 1490

(c) For an application for a permit to drill a new horizontal 1491
well, the results of sampling of water wells within one thousand 1492
five hundred feet of the proposed horizontal wellhead prior to 1493
commencement of drilling. In addition, the owner shall include a 1494
list that identifies the location of each water well where the 1495
owner of the property on which the water well is located denied 1496
the owner access to sample the water well. The sampling shall be 1497
conducted in accordance with the guidelines established in "Best 1498
Management Practices For Pre-drilling Water Sampling" in effect at 1499
the time that the application is submitted. The division shall 1500
furnish those guidelines upon request and shall make them 1501
available on the division's web site. If the chief determines that 1502
conditions at the proposed well site warrant a revision, the chief 1503
may revise the distance established in this division for purposes 1504
of pre-drilling water sampling. 1505

(9) For an application for a permit to drill a new well 1506
within an urbanized area, a sworn statement that the applicant has 1507
provided notice by regular mail of the application to the owner of 1508
each parcel of real property that is located within five hundred 1509
feet of the surface location of the well and to the executive 1510
authority of the municipal corporation or the board of township 1511
trustees of the township, as applicable, in which the well is to 1512
be located. In addition, the notice shall contain a statement that 1513
informs an owner of real property who is required to receive the 1514
notice under division (A)(9) of this section that within five days 1515
of receipt of the notice, the owner is required to provide notice 1516
under section 1509.60 of the Revised Code to each residence in an 1517
occupied dwelling that is located on the owner's parcel of real 1518

property. The notice shall contain a statement that an application 1519
has been filed with the division of oil and gas resources 1520
management, identify the name of the applicant and the proposed 1521
well location, include the name and address of the division, and 1522
contain a statement that comments regarding the application may be 1523
sent to the division. The notice may be provided by hand delivery 1524
or regular mail. The identity of the owners of parcels of real 1525
property shall be determined using the tax records of the 1526
municipal corporation or county in which a parcel of real property 1527
is located as of the date of the notice. 1528

(10) A plan for restoration of the land surface disturbed by 1529
drilling operations. The plan shall provide for compliance with 1530
the restoration requirements of division (A) of section 1509.072 1531
of the Revised Code and any rules adopted by the chief pertaining 1532
to that restoration. 1533

(11)(a) A description by name or number of the county, 1534
township, and municipal corporation roads, streets, and highways 1535
that the applicant anticipates will be used for access to and 1536
egress from the well site; 1537

(b) For an application for a permit for a horizontal well, a 1538
copy of an agreement concerning maintenance and safe use of the 1539
roads, streets, and highways described in division (A)(11)(a) of 1540
this section entered into on reasonable terms with the public 1541
official that has the legal authority to enter into such 1542
maintenance and use agreements for each county, township, and 1543
municipal corporation, as applicable, in which any such road, 1544
street, or highway is located or an affidavit on a form prescribed 1545
by the chief attesting that the owner attempted in good faith to 1546
enter into an agreement under division (A)(11)(b) of this section 1547
with the applicable public official of each such county, township, 1548
or municipal corporation, but that no agreement was executed. 1549

(12) Such other relevant information as the chief prescribes 1550

by rule. 1551

Each application shall be accompanied by a map, on a scale 1552
not smaller than four hundred feet to the inch, prepared by an 1553
Ohio registered surveyor, showing the location of the well and 1554
containing such other data as may be prescribed by the chief. If 1555
the well is or is to be located within the excavations and 1556
workings of a mine, the map also shall include the location of the 1557
mine, the name of the mine, and the name of the person operating 1558
the mine. 1559

(B) The chief shall cause a copy of the weekly circular 1560
prepared by the division to be provided to the county engineer of 1561
each county that contains active or proposed drilling activity. 1562
The weekly circular shall contain, in the manner prescribed by the 1563
chief, the names of all applicants for permits, the location of 1564
each well or proposed well, the information required by division 1565
(A)(11) of this section, and any additional information the chief 1566
prescribes. In addition, the chief promptly shall transfer an 1567
electronic copy or facsimile, or if those methods are not 1568
available to a municipal corporation or township, a copy via 1569
regular mail, of a drilling permit application to the clerk of the 1570
legislative authority of the municipal corporation or to the clerk 1571
of the township in which the well or proposed well is or is to be 1572
located if the legislative authority of the municipal corporation 1573
or the board of township trustees has asked to receive copies of 1574
such applications and the appropriate clerk has provided the chief 1575
an accurate, current electronic mailing address or facsimile 1576
number, as applicable. 1577

(C)(1) Except as provided in division (C)(2) of this section, 1578
the chief shall not issue a permit for at least ten days after the 1579
date of filing of the application for the permit unless, upon 1580
reasonable cause shown, the chief waives that period or a request 1581
for expedited review is filed under this section. However, the 1582

chief shall issue a permit within twenty-one days of the filing of 1583
the application unless the chief denies the application by order. 1584

(2) If the location of a well or proposed well will be or is 1585
within an urbanized area, the chief shall not issue a permit for 1586
at least eighteen days after the date of filing of the application 1587
for the permit unless, upon reasonable cause shown, the chief 1588
waives that period or the chief at the chief's discretion grants a 1589
request for an expedited review. However, the chief shall issue a 1590
permit for a well or proposed well within an urbanized area within 1591
thirty days of the filing of the application unless the chief 1592
denies the application by order. 1593

(D) An applicant may file a request with the chief for 1594
expedited review of a permit application if the well is not or is 1595
not to be located in a gas storage reservoir or reservoir 1596
protective area, as "reservoir protective area" is defined in 1597
section 1571.01 of the Revised Code. If the well is or is to be 1598
located in a coal bearing township, the application shall be 1599
accompanied by the affidavit of the landowner prescribed in 1600
section 1509.08 of the Revised Code. 1601

In addition to a complete application for a permit that meets 1602
the requirements of this section and the permit fee prescribed by 1603
this section, a request for expedited review shall be accompanied 1604
by a separate nonrefundable filing fee of two hundred fifty 1605
dollars. Upon the filing of a request for expedited review, the 1606
chief shall cause the county engineer of the county in which the 1607
well is or is to be located to be notified of the filing of the 1608
permit application and the request for expedited review by 1609
telephone or other means that in the judgment of the chief will 1610
provide timely notice of the application and request. The chief 1611
shall issue a permit within seven days of the filing of the 1612
request unless the chief denies the application by order. 1613
Notwithstanding the provisions of this section governing expedited 1614

review of permit applications, the chief may refuse to accept 1615
requests for expedited review if, in the chief's judgment, the 1616
acceptance of the requests would prevent the issuance, within 1617
twenty-one days of their filing, of permits for which applications 1618
are pending. 1619

(E) A well shall be drilled and operated in accordance with 1620
the plans, sworn statements, and other information submitted in 1621
the approved application. 1622

(F) The chief shall issue an order denying a permit if the 1623
chief finds that there is a substantial risk that the operation 1624
will result in violations of this chapter or rules adopted under 1625
it that will present an imminent danger to public health or safety 1626
or damage to the environment, provided that where the chief finds 1627
that terms or conditions to the permit can reasonably be expected 1628
to prevent such violations, the chief shall issue the permit 1629
subject to those terms or conditions, including, if applicable, 1630
terms and conditions regarding subjects identified in rules 1631
adopted under section 1509.03 of the Revised Code. The issuance of 1632
a permit shall not be considered an order of the chief. 1633

The chief shall post notice of each permit that has been 1634
approved under this section on the division's web site not later 1635
than two business days after the application for a permit has been 1636
approved. 1637

(G) Each application for a permit required by section 1509.05 1638
of the Revised Code, except an application to plug back an 1639
existing well that is required by that section and an application 1640
for a well drilled or reopened for purposes of section 1509.22 of 1641
the Revised Code, also shall be accompanied by a nonrefundable fee 1642
as follows: 1643

(1) Five hundred dollars for a permit to conduct activities 1644
in a township with a population of fewer than ten thousand; 1645

(2) Seven hundred fifty dollars for a permit to conduct 1646
activities in a township with a population of ten thousand or 1647
more, but fewer than fifteen thousand; 1648

(3) One thousand dollars for a permit to conduct activities 1649
in either of the following: 1650

(a) A township with a population of fifteen thousand or more; 1651

(b) A municipal corporation regardless of population. 1652

(4) If the application is for a permit that requires 1653
mandatory pooling, an additional five thousand dollars. 1654

For purposes of calculating fee amounts, populations shall be 1655
determined using the most recent federal decennial census. 1656

Each application for the revision or reissuance of a permit 1657
shall be accompanied by a nonrefundable fee of two hundred fifty 1658
dollars. 1659

(H)(1) Prior to the commencement of well pad construction and 1660
prior to the issuance of a permit to drill a proposed horizontal 1661
well or a proposed well that is to be located in an urbanized 1662
area, the division shall conduct a site review to identify and 1663
evaluate any site-specific terms and conditions that may be 1664
attached to the permit. At the site review, a representative of 1665
the division shall consider fencing, screening, and landscaping 1666
requirements, if any, for similar structures in the community in 1667
which the well is proposed to be located. The terms and conditions 1668
that are attached to the permit shall include the establishment of 1669
fencing, screening, and landscaping requirements for the surface 1670
facilities of the proposed well, including a tank battery of the 1671
well. 1672

(2) Prior to the issuance of a permit to drill a proposed 1673
well, the division shall conduct a review to identify and evaluate 1674
any site-specific terms and conditions that may be attached to the 1675

permit if the proposed well will be located in a one-hundred-year floodplain or within the five-year time of travel associated with a public drinking water supply. 1676
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(I) A permit shall be issued by the chief in accordance with this chapter. A permit issued under this section for a well that is or is to be located in an urbanized area shall be valid for twelve months, and all other permits issued under this section shall be valid for twenty-four months. 1679
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(J) An applicant or a permittee, as applicable, shall submit to the chief an update of the information that is required under division (A)(8)(a) of this section if any of that information changes prior to commencement of production operations. 1684
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(K) A permittee or a permittee's authorized representative shall notify an inspector from the division at least twenty-four hours, or another time period agreed to by the chief's authorized representative, prior to the commencement of well pad construction and of drilling, reopening, converting, well stimulation, or plugback operations. 1688
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Sec. 1509.07. An (A)(1) Except as provided in division (A)(2) of this section, an owner of any well, except an exempt Mississippian well or an exempt domestic well, shall obtain liability insurance coverage from a company authorized to do business in this state in an amount of not less than one million dollars bodily injury coverage and property damage coverage to pay damages for injury to persons or damage to property caused by the drilling, operation, or plugging of all the owner's wells in this state. However, if any well is located within an urbanized area, the owner shall obtain liability insurance coverage in an amount of not less than three million dollars for bodily injury coverage and property damage coverage to pay damages for injury to persons or damage to property caused by the drilling, operation, or 1694
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plugging of all of the owner's wells in this state. The 1707

(2) An owner of a horizontal well shall obtain liability 1708
insurance coverage from an insurer authorized to write such 1709
insurance in this state or from an insurer approved to write such 1710
insurance in this state under section 3905.33 of the Revised Code 1711
in an amount of not less than five million dollars bodily injury 1712
coverage and property damage coverage to pay damages for injury to 1713
persons or damage to property caused by the production operations 1714
of all the owner's wells in this state. The insurance policy shall 1715
include a reasonable level of coverage available for an 1716
environmental endorsement. 1717

(3) An owner shall maintain the coverage required under 1718
division (A)(1) or (2) of this section until all the owner's wells 1719
are plugged and abandoned or are transferred to an owner who has 1720
obtained insurance as required under this section and who is not 1721
under a notice of material and substantial violation or under a 1722
suspension order. The owner shall provide proof of liability 1723
insurance coverage to the chief of the division of oil and gas 1724
resources management upon request. Upon failure of the owner to 1725
provide that proof when requested, the chief may order the 1726
suspension of any outstanding permits and operations of the owner 1727
until the owner provides proof of the required insurance coverage. 1728

(B)(1) Except as otherwise provided in this section, an owner 1729
of any well, before being issued a permit under section 1509.06 of 1730
the Revised Code or before operating or producing from a well, 1731
shall execute and file with the division of oil and gas resources 1732
management a surety bond conditioned on compliance with the 1733
restoration requirements of section 1509.072, the plugging 1734
requirements of section 1509.12, the permit provisions of section 1735
1509.13 of the Revised Code, and all rules and orders of the chief 1736
relating thereto, in an amount set by rule of the chief. 1737

(2) The owner may deposit with the chief, instead of a surety 1738

bond, cash in an amount equal to the surety bond as prescribed 1739
pursuant to this section or negotiable certificates of deposit or 1740
irrevocable letters of credit, issued by any bank organized or 1741
transacting business in this state or by any savings and loan 1742
association as defined in section 1151.01 of the Revised Code, 1743
having a cash value equal to or greater than the amount of the 1744
surety bond as prescribed pursuant to this section. Cash or 1745
certificates of deposit shall be deposited upon the same terms as 1746
those upon which surety bonds may be deposited. If certificates of 1747
deposit are deposited with the chief instead of a surety bond, the 1748
chief shall require the bank or savings and loan association that 1749
issued any such certificate to pledge securities of a cash value 1750
equal to the amount of the certificate that is in excess of the 1751
amount insured by any of the agencies and instrumentalities 1752
created under the "Federal Deposit Insurance Act," 64 Stat. 873 1753
(1950), 12 U.S.C. 1811, as amended, and regulations adopted under 1754
it, including at least the federal deposit insurance corporation, 1755
bank insurance fund, and savings association insurance fund. The 1756
securities shall be security for the repayment of the certificate 1757
of deposit. 1758

Immediately upon a deposit of cash, certificates of deposit, 1759
or letters of credit with the chief, the chief shall deliver them 1760
to the treasurer of state who shall hold them in trust for the 1761
purposes for which they have been deposited. 1762

(3) Instead of a surety bond, the chief may accept proof of 1763
financial responsibility consisting of a sworn financial statement 1764
showing a net financial worth within this state equal to twice the 1765
amount of the bond for which it substitutes and, as may be 1766
required by the chief, a list of producing properties of the owner 1767
within this state or other evidence showing ability and intent to 1768
comply with the law and rules concerning restoration and plugging 1769
that may be required by rule of the chief. The owner of an exempt 1770

Mississippian well is not required to file scheduled updates of 1771
the financial documents, but shall file updates of those documents 1772
if requested to do so by the chief. The owner of a nonexempt 1773
Mississippian well shall file updates of the financial documents 1774
in accordance with a schedule established by rule of the chief. 1775
The chief, upon determining that an owner for whom the chief has 1776
accepted proof of financial responsibility instead of bond cannot 1777
demonstrate financial responsibility, shall order that the owner 1778
execute and file a bond or deposit cash, certificates of deposit, 1779
or irrevocable letters of credit as required by this section for 1780
the wells specified in the order within ten days of receipt of the 1781
order. If the order is not complied with, all wells of the owner 1782
that are specified in the order and for which no bond is filed or 1783
cash, certificates of deposit, or letters of credit are deposited 1784
shall be plugged. No owner shall fail or refuse to plug such a 1785
well. Each day on which such a well remains unplugged thereafter 1786
constitutes a separate offense. 1787

(4) The surety bond provided for in this section shall be 1788
executed by a surety company authorized to do business in this 1789
state. 1790

The chief shall not approve any bond until it is personally 1791
signed and acknowledged by both principal and surety, or as to 1792
either by the principal's or surety's attorney in fact, with a 1793
certified copy of the power of attorney attached thereto. The 1794
chief shall not approve a bond unless there is attached a 1795
certificate of the superintendent of insurance that the company is 1796
authorized to transact a fidelity and surety business in this 1797
state. 1798

All bonds shall be given in a form to be prescribed by the 1799
chief and shall run to the state as obligee. 1800

(5) An owner of an exempt Mississippian well or an exempt 1801
domestic well, in lieu of filing a surety bond, cash in an amount 1802

equal to the surety bond, certificates of deposit, irrevocable 1803
letters of credit, or a sworn financial statement, may file a 1804
one-time fee of fifty dollars, which shall be deposited in the oil 1805
and gas well plugging fund created in section 1509.071 of the 1806
Revised Code. 1807

(C) An owner, operator, producer, or other person shall not 1808
operate a well or produce from a well at any time if the owner, 1809
operator, producer, or other person has not satisfied the 1810
requirements established in this section. 1811

Sec. 1509.10. (A) Any person drilling within the state shall, 1812
within sixty days after the completion of drilling operations to 1813
the proposed total depth or after a determination that a well is a 1814
dry or lost hole, file with the division of oil and gas resources 1815
management all wireline electric logs and an accurate well 1816
completion record on a form that is ~~approved~~ prescribed by the 1817
chief of the division of oil and gas resources management that 1818
designates: 1819

(1) The purpose for which the well was drilled; 1820

(2) The character, depth, and thickness of geological units 1821
encountered, including coal seams, mineral beds, associated fluids 1822
such as fresh water, brine, and crude oil, natural gas, and sour 1823
gas, if such seams, beds, fluids, or gases are known; 1824

(3) The dates on which drilling operations were commenced and 1825
completed; 1826

(4) The types of drilling tools used and the name of the 1827
person that drilled the well; 1828

(5) The length in feet of the various sizes of casing and 1829
tubing used in drilling the well, the amount removed after 1830
completion, the type and setting depth of each packer, all other 1831
data relating to cementing in the annular space behind such casing 1832

or tubing, and data indicating completion as a dry, gas, oil, 1833
combination oil and gas, brine injection, or artificial brine well 1834
or a stratigraphic test; 1835

(6) The number of perforations in the casing and the 1836
intervals of the perforations; 1837

(7) The elevation above mean sea level of the point from 1838
which the depth measurements were made, stating also the height of 1839
the point above ground level at the well, the total depth of the 1840
well, and the deepest geological unit that was penetrated in the 1841
drilling of the well; 1842

(8) If applicable, the type, volume, and concentration of 1843
acid, and the date on which acid was used in acidizing the well; 1844

(9)(a) If applicable, the trade name and the total amount of 1845
all products, fluids, and substances, and the supplier of each 1846
product, fluid, or substance, not including cement and its 1847
constituents and lost circulation materials, intentionally added 1848
to facilitate the drilling of any portion of the well until the 1849
surface casing is set and properly sealed. The owner shall 1850
identify each additive used and provide a brief description of the 1851
purpose for which the additive is used. In addition, the owner 1852
shall include a list of all chemicals, not including any 1853
information that is designated as a trade secret pursuant to 1854
division (I)(1) of this section, intentionally added to all 1855
products, fluids, or substances and include each chemical's 1856
corresponding chemical abstracts service number and the maximum 1857
concentration of each chemical. The owner shall obtain the 1858
chemical information, not including any information that is 1859
designated as a trade secret pursuant to division (I)(1) of this 1860
section, from the company that drilled the well, provided service 1861
at the well, or supplied the chemicals. If the company that 1862
drilled the well, provided service at the well, or supplied the 1863
chemicals provides incomplete or inaccurate chemical information, 1864

the owner shall make reasonable efforts to obtain the required 1865
information from the company or supplier. 1866

(b) For purposes of division (A)(9)(a) of this section, if 1867
recycled fluid was used, the total volume of recycled fluid and 1868
the well that is the source of the recycled fluid or the 1869
centralized facility that is the source of the recycled fluid. 1870

(10)(a) If applicable, the type and volume of fluid, not 1871
including cement and its constituents or information that is 1872
designated as a trade secret pursuant to division (I)(1) of this 1873
section, used to stimulate the reservoir of the well, the 1874
reservoir breakdown pressure, the method used for the containment 1875
of fluids recovered from the fracturing of the well, the methods 1876
used for the containment of fluids when pulled from the wellbore 1877
from swabbing the well, the average pumping rate of the well, and 1878
the name of the person that performed the well stimulation. In 1879
addition, the owner shall include a copy of the log from the 1880
stimulation of the well, a copy of the invoice for each of the 1881
procedures and methods described in division (A)~~(9)~~(10) of this 1882
section that were used on a well, and a copy of the pumping 1883
pressure and rate graphs. However, the owner may redact from the 1884
copy of each invoice that is required to be included under 1885
division (A)~~(9)~~(10) of this section the costs of and charges for 1886
the procedures and methods described in division (A)~~(9)~~(10) of 1887
this section that were used on a well. 1888

~~(10)~~(b) If applicable, the trade name and the total volume of 1889
all products, fluids, and substances, and the supplier of each 1890
product, fluid, or substance used to stimulate the well. The owner 1891
shall identify each additive used, provide a brief description of 1892
the purpose for which the additive is used, and include the 1893
maximum concentration of the additive used. In addition, the owner 1894
shall include a list of all chemicals, not including any 1895
information that is designated as a trade secret pursuant to 1896

division (I)(1) of this section, intentionally added to all 1897
products, fluids, or substances and include each chemical's 1898
corresponding chemical abstracts service number and the maximum 1899
concentration of each chemical. The owner shall obtain the 1900
chemical information, not including any information that is 1901
designated as a trade secret pursuant to division (I)(1) of this 1902
section, from the company that stimulated the well or supplied the 1903
chemicals. If the company that stimulated the well or supplied the 1904
chemicals provides incomplete or inaccurate chemical information, 1905
the owner shall make reasonable efforts to obtain the required 1906
information from the company or supplier. 1907

(c) For purposes of division (A)(10)(b) of this section, if 1908
recycled fluid was used, the total volume of recycled fluid and 1909
the well that is the source of the recycled fluid or the 1910
centralized facility that is the source of the recycled fluid. 1911

(11) The name of the company that performed the logging of 1912
the well and the types of wireline electric logs performed on the 1913
well. 1914

The well completion record shall be submitted in duplicate. 1915
The first copy shall be retained as a permanent record in the 1916
files of the division, and the second copy shall be transmitted by 1917
the chief to the division of geological survey. 1918

(B)(1) Not later than sixty days after the completion of the 1919
drilling operations to the proposed total depth, the owner shall 1920
file all wireline electric logs with the division of oil and gas 1921
resources management and the chief shall transmit such logs 1922
electronically, if available, to the division of geological 1923
survey. Such logs may be retained by the owner for a period of not 1924
more than six months, or such additional time as may be granted by 1925
the chief in writing, after the completion of the well 1926
substantially to the depth shown in the application required by 1927
section 1509.06 of the Revised Code. 1928

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

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

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

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

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

material and ~~post a copy of the material safety data sheet on the~~ 1961
~~division's web site to the chief.~~ 1962

(F) An owner shall submit to the chief the information that 1963
is required in divisions (A)(10)(b) and (c) and (B)(3) of this 1964
section consistent with the requirements established in this 1965
section using one of the following methods: 1966

(1) On a form prescribed by the chief; 1967

(2) Through the chemical disclosure registry that is 1968
maintained by the ground water protection council and the 1969
interstate oil and gas compact commission; 1970

(3) Any other means approved by the chief. 1971

(G) The chief shall post on the division's web site each 1972
material safety data sheet obtained under division (E) of this 1973
section. In addition, the chief shall make available through the 1974
division's web site the chemical information that is required by 1975
divisions (A)(9) and (10) and (B)(3) of this section. 1976

(H)(1) If a medical professional, in order to assist in the 1977
diagnosis or treatment of an individual who was affected by an 1978
incident associated with the production operations of a well, 1979
requests the exact chemical composition of each product, fluid, or 1980
substance and of each chemical component in a product, fluid, or 1981
substance that is designated as a trade secret pursuant to 1982
division (I) of this section, the person claiming the trade secret 1983
protection pursuant to that division shall provide to the medical 1984
professional the exact chemical composition of the product, fluid, 1985
or substance and of the chemical component in a product, fluid, or 1986
substance that is requested. 1987

(2) A medical professional who receives information pursuant 1988
to division (H)(1) of this section shall keep the information 1989
confidential and shall not disclose the information for any 1990
purpose that is not related to the diagnosis or treatment of an 1991

individual who was affected by an incident associated with the 1992
production operations of a well. Nothing in division (H)(2) of 1993
this section precludes a medical professional from making any 1994
report required by law or professional ethical standards. 1995

(I)(1) The owner of a well who is required to submit a well 1996
completion record under division (A) of this section or a report 1997
under division (B)(3) of this section or a person that provides 1998
information to the owner as described in and for purposes of 1999
division (A)(9) or (10) or (B)(3) of this section may designate 2000
without disclosing on a form prescribed by the chief and withhold 2001
from disclosure to the chief the identity, amount, concentration, 2002
or purpose of a product, fluid, or substance or of a chemical 2003
component in a product, fluid, or substance as a trade secret. The 2004
owner or person may pursue enforcement of any rights or remedies 2005
established in sections 1333.61 to 1333.69 of the Revised Code for 2006
misappropriation, as defined in section 1333.61 of the Revised 2007
Code, with respect to the identity, amount, concentration, or 2008
purpose of a product, fluid, or substance or a chemical component 2009
in a product, fluid, or substance designated as a trade secret 2010
pursuant to division (I)(1) of this section. The division shall 2011
not disclose information regarding the identity, amount, 2012
concentration, or purpose of any product, fluid, or substance or 2013
of any chemical component in a product, fluid, or substance 2014
designated as a trade secret pursuant to division (I)(1) of this 2015
section. 2016

(2) A property owner, an adjacent property owner, or any 2017
person or agency of this state having an interest that is or may 2018
be adversely affected by a product, fluid, or substance or by a 2019
chemical component in a product, fluid, or substance may commence 2020
a civil action in the court of common pleas of Franklin county 2021
against an owner or person described in division (I)(1) of this 2022
section challenging the owner's or person's claim to entitlement 2023

to trade secret protection for the specific identity, amount, 2024
concentration, or purpose of a product, fluid, or substance or of 2025
a chemical component in a product, fluid, or substance pursuant to 2026
division (I)(1) of this section. A person who commences a civil 2027
action pursuant to division (I)(2) of this section shall provide 2028
notice to the chief in a manner prescribed by the chief. In the 2029
civil action, the court shall conduct an in camera review of 2030
information submitted by an owner or person described in division 2031
(I)(1) of this section to determine if the identity, amount, 2032
concentration, or purpose of a product, fluid, or substance or of 2033
a chemical component in a product, fluid, or substance pursuant to 2034
division (I)(1) of this section is entitled to trade secret 2035
protection. 2036

(J)(1) Except for any information that is designated as a 2037
trade secret pursuant to division (I)(1) of this section and 2038
except as provided in division (J)(2) of this section, the owner 2039
of a well shall maintain records of all chemicals placed in a well 2040
for a period of not less than two years after the date on which 2041
each such chemical was placed in the well. The chief may inspect 2042
the records at any time concerning any such chemical. 2043

(2) An owner or person who has designated the identity, 2044
amount, concentration, or purpose of a product, fluid, or 2045
substance or of a chemical component in a product, fluid, or 2046
substance as a trade secret pursuant to division (I)(1) of this 2047
section shall maintain the records for such a product, fluid, or 2048
substance or for a chemical component in a product, fluid, or 2049
substance for a period of not less than two years after the date 2050
on which each such product, fluid, or substance or each such 2051
chemical component in a product, fluid, or substance was placed in 2052
the well. Upon the request of the chief, the owner or person, as 2053
applicable, shall disclose the records to the chief if the 2054
information is necessary to respond to a spill, release, or 2055

investigation. However, the chief shall not disclose the 2056
information that is designated as a trade secret. 2057

(K)(1) For purposes of correcting inaccuracies and 2058
incompleteness in chemical information required by divisions 2059
(A)(9) and (10) and (B)(3) of this section, an owner shall be 2060
considered in substantial compliance if the owner has made 2061
reasonable efforts to obtain the required information from the 2062
supplier. 2063

(2) For purposes of reporting under this section, an owner is 2064
not required to report chemicals that occur incidentally or in 2065
trace amounts. 2066

Sec. 1509.11. (A) The owner of any well, including a 2067
horizontal well, producing or capable of producing oil or gas 2068
shall file with the chief of the division of oil and gas resources 2069
management, on or before the thirty-first day of March, a 2070
statement of production of oil, gas, and brine for the last 2071
preceding calendar year in such form as the chief may prescribe. 2072
An owner that has more than one hundred such wells in this state 2073
shall submit electronically the statement of production in a 2074
format that is approved by the chief. The chief shall include on 2075
the form, at the minimum, a request for the submittal of the 2076
information that a person who is regulated under this chapter is 2077
required to submit under the "Emergency Planning and Community 2078
Right-To-Know Act of 1986," 100 Stat. 1728, 42 U.S.C.A. 11001, and 2079
regulations adopted under it, and that the division does not 2080
obtain through other reporting mechanisms. 2081

(B) The chief shall not disclose information received from 2082
the department of taxation under division (C)(12) of section 2083
5703.21 of the Revised Code until the related statement of 2084
production required by division (A) of this section is filed with 2085
the chief. 2086

Sec. 1509.22. (A) Except when acting in accordance with 2087
section 1509.226 of the Revised Code, no person shall place or 2088
cause to be placed brine, crude oil, natural gas, or other fluids 2089
associated with the exploration or development of oil and gas 2090
resources in surface or ground water or in or on the land in such 2091
quantities or in such manner as actually causes or could 2092
reasonably be anticipated to cause either of the following: 2093

(1) Water used for consumption by humans or domestic animals 2094
to exceed the standards of the Safe Drinking Water Act; 2095

(2) Damage or injury to public health or safety or the 2096
environment. 2097

(B) No person shall store or dispose of brine in violation of 2098
a plan approved under division (A) of section 1509.222 or section 2099
1509.226 of the Revised Code, in violation of a resolution 2100
submitted under section 1509.226 of the Revised Code, or in 2101
violation of rules or orders applicable to those plans or 2102
resolutions. 2103

(C) The chief of the division of oil and gas resources 2104
management shall adopt rules and issue orders regarding storage 2105
and disposal of brine and other waste substances; however, the 2106
storage and disposal of brine and other waste substances and the 2107
chief's rules relating to storage and disposal are subject to all 2108
of the following standards: 2109

(1) Brine from any well except an exempt Mississippian well 2110
shall be disposed of only by injection into an underground 2111
formation, including annular disposal if approved by rule of the 2112
chief, which injection shall be subject to division (D) of this 2113
section; by surface application in accordance with section 2114
1509.226 of the Revised Code; in association with a method of 2115
enhanced recovery as provided in section 1509.21 of the Revised 2116
Code; or by other methods approved by the chief for testing or 2117

implementing a new technology or method of disposal. Brine from 2118
exempt Mississippian wells shall not be discharged directly into 2119
the waters of the state. 2120

(2) Muds, cuttings, and other waste substances shall not be 2121
disposed of in violation of any rule. 2122

(3) Pits or steel tanks shall be used as authorized by the 2123
chief for containing brine and other waste substances resulting 2124
from, obtained from, or produced in connection with drilling, well 2125
stimulation, reworking, reconditioning, plugging back, or plugging 2126
operations. The pits and steel tanks shall be constructed and 2127
maintained to prevent the escape of brine and other waste 2128
substances. 2129

(4) A dike or pit may be used for spill prevention and 2130
control. A dike or pit so used shall be constructed and maintained 2131
to prevent the escape of brine and crude oil, and the reservoir 2132
within such a dike or pit shall be kept reasonably free of brine, 2133
crude oil, and other waste substances. 2134

(5) Earthen impoundments constructed pursuant to the 2135
division's specifications may be used for the temporary storage of 2136
fluids used in the stimulation of a well. 2137

(6) No pit, earthen impoundment, or dike shall be used for 2138
the temporary storage of brine or other substances except in 2139
accordance with divisions (C)(3) to (5) of this section. 2140

(7) No pit or dike shall be used for the ultimate disposal of 2141
brine or other liquid waste substances. 2142

(D)(1) No person, without first having obtained a permit from 2143
the chief, shall inject brine or other waste substances resulting 2144
from, obtained from, or produced in connection with oil or gas 2145
drilling, exploration, or production into an underground formation 2146
unless a rule of the chief expressly authorizes the injection 2147
without a permit. The permit shall be in addition to any permit 2148

required by section 1509.05 of the Revised Code, and the permit 2149
application shall be accompanied by a permit fee of one thousand 2150
dollars. The chief shall adopt rules in accordance with Chapter 2151
119. of the Revised Code regarding the injection into wells of 2152
brine and other waste substances resulting from, obtained from, or 2153
produced in connection with oil or gas drilling, exploration, or 2154
production. ~~The rules may authorize tests to evaluate whether~~ 2155
~~fluids or carbon dioxide may be injected in a reservoir and to~~ 2156
~~determine the maximum allowable injection pressure, which shall be~~ 2157
~~conducted in accordance with methods prescribed in the rules or in~~ 2158
~~accordance with conditions of the permit. In addition, the rules~~ 2159
shall include provisions regarding applications all of the 2160
following: 2161

(a) Applications for and issuance of the permits required by 2162
this division; ~~entry~~ 2163

(b) Entry to conduct inspections and to examine and copy 2164
records to ascertain compliance with this division and rules, 2165
orders, and terms and conditions of permits adopted or issued 2166
under it; ~~the~~ 2167

(c) The provision and maintenance of information through 2168
monitoring, recordkeeping, and reporting; and. In addition, the 2169
rules shall require the owner of an injection well who has been 2170
issued a permit under division (D) of this section to quarterly 2171
submit electronically to the chief information concerning each 2172
shipment of brine or other waste substances received by the owner 2173
for injection into the well. 2174

(d) The provision and electronic reporting quarterly of 2175
information concerning brine and other waste substances from a 2176
transporter that is registered under section 1509.222 of the 2177
Revised Code prior to the injection of the transported brine or 2178
other waste substances; 2179

(e) Any other provisions in furtherance of the goals of this 2180
section and the Safe Drinking Water Act. ~~Fe~~ 2181

(2) The chief may adopt rules in accordance with Chapter 119. 2182
of the Revised Code authorizing tests to evaluate whether fluids 2183
or carbon dioxide may be injected in a reservoir and to determine 2184
the maximum allowable injection pressure, which shall be conducted 2185
in accordance with methods prescribed in the rules or in 2186
accordance with conditions of the permit. In addition, the chief 2187
may adopt rules that do both of the following: 2188

(a) Establish the total depth of a well for which a permit 2189
has been applied for or issued under this division; 2190

(b) Establish requirements and procedures to protect public 2191
health and safety. 2192

(3) To implement the goals of the Safe Drinking Water Act, 2193
the chief shall not issue a permit for the injection of brine or 2194
other waste substances resulting from, obtained from, or produced 2195
in connection with oil or gas drilling, exploration, or production 2196
unless the chief concludes that the applicant has demonstrated 2197
that the injection will not result in the presence of any 2198
contaminant in ground water that supplies or can reasonably be 2199
expected to supply any public water system, such that the presence 2200
of the contaminant may result in the system's not complying with 2201
any national primary drinking water regulation or may otherwise 2202
adversely affect the health of persons. ~~This~~ 2203

(4) The chief may issue an order to the owner of a well in 2204
existence on the effective date of this amendment to make changes 2205
in the operation of the well in order to correct problems or to 2206
address safety concerns. 2207

(5) This division and rules, orders, and terms and conditions 2208
of permits adopted or issued under it shall be construed to be no 2209
more stringent than required for compliance with the Safe Drinking 2210

Water Act unless essential to ensure that underground sources of 2211
drinking water will not be endangered. 2212

(E) The owner holding a permit, or an assignee or transferee 2213
who has assumed the obligations and liabilities imposed by this 2214
chapter and any rules adopted or orders issued under it pursuant 2215
to section 1509.31 of the Revised Code, and the operator of a well 2216
shall be liable for a violation of this section or any rules 2217
adopted or orders or terms or conditions of a permit issued under 2218
it. 2219

(F) An owner shall replace the water supply of the holder of 2220
an interest in real property who obtains all or part of the 2221
holder's supply of water for domestic, agricultural, industrial, 2222
or other legitimate use from an underground or surface source 2223
where the supply has been substantially disrupted by 2224
contamination, diminution, or interruption proximately resulting 2225
from the owner's oil or gas operation, or the owner may elect to 2226
compensate the holder of the interest in real property for the 2227
difference between the fair market value of the interest before 2228
the damage occurred to the water supply and the fair market value 2229
after the damage occurred if the cost of replacing the water 2230
supply exceeds this difference in fair market values. However, 2231
during the pendency of any order issued under this division, the 2232
owner shall obtain for the holder or shall reimburse the holder 2233
for the reasonable cost of obtaining a water supply from the time 2234
of the contamination, diminution, or interruption by the operation 2235
until the owner has complied with an order of the chief for 2236
compliance with this division or such an order has been revoked or 2237
otherwise becomes not effective. If the owner elects to pay the 2238
difference in fair market values, but the owner and the holder 2239
have not agreed on the difference within thirty days after the 2240
chief issues an order for compliance with this division, within 2241
ten days after the expiration of that thirty-day period, the owner 2242

and the chief each shall appoint an appraiser to determine the 2243
difference in fair market values, except that the holder of the 2244
interest in real property may elect to appoint and compensate the 2245
holder's own appraiser, in which case the chief shall not appoint 2246
an appraiser. The two appraisers appointed shall appoint a third 2247
appraiser, and within thirty days after the appointment of the 2248
third appraiser, the three appraisers shall hold a hearing to 2249
determine the difference in fair market values. Within ten days 2250
after the hearing, the appraisers shall make their determination 2251
by majority vote and issue their final determination of the 2252
difference in fair market values. The chief shall accept a 2253
determination of the difference in fair market values made by 2254
agreement of the owner and holder or by appraisers under this 2255
division and shall make and dissolve orders accordingly. This 2256
division does not affect in any way the right of any person to 2257
enforce or protect, under applicable law, the person's interest in 2258
water resources affected by an oil or gas operation. 2259

(G) In any action brought by the state for a violation of 2260
division (A) of this section involving any well at which annular 2261
disposal is used, there shall be a rebuttable presumption 2262
available to the state that the annular disposal caused the 2263
violation if the well is located within a one-quarter-mile radius 2264
of the site of the violation. 2265

(H)(1) There is levied on the owner of an injection well who 2266
has been issued a permit under division (D) of this section the 2267
following fees: 2268

(a) Five cents per barrel of each substance that is delivered 2269
to a well to be injected in the well when the substance is 2270
produced within the division of oil and gas resources management 2271
regulatory district in which the well is located or within an 2272
adjoining oil and gas resources management regulatory district; 2273

(b) Twenty cents per barrel of each substance that is 2274

delivered to a well to be injected in the well when the substance 2275
is not produced within the division of oil and gas resources 2276
management regulatory district in which the well is located or 2277
within an adjoining oil and gas resources management regulatory 2278
district. 2279

(2) The maximum number of barrels of substance per injection 2280
well in a calendar year on which a fee may be levied under 2281
division (H) of this section is five hundred thousand. If in a 2282
calendar year the owner of an injection well receives more than 2283
five hundred thousand barrels of substance to be injected in the 2284
owner's well and if the owner receives at least one substance that 2285
is produced within the division's regulatory district in which the 2286
well is located or within an adjoining regulatory district and at 2287
least one substance that is not produced within the division's 2288
regulatory district in which the well is located or within an 2289
adjoining regulatory district, the fee shall be calculated first 2290
on all of the barrels of substance that are not produced within 2291
the division's regulatory district in which the well is located or 2292
within an adjoining district at the rate established in division 2293
(H)(2) of this section. The fee then shall be calculated on the 2294
barrels of substance that are produced within the division's 2295
regulatory district in which the well is located or within an 2296
adjoining district at the rate established in division (H)(1) of 2297
this section until the maximum number of barrels established in 2298
division (H)(2) of this section has been attained. 2299

(3) The owner of an injection well who is issued a permit 2300
under division (D) of this section shall collect the fee levied by 2301
division (H) of this section on behalf of the division of oil and 2302
gas resources management and forward the fee to the division. The 2303
chief shall transmit all money received under division (H) of this 2304
section to the treasurer of state who shall deposit the money in 2305
the state treasury to the credit of the oil and gas well fund 2306

created in section 1509.02 of the Revised Code. The owner of an 2307
injection well who collects the fee levied by this division may 2308
retain up to three per cent of the amount that is collected. 2309

(4) The chief shall adopt rules in accordance with Chapter 2310
119. of the Revised Code establishing requirements and procedures 2311
for collection of the fee levied by division (H) of this section. 2312

Sec. 1509.221. (A) No person, without first having obtained a 2313
permit from the chief of the division of oil and gas resources 2314
management, shall drill a well or inject a substance into a well 2315
for the exploration for or extraction of minerals or energy, other 2316
than oil or natural gas, including, but not limited to, the mining 2317
of sulfur by the Frasch process, the solution mining of minerals, 2318
the in situ combustion of fossil fuel, or the recovery of 2319
geothermal energy to produce electric power, unless a rule of the 2320
chief expressly authorizes the activity without a permit. The 2321
permit shall be in addition to any permit required by section 2322
1509.05 of the Revised Code. The chief shall adopt rules in 2323
accordance with Chapter 119. of the Revised Code governing the 2324
issuance of permits under this section. The rules shall include 2325
provisions regarding the matters the applicant for a permit shall 2326
demonstrate to establish eligibility for a permit; the form and 2327
content of applications for permits; the terms and conditions of 2328
permits; entry to conduct inspections and to examine and copy 2329
records to ascertain compliance with this section and rules, 2330
orders, and terms and conditions of permits adopted or issued 2331
thereunder; provision and maintenance of information through 2332
monitoring, recordkeeping, and reporting; and other provisions in 2333
furtherance of the goals of this section and the Safe Drinking 2334
Water Act. To implement the goals of the Safe Drinking Water Act, 2335
the chief shall not issue a permit under this section, unless the 2336
chief concludes that the applicant has demonstrated that the 2337
drilling, injection of a substance, and extraction of minerals or 2338

energy will not result in the presence of any contaminant in 2339
underground water that supplies or can reasonably be expected to 2340
supply any public water system, such that the presence of the 2341
contaminant may result in the system's not complying with any 2342
national primary drinking water regulation or may otherwise 2343
adversely affect the health of persons. The chief may issue, 2344
without a prior adjudication hearing, orders requiring compliance 2345
with this section and rules, orders, and terms and conditions of 2346
permits adopted or issued thereunder. This section and rules, 2347
orders, and terms and conditions of permits adopted or issued 2348
thereunder shall be construed to be no more stringent than 2349
required for compliance with the Safe Drinking Water Act, unless 2350
essential to ensure that underground sources of drinking water 2351
will not be endangered. 2352

~~(B)(1) There is levied on the owner of an injection well who 2353
has been issued a permit under division (D) of section 1509.22 of 2354
the Revised Code the following fees: 2355~~

~~(a) Five cents per barrel of each substance that is delivered 2356
to a well to be injected in the well when the substance is 2357
produced within the division of oil and gas resources management 2358
regulatory district in which the well is located or within an 2359
adjoining oil and gas resources management regulatory district; 2360~~

~~(b) Twenty cents per barrel of each substance that is 2361
delivered to a well to be injected in the well when the substance 2362
is not produced within the division of oil and gas resources 2363
management regulatory district in which the well is located or 2364
within an adjoining oil and gas resources management regulatory 2365
district. 2366~~

~~(2) The maximum number of barrels of substance per injection 2367
well in a calendar year on which a fee may be levied under 2368
division (B) of this section is five hundred thousand. If in a 2369
calendar year the owner of an injection well receives more than 2370~~

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

~~(3) The owner of an injection well who is issued a permit
under division (D) of section 1509.22 of the Revised Code shall
collect the fee levied by division (B) of this section on behalf
of the division of oil and gas resources management and forward
the fee to the division. The chief shall transmit all money
received under division (B) of this section to the treasurer of
state who shall deposit the money in the state treasury to the
credit of the oil and gas well fund created in section 1509.02 of
the Revised Code. The owner of an injection well who collects the
fee levied by this division may retain up to three per cent of the
amount that is collected.~~

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

~~(C) In an action under section 1509.04 or 1509.33 of the
Revised Code to enforce this section, the court shall grant~~

preliminary and permanent injunctive relief and impose a civil 2403
penalty upon the showing that the person against whom the action 2404
is brought has violated, is violating, or will violate this 2405
section or rules, orders, or terms or conditions of permits 2406
adopted or issued thereunder. The court shall not require, prior 2407
to granting such preliminary and permanent injunctive relief or 2408
imposing a civil penalty, proof that the violation was, is, or 2409
will be the result of intentional conduct or negligence. In any 2410
such action, any person may intervene as a plaintiff upon the 2411
demonstration that the person has an interest that is or may be 2412
adversely affected by the activity for which injunctive relief or 2413
a civil penalty is sought. 2414

Sec. 1509.222. (A)(1) Except as provided in section 1509.226 2415
of the Revised Code, no person shall transport brine by vehicle in 2416
this state unless the business entity that employs the person 2417
first registers with and obtains a registration certificate and 2418
identification number from the chief of the division of oil and 2419
gas resources management. 2420

(2) No more than one registration certificate shall be 2421
required of any business entity. Registration certificates issued 2422
under this section are not transferable. An applicant shall file 2423
an application with the chief, containing such information in such 2424
form as the chief prescribes, ~~but including a.~~ The application 2425
shall include at least all of the following: 2426

(a) A list that identifies each vehicle, vessel, railcar, and 2427
container that will be used in the transportation of brine; 2428

(b) A plan for disposal that provides for compliance with the 2429
requirements of this chapter and rules of the chief pertaining to 2430
the transportation of brine by vehicle and the disposal of brine 2431
so transported and that lists all disposal sites that the 2432
applicant intends to use, ~~the;~~ 2433

(c) The bond required by section 1509.225 of the Revised Code, ~~and a:~~ 2434
2435

(d) A certificate issued by an insurance company authorized to do business in this state certifying that the applicant has in force a liability insurance policy in an amount not less than three hundred thousand dollars bodily injury coverage and three hundred thousand dollars property damage coverage to pay damages for injury to persons or property caused by the collecting, handling, transportation, or disposal of brine. ~~The~~ 2436
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The insurance policy required by division (A)(2)(d) of this section shall be maintained in effect during the term of the registration certificate. The policy or policies providing the coverage shall require the insurance company to give notice to the chief if the policy or policies lapse for any reason. Upon such termination of the policy, the chief may suspend the registration certificate until proper insurance coverage is obtained. ~~Each~~ 2443
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(3) ~~Each~~ application for a registration certificate shall be accompanied by a nonrefundable fee of five hundred dollars. 2450
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~~(3)~~(4) If a business entity that has been issued a registration certificate under this section changes its name due to a business reorganization or merger, the business entity shall revise the bond or certificates of deposit required by section 1509.225 of the Revised Code and obtain a new certificate from an insurance company in accordance with division (A)(2)(e) of this section to reflect the change in the name of the business entity. 2452
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(B) The chief shall issue an order denying an application for a registration certificate if the chief finds that either of the following applies: 2459
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(1) The applicant, at the time of applying for the registration certificate, has been found liable by a final nonappealable order of a court of competent jurisdiction for 2462
2463
2464

damage to streets, roads, highways, bridges, culverts, or 2465
drainways pursuant to section 4513.34 or 5577.12 of the Revised 2466
Code until the applicant provides the chief with evidence of 2467
compliance with the order. 2468

(2) The applicant's plan for disposal does not provide for 2469
compliance with the requirements of this chapter and rules of the 2470
chief pertaining to the transportation of brine by vehicle and the 2471
disposal of brine so transported. 2472

(C) No applicant shall attempt to circumvent division (B) of 2473
this section by applying for a registration certificate under a 2474
different name or business organization name, by transferring 2475
responsibility to another person or entity, or by any similar act. 2476

(D) A registered transporter shall apply to revise a disposal 2477
plan under procedures that the chief shall prescribe by rule. 2478
However, at a minimum, an application for a revision shall list 2479
all sources and disposal sites of brine currently transported. The 2480
chief shall deny any application for a revision of a plan under 2481
this division if the chief finds that the proposed revised plan 2482
does not provide for compliance with the requirements of this 2483
chapter and rules of the chief pertaining to the transportation of 2484
brine by vehicle and the disposal of brine so transported. 2485
Approvals and denials of revisions shall be by order of the chief. 2486

(E) The chief may adopt rules, issue orders, and attach terms 2487
and conditions to registration certificates as may be necessary to 2488
administer, implement, and enforce sections 1509.222 to 1509.226 2489
of the Revised Code for protection of public health or safety or 2490
conservation of natural resources. 2491

Sec. 1509.223. (A) No permit holder or owner of a well shall 2492
enter into an agreement with or permit any person to transport 2493
brine produced from the well who is not registered pursuant to 2494
section 1509.222 of the Revised Code or exempt from registration 2495

under section 1509.226 of the Revised Code. 2496

(B) Each registered transporter shall file with the chief of 2497
the division of oil and gas resources management, on or before the 2498
fifteenth day of April, a statement concerning brine transported, 2499
including quantities transported and source and delivery points, 2500
during the last preceding calendar year, and such other 2501
information in such form as the chief may prescribe. 2502

(C) Each registered transporter shall keep on each vehicle 2503
used to transport brine a daily log and have it available upon the 2504
request of the chief or an authorized representative of the chief 2505
or a peace officer. The log shall, at a minimum, include all of 2506
the following information: 2507

(1) The name of the owner or owners of the well or wells 2508
producing the brine to be transported; 2509

(2) The date and time the brine is loaded; 2510

(3) The name of the driver; 2511

(4) The amount of brine loaded at each collection point; 2512

(5) The disposal location; 2513

(6) The date and time the brine is disposed of and the amount 2514
of brine disposed of at each location. 2515

The chief, by rule, may establish procedures for the 2516
electronic submission to the chief of the information that is 2517
required to be included in the daily log. No registered 2518
transporter shall falsify or fail to keep or submit the log 2519
required by this division. 2520

(D) Each registered transporter shall legibly identify with 2521
reflective paints all vehicles employed in transporting or 2522
disposing of brine. Letters shall be no less than four inches in 2523
height and shall indicate the identification number issued by the 2524
chief, the word "brine," and the name and telephone number of the 2525

transporter. 2526

(E) The chief shall maintain and keep a current list of 2527
persons registered to transport brine under section 1509.222 of 2528
the Revised Code. The list shall be open to public inspection. It 2529
is an affirmative defense to a charge under division (A) of this 2530
section that at the time the permit holder or owner of a well 2531
entered into an agreement with or permitted a person to transport 2532
brine, the person was shown on the list as currently registered to 2533
transport brine. 2534

Sec. 1509.23. (A) Rules of the chief of the division of oil 2535
and gas resources management may specify practices to be followed 2536
in the drilling and treatment of wells, production of oil and gas, 2537
and plugging of wells for protection of public health or safety or 2538
to prevent damage to natural resources, including specification of 2539
the following: 2540

(1) Appropriate devices; 2541

(2) Minimum distances that wells and other excavations, 2542
structures, and equipment shall be located from water wells, 2543
streets, roads, highways, rivers, lakes, streams, ponds, other 2544
bodies of water, railroad tracks, public or private recreational 2545
areas, zoning districts, and buildings or other structures. Rules 2546
adopted under division (A)(2) of this section shall not conflict 2547
with section 1509.021 of the Revised Code. 2548

(3) Other methods of operation; 2549

(4) Procedures, methods, and equipment and other requirements 2550
for equipment to prevent and contain discharges of oil and brine 2551
from oil production facilities and oil drilling and workover 2552
facilities consistent with and equivalent in scope, content, and 2553
coverage to section 311(j)(1)(c) of the "Federal Water Pollution 2554
Control Act Amendments of 1972," 86 Stat. 886, 33 U.S.C.A. 1251, 2555

as amended, and regulations adopted under it. In addition, the rules may specify procedures, methods, and equipment and other requirements for equipment to prevent and contain surface and subsurface discharges of fluids, condensates, and gases.

(5) Notifications;

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

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

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

Sec. 1509.28. (A) The chief of the division of oil and gas resources management, upon the chief's own motion or upon application by the owners of sixty-five per cent of the land area overlying the pool, shall hold a hearing to consider the need for

the operation as a unit of an entire pool or part thereof. An 2587
application by owners shall be accompanied by a nonrefundable fee 2588
of ten thousand dollars and by such information as the chief may 2589
request. 2590

The chief shall make an order providing for the unit 2591
operation of a pool or part thereof if the chief finds that such 2592
operation is reasonably necessary to increase substantially the 2593
ultimate recovery of oil and gas, and the value of the estimated 2594
additional recovery of oil or gas exceeds the estimated additional 2595
cost incident to conducting the operation. The order shall be upon 2596
terms and conditions that are just and reasonable and shall 2597
prescribe a plan for unit operations that shall include: 2598

(1) A description of the unitized area, termed the unit area; 2599

(2) A statement of the nature of the operations contemplated; 2600

(3) An allocation to the separately owned tracts in the unit 2601
area of all the oil and gas that is produced from the unit area 2602
and is saved, being the production that is not used in the conduct 2603
of operations on the unit area or not unavoidably lost. The 2604
allocation shall be in accord with the agreement, if any, of the 2605
interested parties. If there is no such agreement, the chief shall 2606
determine the value, from the evidence introduced at the hearing, 2607
of each separately owned tract in the unit area, exclusive of 2608
physical equipment, for development of oil and gas by unit 2609
operations, and the production allocated to each tract shall be 2610
the proportion that the value of each tract so determined bears to 2611
the value of all tracts in the unit area. 2612

(4) A provision for the credits and charges to be made in the 2613
adjustment among the owners in the unit area for their respective 2614
investments in wells, tanks, pumps, machinery, materials, and 2615
equipment contributed to the unit operations; 2616

(5) A provision providing how the expenses of unit 2617

operations, including capital investment, shall be determined and 2618
charged to the separately owned tracts and how the expenses shall 2619
be paid; 2620

(6) A provision, if necessary, for carrying or otherwise 2621
financing any person who is unable to meet the person's financial 2622
obligations in connection with the unit, allowing a reasonable 2623
interest charge for such service; 2624

(7) A provision for the supervision and conduct of the unit 2625
operations, in respect to which each person shall have a vote with 2626
a value corresponding to the percentage of the expenses of unit 2627
operations chargeable against the interest of that person; 2628

(8) The time when the unit operations shall commence, and the 2629
manner in which, and the circumstances under which, the unit 2630
operations shall terminate; 2631

(9) Such additional provisions as are found to be appropriate 2632
for carrying on the unit operations, and for the protection or 2633
adjustment of correlative rights. 2634

(B) No order of the chief providing for unit operations shall 2635
become effective unless and until the plan for unit operations 2636
prescribed by the chief has been approved in writing by those 2637
owners who, under the chief's order, will be required to pay at 2638
least sixty-five per cent of the costs of the unit operation, and 2639
also by the royalty or, with respect to unleased acreage, fee 2640
owners of sixty-five per cent of the acreage to be included in the 2641
unit. If the plan for unit operations has not been so approved by 2642
owners and royalty owners at the time the order providing for unit 2643
operations is made, the chief shall upon application and notice 2644
hold such supplemental hearings as may be required to determine if 2645
and when the plan for unit operations has been so approved. If the 2646
owners and royalty owners, or either, owning the required 2647
percentage of interest in the unit area do not approve the plan 2648

for unit operations within a period of six months from the date on 2649
which the order providing for unit operations is made, the order 2650
shall cease to be of force and shall be revoked by the chief. 2651

An order providing for unit operations may be amended by an 2652
order made by the chief, in the same manner and subject to the 2653
same conditions as an original order providing for unit 2654
operations, provided that: 2655

(1) If such an amendment affects only the rights and 2656
interests of the owners, the approval of the amendment by the 2657
royalty owners shall not be required. 2658

(2) No such order of amendment shall change the percentage 2659
for allocation of oil and gas as established for any separately 2660
owned tract by the original order, except with the consent of all 2661
persons owning interest in the tract. 2662

The chief, by an order, may provide for the unit operation of 2663
a pool or a part thereof that embraces a unit area established by 2664
a previous order of the chief. Such an order, in providing for the 2665
allocation of unit production, shall first treat the unit area 2666
previously established as a single tract, and the portion of the 2667
unit production so allocated thereto shall then be allocated among 2668
the separately owned tracts included in the previously established 2669
unit area in the same proportions as those specified in the 2670
previous order. 2671

Oil and gas allocated to a separately owned tract shall be 2672
deemed, for all purposes, to have been actually produced from the 2673
tract, and all operations, including, but not limited to, the 2674
commencement, drilling, operation of, or production from a well 2675
upon any portion of the unit area shall be deemed for all purposes 2676
the conduct of such operations and production from any lease or 2677
contract for lands any portion of which is included in the unit 2678
area. The operations conducted pursuant to the order of the chief 2679

shall constitute a fulfillment of all the express or implied 2680
obligations of each lease or contract covering lands in the unit 2681
area to the extent that compliance with such obligations cannot be 2682
had because of the order of the chief. 2683

Oil and gas allocated to any tract, and the proceeds from the 2684
sale thereof, shall be the property and income of the several 2685
persons to whom, or to whose credit, the same are allocated or 2686
payable under the order providing for unit operations. 2687

No order of the chief or other contract relating to the sale 2688
or purchase of production from a separately owned tract shall be 2689
terminated by the order providing for unit operations, but shall 2690
remain in force and apply to oil and gas allocated to the tract 2691
until terminated in accordance with the provisions thereof. 2692

Except to the extent that the parties affected so agree, no 2693
order providing for unit operations shall be construed to result 2694
in a transfer of all or any part of the title of any person to the 2695
oil and gas rights in any tract in the unit area. All property, 2696
whether real or personal, that may be acquired for the account of 2697
the owners within the unit area shall be the property of such 2698
owners in the proportion that the expenses of unit operations are 2699
charged. 2700

Sec. 1509.33. (A) Whoever violates sections 1509.01 to 2701
1509.31 of the Revised Code, or any rules adopted or orders or 2702
terms or conditions of a permit or registration certificate issued 2703
pursuant to these sections for which no specific penalty is 2704
provided in this section, shall pay a civil penalty of not more 2705
than four thousand dollars for each offense. 2706

(B) Whoever violates section 1509.221 of the Revised Code or 2707
any rules adopted or orders or terms or conditions of a permit 2708
issued thereunder shall pay a civil penalty of not more than two 2709
thousand five hundred dollars for each violation. 2710

(C) Whoever violates division (D) of section 1509.22 or 2711
division (A)(1) of section 1509.222 of the Revised Code shall pay 2712
a civil penalty of not less than two thousand five hundred dollars 2713
nor more than twenty thousand dollars for each violation. 2714

(D) Whoever violates division (A) of section 1509.22 of the 2715
Revised Code shall pay a civil penalty of not less than two 2716
thousand five hundred dollars nor more than ten thousand dollars 2717
for each violation. 2718

(E) Whoever violates division (A) of section 1509.223 of the 2719
Revised Code shall pay a civil penalty of not more than ten 2720
thousand dollars for each violation. 2721

(F) Whoever violates section 1509.072 of the Revised Code or 2722
any rules adopted or orders issued to administer, implement, or 2723
enforce that section shall pay a civil penalty of not more than 2724
five thousand dollars for each violation. 2725

(G) In addition to any other penalties provided in this 2726
chapter, whoever violates division (B) of section 1509.22 or 2727
division (A)(1) of section 1509.222 or knowingly violates division 2728
(A) of section 1509.223 of the Revised Code is liable for any 2729
damage or injury caused by the violation and for the cost of 2730
rectifying the violation and conditions caused by the violation. 2731
If two or more persons knowingly violate one or more of those 2732
divisions in connection with the same event, activity, or 2733
transaction, they are jointly and severally liable under this 2734
division. 2735

(H) The attorney general, upon the request of the chief of 2736
the division of oil and gas resources management, shall commence 2737
an action under this section against any person who violates 2738
sections 1509.01 to 1509.31 of the Revised Code, or any rules 2739
adopted or orders or terms or conditions of a permit or 2740
registration certificate issued pursuant to these sections. Any 2741

action under this section is a civil action, governed by the Rules 2742
of Civil Procedure and other rules of practice and procedure 2743
applicable to civil actions. The remedy provided in this division 2744
is cumulative and concurrent with any other remedy provided in 2745
this chapter, and the existence or exercise of one remedy does not 2746
prevent the exercise of any other, except that no person shall be 2747
subject to both a civil penalty under division (A), (B), (C), or 2748
(D) of this section and a criminal penalty under section 1509.99 2749
of the Revised Code for the same offense. 2750

(I) For purposes of this section, each day of violation 2751
constitutes a separate offense. 2752

Sec. 1509.99. (A) Whoever violates sections 1509.01 to 2753
1509.31 of the Revised Code or any rules adopted or orders or 2754
terms or conditions of a permit issued pursuant to these sections 2755
for which no specific penalty is provided in this section shall be 2756
fined not less than one hundred nor more than one thousand dollars 2757
for a first offense; for each subsequent offense ~~such~~ the person 2758
shall be fined not less than two hundred nor more than two 2759
thousand dollars. 2760

(B) Whoever violates section 1509.221 of the Revised Code or 2761
any rules adopted or orders or terms or conditions of a permit 2762
issued thereunder shall be fined not more than five thousand 2763
dollars for each ~~day of~~ violation. 2764

(C) Whoever knowingly violates section 1509.072, division 2765
(A), (B), or (D) of section 1509.22, division (A)(1) or (C) of 2766
section 1509.222, or division (A) or (D) of section 1509.223 of 2767
the Revised Code or any rules adopted or orders issued under 2768
division (C) of section 1509.22 or rules adopted or orders or 2769
terms or conditions of a registration certificate issued under 2770
division (E) of section 1509.222 of the Revised Code shall be 2771
fined ten thousand dollars or imprisoned for six months, or both 2772

for a first offense; for each subsequent offense ~~such~~ the person 2773
shall be fined twenty thousand dollars or imprisoned for two 2774
years, or both. Whoever negligently violates ~~such~~ those divisions, 2775
sections, rules, orders, or terms or conditions of a registration 2776
certificate shall be fined not more than five thousand dollars. 2777

(D) Whoever violates division (C) of section 1509.223 of the 2778
Revised Code shall be fined not more than five hundred dollars for 2779
a first offense ~~not~~ and not more than one thousand dollars for a 2780
subsequent offense. 2781

(E) The prosecuting attorney of the county in which the 2782
offense was committed or the attorney general may prosecute an 2783
action under this section. 2784

(F) For purposes of this section, each day of violation 2785
constitutes a separate offense. 2786

Sec. 1514.01. As used in this chapter: 2787

(A) "Surface mining" means all or any part of a process 2788
followed in the production of minerals from the earth or from the 2789
surface of the land by surface excavation methods, such as open 2790
pit mining, dredging, placering, or quarrying, and includes the 2791
removal of overburden for the purpose of determining the location, 2792
quantity, or quality of mineral deposits, and the incidental 2793
removal of coal at a rate less than one-sixth the total weight of 2794
minerals and coal removed during the year, but does not include: 2795
test or exploration boring; mining operations carried out beneath 2796
the surface by means of shafts, tunnels, or similar mine openings; 2797
the extraction of minerals, other than coal, by a landowner for 2798
the landowner's own noncommercial use where such material is 2799
extracted and used in an unprocessed form on the same tract of 2800
land; the extraction of minerals, other than coal, from borrow 2801
pits for highway construction purposes, provided that the 2802
extraction is performed under a bond, a contract, and 2803

specifications that substantially provide for and require 2804
reclamation practices consistent with the requirements of this 2805
chapter; the removal of minerals incidental to construction work, 2806
provided that the owner or person having control of the land upon 2807
which the construction occurs, the contractor, or the construction 2808
firm possesses a valid building permit; the removal of minerals to 2809
a depth of not more than five feet, measured from the highest 2810
original surface elevation of the area to be excavated, where not 2811
more than one acre of land is excavated during twelve successive 2812
calendar months; routine dredging of a watercourse for purely 2813
navigational or flood control purposes during which materials are 2814
removed for noncommercial purposes, including activities conducted 2815
by or on behalf of a conservancy district, organized under Chapter 2816
6101. of the Revised Code, for flood control purposes that are 2817
exempt from permitting requirements under section 10 of the 2818
"Rivers and Harbors Act of 1899," 30 Stat. 1151, 33 U.S.C. 403, as 2819
amended; or the extraction or movement of soil or minerals within 2820
a solid waste facility, as defined in section 3734.01 of the 2821
Revised Code, that is a sanitary landfill when the soil or 2822
minerals are used exclusively for the construction, operation, 2823
closure, and post-closure care of the facility or for maintenance 2824
activities at the facility. 2825

(B) "Minerals" means sand, gravel, clay, shale, gypsum, 2826
halite, limestone, dolomite, sandstone, other stone, metalliferous 2827
or nonmetalliferous ore, or other material or substance of 2828
commercial value excavated in a solid state from natural deposits 2829
on or in the earth, but does not include coal or peat. 2830

(C) "Overburden" means all of the earth and other materials 2831
that cover a natural deposit of minerals and also means such earth 2832
and other materials after removal from their natural state in the 2833
process of surface mining. 2834

(D) "Spoil bank" means a pile of removed overburden. 2835

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

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

(2) When the context indicates, "operation" or "in-stream
mining operation" means all of the premises, facilities, and
equipment used in the process of removing minerals by in-stream
mining from a mining area.

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

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

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

(J) "Ground water" means all water occurring in an aquifer.	2867
(K) "Cone of depression" means a depression or low point in the water table or potentiometric surface of a body of ground water that develops around a location from which ground water is being withdrawn.	2868 2869 2870 2871
(L) "High water mark" means the line on the shore that is established by the fluctuations of water and indicated by physical characteristics such as a natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding area.	2872 2873 2874 2875 2876 2877 2878
(M) "In-stream mining" means all or any part of a process followed in the production of minerals from the bottom of the channel of a watercourse that drains a surface area of more than one hundred square miles. "In-stream mining" may be accomplished by using any technique or by using surface excavation methods, such as open pit mining, dredging, placering, or quarrying, and includes the removal of overburden for the purpose of determining the location, quantity, or quality of mineral deposits. "In-stream mining" does not include either of the following:	2879 2880 2881 2882 2883 2884 2885 2886 2887
(1) Routine dredging for purely navigational or flood control purposes during which materials are removed for noncommercial purposes;	2888 2889 2890
(2) The extraction of minerals, other than coal, by a landowner for the landowner's own noncommercial use when the material is extracted and used in an unprocessed form on the same tract of land.	2891 2892 2893 2894
For purposes of division (M) of this section, the number of square miles of surface area that a watercourse drains shall be determined by consulting the "gazetteer of Ohio streams," which is	2895 2896 2897

a portion of the Ohio water plan inventory published in 1960 by 2898
the division of water in the department of natural resources, or 2899
its successor, if any. 2900

(N) In provisions concerning in-stream mining, when the 2901
context is appropriate, "land" is deemed to include an area of a 2902
watercourse. 2903

(O) "Watercourse" means any naturally occurring perennial or 2904
intermittent stream, river, or creek flowing within a defined 2905
stream bed and banks. 2906

(P) "Certified mine foreperson" means the person whom the 2907
operator of a surface mining operation places in charge of the 2908
conditions and practices at the mine, who is responsible for 2909
conducting workplace examinations under 30 C.F.R. part 56, as 2910
amended, and who has passed an examination for the position 2911
administered by the division of mineral resources management. 2912

Sec. 1514.02. (A) After the dates the chief of the division 2913
of mineral resources management prescribes by rule pursuant to 2914
section 1514.08 of the Revised Code, but not later than July 1, 2915
1977, nor earlier than July 1, 1975, no operator shall engage in 2916
surface mining or conduct a surface mining operation without a 2917
surface mining permit issued by the chief. 2918

No person shall engage in in-stream mining or conduct an 2919
in-stream mining operation without an in-stream mining permit 2920
issued by the chief. However, a person who, on ~~the effective date~~ 2921
~~of this amendment~~ March 15, 2002, holds a valid permit to conduct 2922
in-stream mining that is issued under section 10 of the "Rivers 2923
and Harbors Appropriation Act of 1899," 30 Stat. 1151, 33 U.S.C. 2924
403, as amended, shall not be required to obtain an in-stream 2925
mining permit from the chief under this section until the existing 2926
permit expires. 2927

An application for a surface or in-stream mining permit shall 2928
be upon the form that the chief prescribes and provides and shall 2929
contain all of the following: 2930

(1) The name and address of the applicant, of all partners if 2931
the applicant is a partnership, or of all officers and directors 2932
if the applicant is a corporation, and any other person who has a 2933
right to control or in fact controls the management of the 2934
applicant or the selection of officers, directors, or managers of 2935
the applicant; 2936

(2) A list of the minerals and coal, if any coal, sought to 2937
be extracted, an estimate of the annual production rates for each 2938
mineral and coal, and a description of the land upon which the 2939
applicant proposes to engage in a surface or in-stream mining 2940
operation, which description shall set forth the names of the 2941
counties, townships, and municipal corporations, if any, in which 2942
the land is located; the location of its boundaries; and a 2943
description of the land of sufficient certainty that it may be 2944
located and distinguished from other lands; 2945

(3) The name of each county, township, or municipal 2946
corporation, if any, that has in effect a zoning resolution or 2947
ordinance that would affect the proposed surface or in-stream 2948
mining operation or, if no such zoning resolution or ordinance is 2949
in effect, a statement attesting to that fact. The application 2950
also shall contain an explanation of how the applicant intends to 2951
comply with any applicable provisions of a zoning resolution or 2952
ordinance. 2953

(4) An estimate of the number of acres of land that will 2954
comprise the total area of land to be affected and an estimate of 2955
the number of acres of land to be affected during the first year 2956
of operation under the permit; 2957

(5) The name and address of the owner of surface rights in 2958

the land upon which the applicant proposes to engage in surface or 2959
in-stream mining; 2960

(6) A copy of the deed, lease, or other instrument that 2961
authorizes entry upon the land by the applicant or the applicant's 2962
agents if surface rights in the land are not owned by the 2963
applicant; 2964

(7) A statement of whether any surface or in-stream mining 2965
permits or coal mining and reclamation permits are now held by the 2966
applicant in this state and, if so, the numbers of the permits; 2967

(8) A statement of whether the applicant, any partner if the 2968
applicant is a partnership, any officer or director if the 2969
applicant is a corporation, or any other person who has a right to 2970
control or in fact controls the management of the applicant or the 2971
selection of officers, directors, or managers of the applicant has 2972
ever had a surface or in-stream mining permit or coal mining and 2973
reclamation permit issued by this or any other state suspended or 2974
revoked or has ever forfeited a surface or in-stream mining or 2975
coal mining and reclamation bond or cash, an irrevocable letter of 2976
credit, or a security deposited in lieu of a bond; 2977

(9) A report of the results of test borings that the operator 2978
has conducted on the area or otherwise has readily available, 2979
including, to the extent that the information is readily available 2980
to the operator, the nature and depth of overburden and material 2981
underlying each mineral or coal deposit, and the thickness and 2982
extent of each mineral or coal deposit. In the case of an 2983
application for an in-stream mining permit, the report 2984
additionally shall include sufficient information to show the 2985
approximate depth to bedrock. All information relating to test 2986
boring results submitted to the chief pursuant to this section 2987
shall be kept confidential and not made a matter of public record, 2988
except that the information may be disclosed by the chief in any 2989
legal action in which the truthfulness of the information is 2990

material. 2991

(10) A complete plan for surface or in-stream mining and 2992
reclamation of the area to be affected, which shall include a 2993
statement of the intended future uses of the area and show the 2994
approximate sequence in which mining and reclamation measures are 2995
to occur, the approximate intervals following mining during which 2996
the reclamation of all various parts of the area affected will be 2997
completed, and the measures the operator will perform to prevent 2998
damage to adjoining property and to achieve all of the following 2999
general performance standards for mining and reclamation: 3000

(a) Prepare the site adequately for its intended future uses 3001
upon completion of mining; 3002

(b) Where a plan of zoning or other comprehensive plan has 3003
been adopted that governs land uses or the construction of public 3004
improvements and utilities for an area that includes the area 3005
sought to be mined, ensure that future land uses within the site 3006
will not conflict with the plan. On and after ~~the effective date~~ 3007
~~of this amendment~~ March 15, 2002, division (A)(10)(b) of this 3008
section does not apply to any surface or in-stream mining permit 3009
or applications for a surface or in-stream mining permit, any 3010
renewal of an existing surface or in-stream mining permit or 3011
application for a renewal of an existing surface or in-stream 3012
mining permit, any amendment or application for an amendment to an 3013
existing surface or in-stream mining permit, or any modification 3014
or application for a modification of a mining and reclamation plan 3015
of an existing surface or in-stream mining permit unless the 3016
application for such a permit, renewal, amendment, or modification 3017
is a resubmission, revision, or reconsideration of an application 3018
that was pending before the chief or was first approved prior to 3019
~~the effective date of this amendment~~ March 15, 2002. 3020

(c) Grade, contour, or terrace final slopes, wherever needed, 3021
sufficient to achieve soil stability and control landslides, 3022

erosion, and sedimentation. Highwalls will be permitted if they 3023
are compatible with the future uses specified in the plan and 3024
measures will be taken to ensure public safety. Where ponds, 3025
impoundments, or other resulting bodies of water are intended for 3026
recreational use, establish banks and slopes that will ensure safe 3027
access to those bodies of water. Where such bodies of water are 3028
not intended for recreation, include measures to ensure public 3029
safety, but access need not be provided. 3030

(d) Resoil the area of land affected, wherever needed, with 3031
topsoil or suitable subsoil, fertilizer, lime, or soil amendments, 3032
as appropriate, in sufficient quantity and depth to raise and 3033
maintain a diverse growth of vegetation adequate to bind the soil 3034
and control soil erosion and sedimentation; 3035

(e) Establish a diverse vegetative cover of grass and legumes 3036
or trees, grasses, and legumes capable of self-regeneration and 3037
plant succession wherever required by the plan; 3038

(f) Remove or bury any metal, lumber, equipment, or other 3039
refuse resulting from mining, and remove or bury any unwanted or 3040
useless structures; 3041

(g) Reestablish boundary, section corner, government, and 3042
other survey monuments that were removed by the operator; 3043

(h) During mining and reclamation, ensure that contamination, 3044
resulting from mining, of underground water supplies is prevented. 3045
Upon completion of reclamation, ensure that any watercourse, lake, 3046
or pond located within the site boundaries is free of substances 3047
resulting from mining in amounts or concentrations that are 3048
harmful to persons, fish, waterfowl, or other beneficial species 3049
of aquatic life. 3050

(i) During mining and reclamation, control drainage so as to 3051
prevent the causing of flooding, landslides, and flood hazards to 3052
adjoining lands resulting from the mining operation. Leave any 3053

ponds in such condition as to avoid their constituting a hazard to adjoining lands. 3054
3055

(j) During mining and reclamation, ensure that the effect of any reduction of the quantity of ground water is minimized; 3056
3057

(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. 3058
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(l) During mining, store topsoil or fill in quantities sufficient to complete the backfilling, grading, contouring, terracing, and resoiling that are specified in the plan. Stabilize the slopes of and plant each spoil bank to control soil erosion and sedimentation wherever substantial damage to adjoining property might occur. 3065
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(m) During mining, promptly remove, store, or cover any coal, pyritic shale, or other acid producing materials in a manner that will minimize acid drainage and the accumulation of acid water; 3071
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(n) During mining, detonate explosives in a manner that will prevent damage to adjoining property; 3074
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(o) In the case of in-stream mining, do all of the following: 3076

(i) Limit access to the channel of a watercourse to a single point of entry on one bank of the watercourse; 3077
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(ii) Maintain riparian vegetation to the fullest extent possible; 3079
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(iii) Upon cessation of in-stream mining, stabilize and reclaim to the pre-mined condition the banks of a watercourse affected by in-stream mining. 3081
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(11) For any applicant, except an applicant for an in-stream mining permit, who intends to extract less than ten thousand tons of minerals per year and no incidental coal, a current tax map, in triplicate and notarized, and the appropriate United States geological survey seven and one-half minute topographic map. Each copy shall bear the applicant's name and shall identify the area of land to be affected corresponding to the application.

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

The map shall comply with all of the following:

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

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

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

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

(e) Show the names and locations of all streams, creeks, or

other bodies of water, roads, railroads, utility lines, buildings, 3115
cemeteries, and oil and gas wells on the area of land to be 3116
affected and within five hundred feet of the perimeter of the 3117
area; 3118

(f) Show the counties, municipal corporations, townships, and 3119
sections in which the area of land to be affected is located; 3120

(g) Show the drainage plan on, above, below, and away from 3121
the area of land to be affected, indicating the directional flow 3122
of water, constructed drainways, natural waterways used for 3123
drainage, and the streams or tributaries receiving or to receive 3124
this discharge; 3125

(h) Show the location of available test boring holes that the 3126
operator has conducted on the area of land to be affected or 3127
otherwise has readily available; 3128

(i) Show the date on which the map was prepared, the north 3129
direction and the quadrangle sketch, and the exact location of the 3130
operation; 3131

(j) Show the type, kind, location, and references of all 3132
existing boundary, section corner, government, and other survey 3133
monuments within the area to be affected and within five hundred 3134
feet of the perimeter of the area. 3135

The certification of the maps shall read: "I, the 3136
undersigned, hereby certify that this map is correct, and shows to 3137
the best of my knowledge and belief all of the information 3138
required by the surface or in-stream mining laws, as applicable, 3139
of the state." The certification shall be signed and attested 3140
before a notary public. The chief may reject any map as incomplete 3141
if its accuracy is not so certified and attested. 3142

(13) A certificate of public liability insurance issued by an 3143
insurance company authorized to do business in this state or 3144
obtained pursuant to sections 3905.30 to 3905.35 of the Revised 3145

Code covering all surface or in-stream mining operations of the 3146
applicant in this state and affording bodily injury and property 3147
damage protection in amounts not less than the following: 3148

(a) One hundred thousand dollars for all damages because of 3149
bodily injury sustained by one person as the result of any one 3150
occurrence, and three hundred thousand dollars for all damages 3151
because of bodily injury sustained by two or more persons as the 3152
result of any one occurrence; 3153

(b) One hundred thousand dollars for all claims arising out 3154
of damage to property as the result of any one occurrence, with an 3155
aggregate limit of three hundred thousand dollars for all property 3156
damage to which the policy applies. 3157

(14) A sworn statement by the applicant that, during the term 3158
of any permit issued under this chapter or of any renewal of such 3159
a permit, the applicant will comply with all applicable zoning 3160
resolutions or ordinances that are in effect at the time the 3161
application is filed unless the resolutions or ordinances 3162
subsequently become invalid during the term of the permit or 3163
renewal; 3164

(15) A copy of the advertisement that the applicant is 3165
required to have published in accordance with section 1514.022 of 3166
the Revised Code, if applicable; 3167

(16) For any applicant whose operation may result in 3168
dewatering, a compilation of data in a form that is prescribed by 3169
the chief and that is suitable to conduct ground water modeling in 3170
order to establish a projected cone of depression for purposes of 3171
section 1514.13 of the Revised Code. The chief shall adopt rules 3172
as provided in section 1514.08 of the Revised Code establishing 3173
the minimum requirements and standards governing the data required 3174
under this division. 3175

(17) A statement by the applicant certifying that the 3176

applicant has communicated with the county engineer of the county 3177
in which the proposed surface or in-stream mining operation will 3178
be located regarding any streets and roads under the county 3179
engineer's jurisdiction that will be used by vehicles entering and 3180
leaving the proposed surface or in-stream mining operation; 3181

(18) In the case of an application for an in-stream mining 3182
permit, and if required by the division of mineral resources 3183
management after review of an applicant's proposed in-stream 3184
mining plans, a hydraulic evaluation of the watercourse prepared 3185
by a professional engineer registered under Chapter 4733. of the 3186
Revised Code. The If the hydraulic evaluation is required, it 3187
shall include, without limitation, all of the following: 3188

(a) Soundings that depict the cross-sectional views of the 3189
channel bottom of the watercourse and water elevations for the 3190
watercourse; 3191

(b) A profile of the channel bottom; 3192

(c) An analysis of design flows and water surface profiles 3193
for the watercourse prior to in-stream mining and the proposed 3194
final mining condition; 3195

(d) An analysis of the expected changes in the roughness 3196
coefficient, resistance to water flow velocity, and hydraulic 3197
gradient in the channel bottom due to the proposed mining; 3198

(e) Any additional information that the chief requires in 3199
order to evaluate the potential impact of in-stream mining on the 3200
watercourse and to determine if any additional performance 3201
standards are required to protect the environment and property 3202
outside the limits of the operation as established in the permit. 3203

The chief may allow an applicant to deviate from the 3204
requirements of divisions (A)(18)(a) to (d) of this section if the 3205
chief determines that such a deviation is appropriate. 3206

(B) No permit application or amendment shall be approved by 3207
the chief if the chief finds that the reclamation described in the 3208
application will not be performed in full compliance with this 3209
chapter or that there is not reasonable cause to believe that 3210
reclamation as required by this chapter will be accomplished. 3211

The chief shall issue an order denying an application for an 3212
operating permit or an amendment if the chief determines that the 3213
measures set forth in the plan are likely to be inadequate to 3214
prevent damage to adjoining property or to achieve one or more of 3215
the performance standards required in division (A)(10) of this 3216
section. 3217

No permit application or amendment shall be approved if the 3218
approval would result in a violation of division (E), (F), or (G) 3219
of section 1514.10 of the Revised Code. 3220

No permit application or amendment shall be approved to 3221
surface mine land adjacent to a public road in violation of 3222
section 1563.11 of the Revised Code. 3223

To ensure adequate lateral support, no permit application or 3224
amendment shall be approved to engage in surface or in-stream 3225
mining on land that is closer than fifty feet of horizontal 3226
distance to any adjacent land or waters in which the operator 3227
making application does not own the surface or mineral rights 3228
unless the owners of the surface and mineral rights in and under 3229
the adjacent land or waters consent in writing to surface or 3230
in-stream mining closer than fifty feet of horizontal distance. 3231
The consent, or a certified copy thereof, shall be attached to the 3232
application as a part of the permanent record of the application 3233
for a surface or in-stream mining permit. 3234

The chief shall issue an order granting a permit upon the 3235
chief's approval of an application, as required by this section, 3236
filing of the performance bond required by section 1514.04 of the 3237

Revised Code, payment of an acreage fee in the amount of 3238
seventy-five dollars multiplied by the number of acres estimated 3239
in the application that will comprise the area of land to be 3240
affected within the first year of operation under the permit, and 3241
payment of a permit fee. The amount of the permit fee for a 3242
surface mining permit shall be five hundred dollars, and the 3243
amount of the permit fee for an in-stream mining permit shall be 3244
two hundred fifty dollars. 3245

The chief may issue an order denying a permit if the chief 3246
finds that the applicant, any partner if the applicant is a 3247
partnership, any officer or director if the applicant is a 3248
corporation, or any other person who has a right to control or in 3249
fact controls the management of the applicant or the selection of 3250
officers, directors, or managers of the applicant has 3251
substantially or materially failed to comply or continues to fail 3252
to comply with this chapter, which failure may consist of one or 3253
more violations thereof, a rule adopted thereunder, or an order of 3254
the chief or failure to perform reclamation as required by this 3255
chapter. The chief may deny or revoke the permit of any person who 3256
so violates or fails to comply or who purposely misrepresents or 3257
omits any material fact in the application for the permit or an 3258
amendment to a permit. 3259

If the chief denies the permit, the chief shall state the 3260
reasons for denial in the order denying the permit. 3261

Each permit shall be issued upon condition that the operator 3262
will comply with this chapter and perform the measures set forth 3263
in the operator's plan of mining and reclamation in a timely 3264
manner. The chief, mineral resources inspectors, or other 3265
authorized representatives of the chief may enter upon the 3266
premises of the operator at reasonable times for the purposes of 3267
determining whether or not there is compliance with this chapter. 3268

(C) If the chief approves an application for a surface mining 3269

permit, the order granting the permit shall authorize the person 3270
to whom the permit is issued to engage as the operator of a 3271
surface mining operation upon the land described in the permit 3272
during a period that shall expire fifteen years after the date of 3273
issuance of the permit, or upon the date when the chief, after 3274
inspection, orders the release of any remaining performance bond 3275
deposited to assure satisfactory performance of the reclamation 3276
measures required pursuant to this chapter, whichever occurs 3277
earlier. 3278

If the chief approves an application for an in-stream mining 3279
permit, the order granting the permit shall authorize the person 3280
to whom the permit is issued to engage as the operator of an 3281
in-stream mining operation on the land described in the permit 3282
during a period that shall expire ~~two~~ five years after the date of 3283
issuance of the permit, or on the date when the chief, after 3284
inspection, orders the release of any remaining bond, cash, 3285
irrevocable letters of credit, or certificates of deposit that 3286
were deposited to ensure satisfactory performance of the 3287
reclamation measures required under this chapter, whichever occurs 3288
earlier. 3289

(D) Before an operator engages in a surface or in-stream 3290
mining operation on land not described in the operator's permit, 3291
but that is contiguous to the land described in the operator's 3292
permit, the operator shall file with the chief an application for 3293
an amendment to the operator's permit. Before approving an 3294
amendment, the chief shall require the information, maps, fees, 3295
and amount, except as otherwise provided by rule, of the 3296
performance bond as required for an original application under 3297
this section and shall apply the same prohibitions and 3298
restrictions applicable to land described in an original 3299
application for a permit. An applicant for a significant amendment 3300
to a permit, as "significant" is defined by rule, shall include a 3301

copy of the advertisement that the applicant is required to have 3302
published in accordance with section 1514.022 of the Revised Code. 3303
If the chief disapproves the amendment, the chief shall state the 3304
reasons for disapproval in the order disapproving the amendment. 3305
Upon the approval of an amendment by the chief, the operator shall 3306
be authorized to engage in surface mining on the land or in-stream 3307
mining in the watercourse described in the operator's original 3308
permit plus the land or area of the watercourse described in the 3309
amendment until the date when the permit expires, or when the 3310
chief, after inspection, orders the release of any remaining 3311
performance bond deposited to assure satisfactory performance of 3312
the reclamation measures required pursuant to this chapter, 3313
whichever occurs earlier. 3314

(E) An operator, at any time and upon application therefor 3315
and approval by the chief, may amend the plan of mining and 3316
reclamation filed with the application for a permit in order to 3317
change the reclamation measures to be performed, modify the 3318
interval after mining within which reclamation measures will be 3319
performed, change the sequence in which mining or reclamation will 3320
occur at specific locations within the area affected, mine acreage 3321
previously mined or reclaimed, or for any other purpose, provided 3322
that the plan, as amended, includes measures that the chief 3323
determines will be adequate to prevent damage to adjoining 3324
property and to achieve the performance standards set forth in 3325
division (A)(10) of this section. An application for a significant 3326
amendment to a plan, as "significant" is defined by rule, shall 3327
include a copy of the advertisement that the applicant is required 3328
to have published in accordance with section 1514.022 of the 3329
Revised Code. 3330

The chief may propose one or more amendments to the plan in 3331
writing within ninety days after the fifth anniversary of the date 3332
of issuance of a surface mining permit or within ninety days after 3333

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

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

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

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

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

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

accompanied by a permit renewal fee. The amount of the fee for 3365
renewal of a surface mining permit or renewal permit shall be one 3366
thousand dollars, and the amount of the fee for renewal of an 3367
in-stream mining permit or renewal permit shall be five hundred 3368
dollars. 3369

(B) Upon receipt of ~~an application for renewal~~ a notice of 3370
intent to renew form and the permit renewal fee under division (A) 3371
of this section, the chief shall notify the ~~applicant~~ permit 3372
holder to submit a renewal application package. The permit holder 3373
shall submit a complete renewal package to the chief at least 3374
thirty days prior to the expiration of the existing surface or 3375
in-stream mining permit or renewal permit. The renewal application 3376
package shall include all of the following: 3377

(1) A map that is a composite of the information required to 3378
be contained in the most recent annual report map under section 3379
1514.03 of the Revised Code and of all surface or in-stream mining 3380
and reclamation activities conducted under the existing permit or 3381
renewal permit; ~~the~~ 3382

(2) The annual report required under section 1514.03 of the 3383
Revised Code; ~~in~~ 3384

(3) In the case of an applicant proposing a significant 3385
change to the plan of mining and reclamation, as "significant" is 3386
defined by rule, a copy of the advertisement that ~~the applicant~~ is 3387
required to ~~have~~ be published in accordance with section 1514.022 3388
of the Revised Code; ~~and additional~~ 3389

(4) Additional maps, plans, and revised or updated 3390
information that the chief determines to be necessary for permit 3391
renewal. ~~Within sixty days after receipt of this notification, the~~ 3392
~~applicant shall submit all the required information to the chief.~~ 3393

For a renewal permit requiring minor or minimal updates to 3394

the existing permit, renewal permit, or accompanying information, 3395
the chief may authorize a permit holder to file updated 3396
information through a surface mining permit modification process 3397
using a surface mining permit modification form. However, the 3398
chief may require such a permit holder to submit a complete 3399
renewal application package. 3400

(C)(1) Upon receipt of the ~~information~~ complete renewal 3401
application package required under division (B) of this section 3402
and except as otherwise provided in division (C)(2) of this 3403
section, the chief shall approve the application for renewal and 3404
issue an order granting a renewal permit unless the chief finds 3405
that any of the following applies: 3406

(a) The permit holder's operation is not in substantial or 3407
material compliance with this chapter, rules adopted and orders 3408
issued under it, and the plan of mining and reclamation under the 3409
existing permit or renewal permit. 3410

(b) The permit holder has not provided evidence that a 3411
performance bond filed under section 1514.04 of the Revised Code 3412
applicable to lands affected under the existing permit or renewal 3413
permit will remain effective until released under section 1514.05 3414
of the Revised Code. 3415

(c) The permit holder, any partner if the ~~applicant~~ permit 3416
holder is a partnership, any officer or director if the ~~applicant~~ 3417
permit holder is a corporation, or any other person who has a 3418
right to control or in fact controls the management of the 3419
~~applicant~~ permit holder or the selection of officers, directors, 3420
or managers of the ~~applicant~~ permit holder has failed 3421
substantially or materially to comply or continues to fail to 3422
comply with this chapter as provided in section 1514.02 of the 3423
Revised Code. 3424

(2) If the application for renewal proposes significant 3425

changes to the plan of mining and reclamation, as "significant" is 3426
defined by rule, the chief may, but is not required to, approve 3427
the application for renewal. 3428

~~(D) Within sixty days after receiving the information and 3429
permit renewal fees required under divisions (A) and (B) of this 3430
section, the chief shall approve the application for renewal and 3431
issue an order granting a renewal permit, issue an order denying 3432
the application, or notify the applicant that the time limit for 3433
issuing such an order has been extended. This extension of time 3434
shall not exceed sixty days~~ (1) After receiving a complete renewal 3435
application package and permit renewal fees required under 3436
divisions (A) and (B) of this section, the chief shall do one of 3437
the following: 3438

(a) Approve the application for renewal and issue an order 3439
granting a renewal permit; 3440

(b) Issue an order denying a renewal permit; 3441

(c) Notify the applicant in accordance with division (D)(2) 3442
of this section that there are deficiencies in the renewal 3443
application package and that an extension of the time limit for 3444
issuing an order approving or disapproving the renewal permit has 3445
been granted. 3446

In making a decision regarding a renewal application package, 3447
the chief shall review the package for compliance with this 3448
chapter and rules adopted under it. 3449

(2) The chief shall notify a permit holder and, if 3450
applicable, the permit holder's consultant, surveyor, or engineer 3451
of deficiencies or errors in a renewal application package and 3452
shall include in the notification a discussion of the deficiencies 3453
or errors. 3454

A permit holder shall have up to one hundred eighty days 3455
after the expiration of the permit holder's permit or renewal 3456

permit to submit a revised renewal application package. A permit 3457
holder may request, in writing, an extension of the one 3458
hundred-eighty-day period for revisions to the renewal application 3459
package. The chief may approve a sixty-day extension. The chief 3460
shall notify the permit holder of the chief's decision to either 3461
grant or deny the extension. 3462

Upon the submission of a revised renewal application package 3463
that is determined to be complete by the chief, the chief shall 3464
proceed to approve or deny the application in accordance with 3465
division (D)(1)(a) or (b) of this section. If the revised renewal 3466
application package is not submitted within one hundred eighty 3467
days after the permit expiration date or, if an extension has been 3468
granted, within two hundred forty days after the permit expiration 3469
date, the chief shall issue an order denying the renewal permit in 3470
accordance with division (D)(1)(b) of this section. 3471

(E) If an applicant for a renewal permit has complied with 3472
division (A) of this section, the applicant may continue surface 3473
or in-stream mining operations under the existing permit or 3474
renewal permit after its expiration date until the ~~sixty day time~~ 3475
period for filing ~~the information required by the chief under~~ 3476
~~division (B) of this section~~ a complete renewal application 3477
package has expired under division (D) of this section or until 3478
the chief issues an order ~~under division (D) of this section~~ 3479
denying the renewal permit. 3480

(F) A permit holder who fails to submit ~~an application a~~ 3481
notice of intent to renew form and required permit renewal fees 3482
within the time prescribed by division (A) of this section and a 3483
renewal application package under division (B) of this section 3484
shall cease surface or in-stream mining operations on the 3485
expiration date of the existing permit or renewal permit. If such 3486
a permit holder then submits a notice of intent to renew form, an 3487
application for renewal, and the permit renewal fees ~~otherwise~~ 3488

~~required by division (A) of this section~~ on or before the 3489
thirtieth day after the expiration date of the expired permit or 3490
renewal permit and provides the information required by the chief 3491
under division (B) of this section within sixty days after ~~being~~ 3492
~~notified of the information required under that division the~~ 3493
permit expiration date, the permit holder need not submit the 3494
final map and report required by section 1514.03 of the Revised 3495
Code until the later of thirty days after the chief issues an 3496
order denying the application for renewal or thirty days after the 3497
chief's order is affirmed upon appeal under section 1513.13 or 3498
1513.14 of the Revised Code. An applicant under this division who 3499
fails to provide the information required by the chief under 3500
division (B) of this section within the prescribed time period 3501
shall submit the final map and report required by section 1514.03 3502
of the Revised Code within thirty days after the expiration of 3503
that prescribed period. 3504

(G) If the chief issues an order denying an application for 3505
renewal of a permit or renewal permit after the expiration date of 3506
the permit, the permit holder shall cease surface or in-stream 3507
mining operations immediately and, within thirty days after the 3508
issuance of the order, shall submit the final report and map 3509
required under section 1514.03 of the Revised Code. The chief 3510
shall state the reasons for denial in the order denying renewal of 3511
the ~~application permit~~. ~~An applicant~~ A permit holder may appeal 3512
the chief's order denying the renewal under section 1513.13 of the 3513
Revised Code and may continue surface or in-stream mining and 3514
reclamation operations under the expired permit until the 3515
reclamation commission affirms the chief's order under that 3516
section and, if the applicant elects to appeal the order of the 3517
commission under section 1513.14 of the Revised Code, until the 3518
court of appeals affirms the order. 3519

(H) The approval of an application for renewal under this 3520

section authorizes the continuation of an existing surface mining 3521
permit or renewal permit for a term of fifteen years from the 3522
expiration date of the existing permit. 3523

The approval of an application for renewal under this section 3524
authorizes the continuation of an existing in-stream mining permit 3525
or renewal permit for a term of ~~two~~ five years from the expiration 3526
date of the existing permit. 3527

(I) Any renewal permit is subject to all the requirements of 3528
this chapter and rules adopted under it. 3529

Sec. 1514.03. Within thirty days after each anniversary date 3530
of issuance of a surface or in-stream mining permit, the operator 3531
shall file with the chief of the division of mineral resources 3532
management an annual report, on a form prescribed and furnished by 3533
the chief, that, for the period covered by the report, shall state 3534
the amount of and identify the types of minerals and coal, if any 3535
coal, produced and shall state the number of acres affected and 3536
the number of acres estimated to be affected during the next year 3537
of operation. An annual report is not required to be filed if a 3538
final report is filed in lieu thereof. 3539

Each annual report for a surface mining operation shall 3540
include a progress map indicating the location of areas of land 3541
affected during the period of the report and the location of the 3542
area of land estimated to be affected during the next year. The 3543
map shall be prepared in accordance with division (A)(11) or (12) 3544
of section 1514.02 of the Revised Code, as appropriate, except 3545
that a map prepared in accordance with division (A)(12) of that 3546
section may be certified by the operator or authorized agent of 3547
the operator in lieu of certification by a professional engineer 3548
or surveyor registered under Chapter 4733. of the Revised Code. 3549
However, the chief may require that an annual progress map or a 3550
final map be prepared by a registered professional engineer or 3551

registered surveyor if the chief has reason to believe that the 3552
operator exceeded the boundaries of the permit area or, if the 3553
operator filed the map required under division (A)(11) of section 3554
1514.02 of the Revised Code, that the operator extracted ten 3555
thousand tons or more of minerals during the period covered by the 3556
report. 3557

Each annual report for an in-stream mining operation shall 3558
include a statement of the total tonnage removed by in-stream 3559
mining for each month and of the surface acreage and depth of 3560
material removed by in-stream mining and shall include a map that 3561
identifies the area affected by the in-stream mining if the 3562
in-stream mining for the year addressed by the report occurred 3563
beyond the area identified in the most recent approved map, 3564
soundings that depict the cross-sectional views of the channel 3565
bottom of the watercourse if the soundings depict a 3566
cross-sectional view of the channel bottom that is different from 3567
the most recent approved map, and water elevations for the 3568
watercourse if water elevations are different from those indicated 3569
on the most recent approved map. 3570

Each annual report shall be accompanied by a filing fee in 3571
the amount of five hundred dollars, except in the case of an 3572
annual report filed by a small operator or an in-stream mining 3573
operator. A small operator, which is a surface mine operator who 3574
intends to extract fewer than ten thousand tons of minerals and no 3575
coal during the next year of operation under the permit, or an 3576
in-stream mining operator shall include a filing fee in the amount 3577
of two hundred fifty dollars with each annual report. The annual 3578
report of any operator also shall be accompanied by an acreage fee 3579
in the amount of seventy-five dollars multiplied by the number of 3580
acres estimated in the report to be affected during the next year 3581
of operation under the permit. The acreage fee shall be adjusted 3582
by subtracting a credit of seventy-five dollars per excess acre 3583

paid for the preceding year if the acreage paid for the preceding 3584
year exceeds the acreage actually affected or by adding an 3585
additional amount of seventy-five dollars per excess acre affected 3586
if the acreage actually affected exceeds the acreage paid for the 3587
preceding year. 3588

With each annual report the operator shall file a performance 3589
bond in the amount, unless otherwise provided by rule, of five 3590
hundred dollars multiplied by the number of acres estimated to be 3591
affected during the next year of operation under the permit for 3592
which no performance bond previously was filed. Unless otherwise 3593
provided by rule, the bond shall be adjusted by subtracting a 3594
credit of five hundred dollars per excess acre for which bond was 3595
filed for the preceding year if the acreage for which the bond was 3596
filed for the preceding year exceeds the acreage actually 3597
affected, or by adding an amount of five hundred dollars per 3598
excess acre affected if the acreage actually affected exceeds the 3599
acreage for which bond was filed for the preceding year. 3600

Within thirty days after the expiration of the surface or 3601
in-stream mining permit, or completion or abandonment of the 3602
operation, whichever occurs earlier, the operator shall submit a 3603
final report containing the same information required in an annual 3604
report, but covering the time from the last annual report to the 3605
expiration of the permit, or completion or abandonment of the 3606
operation, whichever occurs earlier. 3607

Each final report shall include a map indicating the location 3608
of the area of land affected during the period of the report and 3609
the location of the total area of land affected under the permit. 3610
The map shall be prepared in accordance with division (A)(11) or 3611
(12) of section 1514.02 of the Revised Code, as appropriate. 3612

In the case of a final report for an in-stream mining 3613
operation, the map also shall include the information required 3614
under division (A)(18) of section 1514.02 of the Revised Code, as 3615

applicable. 3616

If the final report and certified map, as verified by the 3617
chief, show that the number of acres affected under the permit is 3618
larger than the number of acres for which the operator has paid an 3619
acreage fee or filed a performance bond, upon notification by the 3620
chief, the operator shall pay an additional acreage fee in the 3621
amount of seventy-five dollars multiplied by the difference 3622
between the number of acres affected under the permit and the 3623
number of acres for which the operator has paid an acreage fee and 3624
shall file an additional performance bond in the amount, unless 3625
otherwise provided by rule, of five hundred dollars multiplied by 3626
the difference between the number of acres affected under the 3627
permit and the number of acres for which the operator has filed 3628
bond. 3629

If the final report and certified map, as verified by the 3630
chief, show that the number of acres affected under the permit is 3631
smaller than the number of acres for which the operator has filed 3632
a performance bond, the chief shall order release of the excess 3633
bond. However, the chief shall retain a performance bond in a 3634
minimum amount of ten thousand dollars irrespective of the number 3635
of acres affected under the permit. The release of the excess bond 3636
shall be in an amount, unless otherwise provided by rule, equal to 3637
five hundred dollars multiplied by the difference between the 3638
number of acres affected under the permit and the number of acres 3639
for which the operator has filed bond. 3640

The fees collected pursuant to this section and section 3641
1514.02 of the Revised Code shall be deposited with the treasurer 3642
of state to the credit of the surface mining fund created under 3643
section 1514.06 of the Revised Code. 3644

If upon inspection the chief finds that any filing fee, 3645
acreage fee, performance bond, or part thereof is not paid when 3646
due or is paid on the basis of false or substantially inaccurate 3647

reports, the chief may request the attorney general to recover the 3648
unpaid amounts that are due the state, and the attorney general 3649
shall commence appropriate legal proceedings to recover the unpaid 3650
amounts. 3651

Sec. 1514.05. (A) At any time within the period allowed an 3652
operator by section 1514.02 of the Revised Code to reclaim an area 3653
of land affected by surface or in-stream mining, the operator may 3654
file a request, on a form provided by the chief of the division of 3655
mineral resources management, for inspection of the area of land 3656
upon which the reclamation, other than any required planting, is 3657
completed. The request shall include all of the following: 3658

(1) The location of the area and number of acres; 3659

(2) The permit number; 3660

(3) A map showing the location of the acres reclaimed, 3661
prepared and certified in accordance with division (A)(11) or (12) 3662
of section 1514.02 of the Revised Code, as appropriate. In the 3663
case of an in-stream mining operation, the map also shall include, 3664
as applicable, the information required under division (A)(18) of 3665
section 1514.02 of the Revised Code. 3666

The chief shall make an inspection and evaluation of the 3667
reclamation of the area of land for which the request was 3668
submitted within ninety days after receipt of the request or, if 3669
the operator fails to complete the reclamation or file the request 3670
as required, as soon as the chief learns of the default. 3671
Thereupon, if the chief approves the reclamation, other than any 3672
required planting, as meeting the requirements of this chapter, 3673
rules adopted thereunder, any orders issued during the mining or 3674
reclamation, and the specifications of the plan for mining and 3675
reclaiming, the chief shall issue an order to the operator and the 3676
operator's surety releasing them from liability for one-half of 3677
the total amount of their surety bond on deposit to ensure 3678

reclamation for the area upon which reclamation is completed. If 3679
the operator has deposited cash, an irrevocable letter of credit, 3680
or certificates of deposit in lieu of a surety bond to ensure 3681
reclamation, the chief shall issue an order to the operator 3682
releasing one-half of the amount so held and promptly shall 3683
transmit a certified copy of the order to the treasurer of state. 3684
Upon presentation of the order to the treasurer of state by the 3685
operator to whom it was issued, or by the operator's authorized 3686
agent, the treasurer of state shall deliver to the operator or the 3687
operator's authorized agent the cash, irrevocable letter of 3688
credit, or certificates of deposit designated in the order. 3689

If the chief does not approve the reclamation, other than any 3690
required planting, the chief shall notify the operator by 3691
certified mail. The notice shall be an order stating the reasons 3692
for unacceptability, ordering further actions to be taken, and 3693
setting a time limit for compliance. If the operator does not 3694
comply with the order within the time limit specified, the chief 3695
may order an extension of time for compliance after determining 3696
that the operator's noncompliance is for good cause, resulting 3697
from developments partially or wholly beyond the operator's 3698
control. If the operator complies within the time limit or the 3699
extension of time granted for compliance, the chief shall order 3700
release of the performance bond in the same manner as in the case 3701
of approval of reclamation, other than any required planting, by 3702
the chief, and the treasurer of state shall proceed as in that 3703
case. If the operator does not comply within the time limit and 3704
the chief does not order an extension, or if the chief orders an 3705
extension of time and the operator does not comply within the 3706
extension of time granted for compliance, the chief shall issue 3707
another order declaring that the operator has failed to reclaim 3708
and, if the operator's permit has not already expired or been 3709
revoked, revoking the operator's permit. The chief shall thereupon 3710
proceed under division (C) of this section. 3711

(B) At any time within the period allowed an operator by 3712
section 1514.02 of the Revised Code to reclaim an area affected by 3713
surface mining, the operator may file a request, on a form 3714
provided by the chief, for inspection of the area of land on which 3715
all reclamation, including the successful establishment of any 3716
required planting, is completed. The request shall include all of 3717
the following: 3718

(1) The location of the area and number of acres; 3719

(2) The permit number; 3720

(3) The type and date of any required planting of vegetative 3721
cover and the degree of success of growth; 3722

(4) A map showing the location of the acres reclaimed, 3723
prepared and certified in accordance with division (A)(11) or (12) 3724
of section 1514.02 of the Revised Code, as appropriate. In the 3725
case of an in-stream mining operation, the map also shall include 3726
the information required under division (A)(18) of section 1514.02 3727
of the Revised Code. 3728

The chief shall make an inspection and evaluation of the 3729
reclamation of the area of land for which the request was 3730
submitted within ninety days after receipt of the request or, if 3731
the operator fails to complete the reclamation or file the request 3732
as required, as soon as the chief learns of the default. 3733
Thereupon, if the chief finds that the reclamation meets the 3734
requirements of this chapter, rules adopted under it, any orders 3735
issued during the mining and reclamation, and the specifications 3736
of the plan for mining and reclaiming and decides to release any 3737
remaining performance bond on deposit to ensure reclamation of the 3738
area on which reclamation is completed, within ten days of 3739
completing the inspection and evaluation, the chief shall order 3740
release of the remaining performance bond in the same manner as in 3741
the case of approval of reclamation other than required planting, 3742

and the treasurer of state shall proceed as in that case. 3743

If the chief does not approve the reclamation performed by 3744
the operator, the chief shall notify the operator by certified 3745
mail within ninety days of the filing of the application for 3746
inspection or of the date when the chief learns of the default. 3747
The notice shall be an order stating the reasons for 3748
unacceptability, ordering further actions to be taken, and setting 3749
a time limit for compliance. If the operator does not comply with 3750
the order within the time limit specified, the chief may order an 3751
extension of time for compliance after determining that the 3752
operator's noncompliance is for good cause, resulting from 3753
developments partially or wholly beyond the operator's control. If 3754
the operator complies within the time limit or the extension of 3755
time granted for compliance, the chief shall order release of the 3756
remaining performance bond in the same manner as in the case of 3757
approval of reclamation by the chief, and the treasurer of state 3758
shall proceed as in that case. If the operator does not comply 3759
within the time limit and the chief does not order an extension, 3760
or if the chief orders an extension of time and the operator does 3761
not comply within the extension of time granted for compliance, 3762
the chief shall issue another order declaring that the operator 3763
has failed to reclaim and, if the operator's permit has not 3764
already expired or been revoked, revoking the operator's permit. 3765
The chief then shall proceed under division (C) of this section. 3766

(C) Upon issuing an order under division (A) or (B) of this 3767
section declaring that the operator has failed to reclaim, the 3768
chief shall make a finding as to the number and location of the 3769
acres of land that the operator has failed to reclaim in the 3770
manner required by this chapter. The chief shall order the release 3771
of the performance bond in the amount of five hundred dollars per 3772
acre for those acres that the chief finds to have been reclaimed 3773
in the manner required by this chapter. The release shall be 3774

ordered in the same manner as in the case of other approval of 3775
reclamation by the chief, and the treasurer of state shall proceed 3776
as in that case. If the operator has on deposit cash, an 3777
irrevocable letter of credit, or certificates of deposit to ensure 3778
reclamation of the area of the land affected, the chief at the 3779
same time shall issue an order declaring that the remaining cash, 3780
irrevocable letter of credit, or certificates of deposit are the 3781
property of the state and are available for use by the chief in 3782
performing reclamation of the area and shall proceed in accordance 3783
with section 1514.06 of the Revised Code. 3784

If the operator has on deposit a surety bond to ensure 3785
reclamation of the area of land affected, the chief shall notify 3786
the surety in writing of the operator's default and shall request 3787
the surety to perform the surety's obligation and that of the 3788
operator. The surety, within ten days after receipt of the notice, 3789
shall notify the chief as to whether it intends to perform those 3790
obligations. 3791

If the surety chooses to perform, it shall arrange for work 3792
to begin within thirty days of the day on which it notifies the 3793
chief of its decision. If the surety completes the work as 3794
required by this chapter, the chief shall issue an order to the 3795
surety releasing the surety from liability under the bond in the 3796
same manner as if the surety were an operator proceeding under 3797
this section. If, after the surety begins the work, the chief 3798
determines that the surety is not carrying the work forward with 3799
reasonable progress, or that it is improperly performing the work, 3800
or that it has abandoned the work or otherwise failed to perform 3801
its obligation and that of the operator, the chief shall issue an 3802
order terminating the right of the surety to perform the work and 3803
demanding payment of the amount due as required by this chapter. 3804

If the surety chooses not to perform and so notifies the 3805
chief, does not respond to the chief's notice within ten days of 3806

receipt thereof, or fails to begin work within thirty days of the 3807
day it timely notifies the chief of its decision to perform its 3808
obligation and that of the operator, the chief shall issue an 3809
order terminating the right of the surety to perform the work and 3810
demanding payment of the amount due, as required by this chapter. 3811

Upon receipt of an order of the chief demanding payment of 3812
the amount due, the surety immediately shall deposit with the 3813
chief cash in the full amount due under the order for deposit with 3814
the treasurer of state. If the surety fails to make an immediate 3815
deposit, the chief shall certify it to the attorney general for 3816
collection. When the chief has issued an order terminating the 3817
right of the surety and has the cash on deposit, the cash is the 3818
property of the state and is available for use by the chief, who 3819
shall proceed in accordance with section 1514.06 of the Revised 3820
Code. 3821

Sec. 3706.27. (A) There is hereby created in the state 3822
treasury the advanced energy research and development fund to 3823
provide grants for advanced energy projects. There is hereby 3824
created in the state treasury the advanced energy research and 3825
development taxable fund to provide loans for advanced energy 3826
projects. 3827

(B)(1) The advanced energy research and development fund and 3828
the advanced energy research and development taxable fund shall 3829
consist of the proceeds of obligations issued under section 166.08 3830
of the Revised Code. Money shall be credited to the respective 3831
funds in the proportion that the executive director of the Ohio 3832
air quality development authority, with the affirmative vote of a 3833
majority of the members of the authority, determines appropriate. 3834

(2) Any investment earnings from the money in the advanced 3835
energy research and development fund and in the advanced energy 3836
research and development taxable fund shall be credited to those 3837

funds, respectively. Any repayment of loans made from money in the 3838
advanced energy research and development taxable fund shall be 3839
credited to the ~~facilities establishment~~ alternative fuel 3840
transportation fund created in section ~~166.03~~ 122.075 of the 3841
Revised Code. 3842

(C) The director of budget and management shall establish and 3843
maintain records or accounts for or within these funds in such a 3844
manner as to show the amount credited to the funds pursuant to 3845
section 166.08 of the Revised Code and that the amounts so 3846
credited have been expended for the purposes set forth in Section 3847
2p or 13 of Article VIII, Ohio Constitution, and sections 166.08, 3848
166.30, and 3706.26 of the Revised Code. 3849

Sec. 3737.832. (A) As used in this section: (1) "Natural gas 3850
processing facilities" means installations, including associated 3851
buildings, pipes, valves, tanks, and other equipment, used to 3852
separate various fluids, hydrocarbons, natural gas liquids, and 3853
impurities from the raw natural gas, manufacturing residue gas 3854
suitable for transmission and distribution to end users. 3855

(2) "Natural gas liquids fractionation facilities" means 3856
installations, including associated buildings, pipes, valves, 3857
tanks, and other equipment, used for the separation of mixtures of 3858
light hydrocarbons or natural gas liquids into individual, purity 3859
natural gas liquid products, which include ethane, propane, normal 3860
butane, iso-butane, and natural gasolines. 3861

(3) "Shale oil processing premise" means a single parcel or 3862
contiguous parcels of real estate, including any structures, 3863
facilities, appurtenances, equipment, devices, and activities 3864
thereon, where the processing of substances extracted from the 3865
Point Pleasant, Utica, and Marcellus formations occurs at a 3866
natural gas liquids fractionation or natural gas processing 3867
facility. "Shale oil processing premise" does not include a well 3868

pad or a production operation, as those terms are defined in 3869
section 1509.01 of the Revised Code, that is regulated under 3870
Chapter 1509. of the Revised Code. 3871

(B) Notwithstanding any other provision of the Revised Code, 3872
the state fire marshal and the board of building standards shall 3873
have the exclusive authority to adopt fire safety standards 3874
relating to the construction at a shale oil processing premise of 3875
any structure subject to the nonresidential building codes 3876
established pursuant to section 3781.10 of the Revised Code. 3877
Notwithstanding any other provisions of the Revised Code, the 3878
state fire marshal shall have the sole and exclusive authority to 3879
adopt all other fire safety standards relating to a shale oil 3880
processing premise. Any standards established by the state fire 3881
marshal under this section shall be part of the state fire code. 3882

(C) Notwithstanding any other provision of the Revised Code, 3883
the state fire marshal shall have sole and exclusive authority to 3884
enforce all fire safety standards adopted pursuant to this 3885
section, any other fire safety standards existing in the state 3886
fire code that are applicable to shale oil processing premises, 3887
and any actions authorized by sections 3737.41 to 3737.51 of the 3888
Revised Code at a shale oil processing premise. 3889

(D) The state fire marshal may establish and collect 3890
reasonable permit and inspection fees for the regulation of a 3891
shale oil processing premise. 3892

Sec. 4905.03. As used in this chapter: 3893

(A) Any person, firm, copartnership, voluntary association, 3894
joint-stock association, company, or corporation, wherever 3895
organized or incorporated, is: 3896

(1) A telephone company, when engaged in the business of 3897
transmitting telephonic messages to, from, through, or in this 3898

state; 3899

(2) A motor transportation company, when engaged in the 3900
business of carrying and transporting persons or property or the 3901
business of providing or furnishing such transportation service, 3902
for hire, in or by motor-propelled vehicles of any kind, including 3903
trailers, for the public in general, over any public street, road, 3904
or highway in this state, except as provided in section 4921.02 of 3905
the Revised Code; 3906

(3) An electric light company, when engaged in the business 3907
of supplying electricity for light, heat, or power purposes to 3908
consumers within this state, including supplying electric 3909
transmission service for electricity delivered to consumers in 3910
this state, but excluding a regional transmission organization 3911
approved by the federal energy regulatory commission; 3912

(4) A gas company, when engaged in the business of supplying 3913
artificial gas for lighting, power, or heating purposes to 3914
consumers within this state or when engaged in the business of 3915
supplying artificial gas to gas companies or to natural gas 3916
companies within this state, but a producer engaged in supplying 3917
to one or more gas or natural gas companies, only such artificial 3918
gas as is manufactured by that producer as a by-product of some 3919
other process in which the producer is primarily engaged within 3920
this state is not thereby a gas company. All rates, rentals, 3921
tolls, schedules, charges of any kind, or agreements between any 3922
gas company and any other gas company or any natural gas company 3923
providing for the supplying of artificial gas and for compensation 3924
for the same are subject to the jurisdiction of the public 3925
utilities commission. 3926

(5) A natural gas company, when engaged in the business of 3927
supplying natural gas for lighting, power, or heating purposes to 3928
consumers within this state. Notwithstanding the above, neither 3929
the delivery nor sale of Ohio-produced natural gas or 3930

Ohio-produced raw natural gas liquids by a producer or gatherer 3931
under a public utilities commission-ordered exemption, adopted 3932
before, as to producers, or after, as to producers or gatherers, 3933
January 1, 1996, or the delivery or sale of Ohio-produced natural 3934
gas or Ohio-produced raw natural gas liquids by a producer or 3935
gatherer of Ohio-produced natural gas or Ohio-produced raw natural 3936
gas liquids, either to a lessor under an oil and gas lease of the 3937
land on which the producer's drilling unit is located, or the 3938
grantor incident to a right-of-way or easement to the producer or 3939
gatherer, shall cause the producer or gatherer to be a natural gas 3940
company for the purposes of this section. 3941

All rates, rentals, tolls, schedules, charges of any kind, or 3942
agreements between a natural gas company and other natural gas 3943
companies or gas companies providing for the supply of natural gas 3944
and for compensation for the same are subject to the jurisdiction 3945
of the public utilities commission. The commission, upon 3946
application made to it, may relieve any producer or gatherer of 3947
natural gas, defined in this section as a gas company or a natural 3948
gas company, of compliance with the obligations imposed by this 3949
chapter and Chapters 4901., 4903., 4907., 4909., 4921., and 4923. 3950
of the Revised Code, so long as the producer or gatherer is not 3951
affiliated with or under the control of a gas company or a natural 3952
gas company engaged in the transportation or distribution of 3953
natural gas, or so long as the producer or gatherer does not 3954
engage in the distribution of natural gas to consumers. 3955

Nothing in division (A)(5) of this section limits the 3956
authority of the commission to enforce sections 4905.90 to 4905.96 3957
of the Revised Code. 3958

(6) A pipe-line company, when engaged in the business of 3959
transporting natural gas, oil, or coal or its derivatives through 3960
pipes or tubing, either wholly or partly within this state, but 3961
not when engaged in the business of the transport associated with 3962

<u>gathering lines, raw natural gas liquids, or finished product</u>	3963
<u>natural gas liquids;</u>	3964
(7) A water-works company, when engaged in the business of supplying water through pipes or tubing, or in a similar manner, to consumers within this state;	3965 3966 3967
(8) A heating or cooling company, when engaged in the business of supplying water, steam, or air through pipes or tubing to consumers within this state for heating or cooling purposes;	3968 3969 3970
(9) A messenger company, when engaged in the business of supplying messengers for any purpose;	3971 3972
(10) A street railway company, when engaged in the business of operating as a common carrier, a railway, wholly or partly within this state, with one or more tracks upon, along, above, or below any public road, street, alleyway, or ground, within any municipal corporation, operated by any motive power other than steam and not a part of an interurban railroad, whether the railway is termed street, inclined-plane, elevated, or underground railway;	3973 3974 3975 3976 3977 3978 3979 3980
(11) A suburban railroad company, when engaged in the business of operating as a common carrier, whether wholly or partially within this state, a part of a street railway constructed or extended beyond the limits of a municipal corporation, and not a part of an interurban railroad;	3981 3982 3983 3984 3985
(12) An interurban railroad company, when engaged in the business of operating a railroad, wholly or partially within this state, with one or more tracks from one municipal corporation or point in this state to another municipal corporation or point in this state, whether constructed upon the public highways or upon private rights-of-way, outside of municipal corporations, using electricity or other motive power than steam power for the transportation of passengers, packages, express matter, United	3986 3987 3988 3989 3990 3991 3992 3993

States mail, baggage, and freight. Such an interurban railroad 3994
company is included in the term "railroad" as used in section 3995
4907.02 of the Revised Code. 3996

(13) A sewage disposal system company, when engaged in the 3997
business of sewage disposal services through pipes or tubing, and 3998
treatment works, or in a similar manner, within this state. 3999

(B) "Motor-propelled vehicle" means any automobile, 4000
automobile truck, motor bus, or any other self-propelled vehicle 4001
not operated or driven upon fixed rails or tracks. 4002

(C) As used in this section: 4003

(1) "Gathering lines" has the same meaning as in section 4004
4905.90 of the Revised Code. 4005

(2) "Raw natural gas liquids" and "finished product natural 4006
gas liquids" have the same meanings as in section 4906.01 of the 4007
Revised Code. 4008

Sec. 4905.90. As used in sections 4905.90 to 4905.96 of the 4009
Revised Code: 4010

(A) "Contiguous property" includes, but is not limited to, a 4011
manufactured home park as defined in section 3733.01 of the 4012
Revised Code; a public or publicly subsidized housing project; an 4013
apartment complex; a condominium complex; a college or university; 4014
an office complex; a shopping center; a hotel; an industrial park; 4015
and a race track. 4016

(B) "Gas" means natural gas, flammable gas, or gas which is 4017
toxic or corrosive. 4018

(C) "Gathering ~~lines~~ line" and the "gathering of gas" have 4019
the same meaning as in the Natural Gas Pipeline Safety Act and the 4020
rules adopted by the United States department of transportation 4021
pursuant to the Natural Gas Pipeline Safety Act, including 49 4022
C.F.R. part 192, as amended. 4023

(D) "Gas gathering pipeline" means a gathering line that is not regulated under the Natural Gas Pipeline Safety Act and the rules adopted by the United States department of transportation pursuant to the Natural Gas Pipeline Safety Act, including 49 C.F.R. part 192, as amended. "Gas gathering pipeline" includes a pipeline used to collect and transport raw natural gas or transmission quality gas to the inlet of a gas processing plant, the inlet of a distribution system, or to a transmission line. 4024
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(E) "Gas processing plant" means a plant that processes raw natural gas into merchantable products, including transmission quality gas or natural gas liquids and also may include a plant that treats raw natural gas to remove impurities such as carbon dioxide, helium, nitrogen or water. 4032
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(F) "Intrastate pipe-line transportation" has the same meaning as in 82 Stat. 720 (1968), 49 U.S.C.A. App. 1671, as amended, but excludes the gathering of gas exempted by the Natural Gas Pipeline Safety Act. 4037
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~~(E)~~(G) "MAOP" means the maximum pressure at which a gas gathering pipeline, a processing plant gas stub pipeline, or any segment of such a pipeline may be operated under sections 4905.90 to 4905.96 of the Revised Code. 4041
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(H) "Master-meter system" means a pipe-line system that distributes gas within a contiguous property for which the system operator purchases gas for resale to consumers, including tenants. Such pipe-line system supplies consumers who purchase the gas directly through a meter, or by paying rent, or by other means. The term includes a master-meter system as defined in 49 C.F.R. 191.3, as amended. The term excludes a pipeline within a manufactured home, mobile home, or a building. 4045
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~~(F)~~(I) "Natural Gas Pipeline Safety Act" means the "Natural Gas Pipeline Safety Act of 1968," 82 Stat. 720, 49 U.S.C.A. App. 4053
4054

1671 et seq., as amended. 4055

~~(G)~~(J) "Operator" means any of the following: 4056

(1) A gas company or natural gas company as defined in 4057
section 4905.03 of the Revised Code, except that division (A)(5) 4058
of that section does not authorize the public utilities commission 4059
to relieve any producer of gas, as a gas company or natural gas 4060
company, of compliance with sections 4905.90 to 4905.96 of the 4061
Revised Code or the pipe-line safety code created under section 4062
4905.91 of the Revised Code; 4063

(2) A pipe-line company, as defined in section 4905.03 of the 4064
Revised Code, when engaged in the business of transporting gas by 4065
pipeline; 4066

(3) A public utility that is excepted from the definition of 4067
"public utility" under division (B) or (C) of section 4905.02 of 4068
the Revised Code, when engaged in supplying or transporting gas by 4069
pipeline within this state; 4070

(4) Any person that owns, operates, manages, controls, or 4071
leases any of the following: 4072

(a) Intrastate pipe-line transportation facilities within 4073
this state; 4074

(b) Gas gathering lines within this state which are not 4075
exempted by the Natural Gas Pipeline Safety Act; 4076

(c) A master-meter system within this state. 4077

"Operator" does not include an ultimate consumer who owns a 4078
service line, as defined in 49 C.F.R. 192.3, as amended, on the 4079
real property of that ultimate consumer. 4080

~~(H)~~(K) "Operator of a master-meter system" means a person 4081
described under division ~~(F)~~(J)(4)(c) of this section. An operator 4082
of a master-meter system is not a public utility under section 4083
4905.02 or a gas or natural gas company under section 4905.03 of 4084

the Revised Code. 4085

~~(I)~~(L) "Person" means: 4086

(1) In addition to those defined in division (C) of section 4087
1.59 of the Revised Code, a joint venture or a municipal 4088
corporation; 4089

(2) Any trustee, receiver, assignee, or personal 4090
representative of persons defined in division ~~(H)~~(L)(1) of this 4091
section. 4092

~~(J)~~(M) "Processing plant gas stub pipeline" means a gas 4093
pipeline that transports transmission quality gas from the 4094
tailgate of a gas processing plant to the inlet of an interstate 4095
or intrastate transmission line and that is considered an 4096
extension of the gas processing plant, is not for public use, and 4097
is not regulated under the Natural Gas Pipeline Safety Act and the 4098
rules adopted by the United States department of transportation 4099
pursuant to the Natural Gas Pipeline Safety Act, including 49 4100
C.F.R. part 92, as amended. 4101

(N) "Safety audit" means the public utilities commission's 4102
audit of the premises, pipe-line facilities, and the records, 4103
maps, and other relevant documents of a master-meter system to 4104
determine the operator's compliance with sections 4905.90 to 4105
4905.96 of the Revised Code and the pipe-line safety code. 4106

~~(K)~~(O) "Safety inspection" means any inspection, survey, or 4107
testing of a master-meter system which is authorized or required 4108
by sections 4905.90 to 4905.96 of the Revised Code and the 4109
pipe-line safety code. The term includes, but is not limited to, 4110
leak surveys, inspection of regulators and critical valves, and 4111
monitoring of cathodic protection systems, where applicable. 4112

~~(L)~~(P) "Safety-related condition" means any safety-related 4113
condition defined in 49 C.F.R. 191.23, as amended. 4114

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

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

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

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

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

(A) The public utilities commission shall:

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

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

Pipeline Safety Act;	4144
<u>(3) Perform all regulatory and enforcement duties required</u>	4145
<u>under sections 4905.90 to 4905.96 of the Revised Code.</u>	4146
(B) The commission may:	4147
(1) Investigate any service, act, practice, policy, or	4148
omission by any operator to determine its compliance with sections	4149
4905.90 to 4905.96 of the Revised Code and the pipe-line safety	4150
code;	4151
(2) Investigate any intrastate pipe-line transportation	4152
facility to determine if it is hazardous to life or property, as	4153
provided in 82 Stat. 720 (1968), 49 U.S.C.A. App. 1679b(b)(2) and	4154
(3);	4155
(3) Investigate the existence or report of any safety-related	4156
condition that involves any intrastate pipe-line transportation	4157
facility;	4158
(4) Enter into and perform contracts or agreements with the	4159
United States department of transportation to inspect interstate	4160
transmission facilities pursuant to the Natural Gas Pipeline	4161
Safety Act;	4162
(5) Accept grants-in-aid, cash, and reimbursements provided	4163
for or made available to this state by the federal government to	4164
carry out the Natural Gas Pipeline Safety Act or to enforce	4165
sections 4905.90 to 4905.96 of the Revised Code and the pipe-line	4166
safety code. All such grants-in-aid, cash, and reimbursements	4167
shall be deposited to the credit of the gas pipe-line safety fund,	4168
which is hereby created in the state treasury, to be used by the	4169
commission for the purpose of carrying out this section.	4170
<u>(6) Enter into a cooperative agreement or a memorandum of</u>	4171
<u>understanding with another state agency for consultation services</u>	4172
<u>and the exchange of advice and technical expertise to assist the</u>	4173

commission in exercising its regulatory authority under section 4174
4905.04 of the Revised Code, provided that no such agreement or 4175
memorandum of understanding shall: 4176

(a) Confer on the state agency any regulatory authority over 4177
the activities subject to sections 4905.90 to 4905.96 of the 4178
Revised Code; 4179

(b) Diminish the sole and exclusive authority of the 4180
commission under section 4905.04 of the Revised Code. 4181

(C) The With the exception of gas gathering pipelines and 4182
processing plant gas stub pipelines, the commission's regulation 4183
of gathering lines shall conform to the regulation of gathering 4184
lines in 49 C.F.R. 192 and 199, as amended, and the commission's 4185
annual certification agreements with the United States department 4186
of transportation, except that rule 4901:1-16-03, paragraph (D) of 4187
rule 4901:1-16-05, and rule 4901:1-16-06 of the Ohio 4188
Administrative Code shall also apply to gathering lines. The 4189
procedural rules under chapter 4901:1-16 of the Ohio 4190
Administrative Code shall also apply to operators of gathering 4191
lines that are not gathering pipelines or processing plant gas 4192
stub pipelines. 4193

Sec. 4905.911. (A)(1) The public utilities commission shall 4194
require an operator of either of the following types of pipelines 4195
that was completely constructed on or after the effective date of 4196
this section and that transports gas produced by a horizontal well 4197
to comply with the applicable pipe design requirements of 49 4198
C.F.R. 192 subpart C: 4199

(a) A gas gathering pipeline; 4200

(b) A processing plant gas stub pipeline. 4201

(2) The commission shall also require the operator to do all 4202
of the following regarding that pipeline: 4203

<u>(a) Design, install, construct, initially inspect, and</u>	4204
<u>initially test the pipeline in accordance with the requirements of</u>	4205
<u>49 C.F.R. 192 if the pipeline is new, replaced, relocated, or</u>	4206
<u>otherwise changed;</u>	4207
<u>(b) Control corrosion according to requirements of 49 C.F.R.</u>	4208
<u>192 subpart I if the pipeline is metallic;</u>	4209
<u>(c) Establish and carry out a damage prevention program under</u>	4210
<u>49 C.F.R. 192.614;</u>	4211
<u>(d) Establish and carry out a public education program under</u>	4212
<u>49 C.F.R. 192.616;</u>	4213
<u>(e) Establish the MAOP of the pipeline under 49 C.F.R.</u>	4214
<u>192.619;</u>	4215
<u>(f) Install and maintain pipeline markers according to the</u>	4216
<u>requirements for transmission lines under 49 C.F.R. 192.707;</u>	4217
<u>(g) Perform leakage surveys according to requirements in 49</u>	4218
<u>C.F.R. 192.706;</u>	4219
<u>(h) Retain a record of each required leakage survey conducted</u>	4220
<u>under division (A)(2)(g) of this section and 49 C.F.R. 192.706 for</u>	4221
<u>five years or until the next leakage survey is completed,</u>	4222
<u>whichever time period is longer.</u>	4223
<u>(B)(1) Any person who plans to construct a pipeline subject</u>	4224
<u>to division (A) of this section after the effective date of this</u>	4225
<u>section shall file with the public utilities commission division</u>	4226
<u>of pipeline safety a form approved by the division that includes</u>	4227
<u>all of the following information:</u>	4228
<u>(a) The route of the proposed pipeline;</u>	4229
<u>(b) The MAOP of the pipeline;</u>	4230
<u>(c) The outside diameter of the pipeline;</u>	4231
<u>(d) The wall thickness of the pipeline;</u>	4232

(e) The material that the pipeline will be made of; 4233

(f) The yield strength of the pipeline. 4234

The form shall be filed with the division not later than 4235
twenty-one days prior to the commencement of construction of the 4236
pipeline. 4237

(2) Not later than sixty days after the completion of 4238
construction of a pipeline subject to division (B)(1) of this 4239
section, the operator of the pipeline shall file with the public 4240
utilities commission division of pipeline safety an explanation of 4241
the constructed pipeline's route and operating information. 4242

(C) For purposes of this section: 4243

(1) "Horizontal well" has the same meaning as in section 4244
1509.01 of the Revised Code. 4245

(2) "Operator" means any person that owns, operates, manages, 4246
controls, or leases a gas gathering pipeline or a processing plant 4247
gas stub pipeline. 4248

Sec. 4905.95. (A) Except as otherwise provided in division 4249
(C) of this section: 4250

(1) The public utilities commission, regarding any proceeding 4251
under this section, shall provide reasonable notice and the 4252
opportunity for a hearing in accordance with rules adopted under 4253
section 4901.13 of the Revised Code. 4254

(2) Sections 4903.02 to 4903.082, 4903.09 to 4903.16, and 4255
4903.20 to 4903.23 of the Revised Code apply to all proceedings 4256
and orders of the commission under this section and to all 4257
operators subject to those proceedings and orders. 4258

(B) If, pursuant to a proceeding it specially initiates or to 4259
any other proceeding and after the hearing provided for under 4260
division (A) of this section, the commission finds that: 4261

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

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

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

(i) The gravity of the violation or noncompliance;

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

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

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

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

(vi) Such other matters as justice may require.

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

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

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

(a) Shall require the operator of the facility to take 4291
corrective action to remove the hazard. Such corrective action may 4292
include suspended or restricted use of the facility, physical 4293
inspection, testing, repair, replacement, or other action. 4294

(b) May direct the attorney general to seek the remedies 4295
provided in section 4905.96 of the Revised Code. 4296

(C) If, pursuant to a proceeding it specially initiates or to 4297
any other proceeding, the commission finds that an emergency 4298
exists due to a condition on an intrastate pipe-line 4299
transportation facility posing a clear and immediate danger to 4300
life or health or threatening a significant loss of property and 4301
requiring immediate corrective action to protect the public 4302
safety, the commission may issue, without notice or prior hearing, 4303
an order reciting its finding and may direct the attorney general 4304
to seek the remedies provided in section 4905.96 of the Revised 4305
Code. The order shall remain in effect for not more than forty 4306
days after the date of its issuance. The order shall provide for a 4307
hearing as soon as possible, but not later than thirty days after 4308
the date of its issuance. After the hearing the commission shall 4309
continue, revoke, or modify the order and may make findings under 4310
and seek appropriate remedies as provided in division (B) of this 4311
section. 4312

Sec. 4906.01. As used in Chapter 4906. of the Revised Code: 4313

(A) "Person" means an individual, corporation, business 4314
trust, association, estate, trust, or partnership or any officer, 4315
board, commission, department, division, or bureau of the state or 4316
a political subdivision of the state, or any other entity. 4317

(B)(1) "Major utility facility" means: 4318

(a) Electric generating plant and associated facilities 4319
designed for, or capable of, operation at a capacity of fifty 4320

megawatts or more; 4321

(b) An electric transmission line and associated facilities 4322
of a design capacity of one hundred twenty-five kilovolts or more; 4323

(c) ~~A gas or natural gas transmission line and pipeline that~~ 4324
is greater than five hundred feet in length, and its 4325
associated facilities, is more than nine inches in outside diameter and is 4326
~~designed for, or capable of,~~ transporting gas ~~or natural gas~~ at 4327
~~pressures~~ a maximum allowable operating pressure in excess of one 4328
hundred twenty-five pounds per square inch. 4329

(2) "Major utility facility" does not include ~~gas or natural~~ 4330
~~gas~~ any of the following: 4331

(a) Gas transmission lines over which an agency of the United 4332
States has exclusive jurisdiction, ~~any;~~ 4333

(b) Any solid waste facilities as defined in section 6123.01 4334
of the Revised Code, ~~or either of the following as defined by the~~ 4335
~~power siting board;~~ 4336

~~(a)(c)~~ Electric, gas, natural gas distributing lines and ~~gas~~ 4337
~~or natural gas gathering lines~~ and associated facilities as 4338
defined by the power siting board; 4339

~~(b)(d)~~ Any manufacturing facility that creates byproducts 4340
that may be used in the generation of electricity as defined by 4341
the power siting board; 4342

(e) Gathering lines, gas gathering pipelines, and processing 4343
plant gas stub pipelines as those terms are defined in section 4344
4905.90 of the Revised Code and associated facilities; 4345

(f) Any gas processing plant as defined in section 4905.90 of 4346
the Revised Code; 4347

(g) Natural gas liquids finished product pipelines; 4348

(h) Pipelines from a gas processing plant as defined in 4349
section 4905.90 of the Revised Code to a natural gas liquids 4350

fractionation plant, including a raw natural gas liquids pipeline, 4351
or to an interstate or intrastate gas pipeline; 4352

(i) Any natural gas liquids fractionation plant; 4353

(j) A production operation as defined in section 1509.01 of 4354
the Revised Code, including all pipelines upstream of any 4355
gathering lines; 4356

(k) Any compressor stations used by the following: 4357

(i) A gathering line, a gas gathering pipeline, a processing 4358
plant gas stub pipeline, or a gas processing plant as those terms 4359
are defined in section 4905.90 of the Revised Code; 4360

(ii) A natural gas liquids finished product pipeline, a 4361
natural gas liquids fractionation plant, or any pipeline upstream 4362
of a natural gas liquids fractionation plant; or 4363

(iii) A production operation as defined in section 1509.01 of 4364
the Revised Code. 4365

(C) "Commence to construct" means any clearing of land, 4366
excavation, or other action that would adversely affect the 4367
natural environment of the site or route of a major utility 4368
facility, but does not include surveying changes needed for 4369
temporary use of sites or routes for nonutility purposes, or uses 4370
in securing geological data, including necessary borings to 4371
ascertain foundation conditions. 4372

(D) "Certificate" means a certificate of environmental 4373
compatibility and public need issued by the power siting board 4374
under section 4906.10 of the Revised Code or a construction 4375
certificate issued by the board under rules adopted under division 4376
(E) or (F) of section 4906.03 of the Revised Code. 4377

(E) "Gas" means natural gas, flammable gas, or gas that is 4378
toxic or corrosive. 4379

(F) "Natural gas liquids finished product pipeline" means a 4380

pipeline that carries finished product natural gas liquids to the 4381
inlet of an interstate or intrastate finished product natural gas 4382
liquid transmission pipeline, rail loading facility, or other 4383
petrochemical or refinery facility. 4384

(G) "Natural gas liquids fractionation plant" means a 4385
facility that takes a feed of raw natural gas liquids and produces 4386
finished product natural gas liquids. 4387

(H) "Raw natural gas" means hydrocarbons that are produced in 4388
a gaseous state from gas wells and that generally include methane, 4389
ethane, propane, butanes, pentanes, hexanes, heptanes, octanes, 4390
nonanes, and decanes, plus other naturally occurring impurities 4391
like water, carbon dioxide, hydrogen sulfide, nitrogen, oxygen, 4392
and helium. 4393

(I) "Raw natural gas liquids" means naturally occurring 4394
hydrocarbons contained in raw natural gas that are extracted in a 4395
gas processing plant and liquefied and generally include mixtures 4396
of ethane, propane, butanes, and natural gasoline. 4397

(J) "Finished product natural gas liquids" means an 4398
individual finished product produced by a natural gas liquids 4399
fractionation plant as a liquid that meets the specifications for 4400
commercial products as defined by the gas processors association. 4401
Those products include ethane, propane, iso-butane, normal butane, 4402
and natural gasoline. 4403

Sec. 4906.03. The power siting board shall: 4404

(A) Require such information from persons subject to its 4405
jurisdiction as it considers necessary to assist in the conduct of 4406
hearings and any investigations or studies it may undertake; 4407

(B) Conduct any studies or investigations that it considers 4408
necessary or appropriate to carry out its responsibilities under 4409
this chapter; 4410

(C) Adopt rules establishing criteria for evaluating the 4411
effects on environmental values of proposed and alternative sites, 4412
and projected needs for electric power, and such other rules as 4413
are necessary and convenient to implement this chapter, including 4414
rules governing application fees, supplemental application fees, 4415
and other reasonable fees to be paid by persons subject to the 4416
board's jurisdiction. The board shall make an annual accounting of 4417
its collection and use of these fees and shall issue an annual 4418
report of its accounting, in the form and manner prescribed by its 4419
rules, not later than the last day of June of the year following 4420
the calendar year to which the report applies. 4421

(D) Approve ~~or~~, disapprove, or modify and approve 4422
applications for certificates; 4423

(E) Notwithstanding sections 4906.06 to 4906.14 of the 4424
Revised Code, the board may adopt rules to provide for an 4425
~~abbreviated~~ accelerated review of an application for a 4426
construction certificate for construction of a major utility 4427
facility related to a coal research and development project as 4428
defined in section 1555.01 of the Revised Code, or to a coal 4429
development project as defined in section 1551.30 of the Revised 4430
Code, submitted to the Ohio coal development office for review 4431
under division (B)(7) of section 1551.33 of the Revised Code. 4432
Applications for construction certificates for construction of 4433
major utility facilities for Ohio coal research and development 4434
shall be filed with the board on the same day as the proposed 4435
facility or project is submitted to the Ohio coal development 4436
office for review. 4437

The board shall render a decision on an application for a 4438
construction certificate within ninety days after receipt of the 4439
application and all of the data and information it may require 4440
from the applicant. In rendering a decision on an application for 4441
a construction certificate, the board shall only consider the 4442

criteria and make the findings and determinations set forth in 4443
divisions (A)(2), (3), (5), and (7) and division (B) of section 4444
4906.10 of the Revised Code. 4445

(F) Notwithstanding sections 4906.06 to 4906.14 of the 4446
Revised Code, the board shall adopt rules to provide for an 4447
accelerated review of an application for a construction 4448
certificate for any of the following: 4449

(1) An electric transmission line that is: 4450

(a) Not more than two miles in length; 4451

(b) Primarily needed to attract or meet the requirements of a 4452
specific customer or specific customers; 4453

(c) Necessary to maintain reliable electric service as a 4454
result of the retirement or shutdown of an electric generating 4455
facility located within the state; or 4456

(d) A rebuilding of an existing transmission line. 4457

(2) An electric generating facility that uses waste heat or 4458
natural gas and is primarily within the current boundary of an 4459
existing industrial or electric generating facility; 4460

(3) A gas pipeline that is not more than five miles in length 4461
or is primarily needed to meet the requirements of a specific 4462
customer or specific customers. 4463

The board shall adopt rules that provide for the automatic 4464
certification to any entity described in this division when an 4465
application by any such entity is not suspended by the board, an 4466
administrative law judge, or the chairperson or executive director 4467
of the board for good cause shown, within ninety days of 4468
submission of the application. If an application is suspended, the 4469
board shall approve, disapprove, or modify and approve the 4470
application not later than ninety days after the date of the 4471
suspension. 4472

Sec. 4906.05. No certificate is required for a major utility 4473
facility on which construction had already commenced on October 4474
23, 1972, or within two years thereafter. This section does not 4475
exempt such a facility from any other requirements of state and 4476
local laws and regulations. 4477

No certificate is required for any major utility facility 4478
already in operation on October 23, 1972, and the facility shall 4479
not be exempt from any applicable state or local laws or 4480
regulations. A certificate is required for any substantial 4481
addition to a facility already in operation. "Substantial 4482
addition" shall be defined by the power siting board. 4483

Any electric generating plant and associated facilities, 4484
electric transmission line and associated facilities, or gas ~~or~~ 4485
~~natural gas transmission line~~ pipeline and associated facilities 4486
which is not a major utility facility is not exempt from state or 4487
local laws or regulations. 4488

Sec. 4906.06. (A) An applicant for a certificate shall file 4489
with the office of the chairperson of the power siting board an 4490
application, in such form as the board prescribes, containing the 4491
following information: 4492

(1) A description of the location and of the major utility 4493
facility; 4494

(2) A summary of any studies that have been made by or for 4495
the applicant of the environmental impact of the facility; 4496

(3) A statement explaining the need for the facility; 4497

(4) A statement of the reasons why the proposed location is 4498
best suited for the facility; 4499

(5) A statement of how the facility fits into the applicant's 4500
forecast contained in the report submitted under section 4935.04 4501

of the Revised Code; 4502

(6) Such other information as the applicant may consider 4503
relevant or as the board by rule or order may require. Copies of 4504
the studies referred to in division (A)(2) of this section shall 4505
be filed with the office of the chairperson, if ordered, and shall 4506
be available for public inspection. 4507

The application shall be filed not ~~less than one year nor~~ 4508
more than five years prior to the planned date of commencement of 4509
construction. ~~Either~~ The five-year period may be waived by the 4510
board for good cause shown. 4511

(B) Each application shall be accompanied by proof of service 4512
of a copy of such application on the chief executive officer of 4513
each municipal corporation and county, and the head of each public 4514
agency charged with the duty of protecting the environment or of 4515
planning land use, in the area in which any portion of such 4516
facility is to be located. 4517

(C) Each applicant within fifteen days after the date of the 4518
filing of the application shall give public notice to persons 4519
residing in the municipal corporations and counties entitled to 4520
receive notice under division (B) of this section, by the 4521
publication of a summary of the application in newspapers of 4522
general circulation in such area. Proof of such publication shall 4523
be filed with the office of the chairperson. 4524

(D) Inadvertent failure of service on, or notice to, any of 4525
the persons identified in divisions (B) and (C) of this section 4526
may be cured pursuant to orders of the board designed to afford 4527
them adequate notice to enable them to participate effectively in 4528
the proceeding. In addition, the board, after filing, may require 4529
the applicant to serve notice of the application or copies thereof 4530
or both upon such other persons, and file proof thereof, as the 4531
board considers appropriate. 4532

(E) An application for an amendment of a certificate shall be 4533
in such form and contain such information as the board prescribes. 4534
Notice of such an application shall be given as required in 4535
divisions (B) and (C) of this section. 4536

(F) Each application for certificate or an amendment shall be 4537
accompanied by the application fee prescribed by board rule. All 4538
application fees, supplemental application fees, and other fees 4539
collected by the board shall be deposited in the state treasury to 4540
the credit of the power siting board fund, which is hereby 4541
created. The chairperson shall administer and authorize 4542
expenditures from the fund for any of the purposes of this 4543
chapter. If the chairperson determines that moneys credited to the 4544
fund from an applicant's fee are not sufficient to pay the board's 4545
expenses associated with its review of the application, the 4546
chairperson shall request the approval of the controlling board to 4547
assess a supplemental application fee upon an applicant to pay 4548
anticipated additional expenses associated with the board's review 4549
of the application or an amendment to an application. If the 4550
chairperson finds that an application fee exceeds the amount 4551
needed to pay the board's expenses for review of the application, 4552
the chairperson shall cause a refund of the excess amount to be 4553
issued to the applicant from the fund. 4554

Sec. 4906.07. (A) Upon the receipt of an application 4555
complying with section 4906.06 of the Revised Code, the power 4556
siting board shall promptly fix a date for a public hearing 4557
thereon, not less than sixty nor more than ninety days after such 4558
receipt, and shall conclude the proceeding as expeditiously as 4559
practicable. 4560

(B) On an application for an amendment of a certificate, the 4561
board shall hold a hearing in the same manner as a hearing is held 4562
on an application for a certificate if the proposed change in the 4563

facility would result in any material increase in any 4564
environmental impact of the facility or a substantial change in 4565
the location of all or a portion of such facility other than as 4566
provided in the alternates set forth in the application. 4567

(C) The ~~chairman~~ chairperson of the power siting board shall 4568
cause each application filed with the board to be investigated and 4569
shall, not less than fifteen days prior to the date any 4570
application is set for hearing submit a written report to the 4571
board and to the applicant. A copy of such report shall be made 4572
available to any person upon request. Such report shall set forth 4573
the nature of the investigation, and shall contain recommended 4574
findings with regard to division (A) of section 4906.10 of the 4575
Revised Code and shall become part of the record and served upon 4576
all parties to the proceeding. 4577

Sec. 4906.10. (A) The power siting board shall render a 4578
decision upon the record either granting or denying the 4579
application as filed, or granting it upon such terms, conditions, 4580
or modifications of the construction, operation, or maintenance of 4581
the major utility facility as the board considers appropriate. The 4582
certificate shall be conditioned upon the facility being in 4583
compliance with standards and rules adopted under sections 4584
1501.33, 1501.34, and 4561.32 and Chapters 3704., 3734., and 6111. 4585
of the Revised Code. An applicant may withdraw an application if 4586
the board grants a certificate on terms, conditions, or 4587
modifications other than those proposed by the applicant in the 4588
application. The period of initial operation under a certificate 4589
shall expire two years after the date on which electric power is 4590
first generated by the facility. During the period of initial 4591
operation, the facility shall be subject to the enforcement and 4592
monitoring powers of the director of environmental protection 4593
under Chapters 3704., 3734., and 6111. of the Revised Code and to 4594
the emergency provisions under those chapters. If a major utility 4595

facility constructed in accordance with the terms and conditions 4596
of its certificate is unable to operate in compliance with all 4597
applicable requirements of state laws, rules, and standards 4598
pertaining to air pollution, the facility may apply to the 4599
director of environmental protection for a conditional operating 4600
permit under division (G) of section 3704.03 of the Revised Code 4601
and the rules adopted thereunder. The operation of a major utility 4602
facility in compliance with a conditional operating permit is not 4603
in violation of its certificate. After the expiration of the 4604
period of initial operation of a major utility facility, the 4605
facility shall be under the jurisdiction of the environmental 4606
protection agency and shall comply with all laws, rules, and 4607
standards pertaining to air pollution, water pollution, and solid 4608
and hazardous waste disposal. 4609

The board shall not grant a certificate for the construction, 4610
operation, and maintenance of a major utility facility, either as 4611
proposed or as modified by the board, unless it finds and 4612
determines all of the following: 4613

(1) The basis of the need for the facility if the facility is 4614
an electric transmission line or gas ~~or natural gas transmission~~ 4615
line pipeline; 4616

(2) The nature of the probable environmental impact; 4617

(3) That the facility represents the minimum adverse 4618
environmental impact, considering the state of available 4619
technology and the nature and economics of the various 4620
alternatives, and other pertinent considerations; 4621

(4) In the case of an electric transmission line or 4622
generating facility, that the facility is consistent with regional 4623
plans for expansion of the electric power grid of the electric 4624
systems serving this state and interconnected utility systems and 4625
that the facility will serve the interests of electric system 4626

economy and reliability; 4627

(5) That the facility will comply with Chapters 3704., 3734., 4628
and 6111. of the Revised Code and all rules and standards adopted 4629
under those chapters and under sections 1501.33, 1501.34, and 4630
4561.32 of the Revised Code. In determining whether the facility 4631
will comply with all rules and standards adopted under section 4632
4561.32 of the Revised Code, the board shall consult with the 4633
office of aviation of the division of multi-modal planning and 4634
programs of the department of transportation under section 4635
4561.341 of the Revised Code. 4636

(6) That the facility will serve the public interest, 4637
convenience, and necessity; 4638

(7) In addition to the provisions contained in divisions 4639
(A)(1) to (6) of this section and rules adopted under those 4640
divisions, what its impact will be on the viability as 4641
agricultural land of any land in an existing agricultural district 4642
established under Chapter 929. of the Revised Code that is located 4643
within the site and alternative site of the proposed major utility 4644
facility. Rules adopted to evaluate impact under division (A)(7) 4645
of this section shall not require the compilation, creation, 4646
submission, or production of any information, document, or other 4647
data pertaining to land not located within the site and 4648
alternative site. 4649

(8) That the facility incorporates maximum feasible water 4650
conservation practices as determined by the board, considering 4651
available technology and the nature and economics of the various 4652
alternatives. 4653

(B) If the board determines that the location of all or a 4654
part of the proposed facility should be modified, it may condition 4655
its certificate upon that modification, provided that the 4656
municipal corporations and counties, and persons residing therein, 4657

affected by the modification shall have been given reasonable 4658
notice thereof. 4659

(C) A copy of the decision and any opinion issued therewith 4660
shall be served upon each party. 4661

Sec. 4906.20. (A) No person shall commence to construct an 4662
economically significant wind farm in this state without first 4663
having obtained a certificate from the power siting board. An 4664
economically significant wind farm with respect to which such a 4665
certificate is required shall be constructed, operated, and 4666
maintained in conformity with that certificate and any terms, 4667
conditions, and modifications it contains. A certificate shall be 4668
issued only pursuant to this section. The certificate may be 4669
transferred, subject to the approval of the board, to a person 4670
that agrees to comply with those terms, conditions, and 4671
modifications. 4672

(B) The board shall adopt rules governing the certificating 4673
of economically significant wind farms under this section. Initial 4674
rules shall be adopted within one hundred twenty days after ~~this~~ 4675
~~section's effective date~~ June 24, 2008. 4676

(1) The rules shall provide for an application process for 4677
certificating economically significant wind farms that is 4678
identical to the extent practicable to the process applicable to 4679
certificating major utility facilities under sections 4906.06, 4680
4906.07, 4906.08, 4906.09, 4906.10, 4906.11, and 4906.12 of the 4681
Revised Code and shall prescribe a reasonable schedule of 4682
application filing fees structured in the manner of the schedule 4683
of filing fees required for major utility facilities. 4684

(2) Additionally, the rules shall prescribe reasonable 4685
regulations regarding any wind turbines and associated facilities 4686
of an economically significant wind farm, including, but not 4687
limited to, their location, erection, construction, 4688

reconstruction, change, alteration, maintenance, removal, use, or 4689
enlargement and including erosion control, aesthetics, 4690
recreational land use, wildlife protection, interconnection with 4691
power lines and with regional transmission organizations, 4692
independent transmission system operators, or similar 4693
organizations, ice throw, sound and noise levels, blade shear, 4694
shadow flicker, decommissioning, and necessary cooperation for 4695
site visits and enforcement investigations. The rules also shall 4696
prescribe a minimum setback for a wind turbine of an economically 4697
significant wind farm. That minimum shall be equal to a horizontal 4698
distance, from the turbine's base to the property line of the wind 4699
farm property, equal to one and one-tenth times the total height 4700
of the turbine structure as measured from its base to the tip of 4701
its highest blade and be at least seven hundred fifty feet in 4702
horizontal distance from the tip of the turbine's nearest blade at 4703
ninety degrees to the exterior of the nearest, habitable, 4704
residential structure, if any, located on adjacent property at the 4705
time of the certification application. The setback shall apply in 4706
all cases except those in which all owners of property adjacent to 4707
the wind farm property waive application of the setback to that 4708
property pursuant to a procedure the board shall establish by rule 4709
and except in which, in a particular case, the board determines 4710
that a setback greater than the minimum is necessary. 4711

~~(C) The board shall approve, or may modify and approve, an 4712
application for economically significant wind farm certification 4713
if it finds that the construction, operation, and maintenance of 4714
the economically significant wind farm will comply with the rules 4715
adopted under division (B) of this section. The certificate shall 4716
be conditioned upon the economically significant wind farm 4717
complying with rules adopted under section 4561.32 of the Revised 4718
Code. 4719~~

Sec. 4928.01. (A) As used in this chapter: 4720

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

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

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

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

(5) "Electric cooperative" means a not-for-profit electric light company that both is or has been financed in whole or in part under the "Rural Electrification Act of 1936," 49 Stat. 1363, 7 U.S.C. 901, and owns or operates facilities in this state to generate, transmit, or distribute electricity, or a not-for-profit successor of such company.

(6) "Electric distribution utility" means an electric utility 4753
that supplies at least retail electric distribution service. 4754

(7) "Electric light company" has the same meaning as in 4755
section 4905.03 of the Revised Code and includes an electric 4756
services company, but excludes any self-generator to the extent 4757
that it consumes electricity it so produces, sells that 4758
electricity for resale, or obtains electricity from a generating 4759
facility it hosts on its premises. 4760

(8) "Electric load center" has the same meaning as in section 4761
4933.81 of the Revised Code. 4762

(9) "Electric services company" means an electric light 4763
company that is engaged on a for-profit or not-for-profit basis in 4764
the business of supplying or arranging for the supply of only a 4765
competitive retail electric service in this state. "Electric 4766
services company" includes a power marketer, power broker, 4767
aggregator, or independent power producer but excludes an electric 4768
cooperative, municipal electric utility, governmental aggregator, 4769
or billing and collection agent. 4770

(10) "Electric supplier" has the same meaning as in section 4771
4933.81 of the Revised Code. 4772

(11) "Electric utility" means an electric light company that 4773
has a certified territory and is engaged on a for-profit basis 4774
either in the business of supplying a noncompetitive retail 4775
electric service in this state or in the businesses of supplying 4776
both a noncompetitive and a competitive retail electric service in 4777
this state. "Electric utility" excludes a municipal electric 4778
utility or a billing and collection agent. 4779

(12) "Firm electric service" means electric service other 4780
than nonfirm electric service. 4781

(13) "Governmental aggregator" means a legislative authority 4782
of a municipal corporation, a board of township trustees, or a 4783

board of county commissioners acting as an aggregator for the 4784
provision of a competitive retail electric service under authority 4785
conferred under section 4928.20 of the Revised Code. 4786

(14) A person acts "knowingly," regardless of the person's 4787
purpose, when the person is aware that the person's conduct will 4788
probably cause a certain result or will probably be of a certain 4789
nature. A person has knowledge of circumstances when the person is 4790
aware that such circumstances probably exist. 4791

(15) "Level of funding for low-income customer energy 4792
efficiency programs provided through electric utility rates" means 4793
the level of funds specifically included in an electric utility's 4794
rates on October 5, 1999, pursuant to an order of the public 4795
utilities commission issued under Chapter 4905. or 4909. of the 4796
Revised Code and in effect on October 4, 1999, for the purpose of 4797
improving the energy efficiency of housing for the utility's 4798
low-income customers. The term excludes the level of any such 4799
funds committed to a specific nonprofit organization or 4800
organizations pursuant to a stipulation or contract. 4801

(16) "Low-income customer assistance programs" means the 4802
percentage of income payment plan program, the home energy 4803
assistance program, the home weatherization assistance program, 4804
and the targeted energy efficiency and weatherization program. 4805

(17) "Market development period" for an electric utility 4806
means the period of time beginning on the starting date of 4807
competitive retail electric service and ending on the applicable 4808
date for that utility as specified in section 4928.40 of the 4809
Revised Code, irrespective of whether the utility applies to 4810
receive transition revenues under this chapter. 4811

(18) "Market power" means the ability to impose on customers 4812
a sustained price for a product or service above the price that 4813
would prevail in a competitive market. 4814

(19) "Mercantile customer" means a commercial or industrial customer if the electricity consumed is for nonresidential use and the customer consumes more than seven hundred thousand kilowatt hours per year or is part of a national account involving multiple facilities in one or more states.

(20) "Municipal electric utility" means a municipal corporation that owns or operates facilities to generate, transmit, or distribute electricity.

(21) "Noncompetitive retail electric service" means a component of retail electric service that is noncompetitive as provided under division (B) of this section.

(22) "Nonfirm electric service" means electric service provided pursuant to a schedule filed under section 4905.30 of the Revised Code or pursuant to an arrangement under section 4905.31 of the Revised Code, which schedule or arrangement includes conditions that may require the customer to curtail or interrupt electric usage during nonemergency circumstances upon notification by an electric utility.

(23) "Percentage of income payment plan arrears" means funds eligible for collection through the percentage of income payment plan rider, but uncollected as of July 1, 2000.

(24) "Person" has the same meaning as in section 1.59 of the Revised Code.

(25) "Advanced energy project" means any technologies, products, activities, or management practices or strategies that facilitate the generation or use of electricity or energy and that reduce or support the reduction of energy consumption or support the production of clean, renewable energy for industrial, distribution, commercial, institutional, governmental, research, not-for-profit, or residential energy users, including, but not limited to, advanced energy resources and renewable energy

resources. "Advanced energy project" also includes any project 4846
described in division (A), (B), or (C) of section 4928.621 of the 4847
Revised Code. 4848

(26) "Regulatory assets" means the unamortized net regulatory 4849
assets that are capitalized or deferred on the regulatory books of 4850
the electric utility, pursuant to an order or practice of the 4851
public utilities commission or pursuant to generally accepted 4852
accounting principles as a result of a prior commission 4853
rate-making decision, and that would otherwise have been charged 4854
to expense as incurred or would not have been capitalized or 4855
otherwise deferred for future regulatory consideration absent 4856
commission action. "Regulatory assets" includes, but is not 4857
limited to, all deferred demand-side management costs; all 4858
deferred percentage of income payment plan arrears; 4859
post-in-service capitalized charges and assets recognized in 4860
connection with statement of financial accounting standards no. 4861
109 (receivables from customers for income taxes); future nuclear 4862
decommissioning costs and fuel disposal costs as those costs have 4863
been determined by the commission in the electric utility's most 4864
recent rate or accounting application proceeding addressing such 4865
costs; the undepreciated costs of safety and radiation control 4866
equipment on nuclear generating plants owned or leased by an 4867
electric utility; and fuel costs currently deferred pursuant to 4868
the terms of one or more settlement agreements approved by the 4869
commission. 4870

(27) "Retail electric service" means any service involved in 4871
supplying or arranging for the supply of electricity to ultimate 4872
consumers in this state, from the point of generation to the point 4873
of consumption. For the purposes of this chapter, retail electric 4874
service includes one or more of the following "service 4875
components": generation service, aggregation service, power 4876
marketing service, power brokerage service, transmission service, 4877

distribution service, ancillary service, metering service, and 4878
billing and collection service. 4879

(28) "Starting date of competitive retail electric service" 4880
means January 1, 2001. 4881

(29) "Customer-generator" means a user of a net metering 4882
system. 4883

(30) "Net metering" means measuring the difference in an 4884
applicable billing period between the electricity supplied by an 4885
electric service provider and the electricity generated by a 4886
customer-generator that is fed back to the electric service 4887
provider. 4888

(31) "Net metering system" means a facility for the 4889
production of electrical energy that does all of the following: 4890

(a) Uses as its fuel either solar, wind, biomass, landfill 4891
gas, or hydropower, or uses a microturbine or a fuel cell; 4892

(b) Is located on a customer-generator's premises; 4893

(c) Operates in parallel with the electric utility's 4894
transmission and distribution facilities; 4895

(d) Is intended primarily to offset part or all of the 4896
customer-generator's requirements for electricity. 4897

(32) "Self-generator" means an entity in this state that owns 4898
or hosts on its premises an electric generation facility that 4899
produces electricity primarily for the owner's consumption and 4900
that may provide any such excess electricity to another entity, 4901
whether the facility is installed or operated by the owner or by 4902
an agent under a contract. 4903

(33) "Rate plan" means the standard service offer in effect 4904
on the effective date of the amendment of this section by S.B. 221 4905
of the 127th general assembly, July 31, 2008. 4906

(34) "Advanced energy resource" means any of the following: 4907

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

(b) Any distributed generation system consisting of customer cogeneration technology;

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

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

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

(f) Advanced solid waste or construction and demolition debris conversion technology, including, but not limited to,

advanced stoker technology, and advanced fluidized bed 4939
gasification technology, that results in measurable greenhouse gas 4940
emissions reductions as calculated pursuant to the United States 4941
environmental protection agency's waste reduction model (WARM)-~~i~~ 4942

(g) Demand-side management and any energy efficiency 4943
improvement;~~i~~ 4944

(h) Any new, retrofitted, refueled, or repowered generating 4945
facility located in Ohio, including a simple or combined-cycle 4946
natural gas generating facility or a generating facility that uses 4947
biomass, coal, modular nuclear, or any other fuel as its input; 4948

(i) Any uprated capacity of an existing electric generating 4949
facility if the uprated capacity results from the deployment of 4950
advanced technology. 4951

"Advanced energy resource" does not include a waste energy 4952
recovery system that is, or has been, included in an energy 4953
efficiency program of an electric distribution utility pursuant to 4954
requirements under section 4928.66 of the Revised Code. 4955

(35) "Air contaminant source" has the same meaning as in 4956
section 3704.01 of the Revised Code. 4957

(36) "Cogeneration technology" means technology that produces 4958
electricity and useful thermal output simultaneously. 4959

(37)(a) "Renewable energy resource" means ~~solar~~ any of the 4960
following: 4961

(i) Solar photovoltaic or solar thermal energy,~~wind~~;~~i~~ 4962

(ii) Wind energy,~~power~~;~~i~~ 4963

(iii) Power produced by a hydroelectric facility,~~geothermal~~;~~i~~ 4964

(iv) Geothermal energy,~~fuel~~;~~i~~ 4965

(v) Fuel derived from solid wastes, as defined in section 4966
3734.01 of the Revised Code, through fractionation, biological 4967

decomposition, or other process that does not principally involve 4968
combustion, ~~biomass~~; 4969

(vi) Biomass energy, ~~energy~~; 4970

(vii) Energy produced by cogeneration technology that is 4971
placed into service on or before December 31, 2015, and for which 4972
more than ninety per cent of the total annual energy input is from 4973
combustion of a waste or byproduct gas from an air contaminant 4974
source in this state, which source has been in operation since on 4975
or before January 1, 1985, provided that the cogeneration 4976
technology is a part of a facility located in a county having a 4977
population of more than three hundred sixty-five thousand but less 4978
than three hundred seventy thousand according to the most recent 4979
federal decennial census, ~~biologically~~; 4980

(viii) Biologically derived methane gas, ~~or energy~~; 4981

(ix) Energy derived from nontreated by-products of the 4982
pulping process or wood manufacturing process, including bark, 4983
wood chips, sawdust, and lignin in spent pulping liquors. 4984

"Renewable 4985

"Renewable energy resource" includes, but is not limited to, 4986
any fuel cell used in the generation of electricity, including, 4987
but not limited to, a proton exchange membrane fuel cell, 4988
phosphoric acid fuel cell, molten carbonate fuel cell, or solid 4989
oxide fuel cell; wind turbine located in the state's territorial 4990
waters of Lake Erie; methane gas emitted from an abandoned coal 4991
mine; waste energy recovery system placed into service or 4992
retrofitted on or after the effective date of the amendment of 4993
this section by S.B. 315 of the 129th general assembly, except 4994
that a waste energy recovery system described in division 4995
(A)(38)(b) of this section may be included only if it was placed 4996
into service between January 1, 2002, and December 31, 2004; 4997
storage facility that will promote the better utilization of a 4998

renewable energy resource ~~that primarily generates off peak;~~ or 4999
distributed generation system used by a customer to generate 5000
electricity from any such energy. ~~As~~ 5001

"Renewable energy resource" does not include a waste energy 5002
recovery system that is, or was, on or after January 1, 2012, 5003
included in an energy efficiency program of an electric 5004
distribution utility pursuant to requirements under section 5005
4928.66 of the Revised Code. 5006

(b) As used in division (A)(37) of this section, 5007
"hydroelectric facility" means a hydroelectric generating facility 5008
that is located at a dam on a river, or on any water discharged to 5009
a river, that is within or bordering this state or within or 5010
bordering an adjoining state and meets all of the following 5011
standards: 5012

~~(a)~~(i) The facility provides for river flows that are not 5013
detrimental for fish, wildlife, and water quality, including 5014
seasonal flow fluctuations as defined by the applicable licensing 5015
agency for the facility. 5016

~~(b)~~(ii) The facility demonstrates that it complies with the 5017
water quality standards of this state, which compliance may 5018
consist of certification under Section 401 of the "Clean Water Act 5019
of 1977," 91 Stat. 1598, 1599, 33 U.S.C. 1341, and demonstrates 5020
that it has not contributed to a finding by this state that the 5021
river has impaired water quality under Section 303(d) of the 5022
"Clean Water Act of 1977," 114 Stat. 870, 33 U.S.C. 1313. 5023

~~(c)~~(iii) The facility complies with mandatory prescriptions 5024
regarding fish passage as required by the federal energy 5025
regulatory commission license issued for the project, regarding 5026
fish protection for riverine, anadromous, and catadromous fish. 5027

~~(d)~~(iv) The facility complies with the recommendations of the 5028
Ohio environmental protection agency and with the terms of its 5029

federal energy regulatory commission license regarding watershed 5030
protection, mitigation, or enhancement, to the extent of each 5031
agency's respective jurisdiction over the facility. 5032

~~(e)~~(v) The facility complies with provisions of the 5033
"Endangered Species Act of 1973," 87 Stat. 884, 16 U.S.C. 1531 to 5034
1544, as amended. 5035

~~(f)~~(vi) The facility does not harm cultural resources of the 5036
area. This can be shown through compliance with the terms of its 5037
federal energy regulatory commission license or, if the facility 5038
is not regulated by that commission, through development of a plan 5039
approved by the Ohio historic preservation office, to the extent 5040
it has jurisdiction over the facility. 5041

~~(g)~~(vii) The facility complies with the terms of its federal 5042
energy regulatory commission license or exemption that are related 5043
to recreational access, accommodation, and facilities or, if the 5044
facility is not regulated by that commission, the facility 5045
complies with similar requirements as are recommended by resource 5046
agencies, to the extent they have jurisdiction over the facility; 5047
and the facility provides access to water to the public without 5048
fee or charge. 5049

~~(h)~~(viii) The facility is not recommended for removal by any 5050
federal agency or agency of any state, to the extent the 5051
particular agency has jurisdiction over the facility. 5052

(38) "Waste energy recovery system" means either of the 5053
following: 5054

(a) A facility that generates electricity through the 5055
conversion of energy from either of the following: 5056

(i) Exhaust heat from engines or manufacturing, industrial, 5057
commercial, or institutional sites, except for exhaust heat from a 5058
facility whose primary purpose is the generation of electricity; 5059

(ii) Reduction of pressure in gas pipelines before gas is distributed through the pipeline, provided that the conversion of energy to electricity is achieved without using additional fossil fuels. 5060
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(b) A facility at a state institution of higher education as defined in section 3345.011 of the Revised Code that recovers waste heat from electricity-producing engines or combustion turbines and that simultaneously uses the recovered heat to produce steam, provided that the facility was placed into service between January 1, 2002, and December 31, 2004. 5064
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(39) "Smart grid" means capital improvements to an electric distribution utility's distribution infrastructure that improve reliability, efficiency, resiliency, or reduce energy demand or use, including, but not limited to, advanced metering and automation of system functions. 5070
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(40) "Combined heat and power system" means the coproduction of electricity and useful thermal energy from the same fuel source designed to achieve thermal-efficiency levels of at least sixty per cent, with at least twenty per cent of the system's total useful energy in the form of thermal energy. 5075
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(B) For the purposes of this chapter, a retail electric service component shall be deemed a competitive retail electric service if the service component is competitive pursuant to a declaration by a provision of the Revised Code or pursuant to an order of the public utilities commission authorized under division (A) of section 4928.04 of the Revised Code. Otherwise, the service component shall be deemed a noncompetitive retail electric service. 5080
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Sec. 4928.02. It is the policy of this state to do the following throughout this state: 5088
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- (A) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service; 5090
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- (B) Ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs; 5093
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- (C) Ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities; 5097
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- (D) Encourage innovation and market access for cost-effective supply- and demand-side retail electric service including, but not limited to, demand-side management, time-differentiated pricing, waste energy recovery systems, smart grid programs, and implementation of advanced metering infrastructure; 5101
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- (E) Encourage cost-effective and efficient access to information regarding the operation of the transmission and distribution systems of electric utilities in order to promote both effective customer choice of retail electric service and the development of performance standards and targets for service quality for all consumers, including annual achievement reports written in plain language; 5106
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- (F) Ensure that an electric utility's transmission and distribution systems are available to a customer-generator or owner of distributed generation, so that the customer-generator or owner can market and deliver the electricity it produces; 5113
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- (G) Recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment; 5117
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- (H) Ensure effective competition in the provision of retail 5120

electric service by avoiding anticompetitive subsidies flowing 5121
from a noncompetitive retail electric service to a competitive 5122
retail electric service or to a product or service other than 5123
retail electric service, and vice versa, including by prohibiting 5124
the recovery of any generation-related costs through distribution 5125
or transmission rates; 5126

(I) Ensure retail electric service consumers protection 5127
against unreasonable sales practices, market deficiencies, and 5128
market power; 5129

(J) Provide coherent, transparent means of giving appropriate 5130
incentives to technologies that can adapt successfully to 5131
potential environmental mandates; 5132

(K) Encourage implementation of distributed generation across 5133
customer classes through regular review and updating of 5134
administrative rules governing critical issues such as, but not 5135
limited to, interconnection standards, standby charges, and net 5136
metering; 5137

(L) Protect at-risk populations, including, but not limited 5138
to, when considering the implementation of any new advanced energy 5139
or renewable energy resource; 5140

(M) Encourage the education of small business owners in this 5141
state regarding the use of, and encourage the use of, energy 5142
efficiency programs and alternative energy resources in their 5143
businesses; 5144

(N) Facilitate the state's effectiveness in the global 5145
economy. 5146

In carrying out this policy, the commission shall consider 5147
rules as they apply to the costs of electric distribution 5148
infrastructure, including, but not limited to, line extensions, 5149
for the purpose of development in this state. 5150

Sec. 4928.111. The public utilities commission shall consult 5151
with electric distribution utilities to review the distribution 5152
infrastructure in this state and shall consult with regional 5153
transmission organizations and entities that own or control 5154
transmission facilities to review the transmission infrastructure 5155
in this state. 5156

Sec. 4928.2314. (A) The transfer and ownership of 5157
phase-in-recovery property and the imposition, charging, 5158
collection, and receipt of phase-in-recovery revenues under 5159
sections 4928.231 to 4928.2317 of the Revised Code are exempt from 5160
all taxes and similar charges imposed by the state or any county, 5161
municipal corporation, school district, local authority, or other 5162
subdivision. 5163

(B) Phase-in-recovery bonds issued under a final financing 5164
order shall not constitute a debt or a pledge of the faith and 5165
credit or taxing power of this state or of any county, municipal 5166
corporation, or any other political subdivision of this state. 5167
Bondholders shall have no right to have taxes levied by this state 5168
or the taxing authority of any county, municipal corporation, or 5169
any other political subdivision of this state for the payment of 5170
the principal of or interest on the bonds. The issuance of 5171
phase-in-recovery bonds does not, directly, indirectly, or 5172
contingently, obligate this state or any county, municipal 5173
corporation, or political subdivision of this state to levy any 5174
tax or make any appropriation for payment of the principal of or 5175
interest on the bonds. 5176

(C) Nothing in this section prohibits the levy of the tax 5177
imposed under Chapter 5751. of the Revised Code. 5178

Sec. 4928.61. (A) There is hereby established in the state 5179
treasury the advanced energy fund, into which shall be deposited 5180

all advanced energy revenues remitted to the director of 5181
development under division (B) of this section, for the exclusive 5182
purposes of funding the advanced energy program created under 5183
section 4928.62 of the Revised Code and paying the program's 5184
administrative costs. Interest on the fund shall be credited to 5185
the fund. 5186

(B) Advanced energy revenues shall include all of the 5187
following: 5188

(1) Revenues remitted to the director after collection by 5189
each electric distribution utility in this state of a temporary 5190
rider on retail electric distribution service rates as such rates 5191
are determined by the public utilities commission pursuant to this 5192
chapter. The rider shall be a uniform amount statewide, determined 5193
by the director of development, after consultation with the public 5194
benefits advisory board created by section 4928.58 of the Revised 5195
Code. The amount shall be determined by dividing an aggregate 5196
revenue target for a given year as determined by the director, 5197
after consultation with the advisory board, by the number of 5198
customers of electric distribution utilities in this state in the 5199
prior year. Such aggregate revenue target shall not exceed more 5200
than fifteen million dollars in any year through 2005 and shall 5201
not exceed more than five million dollars in any year after 2005. 5202
The rider shall be imposed beginning on the effective date of the 5203
amendment of this section by Sub. H.B. 251 of the 126th general 5204
assembly, January 4, 2007, and shall terminate at the end of ten 5205
years following the starting date of competitive retail electric 5206
service or until the advanced energy fund, including interest, 5207
reaches one hundred million dollars, whichever is first. 5208

(2) Revenues from payments, repayments, and collections under 5209
the advanced energy program and from program income; 5210

(3) Revenues remitted to the director after collection by a 5211
municipal electric utility or electric cooperative in this state 5212

upon the utility's or cooperative's decision to participate in the advanced energy fund;

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

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

(6) Funds transferred pursuant to division (B) of Section 512.10 of S.B. 315 of the 129th general assembly;

(7) Interest earnings on the advanced energy fund.

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

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

(3) All remittances under divisions (C)(1) and (2) of this section shall continue only until the end of ten years following the starting date of competitive retail electric service or until the advanced energy fund, including interest, reaches one hundred

million dollars, whichever is first. 5244

(D) Any moneys collected in rates for non-low-income customer 5245
energy efficiency programs, as of October 5, 1999, and not 5246
contributed to the energy efficiency revolving loan fund 5247
authorized under this section prior to the effective date of its 5248
amendment by Sub. H.B. 251 of the 126th general assembly, January 5249
4, 2007, shall be used to continue to fund cost-effective, 5250
residential energy efficiency programs, be contributed into the 5251
universal service fund as a supplement to that required under 5252
section 4928.53 of the Revised Code, or be returned to ratepayers 5253
in the form of a rate reduction at the option of the affected 5254
electric distribution utility. 5255

Sec. 4928.62. (A) There is hereby created the advanced energy 5256
program, which shall be administered by the director of 5257
development. Under the program, the director may authorize the use 5258
of moneys in the advanced energy fund for financial, technical, 5259
and related assistance for advanced energy projects in this state 5260
or for economic development assistance, in furtherance of the 5261
purposes set forth in section 4928.63 of the Revised Code. ~~Fe~~ 5262

(1) To the extent feasible given approved applications for 5263
assistance, the assistance shall be distributed among the 5264
certified territories of electric distribution utilities and 5265
participating electric cooperatives, and among the service areas 5266
of participating municipal electric utilities, in amounts 5267
proportionate to the remittances of each utility and cooperative 5268
under divisions (B)(1) and (3) of section 4928.61 of the Revised 5269
Code. 5270

(2) The funds described in division (B)(6) of section 4928.61 5271
of the Revised Code shall not be subject to the territorial 5272
requirements of division (A)(1) of this section. 5273

(3) The director shall not authorize financial assistance for 5274

an advanced energy project under the program unless the director 5275
first determines that the project will create new jobs or preserve 5276
existing jobs in this state or use innovative technologies or 5277
materials. 5278

(B) In carrying out sections 4928.61 to 4928.63 of the 5279
Revised Code, the director may do all of the following to further 5280
the public interest in advanced energy projects and economic 5281
development: 5282

(1) Award grants, contracts, loans, loan participation 5283
agreements, linked deposits, and energy production incentives; 5284

(2) Acquire in the name of the director any property of any 5285
kind or character in accordance with this section, by purchase, 5286
purchase at foreclosure, or exchange, on such terms and in such 5287
manner as the director considers proper; 5288

(3) Make and enter into all contracts and agreements 5289
necessary or incidental to the performance of the director's 5290
duties and the exercise of the director's powers under sections 5291
4928.61 to 4928.63 of the Revised Code; 5292

(4) Employ or enter into contracts with financial 5293
consultants, marketing consultants, consulting engineers, 5294
architects, managers, construction experts, attorneys, technical 5295
monitors, energy evaluators, or other employees or agents as the 5296
director considers necessary, and fix their compensation; 5297

(5) Adopt rules prescribing the application procedures for 5298
financial assistance under the advanced energy program; the fees, 5299
charges, interest rates, payment schedules, local match 5300
requirements, and other terms and conditions of any grants, 5301
contracts, loans, loan participation agreements, linked deposits, 5302
and energy production incentives; criteria pertaining to the 5303
eligibility of participating lending institutions; and any other 5304
matters necessary for the implementation of the program; 5305

(6) Do all things necessary and appropriate for the operation of the program. 5306
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(C) The department of development may hold ownership to any unclaimed energy efficiency and renewable energy emission allowances provided for in Chapter 3745-14 of the Administrative Code or otherwise, that result from advanced energy projects that receive funding from the advanced energy fund, and it may use the allowances to further the public interest in advanced energy projects or for economic development. 5308
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(D) Financial statements, financial data, and trade secrets submitted to or received by the director from an applicant or recipient of financial assistance under sections 4928.61 to 4928.63 of the Revised Code, or any information taken from those statements, data, or trade secrets for any purpose, are not public records for the purpose of section 149.43 of the Revised Code. 5315
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(E) Nothing in the amendments of sections 4928.61, 4928.62, and 4928.63 of the Revised Code by Sub. H.B. 251 of the 126th general assembly shall affect any pending or effected assistance, pending or effected purchases or exchanges of property made, or pending or effected contracts or agreements entered into pursuant to division (A) or (B) of this section as the section existed prior to the effective date of those amendments, January 4, 2007, or shall affect the exemption provided under division (C) of this section as the section existed prior to that effective date. 5321
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(F) Any assistance a school district receives for an advanced energy project, including a geothermal heating, ventilating, and air conditioning system, shall be in addition to any assistance provided under Chapter 3318. of the Revised Code and shall not be included as part of the district or state portion of the basic project cost under that chapter. 5330
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Sec. 4928.64. (A)(1) As used in sections 4928.64 and 4928.65 5336

of the Revised Code, "alternative energy resource" means an 5337
advanced energy resource or renewable energy resource, as defined 5338
in section 4928.01 of the Revised Code that has a 5339
placed-in-service date of January 1, 1998, or after; a renewable 5340
energy resource created on or after January 1, 1998, by the 5341
modification or retrofit of any facility placed in service prior 5342
to January 1, 1998; or a mercantile customer-sited advanced energy 5343
resource or renewable energy resource, whether new or existing, 5344
that the mercantile customer commits for integration into the 5345
electric distribution utility's demand-response, energy 5346
efficiency, or peak demand reduction programs as provided under 5347
division (A)(2)(c) of section 4928.66 of the Revised Code, 5348
including, but not limited to, any of the following: 5349

(a) A resource that has the effect of improving the 5350
relationship between real and reactive power; 5351

(b) A resource that makes efficient use of waste heat or 5352
other thermal capabilities owned or controlled by a mercantile 5353
customer; 5354

(c) Storage technology that allows a mercantile customer more 5355
flexibility to modify its demand or load and usage 5356
characteristics; 5357

(d) Electric generation equipment owned or controlled by a 5358
mercantile customer that uses an advanced energy resource or 5359
renewable energy resource; 5360

(e) Any advanced energy resource or renewable energy resource 5361
of the mercantile customer that can be utilized effectively as 5362
part of any advanced energy resource plan of an electric 5363
distribution utility and would otherwise qualify as an alternative 5364
energy resource if it were utilized directly by an electric 5365
distribution utility. 5366

(2) For the purpose of this section and as it considers 5367
appropriate, the public utilities commission may classify any new 5368
technology as such an advanced energy resource or a renewable 5369
energy resource. 5370

(B) By 2025 and thereafter, an electric distribution utility 5371
shall provide from alternative energy resources, including, at its 5372
discretion, alternative energy resources obtained pursuant to an 5373
electricity supply contract, a portion of the electricity supply 5374
required for its standard service offer under section 4928.141 of 5375
the Revised Code, and an electric services company shall provide a 5376
portion of its electricity supply for retail consumers in this 5377
state from alternative energy resources, including, at its 5378
discretion, alternative energy resources obtained pursuant to an 5379
electricity supply contract. That portion shall equal twenty-five 5380
per cent of the total number of kilowatt hours of electricity sold 5381
by the subject utility or company to any and all retail electric 5382
consumers whose electric load centers are served by that utility 5383
and are located within the utility's certified territory or, in 5384
the case of an electric services company, are served by the 5385
company and are located within this state. However, nothing in 5386
this section precludes a utility or company from providing a 5387
greater percentage. The baseline for a utility's or company's 5388
compliance with the alternative energy resource requirements of 5389
this section shall be the average of such total kilowatt hours it 5390
sold in the preceding three calendar years, except that the 5391
commission may reduce a utility's or company's baseline to adjust 5392
for new economic growth in the utility's certified territory or, 5393
in the case of an electric services company, in the company's 5394
service area in this state. 5395

Of the alternative energy resources implemented by the 5396
subject utility or company by 2025 and thereafter: 5397

(1) Half may be generated from advanced energy resources; 5398

(2) At least half shall be generated from renewable energy			5399
resources, including one-half per cent from solar energy			5400
resources, in accordance with the following benchmarks:			5401
By end of year	Renewable energy	Solar energy	5402
	resources	resources	
2009	0.25%	0.004%	5403
2010	0.50%	0.010%	5404
2011	1%	0.030%	5405
2012	1.5%	0.060%	5406
2013	2%	0.090%	5407
2014	2.5%	0.12%	5408
2015	3.5%	0.15%	5409
2016	4.5%	0.18%	5410
2017	5.5%	0.22%	5411
2018	6.5%	0.26%	5412
2019	7.5%	0.3%	5413
2020	8.5%	0.34%	5414
2021	9.5%	0.38%	5415
2022	10.5%	0.42%	5416
2023	11.5%	0.46%	5417
2024 and each calendar	12.5%	0.5%	5418
year thereafter			

(3) At least one-half of the renewable energy resources 5419
implemented by the utility or company shall be met through 5420
facilities located in this state; the remainder shall be met with 5421
resources that can be shown to be deliverable into this state. 5422

(C)(1) The commission annually shall review an electric 5423
distribution utility's or electric services company's compliance 5424
with the most recent applicable benchmark under division (B)(2) of 5425
this section and, in the course of that review, shall identify any 5426
undercompliance or noncompliance of the utility or company that it 5427
determines is weather-related, related to equipment or resource 5428

shortages for advanced energy or renewable energy resources as 5429
applicable, or is otherwise outside the utility's or company's 5430
control. 5431

(2) Subject to the cost cap provisions of division (C)(3) of 5432
this section, if the commission determines, after notice and 5433
opportunity for hearing, and based upon its findings in that 5434
review regarding avoidable undercompliance or noncompliance, but 5435
subject to division (C)(4) of this section, that the utility or 5436
company has failed to comply with any such benchmark, the 5437
commission shall impose a renewable energy compliance payment on 5438
the utility or company. 5439

(a) The compliance payment pertaining to the solar energy 5440
resource benchmarks under division (B)(2) of this section shall be 5441
an amount per megawatt hour of undercompliance or noncompliance in 5442
the period under review, starting at four hundred fifty dollars 5443
for 2009, four hundred dollars for 2010 and 2011, and similarly 5444
reduced every two years thereafter through 2024 by fifty dollars, 5445
to a minimum of fifty dollars. 5446

(b) The compliance payment pertaining to the renewable energy 5447
resource benchmarks under division (B)(2) of this section shall 5448
equal the number of additional renewable energy credits that the 5449
electric distribution utility or electric services company would 5450
have needed to comply with the applicable benchmark in the period 5451
under review times an amount that shall begin at forty-five 5452
dollars and shall be adjusted annually by the commission to 5453
reflect any change in the consumer price index as defined in 5454
section 101.27 of the Revised Code, but shall not be less than 5455
forty-five dollars. 5456

(c) The compliance payment shall not be passed through by the 5457
electric distribution utility or electric services company to 5458
consumers. The compliance payment shall be remitted to the 5459
commission, for deposit to the credit of the advanced energy fund 5460

created under section 4928.61 of the Revised Code. Payment of the 5461
compliance payment shall be subject to such collection and 5462
enforcement procedures as apply to the collection of a forfeiture 5463
under sections 4905.55 to 4905.60 and 4905.64 of the Revised Code. 5464

(3) An electric distribution utility or an electric services 5465
company need not comply with a benchmark under division (B)(1) or 5466
(2) of this section to the extent that its reasonably expected 5467
cost of that compliance exceeds its reasonably expected cost of 5468
otherwise producing or acquiring the requisite electricity by 5469
three per cent or more. The cost of compliance shall be calculated 5470
as though any exemption from taxes and assessments had not been 5471
granted under section 5727.75 of the Revised Code. 5472

(4)(a) An electric distribution utility or electric services 5473
company may request the commission to make a force majeure 5474
determination pursuant to this division regarding all or part of 5475
the utility's or company's compliance with any minimum benchmark 5476
under division (B)(2) of this section during the period of review 5477
occurring pursuant to division (C)(2) of this section. The 5478
commission may require the electric distribution utility or 5479
electric services company to make solicitations for renewable 5480
energy resource credits as part of its default service before the 5481
utility's or company's request of force majeure under this 5482
division can be made. 5483

(b) Within ninety days after the filing of a request by an 5484
electric distribution utility or electric services company under 5485
division (C)(4)(a) of this section, the commission shall determine 5486
if renewable energy resources are reasonably available in the 5487
marketplace in sufficient quantities for the utility or company to 5488
comply with the subject minimum benchmark during the review 5489
period. In making this determination, the commission shall 5490
consider whether the electric distribution utility or electric 5491
services company has made a good faith effort to acquire 5492

sufficient renewable energy or, as applicable, solar energy 5493
resources to so comply, including, but not limited to, by banking 5494
or seeking renewable energy resource credits or by seeking the 5495
resources through long-term contracts. Additionally, the 5496
commission shall consider the availability of renewable energy or 5497
solar energy resources in this state and other jurisdictions in 5498
the PJM interconnection regional transmission organization or its 5499
successor and the midwest system operator or its successor. 5500

(c) If, pursuant to division (C)(4)(b) of this section, the 5501
commission determines that renewable energy or solar energy 5502
resources are not reasonably available to permit the electric 5503
distribution utility or electric services company to comply, 5504
during the period of review, with the subject minimum benchmark 5505
prescribed under division (B)(2) of this section, the commission 5506
shall modify that compliance obligation of the utility or company 5507
as it determines appropriate to accommodate the finding. 5508
Commission modification shall not automatically reduce the 5509
obligation for the electric distribution utility's or electric 5510
services company's compliance in subsequent years. If it modifies 5511
the electric distribution utility or electric services company 5512
obligation under division (C)(4)(c) of this section, the 5513
commission may require the utility or company, if sufficient 5514
renewable energy resource credits exist in the marketplace, to 5515
acquire additional renewable energy resource credits in subsequent 5516
years equivalent to the utility's or company's modified obligation 5517
under division (C)(4)(c) of this section. 5518

(5) The commission shall establish a process to provide for 5519
at least an annual review of the alternative energy resource 5520
market in this state and in the service territories of the 5521
regional transmission organizations that manage transmission 5522
systems located in this state. The commission shall use the 5523
results of this study to identify any needed changes to the amount 5524

of the renewable energy compliance payment specified under 5525
divisions (C)(2)(a) and (b) of this section. Specifically, the 5526
commission may increase the amount to ensure that payment of 5527
compliance payments is not used to achieve compliance with this 5528
section in lieu of actually acquiring or realizing energy derived 5529
from renewable energy resources. However, if the commission finds 5530
that the amount of the compliance payment should be otherwise 5531
changed, the commission shall present this finding to the general 5532
assembly for legislative enactment. 5533

(D)(1) The commission annually shall submit to the general 5534
assembly in accordance with section 101.68 of the Revised Code a 5535
report describing ~~the~~ all of the following: 5536

(a) The compliance of electric distribution utilities and 5537
electric services companies with division (B) of this section ~~and~~ 5538
any 5539

(b) The average annual cost of renewable energy credits 5540
purchased by utilities and companies for the year covered in the 5541
report; 5542

(c) Any strategy for utility and company compliance or for 5543
encouraging the use of alternative energy resources in supplying 5544
this state's electricity needs in a manner that considers 5545
available technology, costs, job creation, and economic impacts. 5546
~~The~~ 5547

The commission shall begin providing the information 5548
described in division (D)(1)(b) of this section in each report 5549
submitted after the effective date of the amendment of this 5550
section by S.B. 315 of the 129th general assembly. The commission 5551
shall allow and consider public comments on the report prior to 5552
its submission to the general assembly. Nothing in the report 5553
shall be binding on any person, including any utility or company 5554
for the purpose of its compliance with any benchmark under 5555

division (B) of this section, or the enforcement of that provision 5556
under division (C) of this section. 5557

(2) The governor, in consultation with the commission 5558
chairperson, shall appoint an alternative energy advisory 5559
committee. The committee shall examine available technology for 5560
and related timetables, goals, and costs of the alternative energy 5561
resource requirements under division (B) of this section and shall 5562
submit to the commission a semiannual report of its 5563
recommendations. 5564

(E) All costs incurred by an electric distribution utility in 5565
complying with the requirements of this section shall be 5566
bypassable by any consumer that has exercised choice of supplier 5567
under section 4928.03 of the Revised Code. 5568

Sec. 4928.66. (A)(1)(a) Beginning in 2009, an electric 5569
distribution utility shall implement energy efficiency programs 5570
that achieve energy savings equivalent to at least three-tenths of 5571
one per cent of the total, annual average, and normalized 5572
kilowatt-hour sales of the electric distribution utility during 5573
the preceding three calendar years to customers in this state. An 5574
energy efficiency program may include a combined heat and power 5575
system placed into service or retrofitted on or after the 5576
effective date of the amendment of this section by S.B. 315 of the 5577
129th general assembly, or a waste energy recovery system placed 5578
into service or retrofitted on or after the same date, except that 5579
a waste energy recovery system described in division (A)(38)(b) of 5580
section 4928.01 of the Revised Code may be included only if it was 5581
placed into service between January 1, 2002, and December 31, 5582
2004. For a waste energy recovery or combined heat and power 5583
system, the savings shall be as estimated by the public utilities 5584
commission. The savings requirement, using such a three-year 5585
average, shall increase to an additional five-tenths of one per 5586

cent in 2010, seven-tenths of one per cent in 2011, eight-tenths 5587
of one per cent in 2012, nine-tenths of one per cent in 2013, one 5588
per cent from 2014 to 2018, and two per cent each year thereafter, 5589
achieving a cumulative, annual energy savings in excess of 5590
twenty-two per cent by the end of 2025. For purposes of a waste 5591
energy recovery or combined heat and power system, an electric 5592
distribution utility shall not apply more than the total annual 5593
percentage of the electric distribution utility's 5594
industrial-customer load, relative to the electric distribution 5595
utility's total load, to the annual energy savings requirement. 5596

(b) Beginning in 2009, an electric distribution utility shall 5597
implement peak demand reduction programs designed to achieve a one 5598
per cent reduction in peak demand in 2009 and an additional 5599
seventy-five hundredths of one per cent reduction each year 5600
through 2018. In 2018, the standing committees in the house of 5601
representatives and the senate primarily dealing with energy 5602
issues shall make recommendations to the general assembly 5603
regarding future peak demand reduction targets. 5604

(2) For the purposes of divisions (A)(1)(a) and (b) of this 5605
section: 5606

(a) The baseline for energy savings under division (A)(1)(a) 5607
of this section shall be the average of the total kilowatt hours 5608
the electric distribution utility sold in the preceding three 5609
calendar years, and the baseline for a peak demand reduction under 5610
division (A)(1)(b) of this section shall be the average peak 5611
demand on the utility in the preceding three calendar years, 5612
except that the commission may reduce either baseline to adjust 5613
for new economic growth in the utility's certified territory. 5614

(b) The commission may amend the benchmarks set forth in 5615
division (A)(1)(a) or (b) of this section if, after application by 5616
the electric distribution utility, the commission determines that 5617

the amendment is necessary because the utility cannot reasonably 5618
achieve the benchmarks due to regulatory, economic, or 5619
technological reasons beyond its reasonable control. 5620

(c) Compliance with divisions (A)(1)(a) and (b) of this 5621
section shall be measured by including the effects of all 5622
demand-response programs for mercantile customers of the subject 5623
electric distribution utility, all waste energy recovery systems 5624
and all combined heat and power systems, and all such mercantile 5625
customer-sited energy efficiency, including waste energy recovery 5626
and combined heat and power, and peak demand reduction programs, 5627
adjusted upward by the appropriate loss factors. Any mechanism 5628
designed to recover the cost of energy efficiency, including waste 5629
energy recovery and combined heat and power, and peak demand 5630
reduction programs under divisions (A)(1)(a) and (b) of this 5631
section may exempt mercantile customers that commit their 5632
demand-response or other customer-sited capabilities, whether 5633
existing or new, for integration into the electric distribution 5634
utility's demand-response, energy efficiency, including waste 5635
energy recovery and combined heat and power, or peak demand 5636
reduction programs, if the commission determines that that 5637
exemption reasonably encourages such customers to commit those 5638
capabilities to those programs. If a mercantile customer makes 5639
such existing or new demand-response, energy efficiency, including 5640
waste energy recovery and combined heat and power, or peak demand 5641
reduction capability available to an electric distribution utility 5642
pursuant to division (A)(2)(c) of this section, the electric 5643
utility's baseline under division (A)(2)(a) of this section shall 5644
be adjusted to exclude the effects of all such demand-response, 5645
energy efficiency, including waste energy recovery and combined 5646
heat and power, or peak demand reduction programs that may have 5647
existed during the period used to establish the baseline. The 5648
baseline also shall be normalized for changes in numbers of 5649
customers, sales, weather, peak demand, and other appropriate 5650

factors so that the compliance measurement is not unduly 5651
influenced by factors outside the control of the electric 5652
distribution utility. 5653

(d) Programs implemented by a utility may include 5654
demand-response programs, smart grid investment programs, provided 5655
that such programs are demonstrated to be cost-beneficial, 5656
customer-sited programs, including waste energy recovery and 5657
combined heat and power systems, and transmission and distribution 5658
infrastructure improvements that reduce line losses. Division 5659
(A)(2)(c) of this section shall be applied to include facilitating 5660
efforts by a mercantile customer or group of those customers to 5661
offer customer-sited demand-response, energy efficiency, including 5662
waste energy recovery and combined heat and power, or peak demand 5663
reduction capabilities to the electric distribution utility as 5664
part of a reasonable arrangement submitted to the commission 5665
pursuant to section 4905.31 of the Revised Code. 5666

(e) No programs or improvements described in division 5667
(A)(2)(d) of this section shall conflict with any statewide 5668
building code adopted by the board of building standards. 5669

(B) In accordance with rules it shall adopt, the public 5670
utilities commission shall produce and docket at the commission an 5671
annual report containing the results of its verification of the 5672
annual levels of energy efficiency and of peak demand reductions 5673
achieved by each electric distribution utility pursuant to 5674
division (A) of this section. A copy of the report shall be 5675
provided to the consumers' counsel. 5676

(C) If the commission determines, after notice and 5677
opportunity for hearing and based upon its report under division 5678
(B) of this section, that an electric distribution utility has 5679
failed to comply with an energy efficiency or peak demand 5680
reduction requirement of division (A) of this section, the 5681
commission shall assess a forfeiture on the utility as provided 5682

under sections 4905.55 to 4905.60 and 4905.64 of the Revised Code, 5683
either in the amount, per day per undercompliance or 5684
noncompliance, relative to the period of the report, equal to that 5685
prescribed for noncompliances under section 4905.54 of the Revised 5686
Code, or in an amount equal to the then existing market value of 5687
one renewable energy credit per megawatt hour of undercompliance 5688
or noncompliance. Revenue from any forfeiture assessed under this 5689
division shall be deposited to the credit of the advanced energy 5690
fund created under section 4928.61 of the Revised Code. 5691

(D) The commission may establish rules regarding the content 5692
of an application by an electric distribution utility for 5693
commission approval of a revenue decoupling mechanism under this 5694
division. Such an application shall not be considered an 5695
application to increase rates and may be included as part of a 5696
proposal to establish, continue, or expand energy efficiency or 5697
conservation programs. The commission by order may approve an 5698
application under this division if it determines both that the 5699
revenue decoupling mechanism provides for the recovery of revenue 5700
that otherwise may be ~~foregone~~ forgone by the utility as a result 5701
of or in connection with the implementation by the electric 5702
distribution utility of any energy efficiency or energy 5703
conservation programs and reasonably aligns the interests of the 5704
utility and of its customers in favor of those programs. 5705

(E) The commission additionally shall adopt rules that 5706
require an electric distribution utility to provide a customer 5707
upon request with two years' consumption data in an accessible 5708
form. 5709

Sec. 4928.70. (A) The public utilities commission may 5710
periodically review any green pricing program offered in this 5711
state as part of competitive retail electric service. At the 5712
conclusion of a review, the commission may make recommendations to 5713

improve or expand the program subject of the review. 5714

(B) The commission shall adopt rules necessary to carry out 5715
purposes of this section. 5716

Sec. 4928.71. The public utilities commission shall study 5717
whether increased energy efficiency, demand response, generation, 5718
and transmission provide increased opportunities for customer 5719
choice. The commission shall include in the study an evaluation of 5720
emerging technologies. The commission shall commence the study not 5721
later than eighteen months after the effective date of this 5722
section. At the conclusion of the study, the commission shall 5723
prepare a report of its findings and make the report available on 5724
its web site. 5725

Sec. 4928.72. The public utilities commission may, in 5726
cooperation with the department of transportation, work with other 5727
states to develop a multi-state study on the development of 5728
compressed natural gas infrastructures for transportation. 5729

Sec. 4935.04. (A) As used in this chapter: 5730

(1) "Major utility facility" means: 5731

(a) An electric transmission line and associated facilities 5732
of a design capacity of one hundred twenty-five kilovolts or more; 5733

(b) A gas or natural gas transmission line and associated 5734
facilities designed for, or capable of, transporting gas or 5735
natural gas at pressures in excess of one hundred twenty-five 5736
pounds per square inch. 5737

"Major utility facility" does not include electric, gas, or 5738
natural gas distributing lines and gas or natural gas gathering 5739
lines and associated facilities as defined by the public utilities 5740
commission; facilities owned or operated by industrial firms, 5741

persons, or institutions that produce or transmit gas or natural 5742
gas, or electricity primarily for their own use or as a byproduct 5743
of their operations; gas or natural gas transmission lines and 5744
associated facilities over which an agency of the United States 5745
has certificate jurisdiction; facilities owned or operated by a 5746
person furnishing gas or natural gas directly to fifteen thousand 5747
or fewer customers within this state. 5748

(2) "Person" has the meaning set forth in section 4906.01 of 5749
the Revised Code. 5750

(B) Each person owning or operating a gas or natural gas 5751
transmission line and associated facilities within this state over 5752
which an agency of the United States has certificate jurisdiction 5753
shall furnish to the commission a copy of the energy information 5754
filed by the person with that agency of the United States. 5755

(C) Each person owning or operating a major utility facility 5756
within this state, or furnishing gas, natural gas, or electricity 5757
directly to more than fifteen thousand customers within this state 5758
shall furnish a report to the commission for its review. The 5759
report shall be furnished annually, except that for a gas or 5760
natural gas company the report shall be furnished every three 5761
years. The report shall be termed the long-term forecast report 5762
and shall contain: 5763

(1) A year-by-year, ten-year forecast of annual energy 5764
demand, peak load, reserves, and a general description of the 5765
resource ~~plan~~ planning projections to meet demand; 5766

(2) A range of projected loads during the period; 5767

(3) A description of major utility facilities planned to be 5768
added or taken out of service in the next ten years, including, to 5769
the extent the information is available, prospective sites for 5770
transmission line locations; 5771

(4) For gas and natural gas, a projection of anticipated 5772

supply, supply prices, and sources of supply over the forecast 5773
period; 5774

(5) A description of proposed changes in the transmission 5775
system planned for the next five years; 5776

(6) A month-by-month forecast of both energy demand and peak 5777
load for electric utilities, and gas sendout for gas and natural 5778
gas utilities, for the next two years. The report shall describe 5779
the major utility facilities that, in the judgment of such person, 5780
will be required to supply system demands during the forecast 5781
period. The report from a gas or natural gas utility shall cover 5782
the ten- and five-year periods next succeeding the date of the 5783
report, and the report from an electric utility shall cover the 5784
twenty-, ten-, and five-year periods next succeeding the date of 5785
the report. Each report shall be made available to the public and 5786
furnished upon request to municipal corporations and governmental 5787
agencies charged with the duty of protecting the environment or of 5788
planning land use. The report shall be in such form and shall 5789
contain such information as may be prescribed by the commission. 5790

Each person not owning or operating a major utility facility 5791
within this state and serving fifteen thousand or fewer gas or 5792
natural gas, or electric customers within this state shall furnish 5793
such information as the commission requires. 5794

(D) The commission shall: 5795

(1) Review and comment on the reports filed under division 5796
(C) of this section, and make the information contained in the 5797
reports readily available to the public and other interested 5798
government agencies; 5799

(2) Compile and publish each year the general locations of 5800
proposed and existing transmission line routes within its 5801
jurisdiction as identified in the reports filed under division (C) 5802
of this section, identifying the general location of such sites 5803

and routes and the approximate year when construction is expected 5804
to commence, and to make such information readily available to the 5805
public, to each newspaper of daily or weekly circulation within 5806
the area affected by the proposed site and route, and to 5807
interested federal, state, and local agencies; 5808

(3) Hold a public hearing upon the showing of good cause to 5809
the commission by an interested party. 5810

If a hearing is held, the commission shall fix a time for the 5811
hearing, which shall be not later than ninety days after the 5812
report is filed, and publish notice of the date, time of day, and 5813
location of the hearing in a newspaper of general circulation in 5814
each county in which the person furnishing the report has or 5815
intends to locate a major utility facility and will provide 5816
service during the period covered by the report. The notice shall 5817
be published not less than fifteen nor more than thirty days 5818
before the hearing and shall state the matters to be considered. 5819

(4) Require such information from persons subject to its 5820
jurisdiction as necessary to assist in the conduct of hearings and 5821
any investigation or studies it may undertake; 5822

(5) Conduct any studies or investigations that are necessary 5823
or appropriate to carry out its responsibilities under this 5824
section. 5825

(E)(1) The scope of the hearing held under division (D)(3) of 5826
this section shall be limited to issues relating to forecasting. 5827
The power siting board, the office of consumers' counsel, and all 5828
other persons having an interest in the proceedings shall be 5829
afforded the opportunity to be heard and to be represented by 5830
counsel. The commission may adjourn the hearing from time to time. 5831

(2) The hearing shall include, but not be limited to, a 5832
review of: 5833

(a) The projected loads and energy requirements for each year 5834

of the period; 5835

(b) The estimated installed capacity and supplies to meet the 5836
projected load requirements. 5837

(F) Based upon the report furnished pursuant to division (C) 5838
of this section and the hearing record, the commission, within 5839
ninety days from the close of the record in the hearing, shall 5840
determine if: 5841

(1) All information relating to current activities, 5842
facilities agreements, and published energy policies of the state 5843
has been completely and accurately represented; 5844

(2) The load requirements are based on substantially accurate 5845
historical information and adequate methodology; 5846

(3) The forecasting methods consider the relationships 5847
between price and energy consumption; 5848

(4) The report identifies and projects reductions in energy 5849
demands due to energy conservation measures in the industrial, 5850
commercial, residential, transportation, and energy production 5851
sectors in the service area; 5852

(5) Utility company forecasts of loads and resources are 5853
reasonable in relation to population growth estimates made by 5854
state and federal agencies, transportation, and economic 5855
development plans and forecasts, and make recommendations where 5856
possible for necessary and reasonable alternatives to meet 5857
forecasted electric power demand; 5858

(6) The report considers plans for expansion of the regional 5859
power grid and the planned facilities of other utilities in the 5860
state; 5861

(7) All assumptions made in the forecast are reasonable and 5862
adequately documented. 5863

(G) The commission shall adopt rules under section 111.15 of 5864

the Revised Code to establish criteria for evaluating the 5865
long-term forecasts of needs for gas and electric transmission 5866
service, to conduct hearings held under this section, to establish 5867
reasonable fees to defray the direct cost of the hearings and the 5868
review process, and such other rules as are necessary and 5869
convenient to implement this section. 5870

(H) The hearing record produced under this section and the 5871
determinations of the commission shall be introduced into evidence 5872
and shall be considered in determining the basis of need for power 5873
siting board deliberations under division (A)(1) of section 5874
4906.10 of the Revised Code. The hearing record produced under 5875
this section shall be introduced into evidence and shall be 5876
considered by the ~~public utilities~~ commission in its initiation of 5877
programs, examinations, and findings under section 4905.70 of the 5878
Revised Code, and shall be considered in the commission's 5879
determinations with respect to the establishment of just and 5880
reasonable rates under section 4909.15 of the Revised Code and 5881
financing utility facilities and authorizing issuance of all 5882
securities under sections 4905.40, 4905.401, 4905.41, and 4905.42 5883
of the Revised Code. The forecast findings also shall serve as the 5884
basis for all other energy planning and development activities of 5885
the state government where electric and gas data are required. 5886

(I)(1) No court other than the supreme court shall have power 5887
to review, suspend, or delay any determination made by the 5888
commission under this section, or enjoin, restrain, or interfere 5889
with the commission in the performance of official duties. A writ 5890
of mandamus shall not be issued against the commission by any 5891
court other than the supreme court. 5892

(2) A final determination made by the commission shall be 5893
reversed, vacated, or modified by the supreme court on appeal, if, 5894
upon consideration of the record, such court is of the opinion 5895
that such determination was unreasonable or unlawful. 5896

The proceeding to obtain such reversal, vacation, or 5897
modification shall be by notice of appeal, filed with the 5898
commission by any party to the proceeding before it, against the 5899
commission, setting forth the determination appealed from and 5900
errors complained of. The notice of appeal shall be served, unless 5901
waived, upon the commission by leaving a copy at the office of the 5902
chairperson of the commission at Columbus. The court may permit an 5903
interested party to intervene by cross-appeal. 5904

(3) No proceeding to reverse, vacate, or modify a 5905
determination of the commission is commenced unless the notice of 5906
appeal is filed within sixty days after the date of the 5907
determination. 5908

Sec. 5703.21. (A) Except as provided in divisions (B) and (C) 5909
of this section, no agent of the department of taxation, except in 5910
the agent's report to the department or when called on to testify 5911
in any court or proceeding, shall divulge any information acquired 5912
by the agent as to the transactions, property, or business of any 5913
person while acting or claiming to act under orders of the 5914
department. Whoever violates this provision shall thereafter be 5915
disqualified from acting as an officer or employee or in any other 5916
capacity under appointment or employment of the department. 5917

(B)(1) For purposes of an audit pursuant to section 117.15 of 5919
the Revised Code, or an audit of the department pursuant to 5920
Chapter 117. of the Revised Code, or an audit, pursuant to that 5921
chapter, the objective of which is to express an opinion on a 5922
financial report or statement prepared or issued pursuant to 5923
division (A)(7) or (9) of section 126.21 of the Revised Code, the 5924
officers and employees of the auditor of state charged with 5925
conducting the audit shall have access to and the right to examine 5926
any state tax returns and state tax return information in the 5927

possession of the department to the extent that the access and 5928
examination are necessary for purposes of the audit. Any 5929
information acquired as the result of that access and examination 5930
shall not be divulged for any purpose other than as required for 5931
the audit or unless the officers and employees are required to 5932
testify in a court or proceeding under compulsion of legal 5933
process. Whoever violates this provision shall thereafter be 5934
disqualified from acting as an officer or employee or in any other 5935
capacity under appointment or employment of the auditor of state. 5936

(2) For purposes of an internal audit pursuant to section 5937
126.45 of the Revised Code, the officers and employees of the 5938
office of internal auditing in the office of budget and management 5939
charged with conducting the internal audit shall have access to 5940
and the right to examine any state tax returns and state tax 5941
return information in the possession of the department to the 5942
extent that the access and examination are necessary for purposes 5943
of the internal audit. Any information acquired as the result of 5944
that access and examination shall not be divulged for any purpose 5945
other than as required for the internal audit or unless the 5946
officers and employees are required to testify in a court or 5947
proceeding under compulsion of legal process. Whoever violates 5948
this provision shall thereafter be disqualified from acting as an 5949
officer or employee or in any other capacity under appointment or 5950
employment of the office of internal auditing. 5951

(3) As provided by section 6103(d)(2) of the Internal Revenue 5952
Code, any federal tax returns or federal tax information that the 5953
department has acquired from the internal revenue service, through 5954
federal and state statutory authority, may be disclosed to the 5955
auditor of state or the office of internal auditing solely for 5956
purposes of an audit of the department. 5957

(4) For purposes of Chapter 3739. of the Revised Code, an 5958
agent of the department of taxation may share information with the 5959

division of state fire marshal that the agent finds during the 5960
course of an investigation. 5961

(C) Division (A) of this section does not prohibit any of the 5962
following: 5963

(1) Divulging information contained in applications, 5964
complaints, and related documents filed with the department under 5965
section 5715.27 of the Revised Code or in applications filed with 5966
the department under section 5715.39 of the Revised Code; 5967

(2) Providing information to the office of child support 5968
within the department of job and family services pursuant to 5969
section 3125.43 of the Revised Code; 5970

(3) Disclosing to the board of motor vehicle collision repair 5971
registration any information in the possession of the department 5972
that is necessary for the board to verify the existence of an 5973
applicant's valid vendor's license and current state tax 5974
identification number under section 4775.07 of the Revised Code; 5975

(4) Providing information to the administrator of workers' 5976
compensation pursuant to sections 4123.271 and 4123.591 of the 5977
Revised Code; 5978

(5) Providing to the attorney general information the 5979
department obtains under division (J) of section 1346.01 of the 5980
Revised Code; 5981

(6) Permitting properly authorized officers, employees, or 5982
agents of a municipal corporation from inspecting reports or 5983
information pursuant to rules adopted under section 5745.16 of the 5984
Revised Code; 5985

(7) Providing information regarding the name, account number, 5986
or business address of a holder of a vendor's license issued 5987
pursuant to section 5739.17 of the Revised Code, a holder of a 5988
direct payment permit issued pursuant to section 5739.031 of the 5989

Revised Code, or a seller having a use tax account maintained 5990
pursuant to section 5741.17 of the Revised Code, or information 5991
regarding the active or inactive status of a vendor's license, 5992
direct payment permit, or seller's use tax account; 5993

(8) Releasing invoices or invoice information furnished under 5994
section 4301.433 of the Revised Code pursuant to that section; 5995

(9) Providing to a county auditor notices or documents 5996
concerning or affecting the taxable value of property in the 5997
county auditor's county. Unless authorized by law to disclose 5998
documents so provided, the county auditor shall not disclose such 5999
documents; 6000

(10) Providing to a county auditor sales or use tax return or 6001
audit information under section 333.06 of the Revised Code; 6002

(11) Subject to section 4301.441 of the Revised Code, 6003
disclosing to the appropriate state agency information in the 6004
possession of the department of taxation that is necessary to 6005
verify a permit holder's gallonage or noncompliance with taxes 6006
levied under Chapter 4301. or 4305. of the Revised Code; 6007

(12) Disclosing to the department of natural resources 6008
information in the possession of the department that is necessary 6009
to verify the taxpayer's compliance with division (A)(1), (5), 6010
(6), (8), or (9) of section 5749.02 of the Revised Code and 6011
information received pursuant to section 1509.50 of the Revised 6012
Code concerning the amount due under that section; 6013

(13) Disclosing to the department of job and family services, 6014
industrial commission, and bureau of workers' compensation 6015
information in the possession of the department of taxation solely 6016
for the purpose of identifying employers that misclassify 6017
employees as independent contractors or that fail to properly 6018
report and pay employer tax liabilities. The department of 6019
taxation shall disclose only such information that is necessary to 6020

verify employer compliance with law administered by those 6021
agencies. 6022

(14) Disclosing to the Ohio casino control commission 6023
information in the possession of the department of taxation that 6024
is necessary to verify a taxpayer's compliance with section 6025
5753.02 of the Revised Code and sections related thereto. 6026

Sec. 5751.01. As used in this chapter: 6027

(A) "Person" means, but is not limited to, individuals, 6028
combinations of individuals of any form, receivers, assignees, 6029
trustees in bankruptcy, firms, companies, joint-stock companies, 6030
business trusts, estates, partnerships, limited liability 6031
partnerships, limited liability companies, associations, joint 6032
ventures, clubs, societies, for-profit corporations, S 6033
corporations, qualified subchapter S subsidiaries, qualified 6034
subchapter S trusts, trusts, entities that are disregarded for 6035
federal income tax purposes, and any other entities. 6036

(B) "Consolidated elected taxpayer" means a group of two or 6037
more persons treated as a single taxpayer for purposes of this 6038
chapter as the result of an election made under section 5751.011 6039
of the Revised Code. 6040

(C) "Combined taxpayer" means a group of two or more persons 6041
treated as a single taxpayer for purposes of this chapter under 6042
section 5751.012 of the Revised Code. 6043

(D) "Taxpayer" means any person, or any group of persons in 6044
the case of a consolidated elected taxpayer or combined taxpayer 6045
treated as one taxpayer, required to register or pay tax under 6046
this chapter. "Taxpayer" does not include excluded persons. 6047

(E) "Excluded person" means any of the following: 6048

(1) Any person with not more than one hundred fifty thousand 6049
dollars of taxable gross receipts during the calendar year. 6050

Division (E)(1) of this section does not apply to a person that is a member of a consolidated elected taxpayer;

(2) A public utility that paid the excise tax imposed by section 5727.24 or 5727.30 of the Revised Code based on one or more measurement periods that include the entire tax period under this chapter, except that a public utility that is a combined company is a taxpayer with regard to the following gross receipts:

(a) Taxable gross receipts directly attributed to a public utility activity, but not directly attributed to an activity that is subject to the excise tax imposed by section 5727.24 or 5727.30 of the Revised Code;

(b) Taxable gross receipts that cannot be directly attributed to any activity, multiplied by a fraction whose numerator is the taxable gross receipts described in division (E)(2)(a) of this section and whose denominator is the total taxable gross receipts that can be directly attributed to any activity;

(c) Except for any differences resulting from the use of an accrual basis method of accounting for purposes of determining gross receipts under this chapter and the use of the cash basis method of accounting for purposes of determining gross receipts under section 5727.24 of the Revised Code, the gross receipts directly attributed to the activity of a natural gas company shall be determined in a manner consistent with division (D) of section 5727.03 of the Revised Code.

As used in division (E)(2) of this section, "combined company" and "public utility" have the same meanings as in section 5727.01 of the Revised Code.

(3) A financial institution, as defined in section 5725.01 of the Revised Code, that paid the corporation franchise tax charged by division (D) of section 5733.06 of the Revised Code based on one or more taxable years that include the entire tax period under

this chapter; 6082

(4) A dealer in intangibles, as defined in section 5725.01 of 6083
the Revised Code, that paid the dealer in intangibles tax levied 6084
by division (D) of section 5707.03 of the Revised Code based on 6085
one or more measurement periods that include the entire tax period 6086
under this chapter; 6087

(5) A financial holding company as defined in the "Bank 6088
Holding Company Act," 12 U.S.C. 1841(p); 6089

(6) A bank holding company as defined in the "Bank Holding 6090
Company Act," 12 U.S.C. 1841(a); 6091

(7) A savings and loan holding company as defined in the 6092
"Home Owners Loan Act," 12 U.S.C. 1467a(a)(1)(D) that is engaging 6093
only in activities or investments permissible for a financial 6094
holding company under 12 U.S.C. 1843(k); 6095

(8) A person directly or indirectly owned by one or more 6096
financial institutions, financial holding companies, bank holding 6097
companies, or savings and loan holding companies described in 6098
division (E)(3), (5), (6), or (7) of this section that is engaged 6099
in activities permissible for a financial holding company under 12 6100
U.S.C. 1843(k), except that any such person held pursuant to 6101
merchant banking authority under 12 U.S.C. 1843(k)(4)(H) or 12 6102
U.S.C. 1843(k)(4)(I) is not an excluded person, or a person 6103
directly or indirectly owned by one or more insurance companies 6104
described in division (E)(9) of this section that is authorized to 6105
do the business of insurance in this state. 6106

For the purposes of division (E)(8) of this section, a person 6107
owns another person under the following circumstances: 6108

(a) In the case of corporations issuing capital stock, one 6109
corporation owns another corporation if it owns fifty per cent or 6110
more of the other corporation's capital stock with current voting 6111
rights; 6112

(b) In the case of a limited liability company, one person 6113
owns the company if that person's membership interest, as defined 6114
in section 1705.01 of the Revised Code, is fifty per cent or more 6115
of the combined membership interests of all persons owning such 6116
interests in the company; 6117

(c) In the case of a partnership, trust, or other 6118
unincorporated business organization other than a limited 6119
liability company, one person owns the organization if, under the 6120
articles of organization or other instrument governing the affairs 6121
of the organization, that person has a beneficial interest in the 6122
organization's profits, surpluses, losses, or distributions of 6123
fifty per cent or more of the combined beneficial interests of all 6124
persons having such an interest in the organization; 6125

(d) In the case of multiple ownership, the ownership 6126
interests of more than one person may be aggregated to meet the 6127
fifty per cent ownership tests in this division only when each 6128
such owner is described in division (E)(3), (5), (6), or (7) of 6129
this section and is engaged in activities permissible for a 6130
financial holding company under 12 U.S.C. 1843(k) or is a person 6131
directly or indirectly owned by one or more insurance companies 6132
described in division (E)(9) of this section that is authorized to 6133
do the business of insurance in this state. 6134

(9) A domestic insurance company or foreign insurance 6135
company, as defined in section 5725.01 of the Revised Code, that 6136
paid the insurance company premiums tax imposed by section 5725.18 6137
or Chapter 5729. of the Revised Code based on one or more 6138
measurement periods that include the entire tax period under this 6139
chapter; 6140

(10) A person that solely facilitates or services one or more 6141
securitizations or similar transactions for any person described 6142
in division (E)(3), (5), (6), (7), (8), or (9) of this section, or 6143
a person that solely facilitates or services one or more 6144

securitizations of phase-in-recovery property pursuant to a final 6145
financing order as those terms are defined in section 4928.23 of 6146
the Revised Code. For purposes of this division, "securitization" 6147
means transferring one or more assets to one or more persons and 6148
then issuing securities backed by the right to receive payment 6149
from the asset or assets so transferred. 6150

(11) Except as otherwise provided in this division, a 6151
pre-income tax trust as defined in division (FF)(4) of section 6152
5747.01 of the Revised Code and any pass-through entity of which 6153
such pre-income tax trust owns or controls, directly, indirectly, 6154
or constructively through related interests, more than five per 6155
cent of the ownership or equity interests. If the pre-income tax 6156
trust has made a qualifying pre-income tax trust election under 6157
division (FF)(3) of section 5747.01 of the Revised Code, then the 6158
trust and the pass-through entities of which it owns or controls, 6159
directly, indirectly, or constructively through related interests, 6160
more than five per cent of the ownership or equity interests, 6161
shall not be excluded persons for purposes of the tax imposed 6162
under section 5751.02 of the Revised Code. 6163

(12) Nonprofit organizations or the state and its agencies, 6164
instrumentalities, or political subdivisions. 6165

(F) Except as otherwise provided in divisions (F)(2), (3), 6166
and (4) of this section, "gross receipts" means the total amount 6167
realized by a person, without deduction for the cost of goods sold 6168
or other expenses incurred, that contributes to the production of 6169
gross income of the person, including the fair market value of any 6170
property and any services received, and any debt transferred or 6171
forgiven as consideration. 6172

(1) The following are examples of gross receipts: 6173

(a) Amounts realized from the sale, exchange, or other 6174
disposition of the taxpayer's property to or with another; 6175

(b) Amounts realized from the taxpayer's performance of services for another;	6176 6177
(c) Amounts realized from another's use or possession of the taxpayer's property or capital;	6178 6179
(d) Any combination of the foregoing amounts.	6180
(2) "Gross receipts" excludes the following amounts:	6181
(a) Interest income except interest on credit sales;	6182
(b) Dividends and distributions from corporations, and distributive or proportionate shares of receipts and income from a pass-through entity as defined under section 5733.04 of the Revised Code;	6183 6184 6185 6186
(c) Receipts from the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code, without regard to the length of time the person held the asset. Notwithstanding section 1221 of the Internal Revenue Code, receipts from hedging transactions also are excluded to the extent the transactions are entered into primarily to protect a financial position, such as managing the risk of exposure to (i) foreign currency fluctuations that affect assets, liabilities, profits, losses, equity, or investments in foreign operations; (ii) interest rate fluctuations; or (iii) commodity price fluctuations. As used in division (F)(2)(c) of this section, "hedging transaction" has the same meaning as used in section 1221 of the Internal Revenue Code and also includes transactions accorded hedge accounting treatment under statement of financial accounting standards number 133 of the financial accounting standards board. For the purposes of division (F)(2)(c) of this section, the actual transfer of title of real or tangible personal property to another entity is not a hedging transaction.	6187 6188 6189 6190 6191 6192 6193 6194 6195 6196 6197 6198 6199 6200 6201 6202 6203 6204
(d) Proceeds received attributable to the repayment, maturity, or redemption of the principal of a loan, bond, mutual	6205 6206

fund, certificate of deposit, or marketable instrument;	6207
(e) The principal amount received under a repurchase agreement or on account of any transaction properly characterized as a loan to the person;	6208 6209 6210
(f) Contributions received by a trust, plan, or other arrangement, any of which is described in section 501(a) of the Internal Revenue Code, or to which Title 26, Subtitle A, Chapter 1, Subchapter (D) of the Internal Revenue Code applies;	6211 6212 6213 6214
(g) Compensation, whether current or deferred, and whether in cash or in kind, received or to be received by an employee, former employee, or the employee's legal successor for services rendered to or for an employer, including reimbursements received by or for an individual for medical or education expenses, health insurance premiums, or employee expenses, or on account of a dependent care spending account, legal services plan, any cafeteria plan described in section 125 of the Internal Revenue Code, or any similar employee reimbursement;	6215 6216 6217 6218 6219 6220 6221 6222 6223
(h) Proceeds received from the issuance of the taxpayer's own stock, options, warrants, puts, or calls, or from the sale of the taxpayer's treasury stock;	6224 6225 6226
(i) Proceeds received on the account of payments from insurance policies, except those proceeds received for the loss of business revenue;	6227 6228 6229
(j) Gifts or charitable contributions received; membership dues received by trade, professional, homeowners', or condominium associations; and payments received for educational courses, meetings, meals, or similar payments to a trade, professional, or other similar association; and fundraising receipts received by any person when any excess receipts are donated or used exclusively for charitable purposes;	6230 6231 6232 6233 6234 6235 6236
(k) Damages received as the result of litigation in excess of	6237

amounts that, if received without litigation, would be gross	6238
receipts;	6239
(1) Property, money, and other amounts received or acquired	6240
by an agent on behalf of another in excess of the agent's	6241
commission, fee, or other remuneration;	6242
(m) Tax refunds, other tax benefit recoveries, and	6243
reimbursements for the tax imposed under this chapter made by	6244
entities that are part of the same combined taxpayer or	6245
consolidated elected taxpayer group, and reimbursements made by	6246
entities that are not members of a combined taxpayer or	6247
consolidated elected taxpayer group that are required to be made	6248
for economic parity among multiple owners of an entity whose tax	6249
obligation under this chapter is required to be reported and paid	6250
entirely by one owner, pursuant to the requirements of sections	6251
5751.011 and 5751.012 of the Revised Code;	6252
(n) Pension reversions;	6253
(o) Contributions to capital;	6254
(p) Sales or use taxes collected as a vendor or an	6255
out-of-state seller on behalf of the taxing jurisdiction from a	6256
consumer or other taxes the taxpayer is required by law to collect	6257
directly from a purchaser and remit to a local, state, or federal	6258
tax authority;	6259
(q) In the case of receipts from the sale of cigarettes or	6260
tobacco products by a wholesale dealer, retail dealer,	6261
distributor, manufacturer, or seller, all as defined in section	6262
5743.01 of the Revised Code, an amount equal to the federal and	6263
state excise taxes paid by any person on or for such cigarettes or	6264
tobacco products under subtitle E of the Internal Revenue Code or	6265
Chapter 5743. of the Revised Code;	6266
(r) In the case of receipts from the sale of motor fuel by a	6267
licensed motor fuel dealer, licensed retail dealer, or licensed	6268

permissive motor fuel dealer, all as defined in section 5735.01 of 6269
the Revised Code, an amount equal to federal and state excise 6270
taxes paid by any person on such motor fuel under section 4081 of 6271
the Internal Revenue Code or Chapter 5735. of the Revised Code; 6272

(s) In the case of receipts from the sale of beer or 6273
intoxicating liquor, as defined in section 4301.01 of the Revised 6274
Code, by a person holding a permit issued under Chapter 4301. or 6275
4303. of the Revised Code, an amount equal to federal and state 6276
excise taxes paid by any person on or for such beer or 6277
intoxicating liquor under subtitle E of the Internal Revenue Code 6278
or Chapter 4301. or 4305. of the Revised Code; 6279

(t) Receipts realized by a new motor vehicle dealer or used 6280
motor vehicle dealer, as defined in section 4517.01 of the Revised 6281
Code, from the sale or other transfer of a motor vehicle, as 6282
defined in that section, to another motor vehicle dealer for the 6283
purpose of resale by the transferee motor vehicle dealer, but only 6284
if the sale or other transfer was based upon the transferee's need 6285
to meet a specific customer's preference for a motor vehicle; 6286

(u) Receipts from a financial institution described in 6287
division (E)(3) of this section for services provided to the 6288
financial institution in connection with the issuance, processing, 6289
servicing, and management of loans or credit accounts, if such 6290
financial institution and the recipient of such receipts have at 6291
least fifty per cent of their ownership interests owned or 6292
controlled, directly or constructively through related interests, 6293
by common owners; 6294

(v) Receipts realized from administering anti-neoplastic 6295
drugs and other cancer chemotherapy, biologicals, therapeutic 6296
agents, and supportive drugs in a physician's office to patients 6297
with cancer; 6298

(w) Funds received or used by a mortgage broker that is not a 6299

dealer in intangibles, other than fees or other consideration, 6300
pursuant to a table-funding mortgage loan or warehouse-lending 6301
mortgage loan. Terms used in division (F)(2)(w) of this section 6302
have the same meanings as in section 1322.01 of the Revised Code, 6303
except "mortgage broker" means a person assisting a buyer in 6304
obtaining a mortgage loan for a fee or other consideration paid by 6305
the buyer or a lender, or a person engaged in table-funding or 6306
warehouse-lending mortgage loans that are first lien mortgage 6307
loans. 6308

(x) Property, money, and other amounts received by a 6309
professional employer organization, as defined in section 4125.01 6310
of the Revised Code, from a client employer, as defined in that 6311
section, in excess of the administrative fee charged by the 6312
professional employer organization to the client employer; 6313

(y) In the case of amounts retained as commissions by a 6314
permit holder under Chapter 3769. of the Revised Code, an amount 6315
equal to the amounts specified under that chapter that must be 6316
paid to or collected by the tax commissioner as a tax and the 6317
amounts specified under that chapter to be used as purse money; 6318

(z) Qualifying distribution center receipts. 6319

(i) For purposes of division (F)(2)(z) of this section: 6320

(I) "Qualifying distribution center receipts" means receipts 6321
of a supplier from qualified property that is delivered to a 6322
qualified distribution center, multiplied by a quantity that 6323
equals one minus the Ohio delivery percentage. 6324

(II) "Qualified property" means tangible personal property 6325
delivered to a qualified distribution center that is shipped to 6326
that qualified distribution center solely for further shipping by 6327
the qualified distribution center to another location in this 6328
state or elsewhere. "Further shipping" includes storing and 6329
repackaging such property into smaller or larger bundles, so long 6330

as such property is not subject to further manufacturing or 6331
processing. 6332

(III) "Qualified distribution center" means a warehouse or 6333
other similar facility in this state that, for the qualifying 6334
year, is operated by a person that is not part of a combined 6335
taxpayer group and that has a qualifying certificate. However, all 6336
warehouses or other similar facilities that are operated by 6337
persons in the same taxpayer group and that are located within one 6338
mile of each other shall be treated as one qualified distribution 6339
center. 6340

(IV) "Qualifying year" means the calendar year to which the 6341
qualifying certificate applies. 6342

(V) "Qualifying period" means the period of the first day of 6343
July of the second year preceding the qualifying year through the 6344
thirtieth day of June of the year preceding the qualifying year. 6345

(VI) "Qualifying certificate" means the certificate issued by 6346
the tax commissioner after the operator of a distribution center 6347
files an annual application with the commissioner. The application 6348
and annual fee shall be filed and paid for each qualified 6349
distribution center on or before the first day of September before 6350
the qualifying year or within forty-five days after the 6351
distribution center opens, whichever is later. 6352

The applicant must substantiate to the commissioner's 6353
satisfaction that, for the qualifying period, all persons 6354
operating the distribution center have more than fifty per cent of 6355
the cost of the qualified property shipped to a location such that 6356
it would be situated outside this state under the provisions of 6357
division (E) of section 5751.033 of the Revised Code. The 6358
applicant must also substantiate that the distribution center 6359
cumulatively had costs from its suppliers equal to or exceeding 6360
five hundred million dollars during the qualifying period. (For 6361

purposes of division (F)(2)(z)(i)(VI) of this section, "supplier" 6362
excludes any person that is part of the consolidated elected 6363
taxpayer group, if applicable, of the operator of the qualified 6364
distribution center.) The commissioner may require the applicant 6365
to have an independent certified public accountant certify that 6366
the calculation of the minimum thresholds required for a qualified 6367
distribution center by the operator of a distribution center has 6368
been made in accordance with generally accepted accounting 6369
principles. The commissioner shall issue or deny the issuance of a 6370
certificate within sixty days after the receipt of the 6371
application. A denial is subject to appeal under section 5717.02 6372
of the Revised Code. If the operator files a timely appeal under 6373
section 5717.02 of the Revised Code, the operator shall be granted 6374
a qualifying certificate, provided that the operator is liable for 6375
any tax, interest, or penalty upon amounts claimed as qualifying 6376
distribution center receipts, other than those receipts exempt 6377
under division (C)(1) of section 5751.011 of the Revised Code, 6378
that would have otherwise not been owed by its suppliers if the 6379
qualifying certificate was valid. 6380

(VII) "Ohio delivery percentage" means the proportion of the 6381
total property delivered to a destination inside Ohio from the 6382
qualified distribution center during the qualifying period 6383
compared with total deliveries from such distribution center 6384
everywhere during the qualifying period. 6385

(ii) If the distribution center is new and was not open for 6386
the entire qualifying period, the operator of the distribution 6387
center may request that the commissioner grant a qualifying 6388
certificate. If the certificate is granted and it is later 6389
determined that more than fifty per cent of the qualified property 6390
during that year was not shipped to a location such that it would 6391
be situated outside of this state under the provisions of division 6392
(E) of section 5751.033 of the Revised Code or if it is later 6393

determined that the person that operates the distribution center 6394
had average monthly costs from its suppliers of less than forty 6395
million dollars during that year, then the operator of the 6396
distribution center shall be liable for any tax, interest, or 6397
penalty upon amounts claimed as qualifying distribution center 6398
receipts, other than those receipts exempt under division (C)(1) 6399
of section 5751.011 of the Revised Code, that would have not 6400
otherwise been owed by its suppliers during the qualifying year if 6401
the qualifying certificate was valid. (For purposes of division 6402
(F)(2)(z)(ii) of this section, "supplier" excludes any person that 6403
is part of the consolidated elected taxpayer group, if applicable, 6404
of the operator of the qualified distribution center.) 6405

(iii) When filing an application for a qualifying certificate 6406
under division (F)(2)(z)(i)(VI) of this section, the operator of a 6407
qualified distribution center also shall provide documentation, as 6408
the commissioner requires, for the commissioner to ascertain the 6409
Ohio delivery percentage. The commissioner, upon issuing the 6410
qualifying certificate, also shall certify the Ohio delivery 6411
percentage. The operator of the qualified distribution center may 6412
appeal the commissioner's certification of the Ohio delivery 6413
percentage in the same manner as an appeal is taken from the 6414
denial of a qualifying certificate under division (F)(2)(z)(i)(VI) 6415
of this section. 6416

Within thirty days after all appeals have been exhausted, the 6417
operator of the qualified distribution center shall notify the 6418
affected suppliers of qualified property that such suppliers are 6419
required to file, within sixty days after receiving notice from 6420
the operator of the qualified distribution center, amended reports 6421
for the impacted calendar quarter or quarters or calendar year, 6422
whichever the case may be. Any additional tax liability or tax 6423
overpayment shall be subject to interest but shall not be subject 6424
to the imposition of any penalty so long as the amended returns 6425

are timely filed. The supplier of tangible personal property 6426
delivered to the qualified distribution center shall include in 6427
its report of taxable gross receipts the receipts from the total 6428
sales of property delivered to the qualified distribution center 6429
for the calendar quarter or calendar year, whichever the case may 6430
be, multiplied by the Ohio delivery percentage for the qualifying 6431
year. Nothing in division (F)(2)(z)(iii) of this section shall be 6432
construed as imposing liability on the operator of a qualified 6433
distribution center for the tax imposed by this chapter arising 6434
from any change to the Ohio delivery percentage. 6435

(iv) In the case where the distribution center is new and not 6436
open for the entire qualifying period, the operator shall make a 6437
good faith estimate of an Ohio delivery percentage for use by 6438
suppliers in their reports of taxable gross receipts for the 6439
remainder of the qualifying period. The operator of the facility 6440
shall disclose to the suppliers that such Ohio delivery percentage 6441
is an estimate and is subject to recalculation. By the due date of 6442
the next application for a qualifying certificate, the operator 6443
shall determine the actual Ohio delivery percentage for the 6444
estimated qualifying period and proceed as provided in division 6445
(F)(2)(z)(iii) of this section with respect to the calculation and 6446
recalculation of the Ohio delivery percentage. The supplier is 6447
required to file, within sixty days after receiving notice from 6448
the operator of the qualified distribution center, amended reports 6449
for the impacted calendar quarter or quarters or calendar year, 6450
whichever the case may be. Any additional tax liability or tax 6451
overpayment shall be subject to interest but shall not be subject 6452
to the imposition of any penalty so long as the amended returns 6453
are timely filed. 6454

(v) Qualifying certificates and Ohio delivery percentages 6455
issued by the commissioner shall be open to public inspection and 6456
shall be timely published by the commissioner. A supplier relying 6457

in good faith on a certificate issued under this division shall 6458
not be subject to tax on the qualifying distribution center 6459
receipts under division (F)(2)(z) of this section. A person 6460
receiving a qualifying certificate is responsible for paying the 6461
tax, interest, and penalty upon amounts claimed as qualifying 6462
distribution center receipts that would not otherwise have been 6463
owed by the supplier if the qualifying certificate were available 6464
when it is later determined that the qualifying certificate should 6465
not have been issued because the statutory requirements were in 6466
fact not met. 6467

(vi) The annual fee for a qualifying certificate shall be one 6468
hundred thousand dollars for each qualified distribution center. 6469
If a qualifying certificate is not issued, the annual fee is 6470
subject to refund after the exhaustion of all appeals provided for 6471
in division (F)(2)(z)(i)(VI) of this section. The fee imposed 6472
under this division may be assessed in the same manner as the tax 6473
imposed under this chapter. The first one hundred thousand dollars 6474
of the annual application fees collected each calendar year shall 6475
be credited to the commercial activity tax administrative fund. 6476
The remainder of the annual application fees collected shall be 6477
distributed in the same manner required under section 5751.20 of 6478
the Revised Code. 6479

(vii) The tax commissioner may require that adequate security 6480
be posted by the operator of the distribution center on appeal 6481
when the commissioner disagrees that the applicant has met the 6482
minimum thresholds for a qualified distribution center as set 6483
forth in divisions (F)(2)(z)(i)(VI) and (F)(2)(z)(ii) of this 6484
section. 6485

(aa) Receipts of an employer from payroll deductions relating 6486
to the reimbursement of the employer for advancing moneys to an 6487
unrelated third party on an employee's behalf; 6488

(bb) Cash discounts allowed and taken; 6489

(cc) Returns and allowances;	6490
(dd) Bad debts from receipts on the basis of which the tax imposed by this chapter was paid in a prior quarterly tax payment period. For the purpose of this division, "bad debts" means any debts that have become worthless or uncollectible between the preceding and current quarterly tax payment periods, have been uncollected for at least six months, and that may be claimed as a deduction under section 166 of the Internal Revenue Code and the regulations adopted under that section, or that could be claimed as such if the taxpayer kept its accounts on the accrual basis. "Bad debts" does not include repossessed property, uncollectible amounts on property that remains in the possession of the taxpayer until the full purchase price is paid, or expenses in attempting to collect any account receivable or for any portion of the debt recovered;	6491 6492 6493 6494 6495 6496 6497 6498 6499 6500 6501 6502 6503 6504
(ee) Any amount realized from the sale of an account receivable to the extent the receipts from the underlying transaction giving rise to the account receivable were included in the gross receipts of the taxpayer;	6505 6506 6507 6508
(ff) Any receipts directly attributed to providing public services pursuant to sections 126.60 to 126.605 of the Revised Code, or any receipts directly attributed to a transfer agreement or to the enterprise transferred under that agreement under section 4313.02 of the Revised Code.	6509 6510 6511 6512 6513
(gg) Any receipts for which the tax imposed by this chapter is prohibited by the Constitution or laws of the United States or the Constitution of Ohio.	6514 6515 6516
(hh)(i) As used in this division:	6517
(I) "Qualified uranium receipts" means receipts from the sale, exchange, lease, loan, production, processing, or other disposition of uranium within a uranium enrichment zone certified	6518 6519 6520

by the tax commissioner under division (F)(2)(hh)(ii) of this 6521
section. "Qualified uranium receipts" does not include any 6522
receipts with a situs in this state outside a uranium enrichment 6523
zone certified by the tax commissioner under division 6524
(F)(2)(hh)(ii) of this section. 6525

(II) "Uranium enrichment zone" means all real property that 6526
is part of a uranium enrichment facility licensed by the United 6527
States nuclear regulatory commission and that was or is owned or 6528
controlled by the United States department of energy or its 6529
successor. 6530

(ii) Any person that owns, leases, or operates real or 6531
tangible personal property constituting or located within a 6532
uranium enrichment zone may apply to the tax commissioner to have 6533
the uranium enrichment zone certified for the purpose of excluding 6534
qualified uranium receipts under division (F)(2)(hh) of this 6535
section. The application shall include such information that the 6536
tax commissioner prescribes. Within sixty days after receiving the 6537
application, the tax commissioner shall certify the zone for that 6538
purpose if the commissioner determines that the property qualifies 6539
as a uranium enrichment zone as defined in division (F)(2)(hh) of 6540
this section, or, if the tax commissioner determines that the 6541
property does not qualify, the commissioner shall deny the 6542
application or request additional information from the applicant. 6543
If the tax commissioner denies an application, the commissioner 6544
shall state the reasons for the denial. The applicant may appeal 6545
the denial of an application to the board of tax appeals pursuant 6546
to section 5717.02 of the Revised Code. If the applicant files a 6547
timely appeal, the tax commissioner shall conditionally certify 6548
the applicant's property. The conditional certification shall 6549
expire when all of the applicant's appeals are exhausted. Until 6550
final resolution of the appeal, the applicant shall retain the 6551
applicant's records in accordance with section 5751.12 of the 6552

Revised Code, notwithstanding any time limit on the preservation
of records under that section.

(ii) Amounts realized by licensed motor fuel dealers or
licensed permissive motor fuel dealers from the exchange of
petroleum products, including motor fuel, between such dealers,
provided that delivery of the petroleum products occurs at a
refinery, terminal, pipeline, or marine vessel and that the
exchanging dealers agree neither dealer shall require monetary
compensation from the other for the value of the exchanged
petroleum products other than such compensation for differences in
product location or grade. Division (F)(2)(ii) of this section
does not apply to amounts realized as a result of differences in
location or grade of exchanged petroleum products or from
handling, lubricity, dye, or other additive injections fees,
pipeline security fees, or similar fees. As used in this division,
"motor fuel," "licensed motor fuel dealer," "licensed permissive
motor fuel dealer," and "terminal" have the same meanings as in
section 5735.01 of the Revised Code.

~~(hh)~~(jj) In the case of amounts collected by a licensed
casino operator from casino gaming, amounts in excess of the
casino operator's gross casino revenue. In this division, "casino
operator" and "casino gaming" have the meanings defined in section
3772.01 of the Revised Code, and "gross casino revenue" has the
meaning defined in section 5753.01 of the Revised Code.

(3) In the case of a taxpayer when acting as a real estate
broker, "gross receipts" includes only the portion of any fee for
the service of a real estate broker, or service of a real estate
salesperson associated with that broker, that is retained by the
broker and not paid to an associated real estate salesperson or
another real estate broker. For the purposes of this division,
"real estate broker" and "real estate salesperson" have the same
meanings as in section 4735.01 of the Revised Code.

(4) A taxpayer's method of accounting for gross receipts for a tax period shall be the same as the taxpayer's method of accounting for federal income tax purposes for the taxpayer's federal taxable year that includes the tax period. If a taxpayer's method of accounting for federal income tax purposes changes, its method of accounting for gross receipts under this chapter shall be changed accordingly.

(G) "Taxable gross receipts" means gross receipts situated to this state under section 5751.033 of the Revised Code.

(H) A person has "substantial nexus with this state" if any of the following applies. The person:

(1) Owns or uses a part or all of its capital in this state;

(2) Holds a certificate of compliance with the laws of this state authorizing the person to do business in this state;

(3) Has bright-line presence in this state;

(4) Otherwise has nexus with this state to an extent that the person can be required to remit the tax imposed under this chapter under the Constitution of the United States.

(I) A person has "bright-line presence" in this state for a reporting period and for the remaining portion of the calendar year if any of the following applies. The person:

(1) Has at any time during the calendar year property in this state with an aggregate value of at least fifty thousand dollars. For the purpose of division (I)(1) of this section, owned property is valued at original cost and rented property is valued at eight times the net annual rental charge.

(2) Has during the calendar year payroll in this state of at least fifty thousand dollars. Payroll in this state includes all of the following:

(a) Any amount subject to withholding by the person under

section 5747.06 of the Revised Code; 6615

(b) Any other amount the person pays as compensation to an 6616
individual under the supervision or control of the person for work 6617
done in this state; and 6618

(c) Any amount the person pays for services performed in this 6619
state on its behalf by another. 6620

(3) Has during the calendar year taxable gross receipts of at 6621
least five hundred thousand dollars. 6622

(4) Has at any time during the calendar year within this 6623
state at least twenty-five per cent of the person's total 6624
property, total payroll, or total gross receipts. 6625

(5) Is domiciled in this state as an individual or for 6626
corporate, commercial, or other business purposes. 6627

(J) "Tangible personal property" has the same meaning as in 6628
section 5739.01 of the Revised Code. 6629

(K) "Internal Revenue Code" means the Internal Revenue Code 6630
of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended. Any term used in 6631
this chapter that is not otherwise defined has the same meaning as 6632
when used in a comparable context in the laws of the United States 6633
relating to federal income taxes unless a different meaning is 6634
clearly required. Any reference in this chapter to the Internal 6635
Revenue Code includes other laws of the United States relating to 6636
federal income taxes. 6637

(L) "Calendar quarter" means a three-month period ending on 6638
the thirty-first day of March, the thirtieth day of June, the 6639
thirtieth day of September, or the thirty-first day of December. 6640

(M) "Tax period" means the calendar quarter or calendar year 6641
on the basis of which a taxpayer is required to pay the tax 6642
imposed under this chapter. 6643

(N) "Calendar year taxpayer" means a taxpayer for which the 6644

tax period is a calendar year. 6645

(O) "Calendar quarter taxpayer" means a taxpayer for which 6646
the tax period is a calendar quarter. 6647

(P) "Agent" means a person authorized by another person to 6648
act on its behalf to undertake a transaction for the other, 6649
including any of the following: 6650

(1) A person receiving a fee to sell financial instruments; 6651

(2) A person retaining only a commission from a transaction 6652
with the other proceeds from the transaction being remitted to 6653
another person; 6654

(3) A person issuing licenses and permits under section 6655
1533.13 of the Revised Code; 6656

(4) A lottery sales agent holding a valid license issued 6657
under section 3770.05 of the Revised Code; 6658

(5) A person acting as an agent of the division of liquor 6659
control under section 4301.17 of the Revised Code. 6660

(Q) "Received" includes amounts accrued under the accrual 6661
method of accounting. 6662

(R) "Reporting person" means a person in a consolidated 6663
elected taxpayer or combined taxpayer group that is designated by 6664
that group to legally bind the group for all filings and tax 6665
liabilities and to receive all legal notices with respect to 6666
matters under this chapter, or, for the purposes of section 6667
5751.04 of the Revised Code, a separate taxpayer that is not a 6668
member of such a group. 6669

Sec. 6301.12. (A) The office of workforce development within 6670
the department of job and family services shall comprehensively 6671
review the direct and indirect economic impact of businesses 6672
engaged in the production of horizontal wells in this state and, 6673

based on its findings, prepare an annual Ohio workforce report. 6674
The report shall include at least all of the following with 6675
respect to the industry: 6676

(1) The total number of jobs created or retained during the 6677
previous year; 6678

(2) The total number of Ohio-based contractors that employ 6679
skilled construction trades; 6680

(3) The number of employees who are residents of this state; 6681

(4) The total economic impact; 6682

(5) A review of the state's regional workforce development 6683
plans required by the "Workforce Investment Act of 1998," 112 6684
Stat. 936, 29 U.S.C.A. 2801, as amended, that outline workforce 6685
development efforts including goals and benchmarks toward 6686
maximizing job training, education, and job creation opportunities 6687
in the state. 6688

(B) The office shall submit its annual Ohio workforce report 6689
to the members of the general assembly and post it on the office's 6690
internet web site. 6691

Section 101.02. That existing sections 122.075, 123.011, 6692
125.836, 131.50, 133.06, 156.01, 156.02, 156.03, 156.04, 303.213, 6693
905.40, 905.461, 1509.01, 1509.02, 1509.03, 1509.04, 1509.06, 6694
1509.07, 1509.10, 1509.11, 1509.22, 1509.221, 1509.222, 1509.223, 6695
1509.23, 1509.28, 1509.33, 1509.99, 1514.01, 1514.02, 1514.021, 6696
1514.03, 1514.05, 3706.27, 4905.03, 4905.90, 4905.91, 4905.95, 6697
4906.01, 4906.03, 4906.05, 4906.06, 4906.07, 4906.10, 4906.20, 6698
4928.01, 4928.02, 4928.2314, 4928.61, 4928.62, 4928.64, 4928.66, 6699
4935.04, 5703.21, and 5751.01 of the Revised Code are hereby 6700
repealed. 6701

Section 512.10. As soon as possible after the effective date 6702

of this section, the Director of Budget and Management shall do 6703
both of the following: 6704

(A) Transfer any unexpended and unencumbered amounts received 6705
from the repayment of loans made from money in the Advanced Energy 6706
Research and Development Taxable Fund (Fund 7004), except for such 6707
amounts in the Facilities Establishment Fund (Fund 7037), to the 6708
Alternative Fuel Transportation Fund (Fund 5CG0); and 6709

(B) Transfer any unexpended and unencumbered amounts in the 6710
Advanced Energy Research and Development Taxable Fund (Fund 7004) 6711
and the Advanced Energy Research and Development Fund (Fund 7005) 6712
to the Advanced Energy Fund (Fund 5M50). 6713

Section 701.10. The Department of Administrative Services and 6714
the Department of Transportation cooperatively shall analyze their 6715
respective motor vehicle fleets to determine whether it is 6716
beneficial to establish standards for vehicle replacement in order 6717
to increase the overall efficiency of the state motor vehicle 6718
fleet. Not later than September 1, 2012, the Department of 6719
Administrative Services and the Department of Transportation shall 6720
produce a joint report with their findings and shall deliver the 6721
report to the Speaker of the House of Representatives, the 6722
Minority Leader of the House of Representatives, the President of 6723
the Senate, the Minority Leader of the Senate, and the Governor. 6724

Section 715.10. The injection well disposal fees levied by 6725
section 1509.22 of the Revised Code, as amended by this act, are a 6726
continuation of the injection well disposal fees levied by section 6727
1509.221 of the Revised Code as that section existed prior to its 6728
amendment by this act. 6729

Section 715.20. (A) Not later than eighteen months after the 6730
effective date of this section, the Directors of Natural Resources 6731

and Transportation jointly shall prepare a report analyzing the 6732
effectiveness of agreements executed pursuant to division 6733
(A)(11)(b) of section 1509.06 of the Revised Code, as amended by 6734
this act. 6735

(B) The Directors shall prepare the report with input from 6736
all of the following: 6737

(1) A statewide organization representing county 6738
commissioners; 6739

(2) A statewide organization representing county engineers; 6740

(3) A statewide organization representing municipal 6741
corporations; 6742

(4) A statewide organization representing township trustees; 6743

(5) A statewide organization representing the oil and gas 6744
industry. 6745

(C) The Directors shall provide the report to each member of 6746
the General Assembly and to the Governor. 6747

Section 737.10. (A) The Director of Environmental Protection, 6748
in coordination with the Department of Natural Resources, the 6749
United States Environmental Protection Agency, and other entities 6750
as determined appropriate by the Director, shall coordinate the 6751
evaluation of emerging wastewater treatment and recycling 6752
technologies that may reduce reliance on underground injection 6753
wells and may assist in the advancement of industry in this state, 6754
including the exploration and production of oil and gas. As part 6755
of the evaluation, the Director may initiate, participate in, 6756
oversee, or consult on pilot projects regarding wastewater 6757
treatment and recycling technologies. 6758

(B) The Director of Environmental Protection, in coordination 6759
with the Public Utilities Commission of Ohio, the United States 6760

Environmental Protection Agency, and other entities as determined 6761
appropriate by the Director, shall conduct a study that identifies 6762
current and future environmental regulatory requirements and how 6763
those requirements may impact current and future power generation 6764
and transmission in this state. 6765

Section 755.10. The Department of Transportation and the 6766
Public Utilities Commission cooperatively shall analyze the cost 6767
effectiveness of purchasing vehicles that operate on compressed 6768
natural gas and the conversion of certain state motor vehicles to 6769
operate on compressed natural gas. Not later than January 30, 6770
2013, the Department and the Commission shall produce a joint 6771
report with their findings and shall deliver the report to the 6772
Speaker of the House of Representatives, the Minority Leader of 6773
the House of Representatives, the President of the Senate, the 6774
Minority Leader of the Senate, and the Governor. 6775

Section 812.20. Sections exempt from referendum: general 6776
effective date. The amendments by this act of section 133.06 of 6777
the Revised Code and Section 701.10 of this act are exempt from 6778
the referendum under Ohio Constitution, Article II, Section 1d and 6779
section 1.471 of the Revised Code and therefore take effect 6780
immediately when this act becomes law. 6781

Section 815.10. The General Assembly, applying the principle 6782
stated in division (B) of section 1.52 of the Revised Code that 6783
amendments are to be harmonized if reasonably capable of 6784
simultaneous operation, finds that the following section, 6785
presented in this act as a composite of the section as amended by 6786
the acts indicated, is the resulting version of the section in 6787
effect prior to the effective date of the section as presented in 6788
this act: 6789

Section 5751.01 of the Revised Code as amended by Am. Sub. 6790

H.B. 153 and Sub. H.B. 277 of the 129th General Assembly.

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