

**As Introduced**

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**H. B. No. 312**

**Representative Johnson**

**Cosponsor: Representative Smith**

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**A B I L L**

To amend sections 4905.31 and 4928.34 of the Revised Code to permit a public utility electric light company to recover costs of an economic and job retention program from all public utility electric light customers in Ohio.

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

**Section 1.** To amend sections 4905.31 and 4928.34 of the Revised Code to read as follows:

**Sec. 4905.31.** (A) Chapters 4901., 4903., 4905., 4907., 4909., 4921., 4923., 4927., 4928., and 4929. of the Revised Code do not prohibit a public utility from filing a schedule or establishing or entering into any reasonable arrangement with another public utility or with one or more of its customers, consumers, or employees, and do not prohibit a mercantile customer of an electric distribution utility as those terms are defined in section 4928.01 of the Revised Code or a group of those customers from establishing a reasonable arrangement with that utility or another public utility electric light company, providing for any of the following:

~~(A)~~(1) The division or distribution of its surplus profits;

~~(B)~~(2) A sliding scale of charges, including variations in rates based upon stipulated variations in cost as provided in the schedule or arrangement.

~~(C)~~(3) A minimum charge for service to be rendered unless such minimum charge is made or prohibited by the terms of the franchise, grant, or ordinance under which such public utility is operated;

~~(D)~~(4) A classification of service based upon the quantity used, the time when used, the purpose for which used, the duration of use, and any other reasonable consideration;

~~(E)~~(5)(a) Any other financial device that may be practicable or advantageous to the parties interested. In the case of a schedule or arrangement concerning a public utility electric light company, such other financial device may include ~~a~~ any of the following:

(i) A device to recover costs incurred in conjunction with any economic development and job retention program of the utility within its certified territory from all public utility electric light company customers in this state, including recovery of revenue foregone as a result of any such program; ~~any~~

(ii) Any development and implementation of peak demand reduction and energy efficiency programs under section 4928.66 of the Revised Code; ~~any~~

(iii) Any acquisition and deployment of advanced metering, including the costs of any meters prematurely retired as a result of the advanced metering implementation; ~~and compliance~~

(iv) Compliance with any government mandate.

(b) After January 1, 2018, the public utilities commission shall not approve, with respect to a public utility electric light company, any application for, or modification or extension of, any

schedule or arrangement filed pursuant to division (A)(5)(a)(i) of 50  
this section. Such a schedule or arrangement may continue in 51  
effect after that date for any period previously approved by the 52  
commission. 53

(B) No such schedule or arrangement is lawful unless it is 54  
filed with and approved by the commission pursuant to an 55  
application that is submitted by the public utility or the 56  
mercantile customer or group of mercantile customers of an 57  
electric distribution utility and is posted on the commission's 58  
docketing information system and is accessible through the 59  
internet. 60

(C) Every such public utility is required to conform its 61  
schedules of rates, tolls, and charges to such arrangement, 62  
sliding scale, classification, or other device, and where variable 63  
rates are provided for in any such schedule or arrangement, the 64  
cost data or factors upon which such rates are based and fixed 65  
shall be filed with the commission in such form and at such times 66  
as the commission directs. 67

(D) Every such schedule or reasonable arrangement shall be 68  
under the supervision and regulation of the commission, and is 69  
subject to change, alteration, or modification by the commission. 70

**Sec. 4928.34.** (A) The public utilities commission shall not 71  
approve or prescribe a transition plan under division (A) or (B) 72  
of section 4928.33 of the Revised Code unless the commission first 73  
makes all of the following determinations: 74

(1) The unbundled components for the electric transmission 75  
component of retail electric service, as specified in the 76  
utility's rate unbundling plan required by division (A)(1) of 77  
section 4928.31 of the Revised Code, equal the tariff rates 78  
determined by the federal energy regulatory commission that are in 79  
effect on the date of the approval of the transition plan under 80

sections 4928.31 to 4928.40 of the Revised Code, as each such rate 81  
is determined applicable to each particular customer class and 82  
rate schedule by the commission. The unbundled transmission 83  
component shall include a sliding scale of charges under division 84  
~~(B)~~(A)(2) of section 4905.31 of the Revised Code to ensure that 85  
refunds determined or approved by the federal energy regulatory 86  
commission are flowed through to retail electric customers. 87

(2) The unbundled components for retail electric distribution 88  
service in the rate unbundling plan equal the difference between 89  
the costs attributable to the utility's transmission and 90  
distribution rates and charges under its schedule of rates and 91  
charges in effect on the effective date of this section, based 92  
upon the record in the most recent rate proceeding of the utility 93  
for which the utility's schedule was established, and the tariff 94  
rates for electric transmission service determined by the federal 95  
energy regulatory commission as described in division (A)(1) of 96  
this section. 97

(3) All other unbundled components required by the commission 98  
in the rate unbundling plan equal the costs attributable to the 99  
particular service as reflected in the utility's schedule of rates 100  
and charges in effect on the effective date of this section. 101

(4) The unbundled components for retail electric generation 102  
service in the rate unbundling plan equal the residual amount 103  
remaining after the determination of the transmission, 104  
distribution, and other unbundled components, and after any 105  
adjustments necessary to reflect the effects of the amendment of 106  
section 5727.111 of the Revised Code by Sub. S.B. No. 3 of the 107  
123rd general assembly. 108

(5) All unbundled components in the rate unbundling plan have 109  
been adjusted to reflect any base rate reductions on file with the 110  
commission and as scheduled to be in effect by December 31, 2005, 111  
under rate settlements in effect on the effective date of this 112

section. However, all earnings obligations, restrictions, or caps 113  
imposed on an electric utility in a commission order prior to the 114  
effective date of this section are void. 115

(6) Subject to division (A)(5) of this section, the total of 116  
all unbundled components in the rate unbundling plan are capped 117  
and shall equal during the market development period, except as 118  
specifically provided in this chapter, the total of all rates and 119  
charges in effect under the applicable bundled schedule of the 120  
electric utility pursuant to section 4905.30 of the Revised Code 121  
in effect on the day before the effective date of this section, 122  
including the transition charge determined under section 4928.40 123  
of the Revised Code, adjusted for any changes in the taxation of 124  
electric utilities and retail electric service under Sub. S.B. No. 125  
3 of the 123rd General Assembly, the universal service rider 126  
authorized by section 4928.51 of the Revised Code, and the 127  
temporary rider authorized by section 4928.61 of the Revised Code. 128  
For the purpose of this division, the rate cap applicable to a 129  
customer receiving electric service pursuant to an arrangement 130  
approved by the commission under section 4905.31 of the Revised 131  
Code is, for the term of the arrangement, the total of all rates 132  
and charges in effect under the arrangement. For any rate schedule 133  
filed pursuant to section 4905.30 of the Revised Code or any 134  
arrangement subject to approval pursuant to section 4905.31 of the 135  
Revised Code, the initial tax-related adjustment to the rate cap 136  
required by this division shall be equal to the rate of taxation 137  
specified in section 5727.81 of the Revised Code and applicable to 138  
the schedule or arrangement. To the extent such total annual 139  
amount of the tax-related adjustment is greater than or less than 140  
the comparable amount of the total annual tax reduction 141  
experienced by the electric utility as a result of the provisions 142  
of Sub. S.B. No. 3 of the 123rd general assembly, such difference 143  
shall be addressed by the commission through accounting 144  
procedures, refunds, or an annual surcharge or credit to 145

customers, or through other appropriate means, to avoid placing 146  
the financial responsibility for the difference upon the electric 147  
utility or its shareholders. Any adjustments in the rate of 148  
taxation specified in section 5727.81 of the Revised Code ~~section~~ 149  
shall not occur without a corresponding adjustment to the rate cap 150  
for each such rate schedule or arrangement. The department of 151  
taxation shall advise the commission and self-assessors under 152  
section 5727.81 of the Revised Code prior to the effective date of 153  
any change in the rate of taxation specified under that section, 154  
and the commission shall modify the rate cap to reflect that 155  
adjustment so that the rate cap adjustment is effective as of the 156  
effective date of the change in the rate of taxation. This 157  
division shall be applied, to the extent possible, to eliminate 158  
any increase in the price of electricity for customers that 159  
otherwise may occur as a result of establishing the taxes 160  
contemplated in section 5727.81 of the Revised Code. 161

(7) The rate unbundling plan complies with any rules adopted 162  
by the commission under division (A) of section 4928.06 of the 163  
Revised Code. 164

(8) The corporate separation plan required by division (A)(2) 165  
of section 4928.31 of the Revised Code complies with section 166  
4928.17 of the Revised Code and any rules adopted by the 167  
commission under division (A) of section 4928.06 of the Revised 168  
Code. 169

(9) Any plan or plans the commission requires to address 170  
operational support systems and any other technical implementation 171  
issues pertaining to competitive retail electric service comply 172  
with any rules adopted by the commission under division (A) of 173  
section 4928.06 of the Revised Code. 174

(10) The employee assistance plan required by division (A)(4) 175  
of section 4928.31 of the Revised Code sufficiently provides 176  
severance, retraining, early retirement, retention, outplacement, 177

and other assistance for the utility's employees whose employment 178  
is affected by electric industry restructuring under this chapter. 179

(11) The consumer education plan required under division 180  
(A)(5) of section 4928.31 of the Revised Code complies with former 181  
section 4928.42 of the Revised Code and any rules adopted by the 182  
commission under division (A) of section 4928.06 of the Revised 183  
Code. 184

(12) The transition revenues for which an electric utility is 185  
authorized a revenue opportunity under sections 4928.31 to 4928.40 186  
of the Revised Code are the allowable transition costs of the 187  
utility as such costs are determined by the commission pursuant to 188  
section 4928.39 of the Revised Code, and the transition charges 189  
for the customer classes and rate schedules of the utility are the 190  
charges determined pursuant to section 4928.40 of the Revised 191  
Code. 192

(13) Any independent transmission plan included in the 193  
transition plan filed under section 4928.31 of the Revised Code 194  
reasonably complies with section 4928.12 of the Revised Code and 195  
any rules adopted by the commission under division (A) of section 196  
4928.06 of the Revised Code, unless the commission, for good cause 197  
shown, authorizes the utility to defer compliance until an order 198  
is issued under division (G) of section 4928.35 of the Revised 199  
Code. 200

(14) The utility is in compliance with sections 4928.01 to 201  
4928.11 of the Revised Code and any rules or orders of the 202  
commission adopted or issued under those sections. 203

(15) All unbundled components in the rate unbundling plan 204  
have been adjusted to reflect the elimination of the tax on gross 205  
receipts imposed by section 5727.30 of the Revised Code. 206

In addition, a transition plan approved by the commission 207  
under section 4928.33 of the Revised Code but not containing an 208

approved independent transmission plan shall contain the express 209  
conditions that the utility will comply with an order issued under 210  
division (G) of section 4928.35 of the Revised Code. 211

(B) Subject to division (E) of section 4928.17 of the Revised 212  
Code, if the commission finds that any part of the transition plan 213  
would constitute an abandonment under sections 4905.20 and 4905.21 214  
of the Revised Code, the commission shall not approve that part of 215  
the transition plan unless it makes the finding required for 216  
approval of an abandonment application under section 4905.21 of 217  
the Revised Code. Sections 4905.20 and 4905.21 of the Revised Code 218  
otherwise shall not apply to a transition plan under sections 219  
4928.31 to 4928.40 of the Revised Code. 220

**Section 2.** That existing sections 4905.31 and 4928.34 of the 221  
Revised Code are hereby repealed. 222

**Section 3.** Any financial device to recover costs in 223  
conjunction with any economic development and job retention 224  
program established and approved under section 4905.31 of the 225  
Revised Code, as that section existed prior to the effective date 226  
of this act, shall continue in effect in accordance with the terms 227  
of that device, unless altered, changed, or modified by the Public 228  
Utilities Commission. 229