

**As Introduced**

**127th General Assembly  
Regular Session  
2007-2008**

**S. B. No. 221**

**Senator Schuler (By Request)**

—

**A BILL**

To amend sections 122.41, 122.451, 3706.01, 3706.02, 1  
3706.03, 3706.04, 3706.041, 3706.05, 3706.06, 2  
3706.07, 3706.08, 3706.09, 3706.10, 3706.11, 3  
3706.12, 3706.13, 3706.14, 3706.15, 3706.16, 4  
3706.17, 3706.18, 4905.31, 4905.40, 4928.02, 5  
4928.05, 4928.14, and 4928.17 and to enact 6  
sections 1551.41, 4928.111, 4928.141, 4928.142, 7  
4928.64, 4928.68, and 4928.69 of the Revised Code 8  
to revise state energy policy to address electric 9  
service price regulation, new bonding authority 10  
for advanced energy projects, advanced (including 11  
renewable) energy portfolio standards, energy 12  
efficiency standards, and greenhouse gas emission 13  
reporting and carbon control planning 14  
requirements. 15

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

**Section 1.** That sections 122.41, 122.451, 3706.01, 3706.02, 16  
3706.03, 3706.04, 3706.041, 3706.05, 3706.06, 3706.07, 3706.08, 17  
3706.09, 3706.10, 3706.11, 3706.12, 3706.13, 3706.14, 3706.15, 18  
3706.16, 3706.17, 3706.18, 4905.31, 4905.40, 4928.02, 4928.05, 19  
4928.14, and 4928.17 be amended and sections 1551.41, 4928.111, 20  
4928.141, 4928.142, 4928.64, 4928.68, and 4928.69 of the Revised 21  
Code be enacted to read as follows: 22

**Sec. 122.41.** (A) The development financing advisory council 23  
and the director of development are invested with the powers and 24  
duties provided in Chapter 122. of the Revised Code, in order to 25  
promote the welfare of the people of the state, to stabilize the 26  
economy, to provide employment, to assist in the development 27  
within the state of industrial, commercial, distribution, and 28  
research activities required for the people of the state, and for 29  
their gainful employment, or otherwise to create or preserve jobs 30  
and employment opportunities, or improve the economic welfare of 31  
the people of the state, and also to assist in the financing of 32  
air, water, or thermal pollution control facilities, advanced 33  
energy facilities, and solid waste disposal facilities by mortgage 34  
insurance as provided in section 122.451 of the Revised Code. It 35  
is hereby determined that the accomplishment of such purposes is 36  
essential so that the people of the state may maintain their 37  
present high standards in comparison with the people of other 38  
states and so that opportunities for employment and for favorable 39  
markets for the products of the state's natural resources, 40  
agriculture, and manufacturing shall be improved and that it is 41  
necessary for the state to establish the programs authorized 42  
pursuant to Chapter 122. of the Revised Code, to establish the 43  
development financing advisory council, and to invest it and the 44  
director of development with the powers and duties provided in 45  
Chapter 122. of the Revised Code. The powers granted to the 46  
director of development by Chapter 165. of the Revised Code are 47  
independent of and in addition and alternate to, and are not 48  
limited or restricted by, Chapter 122. of the Revised Code. 49

(B) The development financing advisory council shall: 50

(1) Make recommendations to the director of development as to 51  
applications for assistance pursuant to sections 122.39 to 122.62 52  
or Chapter 166. of the Revised Code. The council may revise its 53  
recommendations to reflect any changes in the proposed assistance 54

made by the director.	55
(2) Advise the director in the administration of sections 122.39 to 122.62 and Chapter 166. of the Revised Code;	56 57
(3) Adopt bylaws to govern the conduct of the council's business.	58 59
<b>Sec. 122.451.</b> Upon application of any person, partnership, or corporation, or upon application of any community improvement corporation organized as provided in section 1724.01 of the Revised Code, the director of development, with controlling board approval, may, pledging therefor moneys in the mortgage insurance fund created by section 122.561 of the Revised Code, insure or make advance commitments to insure not more than ninety per cent of any mortgage payments required. Before insuring any such mortgage payments the director shall determine that:	60 61 62 63 64 65 66 67 68
(A) The project, in accordance with Section 13 of Article VIII, Ohio Constitution, will create or preserve jobs and employment opportunities, or improve the economic welfare of the people of the state, or be an air quality facility, <u>advanced energy facility</u> , waste water facility, or solid waste facility, as defined in section 3706.01, 6121.01, or 6123.01 of the Revised Code.	69 70 71 72 73 74 75
(B) The principal obligation, including initial service charges and appraisal, inspection, and other fees approved by the director, does not exceed one hundred per cent of the cost of the project.	76 77 78 79
(C) The mortgage has a satisfactory maturity date in no case later than twenty-five years from the date of the insurance.	80 81
(D) The mortgagor is responsible and able to meet the payments under the mortgage.	82 83
(E) The mortgage contains complete amortization provisions	84

satisfactory to the director requiring periodic payments by the 85  
mortgagor which may include principal and interest payments, cost 86  
of local property taxes and assessments, land lease rentals, if 87  
any, and hazard insurance on the property and such mortgage 88  
insurance premiums as are required under section 122.561 of the 89  
Revised Code, all as the director from time to time prescribes or 90  
approves. 91

(F) The mortgage is in such form and contains such terms and 92  
provisions with respect to property insurance, repairs, 93  
alterations, payment of taxes and assessments, default reserves, 94  
delinquency charges, default remedies, anticipation of maturity, 95  
additional and secondary liens, and other matters as the director 96  
may prescribe. 97

The director may take assignments of insured mortgages and 98  
other forms of security and may take title by foreclosure or 99  
conveyance to any project when an insured mortgage loan thereon is 100  
clearly in default and when in the opinion of the director such 101  
acquisition is necessary to safeguard the mortgage insurance fund, 102  
and may sell, or on a temporary basis lease or rent, such project. 103

Sec. 1551.41. The department of natural resources, the 104  
environmental protection agency, and the public utilities 105  
commission jointly by rule shall develop an interim policy 106  
framework for the supervision and regulation by those agencies of 107  
pilot and demonstration carbon sequestration activities located in 108  
or sequestration products produced in this state. 109

**Sec. 3706.01.** As used in this chapter: 110

(A) "Governmental agency" means a department, division, or 111  
other unit of state government, a municipal corporation, county, 112  
township, and other political subdivision, or any other public 113  
corporation or agency having the power to acquire, construct, or 114

operate air quality facilities, the United States or any agency 115  
thereof, and any agency, commission, or authority established 116  
pursuant to an interstate compact or agreement. 117

(B) "Person" means any individual, firm, partnership, 118  
association, or corporation, or any combination thereof. 119

(C) "Air contaminant" means particulate matter, dust, fumes, 120  
gas, mist, smoke, noise, vapor, heat, radioactivity, radiation, or 121  
odorous substance, or any combination thereof. 122

(D) "Air pollution" means the presence in the ambient air of 123  
one or more air contaminants in sufficient quantity and of such 124  
characteristics and duration as to injure human health or welfare, 125  
plant or animal life, or property, or that unreasonably interferes 126  
with the comfortable enjoyment of life or property. 127

(E) "Ambient air" means that portion of the atmosphere 128  
outside of buildings and other enclosures, stacks, or ducts that 129  
surrounds human, plant, or animal life, or property. 130

(F) "Emission" means the release into the outdoor atmosphere 131  
of an air contaminant. 132

(G) "Air quality facility" means any of the following: 133

(1) Any method, or any modification or replacement of 134  
property, process, device, structure, or equipment that removes, 135  
reduces, prevents, contains, alters, conveys, stores, disperses, 136  
or disposes of air contaminants or substances containing air 137  
contaminants, or that renders less noxious or reduces the 138  
concentration of air contaminants in the ambient air, including, 139  
without limitation, facilities and expenditures that qualify as 140  
air pollution control facilities under section 103 (C)(4)(F) of 141  
the Internal Revenue Code of 1954, as amended, and regulations 142  
adopted thereunder; 143

(2) Motor vehicle inspection stations operated in accordance 144

with, and any equipment used for motor vehicle inspections 145  
conducted under, section 3704.14 of the Revised Code and rules 146  
adopted under it; 147

(3) Ethanol or other biofuel facilities, including any 148  
equipment used at the ethanol or other biofuel facility for the 149  
production of ethanol or other biofuels; 150

(4) Any property or portion thereof used for the collection, 151  
storage, treatment, utilization, processing, or final disposal of 152  
a by-product or solid waste resulting from any method, process, 153  
device, structure, or equipment that removes, reduces, prevents, 154  
contains, alters, conveys, stores, disperses, or disposes of air 155  
contaminants, or that renders less noxious or reduces the 156  
concentration of air contaminants in the ambient air; 157

(5) Any property, device, or equipment that promotes the 158  
reduction of emissions of air contaminants into the ambient air 159  
through improvements in the efficiency of energy utilization or 160  
energy conservation; 161

(6) Any coal research and development project conducted under 162  
Chapter 1555. of the Revised Code; 163

(7) As determined by the director of the Ohio coal 164  
development office, any property or portion thereof that is used 165  
for the collection, storage, treatment, utilization, processing, 166  
or final disposal of a by-product resulting from a coal research 167  
and development project as defined in section 1555.01 of the 168  
Revised Code or from the use of clean coal technology, excluding 169  
any property or portion thereof that is used primarily for other 170  
subsequent commercial purposes; 171

(8) Any property or portion thereof that is part of the 172  
FutureGen project of the United States department of energy or 173  
related to the siting of the FutureGen project; 174

(9) Any property, device, or equipment that reduces emissions 175

of air contaminants into the ambient air through the generation of 176  
electricity using sustainable resources; 177

(10) Any property, device, or equipment necessary for the 178  
manufacture and production of equipment that qualifies as an air 179  
quality facility. 180

"Air quality facility" further includes any property or 181  
system to be used in whole or in part for any of the purposes in 182  
divisions (G)(1) to ~~(8)~~(10) of this section, whether another 183  
purpose is also served, and any property or system incidental to 184  
or that has to do with, or the end purpose of which is, any of the 185  
foregoing. Air quality facilities that are defined in this 186  
division for industry, commerce, distribution, or research, 187  
including public utility companies, are hereby determined to be 188  
those that qualify as facilities for the control of air pollution 189  
and thermal pollution related to air under Section 13 of Article 190  
VIII, Ohio Constitution. 191

(H) "Project," ~~or~~ "air quality project," or "advanced energy 192  
project" means any air quality facility or advanced energy 193  
facility, including undivided or other interests therein, acquired 194  
or to be acquired or constructed or to be constructed by the Ohio 195  
air quality development authority under this chapter, or acquired 196  
or to be acquired or constructed or to be constructed by a 197  
governmental agency or person with all or a part of the cost 198  
thereof being paid from a loan or grant from the authority under 199  
this chapter or otherwise paid from the proceeds of ~~air quality~~ 200  
revenue bonds, including all buildings and facilities that the 201  
authority determines necessary for the operation of the project, 202  
together with all property, rights, easements, and interests that 203  
may be required for the operation of the project. 204

(I) "Cost" as applied to an air quality project or advanced 205  
energy project means the cost of acquisition and construction, the 206  
cost of acquisition of all land, rights-of-way, property rights, 207

easements, franchise rights, and interests required for such 208  
acquisition and construction, the cost of demolishing or removing 209  
any buildings or structures on land so acquired, including the 210  
cost of acquiring any lands to which such buildings or structures 211  
may be moved, the cost of acquiring or constructing and equipping 212  
a principal office and sub-offices of the authority, the cost of 213  
diverting highways, interchange of highways, and access roads to 214  
private property, including the cost of land or easements for such 215  
access roads, the cost of public utility and common carrier 216  
relocation or duplication, the cost of all machinery, furnishings, 217  
and equipment, financing charges, interest prior to and during 218  
construction and for no more than eighteen months after completion 219  
of construction, engineering, expenses of research and development 220  
with respect to air quality facilities, the cost of any commodity 221  
contract, including fees and expenses related thereto, legal 222  
expenses, plans, specifications, surveys, studies, estimates of 223  
cost and revenues, working capital, other expenses necessary or 224  
incident to determining the feasibility or practicability of 225  
acquiring or constructing such project, administrative expense, 226  
and such other expense as may be necessary or incident to the 227  
acquisition or construction of the project, the financing of such 228  
acquisition or construction, including the amount authorized in 229  
the resolution of the authority providing for the issuance of ~~air~~ 230  
~~quality~~ revenue bonds to be paid into any special funds from the 231  
proceeds of such bonds, and the financing of the placing of such 232  
project in operation. Any obligation, cost, or expense incurred by 233  
any governmental agency or person for surveys, borings, 234  
preparation of plans and specifications, and other engineering 235  
services, or any other cost described above, in connection with 236  
the acquisition or construction of a project may be regarded as a 237  
part of the cost of that project and may be reimbursed out of the 238  
proceeds of ~~air-quality~~ revenue bonds as authorized by this 239  
chapter. 240



(J) "Owner" includes an individual, copartnership, 241  
association, or corporation having any title or interest in any 242  
property, rights, easements, or interests authorized to be 243  
acquired by this chapter. 244

(K) "Revenues" means all rentals and other charges received 245  
by the authority for the use or services of any air quality 246  
project, any gift or grant received with respect to any air 247  
quality project, any moneys received with respect to the lease, 248  
sublease, sale, including installment sale or conditional sale, or 249  
other disposition of an air quality project, moneys received in 250  
repayment of and for interest on any loans made by the authority 251  
to a person or governmental agency, whether from the United States 252  
or any department, administration, or agency thereof, or 253  
otherwise, proceeds of such bonds to the extent that use thereof 254  
for payment of principal of, premium, if any, or interest on the 255  
bonds is authorized by the authority, amounts received or 256  
otherwise derived from a commodity contract or from the sale of 257  
the related commodity under such a contract, proceeds from any 258  
insurance, condemnation, or guaranty pertaining to a project or 259  
property mortgaged to secure bonds or pertaining to the financing 260  
of the project, and income and profit from the investment of the 261  
proceeds of ~~air-quality~~ revenue bonds or of any revenues. 262

(L) "Public roads" includes all public highways, roads, and 263  
streets in the state, whether maintained by the state, county, 264  
city, township, or other political subdivision. 265

(M) "Public utility facilities" includes tracks, pipes, 266  
mains, conduits, cables, wires, towers, poles, and other equipment 267  
and appliances of any public utility. 268

(N) "Construction," unless the context indicates a different 269  
meaning or intent, includes reconstruction, enlargement, 270  
improvement, or providing furnishings or equipment. 271

(O) "~~Air quality revenue~~ Revenue bonds," unless the context 272  
indicates a different meaning or intent, includes ~~air quality~~ 273  
revenue notes, ~~air quality~~ revenue renewal notes, and ~~air quality~~ 274  
revenue refunding bonds, except that notes issued in anticipation 275  
of the issuance of bonds shall have a maximum maturity of five 276  
years as provided in section 3706.05 of the Revised Code and notes 277  
or renewal notes issued as the definitive obligation may be issued 278  
maturing at such time or times with a maximum maturity of forty 279  
years from the date of issuance of the original note. 280

(P) "Solid waste" means any garbage; refuse; sludge from a 281  
waste water treatment plant, water supply treatment plant, or air 282  
pollution control facility; and other discarded material, 283  
including solid, liquid, semisolid, or contained gaseous material 284  
resulting from industrial, commercial, mining, and agricultural 285  
operations, and from community activities, but not including solid 286  
or dissolved material in domestic sewage, or solid or dissolved 287  
material in irrigation return flows or industrial discharges that 288  
are point sources subject to permits under section 402 of the 289  
"Federal Water Pollution Control Act Amendments of 1972," 86 Stat. 290  
880, 33 U.S.C.A. 1342, as amended, or source, special nuclear, or 291  
byproduct material as defined by the "Atomic Energy Act of 1954," 292  
68 Stat. 921, 42 U.S.C.A. 2011, as amended. 293

(Q) "Sludge" means any solid, semisolid, or liquid waste, 294  
other than a recyclable by-product, generated from a municipal, 295  
commercial, or industrial waste water treatment plant, water 296  
supply plant, or air pollution control facility or any other such 297  
wastes having similar characteristics and effects. 298

(R) "Ethanol or other biofuel facility" means a plant at 299  
which ethanol or other biofuel is produced. 300

(S) "Ethanol" means fermentation ethyl alcohol derived from 301  
agricultural products, including potatoes, cereal, grains, cheese 302  
whey, and sugar beets; forest products; or other renewable or 303

biomass resources, including residue and waste generated from the 304  
production, processing, and marketing of agricultural products, 305  
forest products, and other renewable or biomass resources, that 306  
meets all of the specifications in the American society for 307  
testing and materials (ASTM) specification D 4806-88 and is 308  
denatured as specified in Parts 20 and 21 of Title 27 of the Code 309  
of Federal Regulations. 310

(T) "Biofuel" means any fuel that is made from cellulosic 311  
biomass resources, including renewable organic matter, crop waste 312  
residue, wood, aquatic plants and other crops, animal waste, solid 313  
waste, or sludge, and that is used for the production of energy 314  
for transportation or other purposes. 315

(U) "FutureGen project" means the buildings, equipment, and 316  
real property and functionally related buildings, equipment, and 317  
real property, including related research projects that support 318  
the development and operation of the buildings, equipment, and 319  
real property, designated by the United States department of 320  
energy and the FutureGen industrial alliance, inc., as the 321  
coal-fueled, zero-emissions power plant designed to prove the 322  
technical and economic feasibility of producing electricity and 323  
hydrogen from coal and nearly eliminating carbon dioxide emissions 324  
through capture and permanent storage. 325

(V) "Commodity contract" means a contract or series of 326  
contracts entered into in connection with the acquisition or 327  
construction of air quality facilities or advanced energy 328  
facilities for the purchase or sale of a commodity that is 329  
eligible for prepayment with the proceeds of federally taxable or 330  
tax exempt bonds under sections 103, 141, and 148 of the Internal 331  
Revenue Code of 1986, as amended, and regulations adopted under 332  
it. 333

(W) "Sustainable resources" includes, but is not limited to, 334  
solar, wind, tidal or wave, biomass, biofuel, hydro, or geothermal 335

resources that are used in the generation of electricity. 336

337

(X) "Advanced energy facility" means any method or any 338  
modification or replacement of property, process, device, 339  
structure, or equipment that meets any of the following: 340

(1) With regard to clean coal technology, consists of a 341  
coal-based generating facility that has the capability of 342  
controlling or preventing emissions of carbon dioxide by at least 343  
eighty per cent compared to the carbon dioxide emissions that 344  
would occur without the technology; 345

(2) With regard to advanced nuclear energy production, 346  
consists of generation III technology as defined by the nuclear 347  
regulatory commission, other later technology, or significant 348  
improvements to existing facilities; 349

(3) With regard to fuel cells used in the generation of 350  
electricity, consists of, but is not limited to, a proton exchange 351  
membrane fuel cell, phosphoric acid fuel cell, molten carbonate 352  
fuel cell, or solid fuel cell; 353

(4) With regard to cogeneration technology, consists of a 354  
technology using a heat engine or power station to generate 355  
electricity and useful heat simultaneously. 356

"Advanced energy facility" further includes any property or 357  
system to be used in whole or in part for any of the purposes of 358  
divisions (X)(1) to (4) of this section, whether another purpose 359  
also is served, and any property or system incidental to or that 360  
has to do with, or the end purpose of which is, any of the 361  
foregoing. 362

**Sec. 3706.02.** There is hereby created the Ohio air quality 363  
development authority. Such authority is a body both corporate and 364  
politic in this state, and the carrying out of its purposes and 365

the exercise by it of the powers conferred by Chapter 3706. of the 366  
Revised Code shall be held to be, and are hereby determined to be, 367  
essential governmental functions and public purposes of the state, 368  
but the authority shall not be immune from liability by reason 369  
thereof. 370

The authority shall consist of seven members as follows: five 371  
members appointed by the governor, with the advice and consent of 372  
the senate, no more than three of whom shall be members of the 373  
same political party, and the director of environmental protection 374  
and the director of health, who shall be members ex officio 375  
without compensation. Each appointive member shall be a resident 376  
of the state, and a qualified elector therein. The members of the 377  
authority first appointed shall continue in office for terms 378  
expiring on June 30, 1971, June 30, 1973, June 30, 1975, June 30, 379  
1977, and June 30, 1978, respectively, the term of each member to 380  
be designated by the governor. Appointed members' terms of office 381  
shall be for eight years, commencing on the first day of July and 382  
ending on the thirtieth day of June. Each appointed member shall 383  
hold office from the date of ~~his~~ appointment until the end of the 384  
term for which ~~he was~~ appointed. Any member appointed to fill a 385  
vacancy occurring prior to the expiration of the term for which 386  
~~his~~ the member's predecessor was appointed shall hold office for 387  
the remainder of such term. Any appointed member shall continue in 388  
office subsequent to the expiration date of ~~his~~ the member's term 389  
until ~~his~~ the member's successor takes office, or until a period 390  
of sixty days has elapsed, whichever occurs first. A member of the 391  
authority is eligible for reappointment. Each appointed member of 392  
the authority, before entering upon ~~his~~ official duties, shall 393  
take an oath as provided by Section 7 of Article XV, Ohio 394  
Constitution. The governor may at any time remove any member of 395  
the authority for misfeasance, nonfeasance, or malfeasance in 396  
office. The authority shall elect one of its appointed members as 397  
~~chairman~~ chairperson and another as ~~vice chairman~~ 398

vice-chairperson, and shall appoint a secretary-treasurer who need 399  
not be a member of the authority. Four members of the authority 400  
shall constitute a quorum, and the affirmative vote of four 401  
members shall be necessary for any action taken by vote of the 402  
authority. No vacancy in the membership of the authority shall 403  
impair the rights of a quorum by such vote to exercise all the 404  
rights and perform all the duties of the authority. 405

Before the issuance of any ~~air-quality~~ revenue bonds under 406  
Chapter 3706. of the Revised Code, each appointed member of the 407  
authority shall give a surety bond to the state in the penal sum 408  
of twenty-five thousand dollars and the secretary-treasurer shall 409  
give such a bond in the penal sum of fifty thousand dollars, each 410  
such surety bond to be conditioned upon the faithful performance 411  
of the duties of the office, to be executed by a surety company 412  
authorized to transact business in this state, and to be approved 413  
by the governor and filed in the office of the secretary of state. 414  
Each appointed member of the authority shall receive an annual 415  
salary of five thousand dollars, payable in monthly installments. 416  
Each member shall be reimbursed for ~~his~~ the actual expenses 417  
necessarily incurred in the performance of ~~his~~ official duties. 418  
All expenses incurred in carrying out Chapter 3706. of the Revised 419  
Code shall be payable solely from funds provided under Chapter 420  
3706. of the Revised Code, appropriated for such purpose by the 421  
general assembly, or provided by the controlling board. No 422  
liability or obligation shall be incurred by the authority beyond 423  
the extent to which moneys have been so provided or appropriated. 424

**Sec. 3706.03. (A)** It is hereby declared to be the public 425  
policy of the state through the operations of the Ohio air quality 426  
development authority under this chapter to contribute toward one 427  
or more of the following: to provide for the conservation of air 428  
as a natural resource of the state, and to prevent or abate the 429  
pollution thereof, to provide for the comfort, health, safety, and 430

general welfare of all employees, as well as all other inhabitants 431  
of the state, to assist in the financing of air quality facilities 432  
and advanced energy facilities for industry, commerce, 433  
distribution, and research, including public utility companies, to 434  
create or preserve jobs and employment opportunities or improve 435  
the economic welfare of the people, or assist and cooperate with 436  
governmental agencies in achieving such purposes. ~~In~~ Additionally, 437  
advanced energy facilities for industry, commerce, distribution, 438  
or research, including public utility companies, are hereby deemed 439  
to qualify as facilities for the control of air pollution and 440  
thermal pollution related to air under Section 13, Article VIII, 441  
Ohio Constitution. 442

(B) In furtherance of such public policy the Ohio air quality 444  
development authority may initiate, acquire, construct, maintain, 445  
repair, and operate air quality projects and advanced energy 446  
projects or cause the same to be operated pursuant to a lease, 447  
sublease, or agreement with any person or governmental agency; may 448  
make loans and grants to governmental agencies for the acquisition 449  
or construction of air quality facilities and advanced energy 450  
facilities by such governmental agencies; may make loans to 451  
persons for the acquisition or construction of air quality 452  
facilities and advanced energy facilities by such persons; may 453  
enter into commodity contracts with, or make loans for the purpose 454  
of entering into commodity contracts to, any person, governmental 455  
agency, or entity located within or without the state in 456  
connection with the acquisition or construction of air quality 457  
facilities and advanced energy facilities; and may issue ~~air~~ 458  
~~quality~~ revenue bonds of this state payable solely from revenues, 459  
to pay the cost of such projects, including any related commodity 460  
contracts. Any air quality project or advanced energy project 461  
shall be determined by the authority to be not inconsistent with 462  
any applicable air quality standards duly established and then 463

required to be met pursuant to the "Clean Air Act," 84 Stat. 1679 464  
(1970), 42 U.S.C.A. 1857, as amended. Any resolution of the 465  
authority providing for acquiring or constructing such projects or 466  
for making a loan or grant for such projects shall include a 467  
finding by the authority that such determination has been made. 468  
Determinations by resolution of the authority that a project is an 469  
air quality facility or advanced energy facility under this 470  
chapter and is consistent with the purposes of section 13 of 471  
Article VIII, Ohio Constitution, and this chapter, shall be 472  
conclusive as to the validity and enforceability of the ~~air~~ 473  
~~quality~~ revenue bonds issued to finance such project and of the 474  
resolutions, trust agreements or indentures, leases, subleases, 475  
sale agreements, loan agreements, and other agreements made in 476  
connection therewith, all in accordance with their terms. 477

478

**Sec. 3706.04.** The Ohio air quality development authority may: 479

480

(A) Adopt bylaws for the regulation of its affairs and the 481  
conduct of its business; 482

(B) Adopt an official seal; 483

(C) Maintain a principal office and suboffices at such places 484  
within the state as it designates; 485

(D) Sue and plead in its own name; be sued and impleaded in 486  
its own name with respect to its contracts or torts of its 487  
members, employees, or agents acting within the scope of their 488  
employment, or to enforce its obligations and covenants made under 489  
sections 3706.05, 3706.07, and 3706.12 of the Revised Code. Any 490  
such actions against the authority shall be brought in the court 491  
of common pleas of the county in which the principal office of the 492  
authority is located, or in the court of common pleas of the 493  
county in which the cause of action arose, provided such county is 494



located within this state, and all summonses, exceptions, and 495  
notices of every kind shall be served on the authority by leaving 496  
a copy thereof at the principal office with the person in charge 497  
thereof or with the secretary-treasurer of the authority. 498

(E) Make loans and grants to governmental agencies for the 499  
acquisition or construction of air quality projects or advanced 500  
energy projects by any such governmental agency and adopt rules 501  
and procedures for making such loans and grants; 502

(F) Acquire, construct, reconstruct, enlarge, improve, 503  
furnish, equip, maintain, repair, operate, lease or rent to, or 504  
contract for operation by, a person or governmental agency, air 505  
quality projects or advanced energy projects, and establish rules 506  
for the use of such projects; 507

(G) Make available the use or services of any air quality 508  
project or advanced energy project to one or more persons, one or 509  
more governmental agencies, or any combination thereof; 510

(H) Issue ~~air quality~~ revenue bonds and notes and ~~air quality~~ 511  
revenue refunding bonds of the state, payable solely from revenues 512  
as provided in section 3706.05 of the Revised Code, unless the 513  
bonds be refunded by refunding bonds, for the purpose of paying 514  
any part of the cost of one or more air quality projects or 515  
advanced energy projects or parts thereof; 516

(I) Acquire by gift or purchase, hold, and dispose of real 517  
and personal property in the exercise of the powers of the 518  
authority and the performance of its duties under this chapter; 519

(J) Acquire, in the name of the state, by purchase or 520  
otherwise, on such terms and in such manner as the authority finds 521  
proper, or by the exercise of the right of condemnation in the 522  
manner provided by section 3706.17 of the Revised Code, such 523  
public or private lands, including public parks, playgrounds, or 524  
reservations, or parts thereof or rights therein, rights-of-way, 525

property, rights, easements, and interests as it finds necessary 526  
for carrying out this chapter, but excluding the acquisition by 527  
the exercise of the right of condemnation of any air quality 528  
facility or advanced energy facility owned by any person or 529  
governmental agency; and compensation shall be paid for public or 530  
private lands so taken; 531

(K) Make and enter into all contracts and agreements and 532  
execute all instruments necessary or incidental to the performance 533  
of its duties and the execution of its powers under this chapter. 534

(1) When the cost under any such contract or agreement, other 535  
than compensation for personal services, involves an expenditure 536  
of more than two thousand dollars, the authority shall make a 537  
written contract with the lowest responsive and responsible 538  
bidder, in accordance with section 9.312 of the Revised Code, 539  
after advertisement for not less than two consecutive weeks in a 540  
newspaper of general circulation in Franklin county, and in such 541  
other publications as the authority determines, which notice shall 542  
state the general character of the work and the general character 543  
of the materials to be furnished, the place where plans and 544  
specifications therefor may be examined, and the time and place of 545  
receiving bids; provided, that a contract or lease for the 546  
operation of an air quality project or advanced energy project 547  
constructed and owned by the authority or an agreement for 548  
cooperation in the acquisition or construction of an air quality 549  
project or advanced energy project pursuant to section 3706.12 of 550  
the Revised Code or any contract for the construction of an air 551  
quality project or advanced energy project that is to be leased by 552  
the authority to, and operated by, persons ~~who~~ that are not 553  
governmental agencies and the cost of such project is to be 554  
amortized exclusively from rentals or other charges paid to the 555  
authority by persons ~~who~~ that are not governmental agencies is not 556  
subject to the foregoing requirements and the authority may enter 557

into such contract, lease, or agreement pursuant to negotiation 558  
and upon such terms and conditions and for such period as it finds 559  
to be reasonable and proper in the circumstances and in the best 560  
interests of proper operation or of efficient acquisition or 561  
construction of such project. 562

(2) Each bid for a contract for the construction, demolition, 563  
alteration, repair, or reconstruction of an improvement shall 564  
contain the full name of every person interested in it and meet 565  
the requirements of section 153.54 of the Revised Code. 566

(3) Each bid for a contract except as provided in division 567  
(K)(2) of this section shall contain the full name of every person 568  
interested in it and shall be accompanied by a sufficient bond or 569  
certified check on a solvent bank that if the bid is accepted a 570  
contract will be entered into and the performance thereof secured. 571

(4) The authority may reject any and all bids. 572

(5) A bond with good and sufficient surety, approved by the 573  
authority, shall be required of every contractor awarded a 574  
contract except as provided in division (K)(2) of this section, in 575  
an amount equal to at least fifty per cent of the contract price, 576  
conditioned upon the faithful performance of the contract. 577

(L) Employ managers, superintendents, and other employees and 578  
retain or contract with consulting engineers, financial 579  
consultants, accounting experts, architects, attorneys, and such 580  
other consultants and independent contractors as are necessary in 581  
its judgment to carry out this chapter, and fix the compensation 582  
thereof. All expenses thereof shall be payable solely from the 583  
proceeds of ~~air-quality~~ revenue bonds or notes issued under this 584  
chapter, from revenues, or from funds appropriated for such 585  
purpose by the general assembly. 586

(M) Receive and accept from any federal agency, subject to 587  
the approval of the governor, grants for or in aid of the 588

construction of any air quality project or advanced energy project 589  
or for research and development with respect to air quality 590  
facilities and advanced energy facilities, and receive and accept 591  
aid or contributions from any source of money, property, labor, or 592  
other things of value, to be held, used, and applied only for the 593  
purposes for which such grants and contributions are made; 594

(N) Engage in research and development with respect to air 595  
quality facilities and advanced energy facilities; 596

(O) Purchase fire and extended coverage and liability 597  
insurance for any air quality project and advanced energy project 598  
and for the principal office and suboffices of the authority, 599  
insurance protecting the authority and its officers and employees 600  
against liability for damage to property or injury to or death of 601  
persons arising from its operations, and any other insurance the 602  
authority may agree to provide under any resolution authorizing 603  
its ~~air quality~~ revenue bonds or in any trust agreement securing 604  
the same; 605

(P) Charge, alter, and collect rentals and other charges for 606  
the use or services of any air quality project or advanced energy 607  
project as provided in section 3706.13 of the Revised Code; 608

(Q) Provide coverage for its employees under Chapters 145., 609  
4123., and 4141. of the Revised Code; 610

(R) Develop, encourage, promote, support, and implement 611  
programs to achieve best cost rates for state-owned buildings, 612  
facilities, and operations, state-supported colleges and 613  
universities, willing local governments, and willing school 614  
districts through pooled purchases of electricity and the 615  
financing of taxable or tax-exempt prepayment of commodities; 616

(S) Develop, encourage, promote, support, and implement 617  
programs to achieve optimal cost financing for electric generating 618  
facilities to be constructed on or after January 1, 2009; 619

620

(T) Develop, encourage, and provide incentives for investments in energy efficiency; 621  
622

(U) Develop, encourage, promote, and support implementation in this state of sustainable resource energy installations; 623  
624

(V) Lead, encourage, promote, and support siting, financing, construction, and operation for early implementations of next-generation base load generating systems, including clean coal generating facilities with carbon capture or sequestration or advanced nuclear power plants, and reduce the costs of associated risks; 625  
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627  
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630

(W) Engage in and coordinate state-supported energy research and development with respect to reliable, affordable, and sustainable energy in this state; 631  
632  
633

(X) Develop, encourage, promote, support, and implement programs to achieve optimal cost electricity available to key industrial and energy-intensive sectors of the economy of this state; 634  
635  
636  
637

(Y) Do all acts necessary or proper to carry out the powers expressly granted in this chapter. 638  
639

Any instrument by which real property is acquired pursuant to this section shall identify the agency of the state that has the use and benefit of the real property as specified in section 5301.012 of the Revised Code. 640  
641  
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643

**Sec. 3706.041.** (A) With respect to projects, and the financing thereof, for industry, commerce, distribution, or research, including public utility companies, under agreements whereby the person to whom the project is to be leased, subleased, or sold, or to whom a loan is to be made for the project, is to make payments sufficient to pay all of the principal of, premium, 644  
645  
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if any, and interest on the ~~air-quality~~ revenue bonds issued for 650  
the project, or the counterparty under any related commodity 651  
contract agrees to make payments sufficient in amount to pay all 652  
of the principal of, premium, if any, and interest on the related 653  
~~air-quality~~ revenue bonds, the Ohio air quality development 654  
authority may, in addition to other powers under this chapter: 655

(1) Make loans for the acquisition or construction of the 656  
project to such person upon such terms as the authority may 657  
determine or authorize, including secured or unsecured loans, and, 658  
in connection therewith, enter into loan agreements and other 659  
agreements, including commodity contracts, accept notes and other 660  
forms of obligation to evidence such indebtedness and mortgages, 661  
liens, pledges, assignments, or other security interests to secure 662  
such indebtedness, which may be prior or subordinate to or on a 663  
parity with other indebtedness, obligations, mortgages, pledges, 664  
assignments, other security interests, or liens or encumbrances, 665  
and take such actions as may be considered by it appropriate to 666  
protect such security and safeguard against losses, including, 667  
without limitation thereto, foreclosure and the bidding upon and 668  
purchase of property upon foreclosure or other sale. 669

(2) Sell such project under such terms as it may determine, 670  
including, without limitation thereto, sale by conditional sale or 671  
installment sale, under which title may pass prior to or after 672  
completion of the project or payment or provisions for payment of 673  
all principal of, premium, if any, and interest on such bonds, or 674  
at any other time provided in such agreement pertaining to such 675  
sale, and including sale under an option to purchase at a price 676  
which may be a nominal amount or less than true value at the time 677  
of purchase. 678

(3) Grant a mortgage, lien, or other encumbrance on, or 679  
pledge or assignment of, or other security interest with respect 680  
to, all or any part of the project, revenues, reserve funds, or 681

other funds established in connection with such bonds, or on, of, 682  
or with respect to any lease, sublease, sale, conditional sale or 683  
installment sale agreement, loan agreement, or other agreement 684  
pertaining to the lease, sublease, sale, or other disposition of a 685  
project or pertaining to a loan made for a project, or any 686  
guaranty or insurance agreement made with respect thereto, or any 687  
interest of the authority therein, or any other interest granted, 688  
assigned, or released to secure payments of the principal of, 689  
premium, if any, or interest on the bonds or to secure any other 690  
payments to be made by the authority, which mortgage, lien, 691  
encumbrance, pledge, assignment, or other security interest may be 692  
prior or subordinate to or on a parity with any other mortgage, 693  
assignment, other security interest, or lien or encumbrance. 694

(4) Provide that the interest on such bonds may be at a 695  
variable rate or rates changing from time to time in accordance 696  
with a base or formula as authorized by the authority. 697

(5) Contract for the acquisition or construction of such 698  
project or any part thereof, including any related commodity 699  
contracts, and for the leasing, subleasing, sale or other 700  
disposition of such project in a manner determined by the 701  
authority in its sole discretion, without necessity for 702  
competitive bidding or performance bonds. 703

(B) Property comprising a project shall not be subject to 704  
taxes or assessments and so long as the bonds or notes issued to 705  
finance the costs of such project are outstanding, and the 706  
transfer of title to or possession of such property to the person 707  
to whom a loan or installment sale or conditional sale with 708  
respect to such project is made shall not be subject to the taxes 709  
levied pursuant to Chapters 5739. and 5741. of the Revised Code. 710

The authority shall certify the property comprising a project 711  
which is exempt from taxes and assessments pursuant to this 712  
section, and shall send, by certified mail, copies of such 713

certification to the owner of such exempt property, to the tax 714  
commissioner, and to the county auditor of the county or counties 715  
in which any such exempt property is located. 716

Each county auditor shall maintain a separate list of all 717  
property exempt pursuant to this section and sections 6121.044 and 718  
6123.041 of the Revised Code, in addition to the list of exempt 719  
property required to be maintained pursuant to section 5713.07 of 720  
the Revised Code. 721

(C) The authority, in the lease, sale or loan agreement with 722  
respect to a project referred to in division (A) of this section, 723  
shall make appropriate provision for adequate maintenance of the 724  
project. 725

(D) With respect to the projects referred to in this section, 726  
the authority granted by this section is cumulative and 727  
supplementary to all other authority granted in this chapter. The 728  
authority granted by this section does not alter or impair any 729  
similar authority granted elsewhere in this chapter for or with 730  
respect to other projects. 731

**Sec. 3706.05.** The Ohio air quality development authority may 732  
at any time issue revenue bonds and notes of the state in such 733  
principal amount as, in the opinion of the authority, are 734  
necessary for the purpose of paying any part of the cost of one or 735  
more air quality projects or advanced energy projects or parts 736  
thereof, including one or more payments pursuant to a commodity 737  
contract entered into in connection with the acquisition or 738  
construction of air quality facilities or advanced energy 739  
facilities. The authority may at any time issue renewal notes, 740  
issue bonds to pay such notes and whenever it deems refunding 741  
expedient, refund any bonds by the issuance of ~~air quality~~ revenue 742  
refunding bonds of the state, whether the bonds to be refunded 743  
have or have not matured, and issue bonds partly to refund bonds 744



then outstanding, and partly for any other authorized purpose. The 745  
refunding bonds shall be sold and the proceeds applied to the 746  
purchase, redemption, or payment of the bonds to be refunded. 747  
Except as may otherwise be expressly provided by the authority, 748  
every issue of its bonds or notes shall be general obligations of 749  
the authority payable out of the revenues of the authority that 750  
are pledged for such payment, without preference or priority of 751  
the first bonds issued, subject only to any agreements with the 752  
holders of particular bonds or notes pledging any particular 753  
revenues. Such pledge shall be valid and binding from the time the 754  
pledge is made and the revenues so pledged and thereafter received 755  
by the authority shall immediately be subject to the lien of such 756  
pledge without any physical delivery thereof or further act, and 757  
the lien of any such pledge is valid and binding as against all 758  
parties having claims of any kind in tort, contract, or otherwise 759  
against the authority, irrespective of whether such parties have 760  
notice thereof. Neither the resolution nor any trust agreement by 761  
which a pledge is created need be filed or recorded except in the 762  
records of the authority. 763

Whether or not the bonds or notes are of such form and 764  
character as to be negotiable instruments, the bonds or notes 765  
shall have all the qualities and incidents of negotiable 766  
instruments, subject only to the provisions of the bonds or notes 767  
for registration. 768

The bonds and notes shall be authorized by resolution of the 769  
authority, shall bear such date or dates, and shall mature at such 770  
time or times, in the case of any such note or any renewals 771  
thereof not exceeding five years from the date of issue of such 772  
original note and in the case of any such bond not exceeding forty 773  
years from the date of issue, as such resolution or resolutions 774  
may provide. The bonds and notes shall bear interest at such rate 775  
or rates, be in such denominations, be in such form, either coupon 776

or registered, carry such registration privileges, be payable in 777  
such medium of payment, at such place or places, and be subject to 778  
such terms of redemption as the authority may authorize. The bonds 779  
and notes of the authority may be sold by the authority, at public 780  
or private sale, at or at not less than such price or prices as 781  
the authority determines. The bonds and notes shall be executed by 782  
the chairperson and vice-chairperson of the authority, either or 783  
both of whom may use a facsimile signature, the official seal of 784  
the authority or a facsimile thereof shall be affixed thereto or 785  
printed thereon and attested, manually or by facsimile signature, 786  
by the secretary-treasurer of the authority, and any coupons 787  
attached thereto shall bear the signature or facsimile signature 788  
of the chairperson of the authority. In case any officer whose 789  
signature, or a facsimile of whose signature, appears on any 790  
bonds, notes or coupons ceases to be such officer before delivery 791  
of bonds or notes, such signature or facsimile shall nevertheless 792  
be sufficient for all purposes the same as if the officer had 793  
remained in office until such delivery, and in case the seal of 794  
the authority has been changed after a facsimile has been 795  
imprinted on such bonds or notes, such facsimile seal will 796  
continue to be sufficient for all purposes. 797

Any resolution or resolutions authorizing any bonds or notes 798  
or any issue thereof may contain provisions, subject to such 799  
agreements with bondholders or noteholders as may then exist, 800  
which provisions shall be a part of the contract with the holders 801  
thereof, as to: the pledging of all or any part of the revenues of 802  
the authority to secure the payment of the bonds or notes or of 803  
any issue thereof; the use and disposition of revenues of the 804  
authority; a covenant to fix, alter, and collect rentals and other 805  
charges so that pledged revenues will be sufficient to pay costs 806  
of operation, maintenance, and repairs, pay principal of and 807  
interest on bonds or notes secured by the pledge of such revenues, 808  
and provide such reserves as may be required by the applicable 809

resolution or trust agreement; the setting aside of reserve funds, 810  
sinking funds, or replacement and improvement funds and the 811  
regulation and disposition thereof; the crediting of the proceeds 812  
of the sale of bonds or notes to and among the funds referred to 813  
or provided for in the resolution authorizing the issuance of the 814  
bonds or notes; the use, lease, sale, or other disposition of any 815  
air quality project or any other assets of the authority; 816  
limitations on the purpose to which the proceeds of sale of bonds 817  
or notes may be applied and the pledging of such proceeds to 818  
secure the payment of the bonds or notes or of any issue thereof; 819  
as to notes issued in anticipation of the issuance of bonds, the 820  
agreement of the authority to do all things necessary for the 821  
authorization, issuance, and sale of such bonds in such amounts as 822  
may be necessary for the timely retirement of such notes; 823  
limitations on the issuance of additional bonds or notes; the 824  
terms upon which additional bonds or notes may be issued and 825  
secured; the refunding of outstanding bonds or notes; the 826  
procedure, if any, by which the terms of any contract with 827  
bondholders or noteholders may be amended or abrogated, the amount 828  
of bonds or notes the holders of which must consent thereto, and 829  
the manner in which such consent may be given; limitations on the 830  
amount of moneys to be expended by the authority for operating, 831  
administrative, or other expenses of the authority; securing any 832  
bonds or notes by a trust agreement in accordance with section 833  
3706.07 of the Revised Code; any other matters, of like or 834  
different character, that in any way affect the security or 835  
protection of the bonds or notes. 836

Neither the members of the authority nor any person executing 837  
the bonds or notes shall be liable personally on the bonds or 838  
notes or be subject to any personal liability or accountability by 839  
reason of the issuance thereof. 840

**Sec. 3706.06.** The issuance of ~~air-quality~~ revenue bonds and 841

notes or ~~air-quality~~ revenue refunding bonds under Chapter 3706. 842  
of the Revised Code need not comply with any other law applicable 843  
to the issuance of bonds or notes. 844

**Sec. 3706.07.** In the discretion of the Ohio air quality 845  
development authority, any ~~air-quality~~ revenue bonds or notes or 846  
~~air-quality~~ revenue refunding bonds issued under Chapter 3706. of 847  
the Revised Code, may be secured by a trust agreement between the 848  
authority and a corporate trustee, which trustee may be any trust 849  
company or bank having the powers of a trust company within or 850  
without the state. 851

Any such trust agreement may pledge or assign revenues of the 852  
authority to be received, but shall not convey or mortgage any air 853  
quality project or any part thereof. Any such trust agreement or 854  
any resolution providing for the issuance of such bonds or notes 855  
may contain such provisions for protecting and enforcing the 856  
rights and remedies of the bondholders or noteholders as are 857  
reasonable and proper and not in violation of law, including 858  
covenants setting forth the duties of the authority in relation to 859  
the acquisition of property, the construction, improvement, 860  
maintenance, repair, operation, and insurance of the air quality 861  
project or projects in connection with which such bonds or notes 862  
are authorized, the rentals or other charges to be imposed for the 863  
use or services of any air quality project, the application of 864  
revenues received or otherwise derived from a commodity contract 865  
or from the sale of the related commodity under such contract, the 866  
custody, safeguarding, and application of all moneys, and 867  
provisions for the employment of consulting engineers in 868  
connection with the construction or operation of such air quality 869  
project or projects. Any bank or trust company incorporated under 870  
the laws of this state that may act as depository of the proceeds 871  
of bonds or notes or of revenues may furnish such indemnifying 872  
bonds or may pledge such securities as are required by the 873

authority. Any such trust agreement may set forth the rights and 874  
remedies of the bondholders and noteholders and of the trustee, 875  
and may restrict the individual right of action by bondholders and 876  
noteholders as is customary in trust agreements or trust 877  
indentures securing similar bonds. Such trust agreement may 878  
contain such other provisions as the authority determines 879  
reasonable and proper for the security of the bondholders or 880  
noteholders. All expenses incurred in carrying out the provisions 881  
of any such trust agreement may be treated as a part of the cost 882  
of the operation of the air quality project or projects. Any such 883  
trust agreement or resolution authorizing the issuance of ~~air~~ 884  
~~quality~~ revenue bonds may provide the method whereby the general 885  
administrative overhead expenses of the authority shall be 886  
allocated among the several projects acquired or constructed by it 887  
as a factor of the operation expense of each such project. 888

**Sec. 3706.08.** Any holder of ~~air-quality~~ revenue bonds issued 889  
under Chapter 3706. of the Revised Code, or any of the coupons 890  
appertaining thereto, and the trustee under any trust agreement, 891  
except to the extent the rights given by such chapter may be 892  
restricted by the applicable resolution or such trust agreement, 893  
may by suit, action, mandamus, or other proceedings, protect and 894  
enforce any rights under the laws of the state or granted under 895  
such chapter, trust agreement, or the resolution authorizing the 896  
issuance of such bonds, and may enforce and compel the performance 897  
of all duties required by such chapter, or by the trust agreement 898  
or resolution, to be performed by the Ohio air quality development 899  
authority or any officer thereof, including the fixing, charging, 900  
and collecting of rentals or other charges. 901

**Sec. 3706.09.** ~~Air-quality-revenue~~ Revenue bonds and notes and 902  
~~air-quality~~ revenue refunding bonds issued under Chapter 3706. of 903  
the Revised Code do not constitute a debt, or a pledge of the 904

faith and credit, of the state or any political subdivision 905  
thereof, and the holders or owners thereof have no right to have 906  
taxes levied by the general assembly or taxing authority of any 907  
political subdivision of the state for the payment of the 908  
principal thereof or interest thereon, but such bonds and notes 909  
are payable solely from the revenues and funds pledged for their 910  
payment as authorized by such chapter, unless the notes are issued 911  
in anticipation of the issuance of bonds or the bonds are refunded 912  
by refunding bonds issued under such chapter, which bonds or 913  
refunding bonds shall be payable solely from revenues and funds 914  
pledged for their payment as authorized by such sections. All such 915  
bonds and notes shall contain on the face thereof a statement to 916  
the effect that the bonds or notes, as to both principal and 917  
interest, are not debts of the state or any political subdivision 918  
thereof, but are payable solely from revenues and funds pledged 919  
for their payment. 920

All expenses incurred in carrying out Chapter 3706. of the 921  
Revised Code are payable solely from funds provided under such 922  
chapter. Such chapter does not authorize the Ohio air quality 923  
development authority to incur indebtedness or liability on behalf 924  
of or payable by the state or any political subdivision thereof. 925

**Sec. 3706.10.** All moneys, funds, properties, and assets 926  
acquired by the Ohio air quality development authority under 927  
Chapter 3706. of the Revised Code, whether as proceeds from the 928  
sale of ~~air quality~~ revenue bonds or as revenues, or otherwise, 929  
shall be held by it in trust for the purposes of carrying out its 930  
powers and duties, shall be used and reused as provided in such 931  
chapter, and shall at no time be part of other public funds. Such 932  
funds, except as otherwise provided in any resolution authorizing 933  
its ~~air quality~~ revenue bonds or in any trust agreement securing 934  
the same, or except when invested pursuant to section 3706.11 of 935  
the Revised Code, shall be kept in depositories selected by the 936

authority in the manner provided in Chapter 135. of the Revised 937  
Code, and the deposits shall be secured as provided in Chapter 938  
135. of the Revised Code. The resolution authorizing the issuance 939  
of such bonds of any issue or the trust agreement securing such 940  
bonds shall provide that any officer to whom, or any bank or trust 941  
company to which, such moneys are paid shall act as trustee of 942  
such moneys and hold and apply them for the purposes hereof, 943  
subject to such conditions as such chapter and such resolutions or 944  
trust agreement provide. 945

**Sec. 3706.11.** Moneys in the funds of the Ohio air quality 946  
development authority, except as otherwise provided in any 947  
resolution authorizing the issuance of its ~~air quality~~ revenue 948  
bonds or in any trust agreement securing the same, in excess of 949  
current needs, may be invested in notes, bonds, or other 950  
obligations of the United States of America or any agency or 951  
instrumentality thereof, or in obligations of this state or any 952  
political subdivision thereof. Income from all such investments of 953  
moneys in any fund shall be credited to such funds as the 954  
authority determines, subject to the provisions of any such 955  
resolution or trust agreement and such investments may be sold at 956  
such times as the authority determines. 957

**Sec. 3706.12.** The Ohio air quality development authority may 958  
charge, alter, and collect rentals or other charges for the use or 959  
services of any air quality project or advanced energy project and 960  
contract in the manner provided by this section with one or more 961  
persons, one or more governmental agencies, or any combination 962  
thereof, desiring the use or services of such project, and fix the 963  
terms, conditions, rentals, or other charges for such use or 964  
services. Such rentals or other charges shall not be subject to 965  
supervision or regulation by any other authority, commission, 966  
board, bureau, or agency of the state and such contract may 967

provide for acquisition by such person or governmental agency of 968  
all or any part of such air quality project or advanced energy 969  
project for such consideration payable over the period of the 970  
contract or otherwise as the authority in its sole discretion 971  
determines to be appropriate, but subject to the provisions of any 972  
resolution authorizing the issuance of ~~air-quality~~ revenue bonds 973  
or notes or ~~air-quality~~ revenue refunding bonds of the authority 974  
or any trust agreement securing the same. Any governmental agency 975  
that has power to construct, operate, and maintain air quality 976  
facilities or advanced energy facilities may enter into a contract 977  
or lease with the authority whereby the use or services of any air 978  
quality project or advanced energy project of the authority will 979  
be made available to such governmental agency and may pay for such 980  
use or services such rentals or other charges as may be agreed to 981  
by the authority and such governmental agency. 982

Any governmental agency or combination of governmental 983  
agencies may cooperate with the authority in the acquisition or 984  
construction of an air quality project or advanced energy project 985  
and shall enter into such agreements with the authority as may be 986  
necessary, with a view to effective cooperative action and 987  
safeguarding of the respective interests of the parties thereto, 988  
which agreements shall provide for such contributions by the 989  
parties thereto in such proportion as may be agreed upon and such 990  
other terms as may be mutually satisfactory to the parties 991  
including without limitation the authorization of the construction 992  
of the project by one of the parties acting as agent for all of 993  
the parties and the ownership and control of the project by the 994  
authority to the extent necessary or appropriate for purposes of 995  
the issuance of ~~air-quality~~ revenue bonds by the authority. Any 996  
governmental agency may provide the funds for the payment of such 997  
contribution as is required under such agreements by the levy of 998  
taxes, assessments or rentals and other charges for the use of the 999  
utility system of which the air quality project or advanced energy 1000



project is a part or to which it is connected, if otherwise 1001  
authorized by the laws governing such governmental agency in the 1002  
construction of the type of air quality project or advanced energy 1003  
project provided for in the agreements, and may pay the proceeds 1004  
from the collection of such taxes, assessments, utility rentals, 1005  
or other charges to the authority pursuant to such agreements; or 1006  
the governmental agency may issue bonds or notes, if authorized by 1007  
such laws, in anticipation of the collection of such taxes, 1008  
assessments, utility rentals, or other charges and may pay the 1009  
proceeds of such bonds or notes to the authority pursuant to such 1010  
agreements. In addition any governmental agency may provide the 1011  
funds for the payment of such contribution by the appropriation of 1012  
money or, if otherwise authorized by law, by the issuance of bonds 1013  
or notes and may pay such appropriated money or the proceeds of 1014  
such bonds or notes to the authority pursuant to such agreements. 1015  
The agreement by the governmental agency to provide such 1016  
contribution, whether from appropriated money or from the proceeds 1017  
of such taxes, assessments, utility rentals, or other charges, or 1018  
such bonds or notes, or any combination thereof, shall not be 1019  
subject to Chapter 133. of the Revised Code or any regulations or 1020  
limitations contained therein. The proceeds from the collection of 1021  
such taxes or assessments, and any interest earned thereon, shall 1022  
be paid into a special fund immediately upon the collection 1023  
thereof by the governmental agency for the purpose of providing 1024  
such contribution at the times required under such agreements. 1025

When the contribution of any governmental agency is to be 1026  
made over a period of time from the proceeds of the collection of 1027  
special assessments, the interest accrued and to accrue before the 1028  
first installment of such assessments shall be collected which is 1029  
payable by such governmental agency on such contribution under the 1030  
terms and provisions of such agreements shall be treated as part 1031  
of the cost of the improvement for which such assessments are 1032  
levied, and that portion of such assessments as are collected in 1033

installments shall bear interest at the same rate as such 1034  
governmental agency is obligated to pay on such contribution under 1035  
the terms and provisions of such agreements and for the same 1036  
period of time as the contribution is to be made under such 1037  
agreements. If the assessment or any installment thereof is not 1038  
paid when due, it shall bear interest until the payment thereof at 1039  
the same rate as such contribution and the county auditor shall 1040  
annually place on the tax list and duplicate the interest 1041  
applicable to such assessment and the penalty and additional 1042  
interest thereon as otherwise authorized by law. 1043

Any governmental agency, pursuant to a favorable vote of the 1044  
electors in an election held before or after June 1, 1970, for the 1045  
purpose of issuing bonds to provide funds to acquire, construct, 1046  
or equip, or provide real estate and interests in real estate for, 1047  
an air quality facility or advanced energy facility, whether or 1048  
not such governmental agency, at the time of such election, had 1049  
the authority to pay the proceeds from such bonds or notes issued 1050  
in anticipation thereof to the authority as provided in this 1051  
section, may issue such bonds or notes in anticipation of the 1052  
issuance thereof and pay the proceeds thereof to the authority in 1053  
accordance with its agreement with the authority; provided, that 1054  
the legislative authority of the governmental agency find and 1055  
determine that the air quality project or advanced energy project 1056  
to be acquired or constructed by the authority in cooperation with 1057  
such governmental agency will serve the same public purpose and 1058  
meet substantially the same public need as the facility otherwise 1059  
proposed to be acquired or constructed by the governmental agency 1060  
with the proceeds of such bonds or notes. 1061

**Sec. 3706.13.** Each air quality project or advanced energy 1062  
project, when constructed and placed in operation, shall be 1063  
maintained and kept in good condition and repair by the Ohio air 1064  
quality development authority, or the authority shall cause the 1065

same to be maintained and kept in good condition and repair. Each 1066  
such project shall be operated by such operating employees as the 1067  
authority employs or pursuant to a contract or lease with a person 1068  
or governmental agency. All public or private property damaged or 1069  
destroyed in carrying out the powers granted by Chapter 3706. of 1070  
the Revised Code, shall be restored or repaired and placed in its 1071  
original condition, as nearly as practicable, or adequate 1072  
compensation shall be paid therefor from funds provided under such 1073  
chapter. 1074

On or before the twentieth day of April in each year, the 1075  
authority shall make a report of its activities for the preceding 1076  
calendar year to the governor and the general assembly. Each such 1077  
report shall set forth a complete operating and financial 1078  
statement covering the authority's operations during the year. The 1079  
authority shall cause an audit of its books and accounts to be 1080  
made at least once each year by certified public accountants and 1081  
the cost thereof may be treated as a part of the cost of 1082  
construction or of operations of its projects. 1083

**Sec. 3706.14.** All ~~air-quality~~ revenue bonds issued under this 1084  
chapter are lawful investments of banks, societies for savings, 1085  
savings and loan associations, deposit guarantee associations, 1086  
trust companies, trustees, fiduciaries, insurance companies, 1087  
including domestic for life and domestic not for life, trustees or 1088  
other officers having charge of sinking and bond retirement or 1089  
other special funds of political subdivisions and taxing districts 1090  
of this state, the commissioners of the sinking fund of the state, 1091  
the administrator of workers' compensation, the state teachers 1092  
retirement system, the public employees retirement system, the 1093  
school employees retirement system, and the Ohio police and fire 1094  
pension fund, and are acceptable as security for the deposit of 1095  
public moneys. 1096

**Sec. 3706.15.** The exercise of the powers granted by Chapter 1097  
3706. of the Revised Code, will be for the benefit of the people 1098  
of the state, for the improvement of their health, safety, 1099  
convenience, and welfare, and for the enhancement of their 1100  
residential, agricultural, recreational, economic, commercial, and 1101  
industrial opportunities and is a public purpose. As the operation 1102  
and maintenance of air quality projects or advanced energy 1103  
projects will constitute the performance of essential governmental 1104  
functions, the Ohio air quality development authority shall not be 1105  
required to pay any taxes or assessments upon any ~~air quality~~ such 1106  
project, ~~or~~ upon any property acquired or used by the authority 1107  
under Chapter 3706. of the Revised Code, or upon the income 1108  
therefrom, nor shall the transfer to or from the Ohio air quality 1109  
development authority of title or possession of any air quality 1110  
project or advanced energy project, part thereof, or item included 1111  
or to be included in any such project, be subject to the taxes 1112  
levied pursuant to Chapters 5739. and 5741. of the Revised Code, 1113  
and the bonds and notes issued under this chapter, their transfer, 1114  
and the income therefrom, including any profit made on the sale 1115  
thereof, shall at all times be free from taxation within the 1116  
state. 1117

**Sec. 3706.16.** The Ohio air quality development authority may 1118  
acquire by purchase, whenever it finds such purchase expedient, 1119  
any land, property, rights, rights-of-way, franchises, easements, 1120  
and other interests in lands as it finds to be necessary or 1121  
convenient for the construction and operation of any air quality 1122  
project or advanced energy project, upon such terms and at such 1123  
price as it considers reasonable and are agreed upon between the 1124  
authority and the owner thereof, and take title thereto in the 1125  
name of the state. 1126

Any governmental agency, notwithstanding any contrary 1127

provision of law and without the necessity for an advertisement, 1128  
auction, order of court, or other action or formality, other than 1129  
the regular and formal action of such governmental agency 1130  
concerned, may lease, lend, grant, or convey to the authority, at 1131  
its request, upon such terms as the proper authorities of such 1132  
governmental agency find reasonable and fair any real property or 1133  
interests therein including improvements thereto or personal 1134  
property which is necessary or convenient to effect the authorized 1135  
purposes of the authority, including public roads and real or 1136  
personal property already devoted to public use. 1137

**Sec. 3706.17.** The Ohio air quality development authority may 1138  
acquire by appropriation pursuant to division (J) of section 1139  
3706.04 of the Revised Code any land, rights, rights-of-way, 1140  
franchises, easements, or other property necessary or proper for 1141  
the construction or the efficient operation of any air quality 1142  
project or advanced energy project. In any proceedings for 1143  
appropriation under this section, the procedure to be followed 1144  
shall be in accordance with Chapter 163. of the Revised Code. 1145

This section does not empower the authority to take or 1146  
disturb property or facilities belonging to and required for the 1147  
proper and convenient operation of any public utility or any 1148  
common carrier engaged in interstate commerce, unless provision is 1149  
made for the restoration, relocation, or duplication of such 1150  
property or facilities elsewhere at the sole cost of the 1151  
authority. 1152

**Sec. 3706.18.** When the Ohio air quality development authority 1153  
finds it necessary to change the location of any portion of any 1154  
public road, state highway, railroad, or public utility facility 1155  
in connection with the construction of an air quality project or 1156  
advanced energy project, it shall cause the same to be 1157  
reconstructed at such location as the division of government 1158

having jurisdiction over such road, highway, railroad, or public utility facility finds most favorable. Such reconstruction shall be of substantially the same type and in as good condition as the original road, highway, railroad, or public utility facility. The cost of such reconstruction, relocation, or removal and any damage incurred in changing the location of any such road, highway, railroad, or public utility facility shall be paid by the authority as a part of the cost of ~~such air quality~~ the project.

When the authority finds it necessary that any public highway or portion thereof be vacated by reason of the acquisition or construction of an air quality project or advanced energy project, the authority may request the director of transportation, in writing, to vacate such highway or portion thereof in accordance with section 5511.07 of the Revised Code if the highway or portion thereof to be vacated is on the state highway system, or, if the highway or portion thereof to be vacated is under the jurisdiction of the county commissioners, the authority shall request the director, in writing, to petition the board of county commissioners, in the manner provided in section 5553.041 of the Revised Code, to vacate such highway or portion thereof. The authority shall pay to the director or to the county, as a part of the cost of ~~such air quality~~ the project, any amounts required to be deposited with any court in connection with proceedings for the determination of compensation and damages and all amounts of compensation and damages finally determined to be payable as a result of such vacation.

The authority may make reasonable regulations for the installation, construction, maintenance, repair, renewal, relocation, and removal of railroad or public utility facilities in, on, over, or under any air quality project or advanced energy project. Whenever the authority determines that it is necessary that any such facilities installed or constructed in, on, over, or

under property of the authority pursuant to such regulations be 1191  
relocated, the public utility owning or operating such facilities 1192  
shall relocate or remove them in accordance with the order of the 1193  
authority. The cost and expenses of such relocation or removal, 1194  
including the cost of installing such facilities in a new 1195  
location, and the cost of any lands, or any rights or interests in 1196  
lands, and the cost of any other rights, acquired to accomplish 1197  
such relocation or removal, may be paid by the authority as a part 1198  
of the cost of ~~such air quality~~ the project. In case of any such 1199  
relocation or removal of facilities, the railroad or public 1200  
utility owning or operating them, its successors, or assigns may 1201  
maintain and operate such facilities, with the necessary 1202  
appurtenances, in the new location in, on, over, or under the 1203  
property of the authority for as long a period and upon the same 1204  
terms as it had the right to maintain and operate such facilities 1205  
in their former location. 1206

**Sec. 4905.31.** Except as provided in section 4933.29 of the 1207  
Revised Code, Chapters 4901., 4903., 4905., 4907., 4909., 4921., 1208  
~~and~~ 4923., and 4928. of the Revised Code do not prohibit a public 1209  
utility from filing a schedule or entering into any reasonable 1210  
arrangement with another public utility or with its customers, 1211  
consumers, or employees providing for: 1212

(A) The division or distribution of its surplus profits; 1213

(B) A sliding scale of charges, including variations in rates 1214  
based upon either of the following: 1215

(1) Stipulated variations in cost as provided in the schedule 1216  
or arrangement; 1217

(2) Any emissions fee levied upon an electric light company 1218  
under Substitute Senate Bill No. 359 of the 119th general assembly 1219  
as provided in the schedule. The public utilities commission shall 1220  
permit an electric light company to recover the emissions fee 1221

pursuant to such a variable rate schedule. 1222

(3) Any emissions fee levied upon an electric light company 1223  
under division (C) or (D) of section 3745.11 of the Revised Code 1224  
as provided in the schedule. The public utilities commission shall 1225  
permit an electric light company to recover any such emission fee 1226  
pursuant to such a variable rate schedule. 1227

(4) Any schedule of variable rates filed under division (B) 1228  
of this section shall provide for the recovery of any such 1229  
emissions fee by applying a uniform percentage increase to the 1230  
base rate charged each customer of the electric light company for 1231  
service during the period that the variable rate is in effect. 1232

(C) A minimum charge for service to be rendered unless such 1233  
minimum charge is made or prohibited by the terms of the 1234  
franchise, grant, or ordinance under which such public utility is 1235  
operated; 1236

(D) A classification of service based upon the quantity used, 1237  
the time when used, the purpose for which used, the duration of 1238  
use, and any other reasonable consideration; 1239

(E) Any other financial device that may be practicable or 1240  
advantageous to the parties interested. No such arrangement, 1241  
sliding scale, minimum charge, classification, variable rate, or 1242  
device is lawful unless it is filed with and approved by the 1243  
commission. 1244

Every such public utility is required to conform its 1245  
schedules of rates, tolls, and charges to such arrangement, 1246  
sliding scale, classification, or other device, and where variable 1247  
rates are provided for in any such schedule or arrangement, the 1248  
cost data or factors upon which such rates are based and fixed 1249  
shall be filed with the commission in such form and at such times 1250  
as the commission directs. The commission shall review the cost 1251  
data or factors upon which a variable rate schedule filed under 1252



division (B)(2) or (3) of this section is based and shall adjust 1253  
the base rates of the electric light company or order the company 1254  
to refund any charges that it has collected under the variable 1255  
rate schedule that the commission finds to have resulted from 1256  
errors or erroneous reporting. After recovery of all of the 1257  
emissions fees upon which a variable rate authorized under 1258  
division (B)(2) or (3) of this section is based, collection of the 1259  
variable rate shall end and the variable rate schedule shall be 1260  
terminated. 1261

Every such arrangement, sliding scale, minimum charge, 1262  
classification, variable rate, or device shall be under the 1263  
supervision and regulation of the commission, and is subject to 1264  
change, alteration, or modification by the commission. 1265

**Sec. 4905.40.** (A) A public utility or a railroad may, when 1266  
authorized by order of the public utilities commission, issue 1267  
stocks, bonds, notes, and other evidences of indebtedness, payable 1268  
at periods of more than twelve months after their date of 1269  
issuance, when necessary: 1270

(1) For the acquisition of property, the construction, 1271  
completion, extension, renewal, or improvement of its facilities, 1272  
or the improvement of its service; or 1273

(2) For reorganization or readjustment of its indebtedness 1274  
and capitalization, for the discharge or lawful refunding of its 1275  
obligation, or for the reimbursement of moneys actually expended 1276  
for such purposes from income or from any other moneys in the 1277  
treasury of the public utility or railroad not secured or obtained 1278  
from the issue of stocks, bonds, notes, or other evidences of 1279  
indebtedness of such public utility or railroad. No reimbursement 1280  
of moneys expended for such purposes from income or other moneys 1281  
in the treasury shall be authorized unless the applicant has kept 1282  
its accounts and vouchers of such expenditures in such manner as 1283

to enable the commission to ascertain the amount and purposes of 1284  
such expenditures. 1285

(B) Any public utility, subject to the jurisdiction of the 1286  
commission, may, when authorized by the commission, issue shares 1287  
of common capital stock to acquire or pay for shares of common 1288  
capital stock of a public utility of this or an adjoining state 1289  
whose property is so located as to permit the operation of the 1290  
properties of such utilities as an integrated system if the 1291  
applicant owns, or by this issue will acquire, not less than 1292  
sixty-five per cent of the issued and outstanding common capital 1293  
shares of the company whose shares are to be acquired, and if the 1294  
consideration to be capitalized by the acquiring company does not 1295  
exceed the par or stated value at which the shares so acquired 1296  
were issued. 1297

(C) Any bonds, notes, or other evidences of indebtedness 1298  
payable at periods of more than twelve months after their date may 1299  
be issued as provided in sections 4905.40 to 4905.43 of the 1300  
Revised Code, regardless of the amount of the capital stock of the 1301  
public utility or railroad, subject to the approval of the 1302  
commission of the excess of such bonds, notes, or other evidences 1303  
of indebtedness above the amount of the capital stock of such 1304  
public utility or railroad. 1305

(D) The commission shall authorize on the best terms 1306  
obtainable such issues of stocks, bonds, and other evidences of 1307  
indebtedness as are necessary to enable any public utility to 1308  
comply with any contract made between such public utility and any 1309  
municipal corporation prior to June 30, 1911. 1310

(E) The commission may authorize a public utility that is an 1311  
electric light company to issue equity securities, or debt 1312  
securities having a term of more than twelve months from the date 1313  
of issuance, for the purpose of yielding to the company the 1314  
capacity to acquire a facility that produces fuel for the 1315

generation of electricity. 1316

(F) In any proceeding under division (A)(1) of this section 1317  
initiated by a public utility, the commission shall determine and 1318  
set forth in its order: 1319

(1) Whether the purpose to which the issue or any proceeds of 1320  
it shall be applied was or is reasonably required by the utility 1321  
to meet its present and prospective obligations to provide utility 1322  
service; 1323

(2) Whether the amount of the issue and the probable cost of 1324  
such stocks, bonds, notes, or other evidences of indebtedness is 1325  
just and reasonable; 1326

(3) What effect, if any, the issuance of such stocks, bonds, 1327  
notes, or other evidences of indebtedness and the cost thereof 1328  
will have upon the present and prospective revenue requirements of 1329  
the utility. 1330

(G) Sections 4905.40 to 4905.42 of the Revised Code do not 1331  
apply to stocks, bonds, notes, or other evidence of indebtedness 1332  
issued for the purpose of financing oil or natural gas drilling, 1333  
producing, gathering, and associated activities and facilities by 1334  
a producer which supplies to no more than twenty purchasers only 1335  
such gas as is produced, gathered, or purchased by such producer 1336  
within this state. 1337

(H) Each public utility seeking authorization from the 1338  
commission for the issuance of securities to finance the 1339  
installation, construction, extension, or improvement of an air 1340  
quality facility or advanced energy facility, as defined in 1341  
section 3706.01 of the Revised Code, shall consider the 1342  
availability of financing therefor from the Ohio air quality 1343  
development authority and shall demonstrate to the commission that 1344  
the proposed financing will be obtained on the best terms 1345  
obtainable. 1346

Sec. 4928.02. It is the policy of this state to do the 1347  
following throughout this state ~~beginning on the starting date of~~ 1348  
~~competitive retail electric service:~~ 1349

(A) Ensure the availability to consumers of adequate, 1350  
reliable, safe, efficient, nondiscriminatory, and reasonably 1351  
priced retail electric service; 1352

(B) Ensure the availability of unbundled and comparable 1353  
retail electric service that provides consumers with the supplier, 1354  
price, terms, conditions, and quality options they elect to meet 1355  
their respective needs; 1356

(C) Ensure diversity of electricity supplies and suppliers, 1357  
by giving consumers effective choices over the selection of those 1358  
supplies and suppliers and by encouraging the development of 1359  
distributed and small generation facilities; 1360

(D) Encourage innovation and market access for cost-effective 1361  
~~supply and demand side~~ retail electric service including, but not 1362  
limited to, demand-side management, time-differentiated pricing, 1363  
and implementation of advanced metering infrastructure; 1364

(E) Encourage cost-effective and efficient access to 1365  
information regarding the operation of the transmission and 1366  
distribution systems of electric utilities in order to promote 1367  
both effective customer choice of retail electric service and the 1368  
development of performance standards and targets for service 1369  
quality for all consumers, including annual achievement reports 1370  
written in plain language; 1371

(F) Recognize the continuing emergence of competitive 1372  
electricity markets through the development and implementation of 1373  
flexible regulatory treatment; 1374

(G) Ensure effective competition in the provision of retail 1375  
electric service by avoiding anticompetitive subsidies flowing 1376

from a noncompetitive retail electric service to a competitive 1377  
retail electric service or to a product or service other than 1378  
retail electric service, and vice versa; 1379

(H) Ensure retail electric service consumers just and 1380  
reasonable rates and protection against unreasonable sales 1381  
practices, market deficiencies, and market power; 1382

(I) Preclude imbalances in knowledge and expertise among 1383  
parties in a proceeding under this chapter to eliminate any 1384  
appearance of disproportionate influence by any of those parties; 1385

(J) Ensure that consumers and shareholders share the benefits 1386  
of, as well as the responsibility for, electric utility investment 1387  
in facilities supplying retail electric generation service; 1388

(K) Provide coherent, transparent means of giving appropriate 1389  
incentives to technologies that can adapt successfully to 1390  
potential environmental mandates; 1391

(L) Protect at-risk populations when considering the 1392  
implementation of any new advanced energy technology; 1393

(M) Encourage implementation of distributed generation across 1394  
customer classes through regular review and updating of rules 1395  
governing critical issues such as, but not limited to, 1396  
interconnection standards, standby charges, and net metering; 1397

(N) Facilitate the state's effectiveness in the global 1398  
economy. 1399

**Sec. 4928.05.** (A)(1)(a) On and after the starting date of 1400  
competitive retail electric service, a competitive retail electric 1401  
service supplied by an electric utility or electric services 1402  
company shall not be subject to supervision and regulation by a 1403  
municipal corporation under Chapter 743. of the Revised Code or by 1404  
the public utilities commission under Chapters 4901. to 4909., 1405  
4933., 4935., and 4963. of the Revised Code, except ~~section~~ 1406

sections 4905.10 and 4905.31, division (B) of section 4905.33, and 1407  
sections 4905.35 and 4933.81 to 4933.90; except sections 4905.06, 1408  
4935.03, 4963.40, and 4963.41 of the Revised Code only to the 1409  
extent related to service reliability and public safety; and 1410  
except as otherwise provided in this chapter. The commission's 1411  
authority to enforce those excepted provisions with respect to a 1412  
competitive retail electric service shall be such authority as is 1413  
provided for their enforcement under Chapters 4901. to 4909., 1414  
4933., 4935., and 4963. of the Revised Code and this chapter. 1415

(b) Notwithstanding division (A)(1)(a) of this section, the 1416  
commission may so supervise and regulate competitive retail 1417  
electric service provided to consumers by an electric utility in 1418  
this state if the commission determines the supervision and 1419  
regulation is necessary to implement the state policy specified in 1420  
section 4928.02 of the Revised Code. 1421

(c) On and after the starting date of competitive retail 1422  
electric service, a competitive retail electric service supplied 1423  
by an electric cooperative shall not be subject to supervision and 1424  
regulation by the commission under Chapters 4901. to 4909., 4933., 1425  
4935., and 4963. of the Revised Code, except as otherwise 1426  
expressly provided in sections 4928.01 to 4928.10 and 4928.16 of 1427  
the Revised Code. 1428

(2) On and after the starting date of competitive retail 1429  
electric service, a noncompetitive retail electric service 1430  
supplied by an electric utility shall be subject to supervision 1431  
and regulation by the commission under Chapters 4901. to 4909., 1432  
4933., 4935., and 4963. of the Revised Code and this chapter, to 1433  
the extent that authority is not preempted by federal law. The 1434  
commission's authority to enforce those provisions with respect to 1435  
a noncompetitive retail electric service shall be the authority 1436  
provided under those chapters and this chapter, to the extent the 1437  
authority is not preempted by federal law. 1438

The commission shall exercise its jurisdiction with respect 1439  
to the delivery of electricity by an electric utility in this 1440  
state on or after the starting date of competitive retail electric 1441  
service so as to ensure that no aspect of the delivery of 1442  
electricity by the utility to consumers in this state that 1443  
consists of a noncompetitive retail electric service is 1444  
unregulated. 1445

On and after that starting date, a noncompetitive retail 1446  
electric service supplied by an electric cooperative shall not be 1447  
subject to supervision and regulation by the commission under 1448  
Chapters 4901. to 4909., 4933., 4935., and 4963. of the Revised 1449  
Code, except sections 4933.81 to 4933.90 and 4935.03 of the 1450  
Revised Code. The commission's authority to enforce those excepted 1451  
sections with respect to a noncompetitive retail electric service 1452  
of an electric cooperative shall be such authority as is provided 1453  
for their enforcement under Chapters 4933. and 4935. of the 1454  
Revised Code. 1455

(B) Nothing in this chapter affects the authority of the 1456  
commission under Title XLIX of the Revised Code to regulate an 1457  
electric light company in this state or an electric service 1458  
supplied in this state prior to the starting date of competitive 1459  
retail electric service. 1460

Sec. 4928.111. An electric distribution utility for which a 1461  
standard service offer consisting of an electric security plan 1462  
under section 4928.14 of the Revised Code has been approved by the 1463  
commission shall file with the commission a long-term energy 1464  
delivery infrastructure modernization plan or any plan providing 1465  
for the utility's recovery of costs and a just and reasonable rate 1466  
of return on such infrastructure modernization. A plan shall 1467  
specify the initiatives the utility shall take to improve electric 1468  
service reliability by rebuilding, upgrading, or replacing utility 1469

infrastructure and generating facilities. The plan shall be filed 1470  
under an application under section 4909.18 of the Revised Code. 1471

**Sec. 4928.14.** (A) ~~After its market development period, an~~ An 1472  
electric distribution utility in this state shall provide 1473  
consumers, on a comparable and nondiscriminatory basis within its 1474  
certified territory, a ~~market-based~~ standard service offer of all 1475  
competitive retail electric services necessary to maintain 1476  
essential electric service to consumers, including a firm supply 1477  
of electric generation service. ~~Such offer shall be filed with the~~ 1478  
~~public utilities commission under section 4909.18 of the Revised~~ 1479  
~~Code.~~ 1480

~~(B) After that market development period, each electric~~ 1481  
~~distribution utility also shall offer customers within its~~ 1482  
~~certified territory an option to purchase competitive retail~~ 1483  
~~electric service the price of which is determined through a~~ 1484  
~~competitive bidding process. Prior to January 1, 2004, the~~ 1485  
~~commission shall adopt rules concerning the conduct of the~~ 1486  
~~competitive bidding process, including the information~~ 1487  
~~requirements necessary for customers to choose this option and the~~ 1488  
~~requirements to evaluate qualified bidders. The commission may~~ 1489  
~~require that the competitive bidding process be reviewed by an~~ 1490  
~~independent third party. No generation supplier shall be~~ 1491  
~~prohibited from participating in the bidding process, provided~~ 1492  
~~that any winning bidder shall be considered a certified supplier~~ 1493  
~~for purposes of obligations to customers. At the election of the~~ 1494  
~~electric distribution utility, and approval of the commission, the~~ 1495  
~~competitive bidding option under this division may be used as the~~ 1496  
~~market-based standard offer required by division (A) of this~~ 1497  
~~section. The commission may determine at any time that a~~ 1498  
~~competitive bidding process is not required, if other means to~~ 1499  
~~accomplish generally the same option for customers is readily~~ 1500



available in the market and a reasonable means for customer participation is developed. 1501  
1502

~~(C) After the market development period, the~~ The offer is 1503  
subject to approval or modification and approval by the public 1504  
utilities commission, following an application that shall be filed 1505  
with the commission, initially not later than six months after the 1506  
effective date of the amendment of this section by \_\_\_\_\_ of the 1507  
127th general assembly. The application shall be subject to such 1508  
filing and procedural requirements as the commission shall 1509  
prescribe by rule or order. The rules may include transition rules 1510  
necessary for the initial implementation of this section as so 1511  
amended. 1512

(B) The standard service offer shall provide for either of 1513  
the following: 1514

(1) An offer, known as an electric security plan, which shall 1515  
include the basis of the valuation of the specific generating 1516  
facilities to be used in providing retail electric generation 1517  
service and the basis of the cost of rendering generation service 1518  
using those facilities, as those bases shall be defined by the 1519  
commission by rule or order. Valuation of facilities under the 1520  
rule or order shall factor in the extent to which the utility 1521  
received transition revenues under section 4928.40 of the Revised 1522  
Code and the extent to which the facilities have been depreciated 1523  
over time. Further, prices under the plan may include amounts for 1524  
specified costs, including, but not limited to, either or both of 1525  
the following: 1526

(a) Environmental compliance costs associated with those 1527  
facilities as determined by the commission; 1528

(b) Costs incurred by the utility on or after January 1, 1529  
2009, in the construction of any generating facility that is 1530  
located in this state and that, notwithstanding Chapter 4906. of 1531

the Revised Code to the contrary, the commission determines and 1532  
certificates the need for on the basis of resource planning 1533  
projections developed in accordance with policies and procedures 1534  
the commission shall prescribe by rule. 1535

(2) An offer, known as a market rate option, under which the 1536  
utility's standard service offer prices periodically are 1537  
determined through an open, competitive bidding process. 1538

(C)(1) Nothing in this section precludes a utility for which 1539  
an application under division (B)(1) of this section has been 1540  
approved by the commission from later filing an application under 1541  
division (B)(2) of this section, or vice versa. 1542

(2) If the commission disapproves a standard service offer 1543  
filed in an initial application under division (B)(2) of this 1544  
section, the utility shall then immediately file an application 1545  
under division (B)(1) of this section. 1546

(D)(1) Subject to division (D)(2) of this section, the 1547  
commission by order may approve or modify and approve the standard 1548  
service offer contained in any application if it finds both of the 1549  
following: 1550

(a) The offer and the prices it establishes are just and 1551  
reasonable and in furtherance of the state policy specified in 1552  
section 4928.02 of the Revised Code. 1553

(b) The utility is in compliance with section 4928.141 of the 1554  
Revised Code. 1555

In its order, the commission shall prescribe any requirements 1556  
for the utility as it considers necessary to implement the state 1557  
policy and shall provide the term of the offer and a schedule and 1558  
the procedural and substantive terms and conditions for periodic 1559  
commission review of the approved offer. In the case of an offer 1560  
consisting of a market rate option under division (B)(2) of this 1561  
section, such review shall provide for reconciliation of the 1562

standard service offer prices to ensure that they are just and 1563  
reasonable and in furtherance of the state policy specified in 1564  
section 4928.02 of the Revised Code. 1565

(2) Regarding a standard service offer consisting of a market 1566  
rate option under division (B)(2) of this section, the commission 1567  
shall not approve the offer unless the utility additionally 1568  
demonstrates all of the following: 1569

(a) The relevant markets are subject to effective 1570  
competition. For that purpose the commission shall consider the 1571  
factors prescribed in division (D) of section 4928.06 of the 1572  
Revised Code. 1573

(b) The utility does not impose unreasonable or 1574  
discriminatory costs or undue burdens on generation service 1575  
competition within its generation service territory. 1576

(c) The offer will not impose undue price increases on 1577  
consumers. 1578

(d) The offer is reasonable on both a short- and long-term 1579  
basis. 1580

(e) Power purchases supporting the offer are prudent and 1581  
reasonable. 1582

(3) Regarding any standard service offer consisting of an 1583  
electric security plan in an application filed by an utility that 1584  
transferred all or part of its generation facilities to an 1585  
affiliate of the utility and to the extent authorized by federal 1586  
law, the commission also may consider power supply or generation 1587  
service contracts or agreements between the utility and any of its 1588  
affiliates or between the utility and the holding company owning 1589  
or controlling the utility. 1590

(E) A utility's initial standard service offer approved under 1591  
this section as amended by \_\_\_\_\_ of the 127th general assembly 1592

shall take effect on the date the commission shall specify in that 1593  
order and, on that date, shall supersede any prior authority 1594  
granted by any law of this state under which the utility provided 1595  
services described in division (A) of this section to consumers. 1596  
Nothing in this section precludes commission approval under this 1597  
section of a standard service offer similar to that in effect 1598  
under such prior authority. 1599

(F) The failure of a supplier to provide retail electric 1600  
generation service to customers within the certified territory of 1601  
the electric distribution utility shall result in the supplier's 1602  
customers, after reasonable notice, defaulting to the utility's 1603  
standard service offer filed under division (A) of this section 1604  
until the customer chooses an alternative supplier. A supplier is 1605  
deemed under this division to have failed to provide such service 1606  
if the commission finds, after reasonable notice and opportunity 1607  
for hearing, that any of the following conditions are met: 1608

(1) The supplier has defaulted on its contracts with 1609  
customers, is in receivership, or has filed for bankruptcy. 1610

(2) The supplier is no longer capable of providing the 1611  
service. 1612

(3) The supplier is unable to provide delivery to 1613  
transmission or distribution facilities for such period of time as 1614  
may be reasonably specified by commission rule adopted under 1615  
division (A) of section 4928.06 of the Revised Code. 1616

(4) The supplier's certification has been suspended, 1617  
conditionally rescinded, or rescinded under division (D) of 1618  
section 4928.08 of the Revised Code. 1619

(G) Nothing in this section limits an electric distribution 1620  
utility providing competitive retail electric service to electric 1621  
load centers within the certified territory of another such 1622  
utility. 1623

Sec. 4928.141. During a proceeding under section 4928.14 of 1624  
the Revised Code, an electric distribution utility shall file with 1625  
the commission every contract or agreement between the utility or 1626  
any of its affiliates and a consumer, electric services company, 1627  
political subdivision, or any party to the proceeding, including 1628  
any contract or agreement that is in effect on the filing date of 1629  
the utility's initial application under section 4928.14 of the 1630  
Revised Code as amended by \_\_\_\_\_ of the 127th general assembly. The 1631  
details of the contract or agreement shall be made available as 1632  
privileged information to intervenors in the proceeding. 1633  
1634

Sec. 4928.142. The public utilities commission shall adopt 1635  
rules prescribing advanced energy portfolio standards applicable 1636  
to the standard service offers of electric distribution utilities 1637  
approved under section 4928.14 of the Revised Code. In adopting 1638  
the rules, the commission shall consider available technology, 1639  
costs, job creation, and economic impacts. The rules shall require 1640  
evaluation of and shall encourage, where necessary, development 1641  
and implementation of next-generation energy technologies, 1642  
including, but not limited to, renewable energy sources, clean 1643  
coal technology, advanced nuclear generation, fuel cells, and 1644  
cogeneration. The rules shall seek to achieve specified interim 1645  
goals such that, by 2025, advanced energy technologies shall 1646  
provide twenty-five per cent of the standard service offer of an 1647  
electric distribution utility. The rules shall require that at 1648  
least half of the advanced energy implemented shall be generated 1649  
from renewable energy sources, which shall include solar power, 1650  
with any remainder supplied by, but not limited to, any clean coal 1651  
technology with carbon controls, advanced nuclear plant, or 1652  
cogeneration project, the original construction of which 1653  
technology, plant, or project is initiated after January 1, 2009. 1654

Additionally, the rules shall require that at least half of the 1655  
advanced energy implemented shall be met through facilities 1656  
located in this state. 1657

**Sec. 4928.17.** (A) Except as otherwise provided in sections 1658  
4928.14 and 4928.31 to 4928.40 of the Revised Code and beginning 1659  
on the starting date of competitive retail electric service, no 1660  
electric utility shall engage in this state, either directly or 1661  
through an affiliate, in the businesses of supplying a 1662  
noncompetitive retail electric service and supplying a competitive 1663  
retail electric service, or in the businesses of supplying a 1664  
noncompetitive retail electric service and supplying a product or 1665  
service other than retail electric service, unless the utility 1666  
implements and operates under a corporate separation plan that is 1667  
approved by the public utilities commission under this section, is 1668  
consistent with the policy specified in section 4928.02 of the 1669  
Revised Code, and achieves all of the following: 1670

(1) The plan provides, at minimum, for the provision of the 1671  
competitive retail electric service or the nonelectric product or 1672  
service through a fully separated affiliate of the utility, and 1673  
the plan includes separate accounting requirements, the code of 1674  
conduct as ordered by the commission pursuant to a rule it shall 1675  
adopt under division (A) of section 4928.06 of the Revised Code, 1676  
and such other measures as are necessary to effectuate the policy 1677  
specified in section 4928.02 of the Revised Code. 1678

(2) The plan satisfies the public interest in preventing 1679  
unfair competitive advantage and preventing the abuse of market 1680  
power. 1681

(3) The plan is sufficient to ensure that the utility will 1682  
not extend any undue preference or advantage to any affiliate, 1683  
division, or part of its own business engaged in the business of 1684

supplying the competitive retail electric service or nonelectric 1685  
product or service, including, but not limited to, utility 1686  
resources such as trucks, tools, office equipment, office space, 1687  
supplies, customer and marketing information, advertising, billing 1688  
and mailing systems, personnel, and training, without compensation 1689  
based upon fully loaded embedded costs charged to the affiliate; 1690  
and to ensure that any such affiliate, division, or part will not 1691  
receive undue preference or advantage from any affiliate, 1692  
division, or part of the business engaged in business of supplying 1693  
the noncompetitive retail electric service. No such utility, 1694  
affiliate, division, or part shall extend such undue preference. 1695  
Notwithstanding any other division of this section, a utility's 1696  
obligation under division (A)(3) of this section shall be 1697  
effective January 1, 2000. 1698

(B) The commission may approve, modify and approve, or 1699  
disapprove a corporate separation plan filed with the commission 1700  
under division (A) of this section. As part of the code of conduct 1701  
required under division (A)(1) of this section, the commission 1702  
shall adopt rules pursuant to division (A) of section 4928.06 of 1703  
the Revised Code regarding corporate separation and procedures for 1704  
plan filing and approval. The rules shall include limitations on 1705  
affiliate practices solely for the purpose of maintaining a 1706  
separation of the affiliate's business from the business of the 1707  
utility to prevent unfair competitive advantage by virtue of that 1708  
relationship. The rules also shall include an opportunity for any 1709  
person having a real and substantial interest in the corporate 1710  
separation plan to file specific objections to the plan and 1711  
propose specific responses to issues raised in the objections, 1712  
which objections and responses the commission shall address in its 1713  
final order. Prior to commission approval of the plan, the 1714  
commission shall afford a hearing upon those aspects of the plan 1715  
that the commission determines reasonably require a hearing. The 1716  
commission may reject and require refiling of a substantially 1717

inadequate plan under this section. 1718

(C) The commission shall issue an order approving or 1719  
modifying and approving a corporate separation plan under this 1720  
section, to be effective on the date specified in the order, only 1721  
upon findings that the plan reasonably complies with the 1722  
requirements of division (A) of this section and will provide for 1723  
ongoing compliance with the policy specified in section 4928.02 of 1724  
the Revised Code. However, for good cause shown, the commission 1725  
may issue an order approving or modifying and approving a 1726  
corporate separation plan under this section that does not comply 1727  
with division (A)(1) of this section but complies with such 1728  
functional separation requirements as the commission authorizes to 1729  
apply for an interim period prescribed in the order, upon a 1730  
finding that such alternative plan will provide for ongoing 1731  
compliance with the policy specified in section 4928.02 of the 1732  
Revised Code. 1733

(D) Any party may seek an amendment to a corporate separation 1734  
plan approved under this section, and the commission, pursuant to 1735  
a request from any party or on its own initiative, may order as it 1736  
considers necessary the filing of an amended corporate separation 1737  
plan to reflect changed circumstances. 1738

(E) ~~Notwithstanding section 4905.20, 4905.21, 4905.46, or~~ 1739  
~~4905.48 of the Revised Code, an No electric utility may divest~~ 1740  
~~itself of shall sell or transfer any generating asset at any time~~ 1741  
~~facility it owns in whole or in part to any person without prior~~ 1742  
~~commission approval, subject to the provisions of Title XLIX of~~ 1743  
~~the Revised Code relating to the transfer of transmission,~~ 1744  
~~distribution, or ancillary service provided by such generating~~ 1745  
~~asset.~~ 1746

**Sec. 4928.64.** The public utilities commission shall adopt 1747  
rules to establish energy efficiency standards applicable to 1748



electric distribution utilities such that, by 2025, any such 1749  
utility shall implement energy efficiency measures that will 1750  
result in not less than twenty-five per cent of projected growth 1751  
in electric load and not less than ten per cent of total peak 1752  
demand being achieved through those measures. The rules shall 1753  
include a requirement that an electric distribution utility 1754  
provide a customer upon request with three years' consumption data 1755  
in an accessible form. Additionally, the rules may provide for 1756  
decoupling. 1757

Sec. 4928.68. The public utilities commission shall employ a 1758  
federal energy advocate to monitor the activities of the federal 1759  
energy regulatory commission and other federal agencies and 1760  
advocate on behalf of the interests of retail electric service 1761  
consumers in this state. The attorney general shall represent the 1762  
advocate before the federal energy regulatory commission and other 1763  
federal agencies. Among other duties assigned to the advocate by 1764  
the commission, the advocate shall examine the value of the 1765  
participation of this state's electric utilities in regional 1766  
transmission organizations and submit a report to the public 1767  
utilities commission on whether continued participation of those 1768  
utilities is in the interest of those consumers. 1769

Sec. 4928.69. The public utilities commission shall adopt 1770  
rules establishing greenhouse gas emission reporting requirements, 1771  
including participation in the climate registry, and carbon 1772  
control planning requirements for each electric generating 1773  
facility located in this state that emits greenhouse gases, 1774  
including facilities in operation on the effective date of this 1775  
section. 1776

**Section 2.** That existing sections 122.41, 122.451, 3706.01, 1777  
3706.02, 3706.03, 3706.04, 3706.041, 3706.05, 3706.06, 3706.07, 1778

3706.08, 3706.09, 3706.10, 3706.11, 3706.12, 3706.13, 3706.14,	1779
3706.15, 3706.16, 3706.17, 3706.18, 4905.31, 4905.40, 4928.02,	1780
4928.05, 4928.14, and 4928.17 of the Revised Code are hereby	1781
repealed.	1782