*Bill Analysis*

*Bethany Boyd* *Legislative Service Commission*
*Mary S. Connor*

# Am. Sub. S.B. 3

123rd General Assembly
(As Passed by the Senate)

**Sens. Johnson, Finan, Blessing, Herington, Armbruster, Hottinger, Spada, Wachtmann, Mumper, Gardner, Kearns**

## BILL SUMMARY

***Market structure, consumer protection, environmental, and transitional provisions***

- Designates January 1, 2001, as the starting date of competitive retail electric service, but authorizes the Public Utilities Commission to delay that date by up to six months for extreme technical conditions.

- Authorizes customer choice in the selection of suppliers of competitive retail electric services, in part, by removing, as of a specified date, the exclusive franchises of electric utility suppliers with respect to those services, and authorizing electric cooperatives to elect to eliminate their exclusive franchises.

- Declares electric generation service, aggregation service, power marketing, and power brokering as competitive retail electric services as of the starting date of competitive retail electric service.

- Authorizes ancillary service, metering service, and billing and collection service to be declared competitive services on or after the starting date, if specific conditions are met.

- Provides for the consolidation of low-income customer assistance programs and the creation of a weatherization program targeted to low-income housing, and an energy efficiency revolving loan program.

- Subjects competitive services to minimum service standards and generally requires suppliers of competitive services to be certified as to their financial, managerial, and technical capability.

- Continues regulation of electric transmission and distribution services by the Commission.

- Requires comparable and nondiscriminatory access to retail electric transmission and distribution services of electric utilities.

- Subjects noncompetitive services to minimum service standards focused on service quality, safety, and reliability.

- Requires corporate separation between competitive and noncompetitive retail electric service operations and between noncompetitive retail electric service and nonelectric products and services.

- Requires independent operation of transmission facilities.

- Provides for consumer education, universal service, and the consolidation of the state's low-income customer assistance programs.

- Authorizes an energy efficiency revolving loan program for residential, small commercial and small industrial business, local government, educational institution, nonprofit entity, and agricultural customers; and authorizes the disclosure of the generation resource mix and environmental characteristics of power supplies.

- Contemplates a market development period for an incumbent electric utility that ends on December 31, 2005, unless extended for up to five years by the Commission.

- Initiates during the market development period certain transitional mechanisms pertaining to the transition of consumers, utility employees, and incumbent utilities to the restructured market, including the opportunity for utilities to receive transition revenues.

- Bases transition revenues on allowable transition costs of the electric utility as determined by the Commission pursuant to legislative standards.

- Authorizes collection of transition revenues through frozen rates paid by a customer supplied generation service by its electric distribution utility or through a transition charge paid by a customer supplied generation

service by another entity on each kilowatt hour of electricity delivered by an electric distribution utility and registered on the customer's meter.

- Requires a rate reduction for residential customers of an incumbent electric utility receiving transition revenues, in the amount of 5% of the utility's unbundled generation rate.

***Tax and replacement payment provisions***

- Revises the true value determination of an electric or rural electric company's production equipment purchased or placed into service after the bill's effective date.

- Reduces to 25% the tax assessment rate for all tangible personal property of an electric company or a rural electric company, except transmission and distribution property, beginning in tax year 2001.

- Revises the apportionment formula for electric company production equipment.

- On and after May 1, 2001, levies a kilowatt-hour tax on electric distribution companies at a variable rate that decreases with the kilowatt-hours distributed to an end user.

- Permits certain commercial and industrial electricity purchasers to self-assess the tax at the rate of 7% of the total price of electricity delivered.

- Exempts the federal government and qualified end users from paying the kilowatt-hour tax.

- Requires that 37% of the kilowatt-hour tax be deposited in the Local Government or School District Property Tax Replacement Funds, created by the bill, to be distributed to school districts and other local governments to replace the revenues lost due to the reduction in the assessment rate for tangible personal property, and 63% of the tax be split among the General Revenue Fund, Local Government Fund, and the Local Government Revenue Assistance Fund.

- Requires that a portion of the Local Government and School District Property Tax Replacement Funds be distributed to county auditors and treasurers to reimburse them for administrative fee losses.

- Removes electric companies and rural electric companies from the public utility excise tax on gross receipts, and requires electric companies to pay the corporation franchise tax, beginning in tax year 2002.

- Permits electric companies to apply the Ohio coal tax credit against their corporation franchise tax liability.

- Subjects electric companies to municipal income taxes beginning January 1, 2002.

- Provides that sales of electricity will continue to be exempt from the sales and use tax, but changes the exemption to reflect a wider variety of sales of electricity-related personal property and services that qualify for the exemption.

---

## TABLE OF CONTENTS

OVERVIEW

General operation of the bill ..... 7
Organization of the bill and bill analysis ..... 10

MARKET STRUCTURE PROVISIONS

Starting date of competitive retail electric service and other time periods ..... 10
State policy regarding customer choice and industry restructuring ..... 11
Service providers recognized by the bill ..... 12
Customer choice authority ..... 13
  Designation of competitive and noncompetitive services ..... 14
  Elimination of certified territories for competitive services ..... 15
State regulation of the retail electric services of an electric utility ..... 16
  Distribution service requirements of an electric utility ..... 18
  Transmission and ancillary service requirements of an electric utility ..... 18
State regulation of the retail electric services of other suppliers ..... 18
Corporate separation ..... 20
Independent transmission ..... 22
Monitoring retail electric services ..... 24
Market power abuse ..... 25
Rule-making and enforcement authority ..... 26
  General enforcement authority ..... 26
  Enforcement authority regarding corporate separation ..... 28
Power siting ..... 29
Long-term forecasting ..... 29

Assessments for PUCO and OCC funding....30
Governmental aggregation....31

CONSUMER PROTECTION PROVISIONS

Supplier certification....32
Consent to service of process....33
Minimum service requirements for competitive services of certified suppliers....34
Minimum service requirements for noncompetitive services of an electric utility....37
Universal service....37
Low-income customer assistance....38
Targeted energy efficiency and weatherization program....39
Consumer education for low-income customers....39
Program consolidation....39
Program funding....40
Low-income customer aggregation....42
Public Benefits Advisory Board....42
Consumer education by state agencies....44

ENVIRONMENTAL PROVISIONS

Nuclear decommissioning....45
Energy Efficiency Revolving Loan Program....45
Program authority....45
Program funding....47

TRANSITIONAL PROVISIONS

Transition plan filing....49
Transition plan approval....50
Transition plan approval procedures....52
Transition rate schedules....53
Changes to a transition plan....55
Enforcement of a transition plan....56
Transition revenues for incumbent electric utilities....56
General authority....56
Determination of transition revenues....58
Determination of transition charges and market development periods....60
Residential rate reduction....61
Resale of generation service....61
Nonfirm electric service....61
Transitional revenues for electric cooperatives....63
Consumer education plan of an electric utility....63

Employee assistance....64
Residential pilot program....64

TAX AND REPLACEMENT PAYMENT PROVISIONS

Assessment of taxable property, assessment rate reductions applicable to the true value of that property, and apportionment of it to taxing districts....64
Taxable property and determination of its true value....65
Reduced assessment rates....66
Apportionment of electric or rural electric company personal property....67
Effect of reduction in assessment rates on certain state aid calculations....68
The kilowatt-hour tax....69
Application of the new tax....69
Self-assessing purchasers....70
Exemptions from the tax....71
Payment of the tax....71
School District and Local Government Property Tax Replacement Funds....74
Assessments for failure to file a return or pay the tax, interest, or charges....75
Tax refunds....78
Record-keeping requirements....79
Mandatory registration with the Tax Commissioner....79
Notice of tax in customers' bills....80
Prohibitions....80
Payment of tax considered a normal expense....80
Property tax replacement payments....81
Determination of tax value loss, fixed-rate levy loss, and fixed-sum levy loss used in replacement payment computations....81
Replacement revenues for school districts and joint vocational school districts....83
Replacement revenues for other local governments....87
Net indebtedness of political subdivisions....90
Replacement of administrative fees....90
Removal of electric companies and rural electric companies from the public utility excise tax....92
Such companies are no longer subject to the excise tax....92
Repeal of Ohio coal tax credit....92
Combined companies....93
Corporation franchise tax....94
Electric companies must pay the tax....94
Adjustments to net income....95

Determination of the sales factor in calculating net income and treatment of the sale of electricity ....95
Computation of the corporation franchise tax ....96
Ohio coal tax credit ....97
Municipal income tax ....99
Sales of electricity continue to be exempt from the sales tax ....99
Miscellaneous ....100

## CONTENT AND OPERATION

### OVERVIEW

***General operation of the bill***

Currently, most Ohioans receive retail electric service from one of eight for-profit public utilities regulated by the Public Utilities Commission (PUCO), or from one of the 26 nonprofit electric cooperatives whose owners are also its customers. Each such supplier provides service within a "certified territory" for which it holds an exclusive franchise in conjunction with a duty to provide adequate facilities to serve that territory. This franchise and "obligation to serve" were established pursuant to statutes effective in 1978.

Each such supplier provides or procures all of the components of retail electric service for its customers, such as generation, transmission, and distribution services. The eight for-profit utilities serve roughly 91% of Ohio's electricity market with generation, transmission, and distribution facilities each owns. The 26 cooperatives serve about 40% of Ohio's land area, but account for only about 4% of electric sales. Buckeye Power, which is a nonprofit entity owned by the 26 cooperatives, supplies all the electricity delivered to their customers.

The present extent of competition for retail electric service in Ohio consists of self- or co-generation efforts by individual consumers and of utility service provided by 84 municipal electric utilities pursuant to authority of municipal corporations under the Ohio Constitution (Sections 4 and 6, Article XVIII). The 84 municipal electric utilities have about 5% of the state's electric market and cover about 1% of the geographic area. Municipal utilities primarily are distribution utilities. While some operate local generating facilities or have formed joint ventures for that purpose, most of the electricity they supply comes from the open market and through a nonprofit wholesale supplier they formed, called American Municipal Power-Ohio.

The bill permits greater competition in retail electric service for customers of Ohio's electric utilities, and provides for the restructuring of that industry. It authorizes customer choice in the selection of suppliers of competitive retail electric services, in part by removing, as of the starting date of competitive retail electric service, the exclusive franchises of electric utilities with respect to those services and, thus, permitting any supplier to compete for customers desiring those services. The bill anticipates service being provided by other suppliers (generally termed "electric services companies") and by authorized "governmental aggregators," in addition to the current for-profit, cooperative, and municipal suppliers.

Under the bill, electric generation, aggregation, power marketing, and power brokering services are declared competitive retail electric services as of the starting date of competitive retail electric service. Metering service, billing and collection service, or certain services ancillary to transmission or generation service may be designated a competitive service on or after that date if specific conditions are met. The bill subjects competitive services to minimum service standards and generally requires suppliers of competitive services to be certified as to their financial, managerial, and technical capability.

Electric transmission and distribution services are not authorized to be competitive services under the bill, and their provision by electric utilities will continue under PUCO regulation. Transmission and distribution services of electric utilities are subject to the bill's requirements of comparable and nondiscriminatory access to those services. Additionally, noncompetitive services are subject to minimum service standards focused on service quality, safety, and reliability.

Corporate separation is required between competitive and noncompetitive retail electric service operations and between noncompetitive retail electric service and nonelectric products and services. Independent operation of transmission facilities also is required.

The bill also provides for consumer education, universal service, and the consolidation of the state's low-income customer assistance programs. It also authorizes an energy efficiency revolving loan program for certain private and public customers--specifically, residential, small commercial and small industrial business, local government, educational institution, nonprofit entity, and agricultural customers. Additionally, the bill authorizes the disclosure of the generation resource mix and environmental characteristics of power supplies.

The bill contemplates a market development period that generally will not extend for any incumbent electric utility beyond December 31, 2005, although the

PUCO may extend the market development period by five years to reduce the level of transition charges to encourage competition. During the market development period, the bill initiates certain transitional mechanisms pertaining to the transition of consumers, utility employees, and incumbent utilities to the restructured market. Those mechanisms include the opportunity for utilities to receive transition revenues during the period based on allowable transition costs of each electric utility as determined by the PUCO pursuant to legislative standards. The revenues will be collected through frozen rates paid by a customer supplied generation service by its electric distribution utility or through a transition charge paid by a customer supplied generation service by another entity on each kilowatt hour of electricity delivered by an electric distribution utility as registered on the customer's meter. The bill also provides for a 5% reduction in the unbundled generation rate payable by residential customers of an electric utility.

The bill contains various tax changes that affect electric companies and rural electric companies. The bill revises the method used to determine the true value of an electric or rural electric company's production equipment and changes how electric company production equipment is apportioned. The bill also reduces the tax assessment rates for all electric company and rural electric company tangible personal property, except transmission and distribution property, to 25% of time value. The bill levies a kilowatt-hour tax on electric distribution companies to replace the revenues lost from that assessment rate reduction. A substantial part of the revenues received from the kilowatt-hour tax will be distributed to school districts and other local governments.

The bill changes the public utility excise tax law so that electric companies and rural electric companies are no longer subject to that tax. Instead, electric companies must pay the state corporation franchise tax and municipal income taxes.

The bill contains a "severability clause," which generally provides that, if any provision of the bill is held invalid, the invalidity does not affect other provisions of the bill that can be given effect without the invalid provision (Section 18).

***Organization of the bill and bill analysis***

The bill contains provisions broadly categorized as provisions regarding market structure, consumer protection, the environment, transitional mechanisms, and taxation. Most of the tax law changes are found in the Title 57 sections of the bill. Generally, the remaining sections, especially new Chapter 4928., cover the market structure, consumer protection, environmental, and transitional provisions.

This bill analysis reflects those general topics. The first part of the analysis discusses market structure changes. The second part covers consumer protection provisions. The third part discusses environmental provisions. The fourth part explains the transitional provisions of the bill. The fifth part discusses the tax and property tax replacement payment provisions.

## MARKET STRUCTURE PROVISIONS

The market structure provisions of the bill include provisions regarding the timing of retail customer choice; the state policy regarding customer choice and industry restructuring; and the designation of services as noncompetitive or competitive and the elimination of certified territories for competitive services. They also include provisions regarding state regulation of the retail electric services of an electric utility and other suppliers; allowable pricing of services; requisite corporate separation and independent transmission; market monitoring, market power abuse, rule-making, and enforcement authority; power siting; long-term forecasting; and governmental aggregation.

### ***Starting date of competitive retail electric service and other time periods***

(sec. 4928.01(A)(5), (17), and (26), and (C); Sections 5 and 9)

Generally, the bill's provisions are keyed to the "starting date of competitive retail electric service." The bill establishes January 1, 2001, as that starting date. However, it authorizes the PUCO to issue an order prior to that date delaying the starting date by a specified number of days not to exceed six months, but only for extreme technical conditions precluding the start of competitive retail electric service on January 1, 2001 (sec. 4928.01(A)(26) and (C)).

Generally, the new market structure, consumer protection, environmental protection, and transitional provisions of the bill take effect in accordance with the normal 90-day period for Ohio legislation, but, due to express references in many of those provisions to the "starting date of competitive retail electric service," the provisions are operative with respect to that variable starting date. Too, under the bill, the effective date of a number of amendments and repeals of existing laws relating to market structure recognizes the potential of a delayed starting date as authorized under the bill (Sections 5 and 9).

The bill additionally refers to a "market development period." This period is defined as the period of time beginning on the starting date of competitive retail electric service and ending on the applicable date for that utility as specified in the "transition revenues" portion of the bill, irrespective of whether the utility applies to receive transition revenues (sec. 4928.01(A)(17)).

***State policy regarding customer choice and industry restructuring***

(secs. 4928.01(A)(25), 4928.02, and 4928.06(A))

The bill declares a state policy with respect to "retail electric service," which is defined under the bill as any service involved in supplying or arranging for the supply of electricity to ultimate consumers in Ohio, from the point of generation to the point of consumption. It expressly includes one or more of the following "service components": generation service, aggregation service, power marketing service, power brokerage service, transmission service, distribution service, ancillary service, metering service, and billing and collection service. (Sec. 4928.01(A)(25).)

The bill provides that it is the policy of the State of Ohio to do the following throughout Ohio beginning on the starting date of competitive retail electric service:

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

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

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

(4) Encourage innovation and market access for cost-effective supply- and demand-side retail electric service;

(5) Encourage cost-effective and efficient access to information regarding the operation of the transmission and distribution systems of electric utilities in order to promote effective customer choice of retail electric service;

(6) Recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment;

(7) Ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa;

(8) Ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power;

(9) Facilitate the state's effectiveness in the global economy. (Sec. 4928.02.)

The bill requires that the PUCO ensure that this state policy is effectuated (sec. 4928.06(A)).

***Service providers recognized by the bill***

(secs. 4928.01(A)(2), (5), (6), (7), (9), (11), (13), and (19) and 4905.03(A)(4))

The bill recognizes several types of service providers in a restructured electric industry: an electric utility, electric cooperative, and electric services company, each of which are specifically acknowledged as types of electric light companies; a governmental aggregator; and a municipal electric utility.

Under the bill, an "electric utility" is an electric light company that is engaged on a for-profit basis in the business of supplying a noncompetitive retail electric service in Ohio or in the businesses of supplying both a noncompetitive and a competitive retail electric service. "Electric utility" excludes a municipal electric utility or a billing and collection agent. (Sec. 4928.01(A)(11).) An "electric distribution utility" is a specific type of electric utility--that is, an electric utility that supplies at least retail electric distribution service (sec. 4928.01(A)(6)).

An "electric cooperative" under the bill is a not-for-profit electric light company that both is or has been financed in whole or in part under specified federal rural electrification law and owns or operates facilities in Ohio to generate, transmit, or distribute electricity, or a successor of such company (sec. 4928.01(A)(5)).

An "electric services company" is defined as an electric light company that is engaged on a for-profit or not-for-profit basis in the business of supplying or arranging for the supply of only a competitive retail electric service in Ohio. It expressly includes a power marketer, power broker, aggregator, or independent power producer but expressly excludes an electric cooperative, municipal electric utility, governmental aggregator, or billing and collection agent. (Sec. 4928.01(A)(9).)

Under new Chapter 4928. of the bill, "electric light company" incorporates the definition of that term in existing Public Utility Law and expressly includes an electric services company (sec. 4928.01(A)(7)). The bill also changes the definition in existing law so that "electric light company" not only means any

person, firm, copartnership, voluntary association, joint-stock association, company, or corporation, wherever organized or incorporated, that is engaged in the business of supplying electricity for light, heat, or power purposes to consumers within Ohio, but expressly includes the business of supplying electric transmission service for electricity delivered to consumers in Ohio (sec. 4905.03(A)(4)).

Under the bill, "municipal electric utility" means a municipal corporation that owns or operates facilities to generate, transmit, or distribute electricity (sec. 4928.01(A)(19)).

Further, a "governmental aggregator" is defined as a legislative authority of a municipal corporation, a board of township trustees, or a board of county commissioners acting as an aggregator for the provision of a competitive retail electric service under authority otherwise conferred under the bill (see "***Governmental aggregation***," below) (sec. 4928.01(A)(13)).

A "billing and collection agent" is defined under the bill as a fully independent agent, not affiliated with or otherwise controlled by an electric utility, electric services company, electric cooperative, or governmental aggregator subject to certification under the bill, to the extent that the agent is under contract with the utility, company, cooperative, or aggregator solely to provide billing and collection for retail electric service on its behalf (sec. 4928.01(A)(2)).

***Customer choice authority***

(secs. 4928.01(A)(1) and (B), 4928.03, 4928.04(A) and (B), 4928.05(B), and 4933.81(F))

Customer choice of competitive retail electric service suppliers is effected in two ways: by the bill's designation of what are competitive and what are noncompetitive retail electric services, and by the bill's amendment of the existing Certified Territories Law. Generally, under the bill, on and after the starting date of competitive retail electric service, there is a lesser degree of state regulation of a competitive retail electric service than of a noncompetitive retail electric service. The bill expressly states that nothing in it affects existing PUCO authority to regulate an electric light company in Ohio or an electric service supplied in Ohio prior to that starting date (sec. 4928.05(B)).

***Designation of competitive and noncompetitive services***

The bill provides that a retail electric service component is deemed a competitive retail electric service if the service component is competitive pursuant

to a declaration by a provision of the Revised Code or pursuant to a PUCO order as authorized under the bill. Otherwise, the service component is deemed a noncompetitive retail electric service. (Sec. 4928.01(B).)

The bill expressly declares the following as competitive retail electric services beginning on the starting date of competitive retail electric service: retail electric generation, aggregation, power marketing, and power brokerage services supplied to consumers within the certified territory of an electric utility. Such consumers may obtain those services, subject to the bill, from any supplier or suppliers. In accordance with a filing under the Certified Territories Law, retail electric generation, aggregation, power marketing, or power brokerage services supplied to consumers within the certified territory of any electric cooperative that has made the filing are competitive retail electric services that the consumers may obtain, subject to the bill, from any supplier or suppliers. (Sec. 4928.03.)

Additionally, the bill authorizes the PUCO to declare by order that retail ancillary, metering, or billing and collection service supplied to consumers within the certified territory of an electric utility on or after the starting date of competitive retail electric service is a competitive retail electric service that the consumers may obtain from any supplier or suppliers subject to the bill (sec. 4928.04(A)). An "ancillary service" is any function necessary to the provision of electric transmission or distribution service to a retail customer. The term includes, but is not limited to, scheduling, system control, and dispatch services; reactive supply from generation resources and voltage control service; reactive supply from transmission resources service; regulation service; frequency response service; energy imbalance service; operating reserve-spinning reserve service; operating reserve-supplemental reserve service; load following; back-up supply service; real-power loss replacement service; dynamic scheduling; system black start capability; and network stability service. (Sec. 4928.01(A)(1).)

The PUCO may issue an order declaring retail ancillary, metering, or billing and collection service competitive only if it first determines, after investigation and public hearing, either of the following:

(1) There will be effective competition with respect to the service.

(2) The customers of the service have reasonably available alternatives.

The PUCO must initiate a proceeding on or before March 31, 2003, on the question of the desirability, feasibility, and timing of any such competition. (Sec. 4928.04(A).)

In carrying out this authority, the PUCO may prescribe different classifications, procedures, terms, or conditions for different electric utilities and for the retail electric services they provide that the PUCO so declares competitive. However, these classifications, procedures, terms, or conditions must be reasonable and not confer any undue economic, competitive, or market advantage or preference upon any electric utility. (Sec. 4928.04(B).)

Further, the bill provides that, beginning on the starting date of competitive retail electric service and notwithstanding any other provision of law, each Ohio consumer and the suppliers to a consumer have comparable and nondiscriminatory access to the noncompetitive retail electric services of an electric utility in Ohio within its certified territory for the purpose of satisfying the consumer's electricity requirements in keeping with the state policy specified in the bill (see "***State policy regarding customer choice and industry restructuring***," above) (sec. 4928.03).

***Elimination of certified territories for competitive services***

Ohio's existing Certified Territories Law was enacted in 1978, and, in brief, it grants an exclusive service franchise to for-profit electric suppliers and not-for-profit electric suppliers (excluding municipal corporations) in conjunction with imposing an obligation on those suppliers to provide adequate facilities for service to their certified territories (secs. 4933.81 to 4933.90).

Under the bill, customer choice of suppliers for competitive retail electric services is authorized in part by changes in the definition of "electric service" in the existing Certified Territories Law. The bill defines the term differently for for-profit suppliers and not-for-profit suppliers, with the result that certified territories for competitive retail electric services of for-profit suppliers are eliminated, and certified territories for competitive services of not-for-profit suppliers are eliminated only at the specific election of the supplier. (Sec. 4933.81(F).)

Under the bill, "electric service" is redefined for purposes of the Certified Territories Law so that, as of the starting date of competitive retail electric service, the term excludes, in the case of a for-profit electric supplier, a competitive retail electric service as defined under the bill (sec. 4933.81(F)).

In the case of a not-for-profit electric supplier and beginning on that starting date, "electric service" is defined as excluding any service component of a competitive retail electric service that is specified in an irrevocable filing the supplier makes with the PUCO, for informational purposes only, to eliminate permanently its certified territory as to that service component. Such a service component may include retail ancillary, metering, or billing and collection service irrespective of whether that service component has or has not been declared

competitive under the bill by the PUCO (see "***Designation of competitive and noncompetitive services***," above. (Sec. 4933.81(F).)

The filing by a not-for-profit supplier must specify the date on which its certified territory is eliminated as to the service component. Upon receipt of the filing by the PUCO, the not-for-profit electric supplier's certified territory is eliminated permanently as to the service component specified in the filing as of the date specified in the filing. (Sec. 4933.81(F).)

***State regulation of the retail electric services of an electric utility***

(secs. 4928.05(A), 4928.06(B), (D), and (F), and 4928.15; specified sections in Chapters 1551., 4905., 4909., 4913., and 4933.; Sections 2, 5, and 9)

Competitive services supplied by an electric utility generally are removed from PUCO regulation on and after the starting date of competitive retail electric service. The bill states that a competitive service supplied by an electric utility is not subject to PUCO supervision and regulation under Public Utility Law (Chapters 4901. to 4909., 4933., 4935., or 4963.). Exceptions to this general policy consist of those exceptions otherwise authorized under the bill (for example, a supplier certification requirement (see "***Supplier certification***," below)) and of specified statutes in existing Public Utility Law concerning certified territories, nondiscriminatory pricing of services, and assessment of public utilities for PUCO funding purposes and, with regard to service reliability and public safety, statutes concerning safety inspections, energy emergencies, and line construction and maintenance. The bill states that the PUCO's authority to enforce those excepted provisions with respect to a competitive retail electric service must be such authority as is provided for their enforcement under existing Public Utility Law and the bill. (Sec. 4928.05(A)(1).)

Further, in keeping with the designation of generation as a competitive service and the limitations on the PUCO's authority regarding a competitive service, the bill makes a number of changes to existing Public Utility Law as of the starting date of competitive retail electric service, to remove certain existing duties of the PUCO and certain limitations relating to generation service, such as provisions relating to the electric fuel component in utility rates and to environmental compliance facilities, and such as a requirement of a semiannual report to the PUCO on short-term electricity demand and supply (secs. 1551.33, 1551.35, 4905.01, 4905.03, 4905.14, 4905.301, 4905.40, 4905.42, 4905.66 to 4905.70, 4909.01, 4909.05, 4909.15, 4909.157 to 4909.159, 4909.191 to 4909.193, 4913.01 to 4913.07, 4933.27, and 4933.34; Sections 2, 5, and 9). The bill also redefines "public utility" for purposes of Public Utility Law: it expressly excludes from that term an electric light company that supplies only competitive retail

electric service and does not supply noncompetitive retail electric service (sec. 4905.02(E)).

Additionally, the bill authorizes the PUCO, if it determines, on or after the starting date of competitive retail electric service, that there is a decline or loss of effective competition with respect to a competitive retail electric service of an electric utility, which service was declared competitive by PUCO order issued under the bill (retail ancillary, metering, or billing and collection service), the PUCO must ensure that that service is provided at compensatory, fair, and nondiscriminatory prices, terms, and conditions (sec. 4928.06(B)). The procedures and criteria the PUCO must use in determining effective competition for that purpose are the same as the procedures and criteria specified in "***Monitoring retail electric services***," below (sec. 4928.06(D)). The bill requires an electric light company to provide the PUCO with such information as the PUCO considers necessary to carry out this duty. The PUCO must take such measures as it considers necessary to protect the confidentiality of that information. (Sec. 4928.06(F).)

As to any noncompetitive retail electric service, the bill provides that, on and after the starting date of competitive retail electric service, a noncompetitive retail electric service supplied by an electric utility is subject to supervision and regulation by the PUCO under existing Public Utility Law (Chapters 4901. to 4909., 4933., 4935., and 4963.) and the bill, to the extent that authority is not preempted by federal law. The PUCO's authority to enforce those provisions with respect to a noncompetitive retail electric service is the authority provided under existing law and the bill, to the extent the authority is not preempted by federal law. (Sec. 4928.05(A)(2).)

The bill further requires the PUCO to exercise its jurisdiction with respect to the delivery of electricity by an electric utility in Ohio on or after the starting date of competitive retail electric service so as to ensure that no aspect of the delivery of electricity to consumers in Ohio that consists of a noncompetitive retail electric service is unregulated. (Sec. 4928.05(A)(2).)

***Distribution service requirements of an electric utility***

The bill prohibits an electric utility, except as otherwise provided in the bill's transitional provisions, from supplying noncompetitive retail electric distribution service in Ohio on or after the starting date of competitive retail electric service except pursuant to a schedule for that service that is consistent with the state policy specified in the bill and filed with the PUCO under existing law pertaining to initiation of rate-making proceedings (sec. 4909.18). The schedule must provide that electric distribution service under the schedule is available to all

consumers within the utility's certified territory and to any supplier to those consumers on a nondiscriminatory and comparable basis. Distribution service rates and charges under the schedule must be established in accordance with existing Public Utility Law (Chapters 4905. and 4909.). The schedule must include an obligation to build distribution facilities when necessary to provide adequate distribution service, provided that a customer requesting that service may be required to pay all or part of the reasonable incremental cost of the new facilities, in accordance with rules, policy, precedents, or orders of the PUCO. (Sec. 4928.15(A).)

***Transmission and ancillary service requirements of an electric utility***

The bill prohibits an electric utility, except as otherwise provided in the bill's transitional provisions and except as preempted by federal law, from supplying the transmission service or ancillary service component of noncompetitive retail electric service in Ohio on or after the starting date of competitive retail electric service except pursuant to a schedule for that service component that is consistent with the state policy specified in the bill and filed with the PUCO under existing law regarding initiation of rate-making proceedings (sec. 4909.18). The schedule must provide that transmission or ancillary service under the schedule is available to all consumers and to any supplier to those consumers on a nondiscriminatory and comparable basis. Service rates and charges under the schedule must be established in accordance with existing Public Utility Law (Chapters 4905. and 4909.). (Sec. 4928.15(B).)

***State regulation of the retail electric services of other suppliers***

(sec. 4928.05(A))

With the exception of subjecting municipal corporations and electric cooperatives to supplier certification and the minimum service requirements that must be met by a certified supplier of competitive retail electric services (see "***Supplier certification***" and "***Minimum service requirements for competitive services of certified suppliers***," below), the bill generally makes no change in the current exemption of electric cooperatives and municipal electric utilities from PUCO regulation.

The bill expressly states, however, that, on and after the starting date of competitive retail electric service, a competitive retail electric service supplied by an electric cooperative is not subject to PUCO supervision and regulation under existing Public Utility Law (Chapters 4901. to 4909., 4933., 4935., or 4963.), except as otherwise expressly provided under the bill (for example, the supplier

certification requirement (see "***Supplier certification***," below) (sec. 4928.05(A)(1)).

Further, on and after that starting date, a noncompetitive retail electric service supplied by an electric cooperative is not subject to PUCO supervision and regulation under existing Public Utility Law (Chapters 4901. to 4909., 4933., 4935., and 4963.), except the Certified Territories Law and provisions regarding energy emergencies. The PUCO's authority to enforce those excepted sections with respect to a noncompetitive retail electric service of an electric cooperative is such authority as is provided for their enforcement under existing law. (Sec. 4928.05(A)(2).)

***Pricing of services***

(secs. 4928.07 and 4905.34; Section 5)

The bill requires each electric utility, electric services company, electric cooperative, or governmental aggregator subject to certification under the bill, to the maximum extent practicable on or after the starting date of competitive retail electric service, to separately price competitive retail electric services, and to itemize the prices on the bill of a customer or otherwise disclose the separate prices to the customer. Although a competitive retail electric service must be supplied to any consumer on those bases, such an electric utility, electric services company, electric cooperative, or governmental aggregator may repackage a competitive retail electric service on or after the starting date and offer it on a bundled basis with other retail electric services to meet consumer preferences. Repackaging by an electric utility is subject to existing law regarding nondiscriminatory pricing (secs. 4905.33 and 4905.35). Repackaging by such an electric services company, electric cooperative, or governmental aggregator is subject to a similar limitation that no such entity, as to a competitive retail electric service for which the company, cooperative, or aggregator is subject to certification, must furnish free service or service for less than actual cost for the purpose of destroying competition. (Sec. 4928.07.)

The bill additionally limits, as of the starting date of competitive retail electric service, the existing statutory authority of a public utility or railroad to grant its property for a public purpose or grant reduced rates or free service to the United States, the State of Ohio, or any Ohio political subdivision; for charitable purposes, fairs, or expositions; to a law enforcement officer residing in free housing as authorized under existing law; or to any officer or employee of the utility or railroad or the officer's or employee's family. As of that starting date, the bill permits the exercise of that authority except as provided in the bill and in two

existing statutes, unchanged by the bill, concerning nondiscriminatory pricing, which the bill references. (Sec. 4905.34; Section 5.)

One of those existing statutes generally prohibits a public utility from giving any undue or unreasonable preference or advantage to any consumer or subjecting the consumer to any undue or unreasonable prejudice or disadvantage (sec. 4905.35, not in the bill). The other statute prohibits a public utility from charging consumers a different amount for a like and contemporaneous service under substantially the same circumstances and conditions, or furnishing free service or service for less than actual cost for the purpose of destroying competition (sec. 4905.33, not in the bill). The bill would appear, in part, to reverse the effect of a recent Ohio Supreme Court decision in which the Court held that a utility's right to enter into a reduced-rate utility service contract with a political subdivision under the statute amended by the bill is not limited by the statutory provision prohibiting below-cost service contracts that attempt to destroy competition (*Ohio Edison Co. v. Pub. Util. Comm.* (1997), 78 Ohio St.3d 466).

***Corporate separation***

(secs. 4928.17 and 4928.18(A))

Except as otherwise provided in the transition provisions of the bill and beginning on the starting date of competitive retail electric service, the bill prohibits an electric utility from engaging in Ohio, either directly or through an affiliate, in the businesses of supplying a noncompetitive retail electric service and supplying a competitive retail electric service, or in the businesses of supplying a noncompetitive retail electric service and supplying a product or service other than retail electric service, unless the utility implements and operates under a corporate separation plan that is approved by the PUCO, is consistent with the state policy specified in the bill, and achieves all of the following:

(1) The plan provides, at minimum, for the provision of the competitive retail electric service or the nonelectric product or service through a fully separated affiliate of the utility, and the plan includes separate accounting requirements, the code of conduct as ordered by PUCO rule, and such other measures as are necessary to effectuate the policy specified in the bill.

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

(3) The plan is sufficient to ensure that the utility will not extend any undue preference or advantage to any affiliate, division, or part of its own business engaged in the business of supplying the competitive retail electric service or

nonelectric product or service, and to ensure that any such affiliate, division, or part will not receive undue preference or advantage from any affiliate, division, or part of the business engaged in business of supplying the noncompetitive retail electric service. The bill prohibits such utility, affiliate, division, or part from extending such undue preference. (Sec. 4928.17(A).)

Under the bill, the PUCO may approve, modify and approve, or disapprove a corporate separation plan. As part of the requisite code of conduct, the PUCO must adopt rules under the rule-making provisions of the bill regarding corporate separation and procedures for plan filing and approval. The rules must include limitations on affiliate practices solely for the purpose of maintaining a separation of the affiliate's business from the business of the utility to prevent unfair competitive advantage by virtue of that relationship. The rules also must include an opportunity for any person having a real and substantial interest in the corporate separation plan to file specific objections to the plan and propose specific responses to issues raised in the objections, which objections and responses the PUCO must address in its final order. Prior to PUCO approval of the plan, the PUCO must afford a hearing upon those aspects of the plan that the PUCO determines reasonably require a hearing. The PUCO may reject and require refiling of a substantially inadequate plan under the bill. (Sec. 4928.17(B).)

The PUCO must issue an order approving or modifying and approving a corporate separation plan, to be effective on the date specified in the order, only upon findings that the plan reasonably complies with the requirements stated in (1) to (3) above and will provide for ongoing compliance with the state policy (sec. 4928.17(C)).

Any party may seek an amendment to an approved corporate separation plan, and the PUCO, pursuant to a request from any party or on its own initiative, may order as it considers necessary the filing of an amended corporate separation plan to reflect changed circumstances (sec. 4928.17(D)).

The bill authorizes an electric utility to divest itself of any generating asset at any time without PUCO approval, notwithstanding existing laws regarding facility abandonment, transactions between utilities, and mergers (secs. 4905.20, 4905.21, 4905.46, and 4905.48), and subject to the provisions of existing Public Utility Law relating to the transfer of transmission, distribution, or ancillary service provided by such generating asset (sec. 4928.17(E)).

Additionally, the bill states that, notwithstanding a provision of existing rate-making law that refers to the actual embedded cost of debt of a utility (sec. 4909.15(D)(2)(a)), nothing in the bill prevents the PUCO from exercising its authority under existing Public Utility Law to protect customers of retail electric

service supplied by an electric utility from any adverse effect of the utility's provision of a product or service other than retail electric service (sec. 4928.18(A)).

***Independent transmission***

(sec. 4928.12)

Except as otherwise provided in the bill's transitional provisions, the bill prohibits any entity from owning or controlling transmission facilities as defined under federal law and located in Ohio on or after the starting date of competitive retail electric service unless that entity is a member of, and transfers control of those facilities to, one or more qualifying transmission entities that are operational (sec. 4928.12(A)).

The bill states that such an entity complies with the bill's independent transmission requirement if each transmission entity of which it is a member meets all of the following specifications:

(1) The transmission entity is approved by the Federal Energy Regulatory Commission.

(2) The transmission entity results in separate control of transmission facilities from control of generation facilities.

(3) The transmission entity prohibits or otherwise precludes pancaked transmission rates.

(4) The transmission entity improves service reliability with Ohio.

(5) The transmission entity achieves the objectives of an open and competitive electric generation marketplace, elimination of barriers to market entry, and preclusion of control of bottleneck electric transmission facilities in the provision of retail electric service.

(6) The transmission entity is of sufficient scope or otherwise operates to substantially increase economical supply options for consumers.

(7) The governance structure or control of the transmission entity is independent of the owners and users of the transmission facilities, and no member of its board of directors has an affiliation, with such an owner or user or with an affiliate of an owner or user during the member's tenure on the board, such as to unduly affect the transmission entity's performance.

(8) The transmission entity operates under policies that promote positive performance designed to satisfy the electricity requirements of customers.

(9) The transmission entity is capable of maintaining real-time reliability of the electric transmission system, ensuring comparable and nondiscriminatory transmission access and necessary services, minimizing system congestion, and further addressing real or potential transmission constraints. (Sec. 4928.12(B).)

To the extent that a transmission entity is authorized to build transmission facilities, the bill affirms that the transmission entity has the powers provided in and is subject to existing provisions regarding the power to appropriate private property (sec. 1723.01 to 1723.08, not in the bill; sec. 4928.12(C)).

The bill authorizes the PUCO, for the purpose of forming or participating in a regional regulatory oversight body or mechanism developed for any transmission entity that is of regional scope and operates within Ohio, to make joint investigations, hold joint hearings, within or outside Ohio, and issue joint or concurrent orders in conjunction or concurrence with any official or agency of any state or of the United States. The bill grants this authority whether the PUCO is functioning under agreements or compacts between states, under the concurrent power of states to regulate interstate commerce, as an agency of the United States, or otherwise. Further, the PUCO may negotiate and enter into agreements or compacts with agencies of other states for cooperative regulatory efforts and for the enforcement of the respective state laws regarding the transmission entity. (Sec. 4928.12(D).)

Additionally, the bill provides that, if a qualifying transmission entity is not operational as contemplated under the bill, including its transitional provisions (see "***Transition plan approval***," below), the PUCO by rule or order must take such measures or impose such requirements on all for-profit entities that own or control electric transmission facilities located in this state as the PUCO determines necessary and proper to achieve independent, nondiscriminatory operation of, and separate ownership and control of, such electric transmission facilities on or after the starting date of competitive retail electric service (sec. 4928.12(E)).

***Monitoring retail electric services***

(secs. 4928.01(A)(18) and 4928.06(C), (D), and (F))

The bill provides that, in addition to other authority under the bill, the PUCO, on an ongoing basis, must monitor and evaluate the provision of retail electric service in Ohio for the purpose of discerning any noncompetitive retail electric service that should be available on a competitive basis on or after the

starting date of competitive retail electric service pursuant to a declaration in the Revised Code, and for the purpose of discerning any competitive retail electric service that is no longer subject to effective competition on or after that date. Upon such evaluation, the PUCO periodically must report its findings and any recommendations for legislation to the standing committees of both houses of the General Assembly that have primary jurisdiction regarding public utility legislation. Until 2008, the PUCO and OCC also must provide biennial reports to those standing committees, regarding the effectiveness of competition in the supply of competitive retail electric services in Ohio. (Sec. 4928.06(C).)

In determining, for purposes of the above-described authority, whether there is effective competition in the provision of a retail electric service or reasonably available alternatives for that service, the PUCO must consider factors including, but not limited to, all of the following:

(1) The number and size of alternative providers of that service;

(2) The extent to which the service is available from alternative suppliers in the relevant market;

(3) The ability of alternative suppliers to make functionally equivalent or substitute services readily available at competitive prices, terms, and conditions;

(4) Other indicators of market power, which may include market share, growth in market share, ease of entry, and the affiliation of suppliers of services. (Sec. 4928.06(D).) "Market power" is defined for purposes of the bill as the ability to impose on customers a sustained price for a product or service above the price that would prevail in a competitive market (sec. 4928.01(A)(18)).

The bill provides that the burden of proof is on any entity requesting a determination by the PUCO of the existence of or a lack of effective competition or reasonably available alternatives (sec. 4928.06(D)).

The bill requires an electric light company to provide the PUCO with such information as the PUCO considers necessary to carry out its monitoring duty. The PUCO must take such measures as it considers necessary to protect the confidentiality of that information. (Sec. 4928.06(F).)

Additionally, the bill requires the standing committees of the General Assembly that have primary jurisdiction over public utility legislation to meet at least biennially, until the end of all market development periods as determined or extended by the PUCO, to consider the effect on Ohio of electric restructuring and

to receive reports from the PUCO, OCC, and the Director of Development (sec. 4928.06(C)).

***Market power abuse***

(sec. 4928.06(E)(1) and (2))

The bill provides that, beginning on the starting date of competitive retail electric service, the PUCO has authority under existing Public Utility Law (Chapters 4901. to 4909.), and must exercise that authority, to resolve abuses of market power by any electric utility that interfere with effective competition in the provision of retail electric service (sec. 4928.06(E)(1)).

In addition, the PUCO, beginning the first year after the market development period of a particular electric utility and after reasonable notice and opportunity for hearing, may take such measures within a transmission constrained area in the utility's certified territory as are necessary to ensure that retail electric generation service is provided at reasonable rates within that area. The PUCO may exercise this authority only upon findings that an electric utility is or has engaged in the abuse of market power and that that abuse is not adequately mitigated by rules and practices of any independent transmission entity controlling the transmission facilities. Any such measure must be taken only to the extent necessary to protect customers in the area from the particular abuse of market power and to the extent the PUCO's authority is not preempted by federal law. The measure must remain in effect until the PUCO, after reasonable notice and opportunity for hearing, determines that the particular abuse of market power has been mitigated. (Sec. 4928.06(E)(2).)

***Rule-making and enforcement authority***

(secs. 4928.06(A) and (F), 4928.16, and 4928.18(B) to (E); Section 10)

The bill requires the PUCO, to the extent necessary, to adopt rules to carry out the bill. Initial rules necessary for the commencement of the competitive retail electric service must be adopted within 180 days after the bill's effective date. Further, except as otherwise provided in the bill, the proceedings and orders of the PUCO under the bill must be subject to and governed by existing Public Utility Law (Chapter 4903.). (Sec. 4928.06(A).)

The bill requires an electric utility, electric services company, electric cooperative, or governmental aggregator subject to certification under the bill to provide the PUCO with such information, regarding a competitive retail electric service for which it is subject to certification, as the PUCO considers necessary to

carry out the bill. The PUCO must take such measures as it considers necessary to protect the confidentiality of that information. (Sec. 4928.06(F).)

***General enforcement authority***

The bill states that the PUCO has jurisdiction under existing complaint law (sec. 4905.26), upon complaint of any person or upon complaint or initiative of the PUCO on or after the starting date of competitive retail electric service, regarding the provision by an electric utility, electric services company, electric cooperative, or governmental aggregator subject to certification under the bill of any service for which it is subject to certification (sec. 4928.16(A)(1)).

The bill also provides that the PUCO has jurisdiction under such existing complaint law, upon complaint of any person or upon complaint or initiative of the PUCO on or after the starting date of competitive retail electric service, to determine (1) whether an electric utility has violated or failed to comply with any provision of the bill regarding the state policy, pricing of services, designation of competitive and noncompetitive services, state regulation of competitive or noncompetitive services, supplier certification, consent to service of process, minimum service requirements, universal service, information requirements, monitoring of retail service, independent transmission, or market power abuse (secs. 4928.01 to 4928.15) or with any related rule or order adopted or issued under the bill, or (2) whether an electric services company, electric cooperative, or governmental aggregator subject to certification under the bill, regarding a competitive retail electric service for which it is subject to certification, has violated or failed to comply with any provision of the bill regarding the state policy, designation of competitive and noncompetitive services, state regulation of competitive or noncompetitive services, supplier certification, consent to service of process, minimum service requirements for competitive services, information requirements, monitoring of retail service (secs. 4928.01 to 4928.10) or any related rule or order. (Sec. 4928.16(A)(2).)

If the PUCO makes a finding regarding provision of retail electric service or a violation of failure to comply, the PUCO, in addition to its authority to rescind or suspend certification and to any other remedies provided by law and after reasonable notice and opportunity for hearing, may do any of the following:

(1) Order rescission of a contract or restitution to customers;

(2) Order any remedy or forfeiture provided under existing Public Utility Law (secs. 4905.54 to 4905.60 and 4905.64) upon a finding of a violation or failure to comply. (Sec. 4928.16(B)(1), (2), and (3).)

In addition, the PUCO may order any remedy provided under existing Public Utility Law (secs. 4905.22, 4905.37, and 4905.38) if the violation or failure to comply by an electric utility related to the provision of a noncompetitive retail electric service (sec. 4928.16(B)(2)).

The bill authorizes OCC, in addition to the authority conferred under existing Consumers' Counsel Law (sec. 4911.15), to file a complaint under the bill on behalf of Ohio residential consumers or appear before the PUCO as a representative of those consumers (sec. 4928.16(C)(1)).

Further, in addition to the authority conferred under existing Consumers' Counsel Law (sec. 4911.19), OCC, upon reasonable grounds on and after the starting date of competitive retail electric service, may file with the PUCO under existing complaint authority (sec. 4905.26) a complaint for discovery if the recipient of an inquiry under existing Consumers' Counsel Law (sec. 4911.19) fails to provide a response within the time specified in that law (sec. 4928.16(C)(2)).

Additionally, the bill authorizes any party to seek treble damages under existing Public Utility Law (sec. 4905.61) for any violation or failure to comply (sec. 4928.16(D)).

The bill also requires the PUCO, OCC, and the Attorney General's Office to develop a memorandum of understanding not later than January 1, 2000, to establish a system to respond effectively and efficiently to residential consumer inquiries and complaints. The agencies must provide a joint report to the General Assembly on their efforts not later than June 30, 2002. (Section 10.)

***Enforcement authority regarding corporate separation***

The bill grants the PUCO jurisdiction under its existing complaint authority (sec. 4905.26), upon complaint of any person or upon complaint or initiative of the PUCO on or after the starting date of competitive retail electric service, to determine whether an electric utility or its affiliate has violated any provision of the bill's corporate separation requirements or an order issued or rule adopted under any of those provisions. For this purpose, the PUCO may examine such books, accounts, or other records kept by an electric utility or its affiliate as may relate to the businesses for which corporate separation is required under the bill, and may investigate such utility or affiliate operations as may relate to those businesses and investigate the interrelationship of those operations. Any such examination or investigation by the PUCO must be governed by existing Public Utility Law (Chapter 4903.). (Sec. 4928.18(B).)

***General remedies***. In addition to any remedies otherwise provided by law, the PUCO, regarding a determination of a violation, may do any of the following:

(1) Issue an order directing the utility or affiliate to comply;

(2) Modify an order as the PUCO finds reasonable and appropriate and order the utility or affiliate to comply with the modified order;

(3) Suspend or abrogate an order, in whole or in part;

(4) Issue an order that the utility or affiliate pay restitution to any person injured by the violation or failure to comply;

(5) Impose a forfeiture on the utility or affiliate of up to $25,000 per day per violation. The recovery and deposit of the forfeiture are subject to existing law regarding collection of forfeitures (secs. 4905.57 and 4905.59). (Sec. 4928.18(C).)

***Specific remedies***. Further, in addition to any other remedies authorized by law, the PUCO, regarding a violation by an electric utility relating to a corporate separation plan involving competitive retail electric service, may do either of the following:

(1) Suspend or abrogate an order, to the extent it is in effect, authorizing an opportunity for the utility to receive transition revenues under a transition plan approved by the PUCO under the bill's transition provisions;

(2) Notwithstanding any contrary provision of the Certified Territories Law (secs. 4933.81 to 4933.90), issue an order authorizing another electric light company to furnish noncompetitive retail electric service to all electric load centers within the certified territory of the electric utility without a finding of physically inadequate service under that law. (Sec. 4928.18(D).)

The bill also authorizes an action for treble damages to be brought under existing authority in Public Utility Law (sec. 4905.61), in the case of any violation of the bill's corporation separation requirements or related rules (sec. 4928.18(E)).

***Power siting***

(sec. 4906.10(A)(1); Sections 2 and 5)

Existing law provides a siting approval process for major utility facilities. Under that process, the Power Siting Board grants certificates for the construction, operation, and maintenance of a major utility facility (Chapter 4906.). In granting such certification, the Board must make certain findings, including a finding

regarding the basis of the need for the facility (sec. 4906.10). Under existing law unchanged by the bill, an application must contain a statement explaining the need for the facility (sec. 4906.03).

The bill provides that, as of the starting date of competitive retail electric service, in the case of a major utility facility consisting of an electric generating plant of 50 megawatts or more, the Board must presume the need for the facility as that need is stated in an application for a certificate (sec. 4906.10(A)(1); Sections 2 and 5).

***Long-term forecasting***

(sec. 4935.04; Sections 2 and 5)

Under the existing Public Utility Forecasting Law, each person owning or operating a major utility facility within Ohio or furnishing gas, natural gas, or electricity to more than 15,000 Ohio customers must submit monthly and annual reports with information related to meeting forecasted needs. The reports and the record of hearings on the reports serve various purposes under Public Utility Law, including purposes related to power siting, ratemaking, energy planning, and securities approval. (Sec. 4935.04.)

The bill redefines "major utility facility," as of the starting date of competitive retail electric service, to exclude an electric generating plant of 50 megawatts or more. By doing so and making other related changes in the Forecasting Law, the bill eliminates the long-term forecasting requirement for any owner of such a generating plant. (Sec. 4935.04; Sections 2 and 5.)

***Assessments for PUCO and OCC funding***

(secs. 4905.10(A) and (D), 4911.18(A) and (D), and 4928.06(F))

Under existing law, railroads and public utilities in Ohio pay an annual assessment to the PUCO and OCC, the proceeds of which are used to fund the PUCO and OCC. The assessments are imposed pursuant to a statutory formula generally based on a railroad's or utility's gross earnings or gross receipts. (Secs. 4905.10 and 4911.18.)

The bill provides that, for the purpose of such an assessment, "public utility" includes, in addition to an electric utility under the bill, an electric services company, electric cooperative, or a governmental aggregator subject to certification under the bill, to the extent of the company's, cooperative's, or aggregator's engagement in the business of supplying or arranging for the supply in

Ohio of any retail electric service for which it must be so certified (secs. 4905.10(D) and 4911.18(D)).

Under the bill, the PUCO must require each electric utility to file with the PUCO on and after the starting date of competitive retail electric service an annual report of its intrastate gross receipts and sales of kilowatt-hours of electricity. The PUCO also must require each electric services company, electric cooperative, and governmental aggregator subject to certification to file an annual report on and after that starting date of such receipts and sales from the provision of those retail electric services for which it is subject to certification. For the purpose of the reports, sales of kilowatt hours of electricity are deemed to occur at the meter of the retail customer. (Sec. 4928.06(F).) The bill states that, in the case of an assessment based on intrastate gross receipts against a public utility that is an electric utility under the bill or an electric services company, electric cooperative or governmental aggregator subject to certification under the bill, such receipts are those specified in the utility's, company's, cooperative's, or aggregator's most recent report of intrastate gross receipts and sales of kilowatt-hours of electricity (secs. 4905.10(A) and 4911.18(A)).

The bill also authorizes the PUCO and OCC to include, in the first computation it makes in calculating a railroad's or public utility's assessment, any amount of the railroad's or public utility's gross earnings or receipts that were underreported in a prior year. Under the bill, the agency, in addition to whatever penalties apply under the Revised Code to such underreporting, must assess the railroad or public utility interest at the rate of 8% annually as stated in existing Ohio law governing allowable interest (sec. 1343.01(A)). Any interest so collected must be deposited into the Public Utilities Fund or the Consumers' Counsel Operating Fund, as applicable. (Secs. 4905.10(A) and 4911.18(A).)

***Governmental aggregation***

(secs. 4928.01(A)(8) and 4928.20)

The bill authorizes certain political subdivisions to act as aggregators (in essence, purchasing agents) for groups of consumers within their jurisdictions. Specifically, it authorizes the legislative authority of a municipal corporation through the adoption of an ordinance, or the board of township trustees of a township or the board of county commissioners of a county through the adoption of a resolution, to provide through aggregation for the supply, on or after the starting date of competitive retail electric service, of any competitive retail electric service to electric load centers located respectively, within the municipal corporation, township, or unincorporated area of the county, except to the extent such aggregation is otherwise prohibited by the Certified Territories Law or other

Ohio law. However, no such aggregation must occur unless the person owning, occupying, controlling, or using the electric load centers provides prior written consent. (Sec. 4928.20(A).) "Electric load center" has the same meaning as in the Certified Territories Law: all electric consuming facilities of any type of character owned, occupied, controlled or used by a person at a single location, which facilities have been, are, or will be connected to and served at a metered point of delivery and to which electric service has been, is, or will be rendered (secs. 4933.81(E) and 4928.01(A)(8)).

The bill states that such a "governmental aggregator" is not a public utility engaging in the wholesale purchase and resale of electricity, and provision of the aggregated service is not a wholesale utility transaction. A governmental aggregator must be subject to supervision and regulation by the PUCO only to the extent of any competitive retail electric service it provides and PUCO authority under the bill. (Sec. 4928.20(B).)

The bill states that this governmental aggregation authority does not apply in the case of a municipal corporation that supplies such aggregated service to electric load centers to which its municipal electric utility also supplies a noncompetitive retail electric service through transmission or distribution facilities the utility singly or jointly owns or operates (sec. 4928.20(C)).

## CONSUMER PROTECTION PROVISIONS

The consumer protection provisions of the bill include provisions requiring PUCO certification of suppliers and prescription of minimum service requirements for competitive and noncompetitive services, as well as universal service provisions.

### ***Supplier certification***

(secs. 4928.01(A)(14) and 4928.08)

The bill prohibits an electric utility, electric services company, electric cooperative, or governmental aggregator from providing a competitive retail electric service to a consumer in Ohio on and after the starting date of competitive retail electric service without first being certified by the PUCO regarding its managerial, technical, and financial capability to provide that service (sec. 4928.08(B)). However, this certification requirement applies to an electric cooperative, or to a governmental aggregator that is a municipal electric utility, only to the extent of a competitive retail electric service it provides to a customer to whom it does not provide a noncompetitive retail electric service through

transmission or distribution facilities it singly or jointly owns or operates (sec. 4928.08(A)).

PUCO certification may be granted pursuant to procedures and standards the PUCO must prescribe in accordance with the bill, except that certification or certification renewal will be deemed approved 30 days after the filing of an application with the PUCO unless the PUCO suspends that approval for good cause shown. In the case of such a suspension, the PUCO must act to approve or deny certification or certification renewal to the applicant not later than 90 days after the date of the suspension. (Sec. 4928.08(B).)

Capability standards adopted in PUCO rules must be sufficient to ensure compliance with the minimum service requirements established under the bill and with the bill's consent-to-service-of-process requirement described below. The standards must allow flexibility for voluntary aggregation, to encourage market creativity in responding to consumer needs and demands. The rules must include procedures for biennially renewing certification. (Sec. 4928.08(C).)

Under the bill, the PUCO may suspend, rescind, or conditionally rescind the certification of any electric utility, electric services company, electric cooperative, or governmental aggregator if the PUCO determines, after reasonable notice and opportunity for hearing, that the utility, company, cooperative, or aggregator has failed to comply with any applicable certification standards or has engaged in anticompetitive or unfair, deceptive, or unconscionable acts or practices in Ohio (sec. 4928.08(D)).

Additionally, the bill prohibits an electric distribution utility on and after the starting date of competitive retail electric service from knowingly distributing electricity, to a retail consumer in Ohio, for any supplier of electricity that has not been certified by the PUCO (sec. 4928.08(E)). Under the bill, a person acts "knowingly," regardless of the person's purpose, when the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist. (Sec. 4928.01(A)(14).) This is the same standard as applies under the Ohio Criminal Code (sec. 2901.22(B), not in the bill).

***Consent to service of process***

(sec. 4928.09)

The bill imposes a "consent-to-service-of-process" requirement to ensure that persons supplying competitive services in Ohio may be sued in Ohio courts

(sec. 4928.09). In recognition that most such suppliers will already have met the requirement due to similar requirements elsewhere in Ohio law, the bill exempts the following from its consent-to-service-of-process requirement: a corporation incorporated under the Ohio law that has appointed a statutory agent pursuant to existing General Corporation or Nonprofit Corporation Law; a foreign corporation licensed to transact business in Ohio that has appointed a designated agent pursuant to existing Foreign Corporation Law; and any other person that is a resident of Ohio or that files consent to service of process and designates a statutory agent pursuant to other Ohio law (sec. 4928.09(C)).

Specifically, the bill prohibits any person from operating in Ohio as an electric utility, an electric services company, or a billing and collection agent on and after the starting date of competitive retail electric service unless that person first does both of the following:

(1) Consents irrevocably to the jurisdiction of Ohio courts and service of process in Ohio, including, without limitation, service of summonses and subpoenas, for any civil or criminal proceeding arising out of or relating to such operation, by providing that irrevocable consent in accordance with the bill;

(2) Designates an agent authorized to receive that service of process, by filing with the PUCO a document designating that agent. (Sec. 4928.09(A)(1).)

The bill further prohibits a person from continuing to operate as such an electric utility, electric services company, or billing and collection agent unless that person continues to consent to such jurisdiction and service of process in Ohio and continues to designate an agent as provided under the bill, by refiling the appropriate documents in accordance with the bill or, as applicable, the appropriate amended documents. Such refiling must occur during the month of December of every fourth year after the initial filing of a document under the bill. (Sec. 4928.09(A)(2).)

If the address of the person filing such a document changes, or if a person's agent or the address of the agent changes, from that listed on the most recently filed of such documents, the person must file an amended document containing the new information (sec. 4928.09(A)(3)).

The requisite consent and designation must be in writing, on forms prescribed by the PUCO. The original of each such document or amended document must be legible and must be filed with the PUCO, with a copy filed with the OCC and with the Attorney General's Office. (Sec. 4928.09(A)(4).)

The bill states that a person who enters Ohio pursuant to a summons, subpoena, or other form of process authorized by the bill is not subject to arrest or service of process, whether civil or criminal, in connection with other matters that arose before the person's entrance into Ohio pursuant to such summons, subpoena, or other form of process (sec. 4928.09(B)).

***Minimum service requirements for competitive services of certified suppliers***

(sec. 4928.10)

The bill requires the PUCO, for the protection of Ohio consumers, to adopt rules under the bill's general rule-making authority (see "***Rule-making and enforcement authority***," above) specifying the necessary minimum service requirements, on or after the starting date of competitive retail electric service, of an electric utility, electric services company, electric cooperative, or governmental aggregator subject to certification under the bill regarding the provision directly or through its billing and collection agent of competitive retail electric services for which it is subject to certification. The rules must include a prohibition against unfair, deceptive, and unconscionable acts and practices in the marketing, solicitation, and sale of such a competitive retail electric service and in the administration of any contract for the service. The rules also must include additional consumer protections concerning all of the following:

(1) Contract disclosure. The rules must include requirements that an electric utility, electric services company, electric cooperative, or governmental aggregator subject to certification under the bill does both of the following:

(a) Provides consumers with adequate, accurate, and understandable pricing and terms and conditions of service, including any switching fees, and with a document containing the terms and conditions of pricing and service before the consumer enters into the contract for service;

(b) Discloses the conditions under which a customer may rescind a contract without penalty. (Sec. 4928.10(A).)

(2) Service termination. The rules must include disclosure of the terms identifying how customers may switch or terminate service, including any required notice and any penalties. (Sec. 4928.10(B).)

(3) Minimum content of customer bills. The rules must include all of the following requirements:

(a) Uniform price disclosure and disclosures of total billing units for the billing period and historical annual usage;

(b) To the maximum extent practicable, separate listing of each service component to enable a customer to recalculate its bill for accuracy;

(c) Identification of the supplier of each service;

(d) Statement of where and how payment may be made and provision of a toll-free or local customer assistance and complaint number for the electric utility, electric services company, electric cooperative, or governmental aggregator, as well as a consumer assistance telephone number or numbers for state agencies, such as the PUCO, OCC, and the Attorney General's Office, with the available hours noted. (Sec. 4928.10(C).)

(4) Disconnection and service termination, including requirements with respect to master-metered buildings. The rules must include policies and procedures that are consistent with existing law on the termination of residential electric service (secs. 4933.121 and 4933.122) and the PUCO's rules adopted under that law, and that provide for all of the following:

(a) Coordination between suppliers for the purpose of maintaining service;

(b) The allocation of partial payments between suppliers when service components are jointly billed;

(c) A prohibition against blocking, or authorizing the blocking of, customer access to a noncompetitive retail electric service when a customer is delinquent in payments to the electric utility or electric services company for a competitive retail electric service;

(d) A prohibition against switching, or authorizing the switching of, a customer's supplier of competitive retail electric service without the prior consent of the customer in accordance with appropriate confirmation practices, which may include independent, third-party verification procedures;

(e) A requirement of disclosure of the conditions under which a customer may rescind a decision to switch its supplier without penalty;

(f) Specification of any required notice and any penalty for early termination of contract. (Sec. 4928.10(D).)

(5) Minimum service quality, safety, and reliability. However, service quality, safety, and reliability requirements for electric generation service must be determined primarily through market expectations and contractual relationships. (Sec. 4928.10(E).)

(6) Generation resource mix and environmental characteristics of power supplies. The rules must include requirements for determination of the approximate generation resource mix and environmental characteristics of the power supplies and disclosure to the customer prior to the customer entering into a contract to purchase and four times per year under the contract. The rules also must require that the electric utility, electric services company, electric cooperative, or governmental aggregator provide, or cause its billing and collection agent to provide, a customer with information comparing the projected, with the actual and verifiable, resource mix and environmental characteristics. This disclosure must occur not less than annually or not less than once during the contract period if the contract period is less than one year, and prior to any renewal of a contract. (Sec. 4928.10(F).)

(7) Customer information. The rules must include requirements that the electric utility, electric services company, electric cooperative, or governmental aggregator make generic customer load pattern information available to other electric light companies on a comparable and nondiscriminatory basis, and make customer-specific information available to other electric light companies on a comparable and nondiscriminatory basis unless, as to customer-specific information, the customer objects. The rules must ensure that each such utility, company, cooperative, or aggregator provide clear and frequent notice to its customers of the right to object and of applicable procedures. The rules also must establish the exact language that must be used in all such notices. (Sec. 4928.10(G).)

***Minimum service requirements for noncompetitive services of an electric utility***

(sec. 4928.11)

The bill requires the PUCO, for the protection of Ohio consumers, to adopt rules under the bill's rule-making provisions that specify minimum service quality, safety, and reliability requirements for noncompetitive retail electric services supplied by an electric utility in Ohio, to the extent such authority is not preempted by federal law. The rules must include prescriptive standards for inspection, maintenance, repair, and replacement of the transmission and distribution systems of electric utilities; must apply to each substantial type of transmission or distribution equipment or facility; must establish uniform interconnection standards to ensure transmission and distribution system safety and reliability and otherwise provide for high quality, safe, and reliable electric service; and must include standards for operation, reliability, and safety during periods of emergency and disaster.

The rules regarding interconnection must seek to prevent barriers to new technology and not make compliance unduly burdensome or expensive. When questions arise about specific equipment to meet interconnection standards, the PUCO must initiate public proceedings to solicit comments from all interested parties. Additionally, the rules must include nondiscriminatory metering standards. (Sec. 4928.11.)

The PUCO must require each electric utility to report annually to the PUCO on and after the starting date of competitive retail electric service, regarding its compliance with the rules. The PUCO must make the filed reports available to the public. The PUCO also must review a utility's report to determine the utility's compliance and may act pursuant to the bill to enforce compliance. These duties are to be carried out periodically as determined by PUCO rule adopted under the bill's rule-making provisions, in a proceeding initiated under the PUCO's complaint authority. (Sec. 4928.11.)

***Universal service***

(sec. 4928.14)

After its market development period, an electric distribution utility in Ohio must provide consumers, on a comparable and nondiscriminatory basis within its certified territory, a standard service offer of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service. The offer must be filed with the PUCO under an existing law pertaining to the initiation of rate-making proceedings (sec. 4909.18). (Sec. 4928.14(A).)

After that market development period, the failure of a supplier to provide retail electric generation service to customers within the certified territory of the electric distribution utility will result in the supplier's customers defaulting to the utility's standard service offer until the customer chooses an alternative supplier. The bill requires reasonable notice prior to any such default. A supplier is deemed to have failed to provide service if the PUCO finds, after reasonable notice and opportunity for hearing, that any of the following conditions is met:

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

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

(3) The supplier is unable to provide delivery to transmission or distribution facilities for such period of time as may be reasonably specified by PUCO rule adopted under the bill's rule-making provisions.

(4) The supplier's certification has been suspended, conditionally rescinded, or rescinded by the PUCO in accordance with the bill. (Sec. 4928.14(B).)

***Low-income customer assistance***

(secs. 4928.01(A)(15) and (16), 4928.51 to 4928.57, 5117.01 to 5117.05, 5117.07 to 5117.10, and 5117.12; Section 7)

The bill defines the "low-income customer assistance programs" as consisting of the following four programs: the Percentage of Income Payment Plan Program (PIPP) as prescribed in current PUCO rules (Rules 4901:1-18-02(B) to (G) and 4901:1-18-04(B) of the Ohio Administrative Code); the Home Energy Assistance Program as prescribed in existing law (sec. 5117.21) and in Executive Order 97-1023-V; the Home Weatherization Assistance Program as prescribed in existing law (secs. 122.011(A)(6) and 122.02); the Ohio Energy Credit Program as prescribed in existing law (secs. 5117.01 to 5117.05, 5117.07 to 5117.12, and 5117.99); and the Targeted Energy Efficiency and Weatherization Program established under the bill as described below; or any such program as modified pursuant to authority granted under the bill. (Sec. 4928.01(A)(16).) The bill also authorizes a consumer education program for low-income consumers, as described below (sec. 4928.56).

***Targeted energy efficiency and weatherization program***

The bill requires the Director of Development to establish an energy efficiency and weatherization program targeted to high-cost, high-volume use structures occupied by customers eligible for PIPP assistance, with the goal of reducing the energy bills of the occupants. Acceptance of energy efficiency and weatherization services provided by the targeted program must be a condition for the eligibility of any such customer to participate in PIPP. Any difference between universal service fund revenues and any savings in PIPP costs as a result of competitive auctioning by the Director as described below in "***Low-income customer aggregation***" must be reinvested in the targeted energy efficiency and weatherization program. (Sec. 4928.55.)

***Consumer education for low-income customers***

The bill authorizes the Director of Development to adopt rules in accordance with the Ohio Administrative Procedure Act (Chapter 119.)

establishing an education program for consumers eligible to participate in the low-income customer assistance programs. The education program must provide information to consumers regarding energy efficiency and energy conservation. (Sec. 4928.56.)

***Program consolidation***

The bill authorizes the Director of Development, beginning on July 1, 2000, to administer the low-income customer assistance programs. For that purpose, the Tax Commissioner and the PUCO must cooperate with and provide such assistance as the Director requires for administration of the low-income customer assistance programs. The Director must consolidate the administration of and redesign and coordinate the operations of those programs to provide, to the maximum extent possible, for efficient program administration and a one-stop application and eligibility determination process at the local level for consumers. (Sec. 4928.53(A).)

Additionally, not later than March 1, 2000, the Director, in accordance with the Ohio Administrative Procedure Act (Chapter 119.), must adopt rules to carry out the bill's low-income assistance provisions and ensure the effective and efficient administration and operation of the low-income customer assistance programs. The rules must take effect on July 1, 2000. (Sec. 4928.53(B)(1).)

The Director's authority to adopt rules for the Ohio Energy Credit Program must be subject to such rule-making authority as is conferred on the Director by the bill's amendment of existing law establishing the program (secs. 5117.01 to 5117.05, 5117.07 to 5117.12, and 5117.99) as amended by the bill, except that the rules must incorporate the substance of those laws as they exist on the bill's effective date (sec. 4928.53(B)(2); Section 7). Currently, this program is administered solely by the Tax Commissioner.

The Director's authority to adopt rules for PIPP includes authority to adopt rules prescribing criteria for customer eligibility and policies regarding payment and crediting arrangements and responsibilities, procedures for verifying customer eligibility, procedures for disbursing public funds to suppliers and otherwise administering funds under the Director's jurisdiction, and requirements as to timely remittances of program revenues. However, the Director's authority as to PIPP excludes authority to prescribe service disconnection and customer billing policies and procedures and to address complaints against suppliers; this excluded authority will be exercised by the PUCO, in coordination with the Director. Rules initially adopted by the Director for PIPP must incorporate the eligibility criteria and payment arrangement and responsibility policies set forth in current PUCO rules (Rule 4901:1-18-04(B) of the Ohio Administrative Code). (Sec. 4928.53(B)(3).)

The bill requires the Director, on and after the starting date of competitive retail electric service, to provide a report every two years until 2008 to the standing committees of the General Assembly that deal with public utility matters, regarding the effectiveness of the low-income customer assistance programs and the consumer education program (sec. 4928.57).

***Program funding***

The bill establishes in the state treasury a universal service fund, into which must be deposited all universal service revenues remitted to the Director of Development, for the exclusive purposes of providing funding for the low-income customer assistance programs and for the consumer education program and paying the administrative costs of those programs. Interest on the fund must be credited to the fund. Disbursements from the fund must be made to any supplier that provides a competitive retail electric service to a customer approved to receive assistance under a specified low-income customer assistance program and to any authorized provider of weatherization or energy efficiency service to an approved customer. (Sec. 4928.51(A).)

Universal service revenues include all of the following:

(1) Revenues remitted to the Director after collection by an electric distribution utility beginning on July 1, 2000, attributable to the collection from customers of the universal service rider described below;

(2) Revenues remitted to the Director that have been collected by an electric distribution utility beginning on July 1, 2000, as customer payments under PIPP, including revenues remitted as described below;

(3) Adequate revenues remitted to the Director after collection by a municipal electric utility or electric cooperative in Ohio, not earlier than July 1, 2000, upon the utility's or cooperative's decision to participate in the low-income customer assistance programs. (Sec. 4928.51(B).)

Further, the bill requires an electric distribution utility, beginning on July 1, 2000, to transfer to the Director the right to collect all arrearage payments of a customer for PIPP debt owed to the utility on the day before that date, or retain the right to collect that debt but remit to the Director all program revenues received by the utility for that customer (sec. 4928.51(C)). The PUCO must complete an audit of each utility by July 1, 2000, to establish a baseline for the PIPP component of the low-income programs (sec. 4928.51(D)).

The bill requires that, beginning on July 1, 2000, the universal service rider replaces the current PIPP rider and any amount in utility rates for funding low-income energy efficiency programs. The universal service rider is a rider on retail electric distribution service rates as such rates are determined by the PUCO pursuant to the bill. The universal service rider for the first five years after the starting date of competitive retail electric service must be the sum of all of the following:

(1) The level of the current PIPP rider;

(2) An amount equal to the level of funding for low-income customer energy efficiency programs provided through electric utility rates in effect on the bill's effective date;

(3) Any additional amount necessary and sufficient to fund through the universal service rider the administrative costs of the low-income customer assistance programs and the consumer education program. (Sec. 4928.52(A).)

For the purpose of (2) above, the bill defines "level of funding for low-income customer energy efficiency programs provided through electric utility rates" as the level of funds committed by an electric utility pursuant to a PUCO order issued under existing Public Utility Law (Chapters 4905. and 4909.) and in effect on the date before the bill's effective date, for the purpose of improving the energy efficiency of housing for the utility's low-income customers. The term excludes the level of any such funds committed to a specific nonprofit organization or organizations pursuant to a stipulation or contract. (Sec. 4928.01(A)(15).)

If, during or after the first five years of the low-income customer assistance programs, the Director, after consultation with the Public Benefits Advisory Board described below, determines that revenues in the universal service fund and revenues from federal or other sources of funding for those programs, including general revenue fund appropriations for the Ohio Energy Credit Program, will be insufficient to cover the funding and administrative costs of the programs, the Director must file a petition with the PUCO for an increase in the universal service rider. The PUCO, after reasonable notice and opportunity for hearing, may adjust the universal service rider by the minimum amount necessary to provide the additional revenues. The PUCO must not decrease the universal service rider without the approval of the Director, after consultation by the Director with the Advisory Board. (Sec. 4928.52(B).)

The bill requires that the universal service rider must be set in such a manner so as not to shift among the customer classes of electric distribution

utilities the costs of funding low-income customer assistance programs (sec. 4928.52(C)).

***Low-income customer aggregation***

The bill authorizes the Director, beginning on the starting date of competitive retail electric service, to aggregate PIPP customers for the purpose of competitively auctioning the supply of competitive retail electric generation service to bidders certified under the bill and further qualified under eligibility criteria the Director prescribes by rule after consultation with the PUCO and electric light companies. The objectives of the auction must be to provide reliable retail electric generation service at the lowest cost to the customers, based on selection criteria that the winning bid provide the lowest cost and best value to customers. The rules adopted by the Director must ensure a fair and unbiased auction process and the performance of any winning bidder. (Sec. 4928.54.)

***Public Benefits Advisory Board***

(sec. 4928.58)

The bill creates the Public Benefits Advisory Board, which has the purpose of ensuring that energy services be provided to low-income consumers in an affordable manner consistent with the state policy specified in the bill (see "***State policy regarding customer choice and industry restructuring***," above). The Advisory Board must consist of 21 members as follows: the Director of Development, the Chairperson of the PUCO, the Consumers' Counsel, and the Director of the Air Quality Development Authority each serving ex officio and represented by a designee at the official's discretion; two members of the House of Representatives appointed by the Speaker of the House of Representatives, neither of the same political party, and two members of the Senate appointed by the President of the Senate, neither of the same political party; and 13 members appointed by the Governor with the advice and consent of the Senate, consisting of one representative of suppliers of competitive retail electric service; one representative of the residential class of electric utility customers; one representative of the industrial class of electric utility customers; one representative of the commercial class of electric utility customers; one representative of agricultural or rural electric customers of an electric utility; two customers receiving assistance under one or more of the low-income customer assistance programs, to represent customers eligible for any such assistance, including senior citizens; one representative of the general public; one representative of local in-take agencies; one representative of a community-based organization serving low-income customers; one representative of environmental protection interests; one representative of lending institutions; and one person

considered an expert in energy efficiency or renewables technology. Initial appointments must be made not later than November 1, 1999. (Sec. 4928.58(A).)

Initial terms of six of the appointed members end on June 30, 2003, and initial terms of the remaining seven appointed members end on June 30, 2004. Thereafter, terms of appointed members are for three years, with each term ending on the same day of the same month as the term it succeeds. Each member holds office from the date of the member's appointment until the end of the term for which the member was appointed. Members may be reappointed.

Vacancies must be filled in the manner provided for original appointments. Any member appointed to fill a vacancy occurring prior to the expiration date of the term for which the member's predecessor was appointed holds office as a member for the remainder of that term. A member continues in office after the expiration date of the member's term until the member's successor takes office or until a period of 60 days has elapsed, whichever occurs first. (Sec. 4928.58(B).)

Board members are reimbursed for their actual and necessary expenses incurred in the performance of board duties. These reimbursements constitute administrative costs of the low-income customer assistance programs or Energy Efficiency Revolving Loan Program, as applicable (see "***Energy Efficiency Revolving Loan Program***," below). (Sec. 4928.58(C).)

The Advisory Board must select a chairperson from among its members. Only board members appointed by the Governor with the advice and consent of the Senate are voting members of the board; each has one vote in all deliberations of the board. A majority of the voting members constitute a quorum. (Sec. 4928.58(D).)

The duties of the Advisory Board are to advise the Director in the administration of the universal service fund and the low-income customer assistance programs and advise the Director on the Director's recommendation to the PUCO regarding the appropriate level of the universal service rider (sec. 4928.58(E)). Additionally, the Board must advise the Director on the administration of the Energy Efficiency Revolving Loan Program and the Program fund.

The bill further provides that the Advisory Board is not an agency for purposes of Ohio law regarding the sunsetting of agencies (sec. 101.84(A) and (B)) (sec. 4928.58(F)).

***Consumer education by state agencies***

(sec. 4928.19)

In addition to education of low-income customers by the Department of Development (see "***Consumer education for low-income customers***," above), the PUCO and OCC, as part of their ongoing consumer education efforts, must engage in cooperative agency efforts to educate Ohio consumers regarding electric industry restructuring under the bill (sec. 4928.19). The bill also provides for consumer education by electric utilities during the market development period (see "***Consumer education plan of an electric utility***," below).

## ENVIRONMENTAL PROVISIONS

In addition to the minimum service requirements regarding the disclosure of the generation resource mix and environmental characteristics of power supplies (see "***Minimum service requirements for competitive services of certified suppliers***," above), the bill imposes duties with respect to funds for nuclear decommissioning and establishes the Energy Efficiency Revolving Loan Program.

***Nuclear decommissioning***

(sec. 4928.13)

The bill requires each electric utility that owns nuclear generation facilities in Ohio to demonstrate compliance with decommissioning requirements of the Nuclear Regulatory Commission and the PUCO and demonstrate adequate financing mechanisms to fund facility decommissioning. This is to be done through a periodic filing with the PUCO in such form as the PUCO must prescribe by rule adopted under the bill's rule-making provisions. (Sec. 4928.13.)

***Energy Efficiency Revolving Loan Program***

(secs. 4928.01(A)(23) and 4928.61 to 4928.63)

***Program authority***

The bill creates the Energy Efficiency Revolving Loan Program beginning on the starting date of competitive retail electric service, to be administered by the Director of Development. Under the Program, the Director may authorize the use of moneys in the Energy Efficiency Revolving Loan Fund, described below, for financial assistance for projects in Ohio (sec. 4928.62). "Project" is defined as any real or personal property connected with all or part of an industrial, distribution, commercial, or research facility, not-for-profit facility, or residence that is to be

acquired, constructed, reconstructed, enlarged, improved, furnished, or equipped, or any combination of those activities, with aid furnished pursuant to the Energy Efficiency Revolving Loan Program for the purposes of not-for-profit, industrial, commercial, distribution, residential, and research development in this state. "Project" includes, but is not limited to, any small-scale renewables project. (Sec. 4928.01(A)(23).)

To the extent feasible given approved applications for assistance, program assistance must be distributed among the certified territories of electric distribution utilities and participating electric cooperatives, and among the service areas of participating municipal electric utilities, in amounts proportionate to the remittances of each utility and cooperative to the Fund. The assistance must be made or provided through approved lending institutions in the form of loans at below market rates, loan guarantees for such loans, and linked deposits for such loans. The Director must not authorize financial assistance under the Program unless the Director first determines all of the following:

(1) The project will include an investment in products, technologies, or services, including energy efficiency for low-income housing, for residential, small commercial and small industrial business, local government, educational institution, nonprofit entity, or agricultural customers of an electric distribution utility or a participating municipal electric utility or electric cooperative in Ohio.

(2) The project will improve energy efficiency in a cost-efficient manner by using both the most appropriate national, federal, or other standards for products as determined by the Director, and the best practices for use of technology, products, or services in the context of the total facility or building.

(3) The project will benefit the economic and environmental welfare of Ohio's citizens.

(4) The receipt of financial assistance is a major factor in the applicant's decision to proceed with or invest in the project. (Sec. 4928.62(A).)

In carrying out the bill, the Director may do all of the following for the purpose of the Energy Efficiency Revolving Loan Program:

(1) Acquire in the name of the Director any property of any kind or character, by purchase, purchase at foreclosure, or exchange, on such terms and in such manner as the Director considers proper;

(2) Make and enter into all contracts and agreements necessary or incidental to the performance of the Director's duties and the exercise of the Director's powers under the bill;

(3) Employ or enter into contracts with financial consultants, marketing consultants, consulting engineers, architects, managers, construction experts, attorneys, technical monitors, energy evaluators, or other employees or agents as the Director considers necessary, and fix their compensation;

(4) Adopt rules prescribing the application procedures for financial assistance under the Program; the terms and conditions of any loans, loan guarantees, linked deposits, and contracts; criteria pertaining to the eligibility of participating lending institutions; and any other matters necessary for the implementation of the Program;

(5) Do all things necessary and appropriate for the operation of the Program (sec. 4928.62(B)).

The bill provides that financial statements, financial data, and trade secrets submitted to or received by the Director from an applicant or recipient of financial assistance under the Program, or any information taken from those statements, data, or trade secrets for any purpose, are not public records for the purpose of existing Public Records Law (sec. 4928.62(C)).

Further, the bill expressly states that the Director and the Public Benefits Advisory Board created by the bill, as described below, have the powers and duties provided in the bill regarding the Program, in order to promote the welfare of the people of Ohio, to stabilize the economy, to assist in the improvement and development within Ohio of not-for-profit entity, industrial, commercial, distribution, residential, and research buildings and activities required for the people of Ohio, to improve the economic welfare of the people of Ohio, and also to assist in the improvement of air, water, or thermal pollution control facilities and solid waste disposal facilities. Additionally, the bill expressly provides that the accomplishment of those purposes is essential so that the people of Ohio may maintain their present high standards in comparison with the people of other states and so that opportunities for improving the economic welfare of the people of Ohio, for improving the housing of residents, and for favorable markets for the products of Ohio's natural resources, agriculture, and manufacturing are improved; and that it is necessary for Ohio to establish the Energy Efficiency Revolving Loan Program and Program Fund and the Public Benefits Advisory Board, and to vest the Director and the Board with the powers and duties provided under the bill. (Sec. 4928.63.)

The bill requires the Director, on and after the starting date of competitive retail electric service, to provide a report every two years until 2008 to the standing committees of the General Assembly that deal with public utility matters, regarding the effectiveness of the Energy Efficiency Revolving Loan Program (sec. 4928.57).

***Program funding***

The bill establishes in the state treasury the Energy Efficiency Revolving Loan Fund, into which must be deposited all energy efficiency revenues remitted to the Director of Development under the bill, for the exclusive purposes of funding the Energy Efficiency Revolving Loan Program and paying the program's administrative costs. Interest on the Fund must be credited to the Fund. (Sec. 4928.61(A).)

Energy efficiency revenues include all of the following:

(1) Revenues remitted to the Director after collection by each electric distribution utility in Ohio of a temporary rider on retail electric distribution service rates as such rates are determined by the PUCO pursuant to the bill. The rider must be a uniform amount statewide, determined by the Director, after consultation with the Public Benefits Advisory Board. The amount must be determined by dividing an aggregate revenue target for a given year, as determined by the Director after consultation with the Board, by the number of customers of electric distribution utilities in Ohio in the prior year. That aggregate revenue target cannot exceed more than $15 million in any year through 2005, or more than $5 million in any year after 2005. The rider must be imposed beginning on the starting date of competitive retail electric service and must terminate at the end of ten years following that starting date or until the Energy Efficiency Revolving Loan Fund, including interest, reaches $100 million, whichever is first.

(2) Revenues from Energy Efficiency Revolving Loan Program loan repayments and payments from Program loan collections;

(3) Adequate revenues remitted to the Director after collection by a municipal electric utility or electric cooperative in Ohio not earlier than the starting date of competitive retail electric service upon the utility's or cooperative's decision to participate in the Energy Efficiency Revolving Loan Program. (Sec. 4928.61(B).)

The bill requires each electric distribution utility in Ohio to remit to the Director on a quarterly basis the revenues described above. These remittances must begin with the first quarter following the starting date of competitive retail

electric service. Each participating electric cooperative and participating municipal electric utility also must remit to the Director on a quarterly basis the revenues described above. These remittances must begin with the first quarter following the participating cooperative's or utility's decision to participate. All such electric utility, electric cooperative, or municipal utility remittances must continue only until the end of ten years following that starting date or until the Energy Efficiency Revolving Loan Fund, including interest, reaches $100 million, whichever is first. (Sec. 4928.61(C).)

## TRANSITIONAL PROVISIONS

The bill contains several transitional mechanisms that pertain to the adjustment of customers, utility employees, and incumbent suppliers to a restructured market. These mechanisms consist of employee assistance, consumer education by utilities, and transition revenues granted under a transition planning process the bill establishes, as follows.

### ***Transition plan filing***

(sec. 4928.31)

The bill requires every electric utility supplying retail electric service in Ohio, not later than 90 days after the bill's effective date, to file on that date with the PUCO a plan for the utility's provision of retail electric service in Ohio during the market development period. This transition plan must be in such form as the PUCO must prescribe by rule adopted under the bill's rule-making provisions, and must include all of the following:

(1) A rate unbundling plan that (a) specifies, consistent with the bill's unbundling requirements and any rules adopted by the PUCO under the bill's rule-making provisions, the unbundled components for electric generation, transmission, and distribution service and such other unbundled service components as the PUCO requires, to be charged by the utility beginning on the starting date of competitive retail electric service, and (b) includes information the PUCO requires to fix and determine those components;

(2) A corporate separation plan consistent with the bill's corporation separation requirements (see "***Corporate separation***," above) and any rules adopted by the PUCO under the bill's rule-making provisions;

(3) Such plan or plans as the PUCO requires to address operational support systems and any other technical implementation issues pertaining to competitive

retail electric service consistent with any rules adopted by the PUCO under the bill's rule-making provisions;

(4) A plan for providing severance, retraining, early retirement, retention, outplacement, and other assistance for the utility's employees whose employment is affected by electric industry restructuring under the bill;

(5) A consumer education plan consistent with the bill's transitional provisions (see "***Consumer education plan of an electric utility***," below) and any rules adopted by the PUCO. (Sec. 4928.31(A)(1) to (5).)

Additionally, a transition plan may include an application for the opportunity to receive transition revenues under the bill, which application must be consistent with the bill and any rules adopted by the PUCO.

The transition plan also may include a plan for the independent operation of the utility's transmission facilities consistent with the bill's independent transmission requirements (see "***Independent transmission***," above and "***Transition plan approval***," below) and any rules adopted by the PUCO under the bill's rule-making provisions.

The PUCO may reject and require refiling, in whole or in part, of any substantially inadequate transition plan. (Sec. 4928.31(A).)

The electric utility must provide public notice of its transition plan filing, in a form and manner that the PUCO must prescribe by rule. However, the adoption of rules regarding that public notice, regarding the form of the transition plan, and regarding procedures for expedited discovery under the bill as described below, are not subject to existing Ohio law requiring review of "111" rules by the Joint Committee on Agency Rule Review (sec. 111.15). (Sec. 4928.31(B).)

***Transition plan approval***

(sec. 4928.34)

The bill prohibits the PUCO from approving or prescribing a transition plan under the bill unless the PUCO first makes all of the following determinations:

(1) The unbundled components for the electric transmission component of retail electric service, as specified in the utility's rate unbundling plan, equal the tariff rates determined by the FERC that are in effect on the date of the approval of the transition plan, as each such rate is determined applicable to each particular customer class by the PUCO.

(2) The unbundled components for retail electric distribution service in the rate unbundling plan equal the difference between the costs attributable to the utility's transmission and distribution rates and charges under its schedule of rates and charges in effect on the bill's effective date, as based on the record of the utility's most recent rate proceeding establishing the schedule, less the tariff rates for electric transmission service determined by FERC.

(3) All other unbundled components required by the PUCO in the rate unbundling plan equal the costs attributable to the particular service as reflected in the utility's schedule of rates and charges in effect on the bill's effective date.

(4) The unbundled components for retail electric generation service in the rate unbundling plan equal the residual amount remaining after the determination of the transmission, distribution, and other unbundled components.

(5) All unbundled components in the rate unbundling plan have been adjusted to reflect any rate reductions under rate settlements in effect on the bill's effective date. However, all earnings obligations, restrictions, or caps imposed on an electric utility in a PUCO order prior to the bill's effective date are void.

(6) Subject to (5) above, the total of all unbundled components in the rate unbundling plan are capped and do not exceed the total of all rates and charges in effect under the applicable bundled schedule of the electric utility in effect on the day before the bill's effective date, including the transition charge determined under the bill, any changes in the taxation of electric utilities and retail electric service under the bill, and the universal service rider and temporary rider authorized by the bill (see "***Low-income customer assistance***" and "***Energy Efficiency Revolving Loan Program***," above). The rate cap applicable to a customer receiving electric service pursuant to an arrangement approved by the PUCO under existing law (sec. 4905.31) is the total of all rates and charges in effect under the contract.

(7) The rate unbundling plan complies with any rules adopted by the PUCO under the bill's rule-making provisions.

(8) The corporate separation plan complies with the bill's provisions regarding corporate separation (see "***Corporate separation***," above) and any rules adopted by the PUCO.

(9) Any plan or plans the PUCO requires to address operational support systems and any other technical implementation issues pertaining to competitive retail electric service comply with any rules adopted by the PUCO.

(10) The utility's employee assistance plan sufficiently provides severance, retraining, early retirement, retention, outplacement, and other assistance for the utility's employees affected by industry restructuring under the bill.

(11) The consumer education plan complies with the bill's provision regarding such plan and any rules adopted by the PUCO.

(12) The utility's approved transition revenues are the allowable transition costs of the utility as such costs are determined by the PUCO under the bill (see "***Transition revenues for incumbent electric utilities***," below), and transition charges for the customer classes of the utility are the charges determined pursuant to the bill.

(13) Any independent transmission plan included in the transition plan reasonably complies with the bill's independent transmission requirements (see "***Independent transmission***," above) and any rules adopted by the PUCO, unless the PUCO, for good cause shown, authorizes the utility to defer compliance until an independent transmission order is issued under the bill (see "***Changes to a transition plan***," below). The bill requires that a transition plan approved by the PUCO but not containing an approved independent transmission plan must contain the express condition that the utility will comply with the independent transmission order.

(14) The utility is in compliance with the bill's requirements regarding the state policy, pricing of services, supplier certification, minimum service requirements, and other requirements and any related rules or orders of the PUCO adopted or issued under the bill. (Sec. 4928.34(A)(1) to (14).)

Further, the bill provides that, subject to the bill's divestiture authority (see "***Corporate separation***," above), if the PUCO finds that any part of the transition plan would constitute an abandonment under existing facility abandonment law (secs. 4905.20 and 4905.21), the PUCO must not approve that part of the transition plan unless it makes the finding required for approval of an abandonment application under that law. The abandonment law otherwise will not apply to a transition plan. (Sec. 4928.34(B).)

***Transition plan approval procedures***

(secs. 4928.32 and 4928.33)

Under the bill, the PUCO must establish reasonable procedures for expedited discovery in any proceeding initiated to consider a transition plan filed with the PUCO (sec. 4928.32(A)).

Not later than 45 days after the date on which an electric utility files a transition plan, any person having a real and substantial interest in the transition plan may file with the PUCO preliminary objections to the transition plan, which objections must identify with specificity issues pertaining to any aspect of the transition plan. Any such person may propose specific responses to those issues. The PUCO must address those objections and responses in its final order.

In addition, not later than 90 days after the plan's filing, the PUCO staff must file with the PUCO a report of its recommendations with respect to the plan. Prior to PUCO approval of the plan, the PUCO must afford a hearing upon those aspects of the plan that the PUCO determines reasonably require a hearing. (Sec. 4928.32(B).)

The PUCO must maintain a complete record of all proceedings relative to a transition plan and must issue and file, with the record of the case, findings of fact and written opinions setting forth the reasons for any modification to or its approval of a transition plan (sec. 4928.32(C)).

Not later than 275 days after the date an electric utility files a transition plan, but, in any event, not later than October 31, 2000, the PUCO must issue a final order approving the transition plan as filed or an order modifying and approving that plan. The order is subject to existing law regarding the effective date of a PUCO order (sec. 4903.15) and is subject to review and appeal under existing Public Utility Law (Chapter 4903.). (Sec. 4928.33(A).)

If the PUCO fails to issue, by October 31, 2000, a final order approving a transition plan, or such a final order has been enjoined in whole or in part pending appeal to a court, the PUCO must issue an interim order prescribing a transition plan, to have effect on an interim basis only. The interim order must contain the requisite plan components and must provide for the opportunity for transition revenue receipt if such an application were included in the utility's original transition plan filing. The interim order is subject to existing law regarding the effective date of PUCO orders (sec. 4903.15), but is not subject to review and appeal under existing Public Utility Law (Chapter 4903.).

An interim plan prescribed under the interim order must be effective for the electric utility beginning on the starting date of competitive retail electric service and must continue in effect until such time as any other replacement transition plan takes effect pursuant to a final PUCO order or resolution of an appeal. Any interim plan so prescribed must comply with the applicable provisions for transition plan approval. A final PUCO order must provide for a reconciliation of those amounts determined in the final order as compared to the interim amounts as determined under an interim plan. (Sec. 4928.33(B).)

The bill prohibits an electric utility required to file a transition plan under the bill from failing to implement a transition plan approved or prescribed for the utility by PUCO order. The bill also prohibits an electric utility from providing retail electric service in Ohio during the market development period except pursuant to such an approved or prescribed transition plan. (Sec. 4928.33(C).)

***Transition rate schedules***

(secs. 4928.16(A)(2), (B), (C), and (D) and 4928.35)

The bill requires an electric utility, upon approval of its transition plan, to file in accordance with existing filing law (sec. 4905.30) schedules containing the unbundled rate components set in the approved plan in accordance with the bill. The schedules must be in effect for the duration of the utility's market development period, must be subject to the rate cap specified in the bill, and must not be adjusted during that period by the PUCO except as otherwise authorized by the bill or federal law. (Sec. 4928.35(A).)

The bill also requires that efforts be made to reach agreements with electric utilities in matters of litigation regarding property valuation issues. Irrespective of those efforts, the unbundled components for an electric utility's retail electric generation service and distribution service are not subject to adjustment during the utility's market development period. However, the PUCO must order an equitable reduction in those components for all customer classes to reflect any refund a utility receives as a result of the resolution of utility personal property tax valuation litigation that is resolved on or after the bill's effective date and prior to the end of the market development period. Immediately upon the issuance of that order, the electric utility must file revised rate schedules under existing law regarding initiation of rate-making proceedings (sec. 4909.18) to effect the order. (Sec. 4928.35(B).)

The bill further requires that the schedule containing the unbundled distribution components must provide that electric distribution service under the schedule will be available to all retail electric service customers in the electric utility's certified territory and their suppliers on a nondiscriminatory and comparable basis on and after the starting date of competitive retail electric service. The schedule also must include an obligation to build distribution facilities when necessary to provide adequate distribution service, provided that a customer requesting that service may be required to pay all or part of the reasonable incremental cost of the new facilities, in accordance with rules, policy, precedents, or orders of the PUCO. (Sec. 4928.35(C).)

Additionally, during the market development period, an electric distribution utility must provide consumers on a comparable and nondiscriminatory basis within its certified territory a standard service offer of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service priced in accordance with the schedule containing the utility's unbundled generation service component. Immediately upon approval of its transition plan, the utility must file the standard service offer with the PUCO pursuant to existing law regarding initiation of rate-making proceedings (sec. 4909.18). During the market development period, the failure of a supplier to deliver retail electric generation service results in the supplier's customers, after reasonable notice, defaulting to that standard service offer until the customer chooses an alternative supplier. A supplier is deemed to have failed to deliver such service if any of the conditions specified in "***Universal service***," above is met. (Sec. 4928.35(D).)

The bill also provides that the PUCO has jurisdiction under existing complaint law (sec. 4905.26), upon complaint of any person or upon complaint or initiative of the PUCO on or after the starting date of competitive retail electric service, to determine whether an electric utility has violated or failed to comply with the provisions of the bill regarding transitional rate schedules or the transitional standard service offer or with any related rule or order adopted or issued under the bill. The PUCO's authority to enforce those provisions is the same authority described with respect to an electric utility in "***General enforcement authority***," above (sec. 4928.16(A)(2) and (B)). The OCC has the same authority to file complaints regarding such schedules or standard offers as it does to file complaints with respect to an electric utility, electric service company, municipal electric utility, or governmental aggregator, as described in "***General enforcement authority***," above (sec. 4928.16(C)(1) and (2)). In addition, the bill authorizes any party to seek treble damages under existing Public Utility Law (sec. 4905.61) for any violation of or failure to comply with a transition rate schedule or standard service offer (sec. 4928.16(D)).

***Changes to a transition plan***

(secs. 4928.12(E), 4928.35(E), (F), and (G))

Regarding changes to a transition plan, the bill requires that an amendment of a corporate separation plan contained in a transition plan approved by the PUCO must be filed and approved as a corporate separation plan pursuant to the bill's provisions regarding corporate separation (see "***Corporate separation***," above) (sec. 4928.35(E)).

Further, the bill states that any change to an electric utility's opportunity to receive transition revenues under an approved transition plan must be authorized only as provided in the bill's transition revenue provisions, as described below (sec. 4928.35(F)).

The bill requires the PUCO, by order, to require each electric utility whose approved transition plan did not include an independent transmission plan to be a member of, and transfer control of transmission facilities it owns or controls in Ohio to, one or more qualifying transmission entities, as described in the bill (see "***Independent transmission***," above), that are planned to be operational on and after December 31, 2005. The order may specify an earlier date on which the transmission entity must be planned to be operational if the PUCO considers it necessary to carry out the state policy specified in the bill (see "***State policy regarding customer choice and industry restructuring***," above) or to encourage effective competition in retail electric service in Ohio.

Upon the issuance of the order, each such utility must file with the PUCO a plan for such independent operation of its transmission facilities. The PUCO may reject and require refiling of any substantially inadequate plan.

After reasonable notice and opportunity for hearing, the PUCO must approve the plan upon a finding that it will result in the utility's compliance with the order, the bill, and any related PUCO rules. The approved independent transmission plan is then deemed a part of the utility's transition plan for purposes of the bill. (Sec. 4928.35(G).)

The bill also vests the PUCO with such authority to effect the independent transmission requirement of a transition plan as is described in "***Independent transmission***," above, if a qualifying transmission entity is not operational as contemplated under the bill (sec. 4928.12(E)).

***Enforcement of a transition plan***

(sec. 4928.36)

Under the bill, the PUCO has jurisdiction under existing complaint law (sec. 4905.26), upon complaint by any person or upon complaint or initiative of the PUCO on or after the starting date of competitive retail electric service, to determine whether an electric utility has failed to implement an approved transition plan in conformance with an approval order or in ongoing compliance with applicable provisions of the state policy specified in the bill. If, after reasonable notice and opportunity for hearing as provided in the complaint law, the PUCO determines that the utility has failed to so comply, the PUCO, in addition to any

other remedies provided by law, may use the first three general remedies and the two specific remedies described in "***Enforcement authority regarding corporate separation***," above. (Sec. 4928.36.)

***Transition revenues for incumbent electric utilities***

(secs. 4928.01(A)(24) and 4928.37 to 4928.40)

***General authority***

The bill expressly states that it provides an electric utility the opportunity to receive transition revenues that may assist it in making the transition to a fully competitive retail electric generation market. It further states that an electric utility for which transition revenues are approved pursuant to the bill must receive those revenues through both of the following mechanisms beginning on the starting date of competitive retail electric service and ending on the expiration date of its market development period as determined under the bill:

(1) Payment of unbundled rates for retail electric services by each customer that is supplied retail electric generation service during the market development period by the customer's electric distribution utility, which rates must be specified in schedules filed with the PUCO as required by the bill (see "***Transition rate schedules***," above).

(2) Payment of a nonbypassable and competitively neutral transition charge by each customer that is supplied retail electric generation service during the market development period by an entity other than the customer's electric distribution utility, as such transition charge is determined under the bill. (Sec. 4928.37(A)(1)(a) and (b).)

Under the bill, the transition charge is payable by each such retail electric distribution service customer in the certified territory of the electric utility for which the transition revenues are approved, and is billed on each kilowatt hour of electricity delivered by the electric distribution utility as registered on the customer's meter during the utility's market development period. The transition charge for each customer class must reflect the cost allocation to that class as provided under bundled rates and charges in effect on the day before the bill's effective date. Additionally, as reflected in the bill's transition revenue provisions, the transition charges must be structured to provide shopping incentives to customers sufficient to encourage the development of effective competition in the supply of retail electric generation service. To the extent possible, the level and structure of the transition charge must be designed to avoid revenue responsibility

shifts among the utility's customer classes and rate schedules. (Sec. 4928.37(A)(1)(b).)

However, the bill provides that the transition charge is not payable on electricity supplied by a municipal electric utility to a retail electric distribution service customer in the certified territory of the electric utility for which the transition revenues are approved, if the municipal electric utility provides electric transmission or distribution service, or both services, through transmission or distribution facilities singly or jointly owned or operated by the municipal electric utility (sec. 4928.37(A)(2)(a)).

Further, the transition charge is not payable on electricity supplied or consumed in Ohio except such electricity as is delivered to a retail customer by an electric distribution utility and is registered on the customer's meter during the utility's market development period (sec. 4928.37(A)(2)(b)).

The bill prohibits discounting of the transition charge by any party unless there is a determination by the Department of Development that such a discount is part of an approved economic development package involving state or local funding and is necessary for economic development to occur within Ohio instead of another state (sec. 4928.37(A)(3)).

Further, the bill states that nothing prevents payment of all or part of the transition charge by another party on a customer's behalf if that payment does not contravene the bill or existing law regarding nondiscriminatory pricing of services (secs. 4905.33 to 4905.35) (sec. 4928.37(A)(4)).

The bill also requires the electric utility to separately itemize and disclose, or cause its billing and collection agent to separately itemize and disclose, the transition charge on the customer's bill in accordance with reasonable specifications the PUCO must prescribe by rule (sec. 4928.37(B)).

Additionally, the bill states that an electric utility in Ohio may receive transition revenues pursuant to an approved transition plan beginning on the starting date of competitive retail electric service. Additionally, the bill states that, except as provided in existing law regarding nondiscriminatory pricing of services (secs. 4905.33 to 4905.35) and the bill, an electric utility that receives such transition revenues is wholly responsible for how to use those revenues and wholly responsible for whether it is in a competitive position after the market development period. The utility's receipt of transition revenues terminates at the end of the market development period. With the termination of that approved revenue source, the utility is fully on its own in the competitive market. The PUCO must

not authorize the receipt of transition revenues or any equivalent revenues by an electric utility except as expressly authorized under the bill. (Sec. 4928.38.)

***Determination of transition revenues***

The bill requires the PUCO, upon the filing of a transition revenue application with the transition plan of an electric utility, and by order, to determine the total allowable amount of the utility's transition costs to be received as transition revenues. That amount must be the just and reasonable transition costs of the utility, which costs the PUCO finds meet all of the following criteria:

(1) The costs were prudently incurred.

(2) The costs are a legitimate and verifiable result of electric restructuring under the bill.

(3) The costs are unrecoverable in a competitive market.

(4) The costs are directly assignable or allocable to retail electric generation service provided to Ohio consumers.

The bill expressly states that transition costs do not include the costs of employee assistance under a utility's approved employee assistance plan. (Sec. 4928.39.)

It also expressly provides that transition revenues provided under the bill include as transition costs the costs of consumer education by an electric utility pursuant to its approved consumer education plan (see "***Consumer education plan of an electric utility***," below) (sec. 4928.42).

Further, if requested in the application, the bill requires the PUCO to separately identify regulatory assets of the utility that are a part of total allowable amount of transition costs and separately identify that portion of a transition charge (see "***Determination of transition charges and market development periods***," below) that is allocable to those assets. The bill provides that the regulatory asset portion of the transition charge is subject to adjustment only prospectively and after the midpoint of the market development period. (Sec. 4928.39.) The bill defines "regulatory assets" as the unamortized net regulatory assets that are capitalized or deferred on the regulatory books of the electric utility, pursuant to a PUCO order or practice or pursuant to generally accepted accounting principles as a result of a prior PUCO rate-making decision, and that would otherwise have been charged to expense as incurred or would not have been capitalized or otherwise deferred for future regulatory consideration absent PUCO action. "Regulatory assets" includes, but is not limited to, all deferred demand-side management costs;

all deferred percentage of income payment plan amounts; post-in-service capitalized charges and assets recognized in connection with statement of Financial Accounting Standards No. 109 (Receivables From Customers For Income Taxes); future nuclear decommissioning costs and fuel disposal costs as those costs have been determined by the PUCO in the utility's most recent rate or accounting application proceeding addressing such costs; the undepreciated costs of safety and radiation control equipment on nuclear generating plants owned or leased by an electric utility; and fuel costs currently deferred pursuant to the terms of one or more settlement agreements approved by the PUCO. (Sec. 4928.01(A)(24).)

The bill provides that the electric utility has the burden of demonstrating allowable transition costs. It authorizes the PUCO to impose reasonable commitments upon the utility's collection of transition revenues to ensure that those revenues are used to eliminate the utility's allowable transition costs during the market development period and are not available for use by the utility to achieve an undue competitive advantage, or to impose an undue disadvantage, in the provision by the utility of regulated and unregulated products or services. (Sec. 4928.39).)

***Determination of transition charges and market development periods***

The bill requires the PUCO, upon determining allowable transition costs and by order, to establish the transition charge for each customer class of the electric utility and, to the extent possible, each rate schedule within each such customer class, with all such transition charges being collected as provided under the bill (see "***General authority***," above) during a market development period for the utility, ending on such date as the PUCO must reasonably prescribe.

The bill states that no market development period may end after December 31, 2005, unless the PUCO extends the utility's market development period for up to five years to the extent the PUCO determines necessary to reduce the level of the transition charges applicable to any rate schedule in order to encourage effective competition.

Factors the PUCO must consider in prescribing the expiration date of the utility's market development period and the transition charge for each customer class and rate schedule of the utility include, but are not limited to (1) the utility's total allowable amount of transition costs, (2) the relevant market price for the delivered supply of electricity to customers in that class, and to the extent possible, in each rate schedule as determined by the PUCO, and (3) such shopping incentives by customer class as are considered necessary to induce, at the minimum, a 20% load switching rate by customer class halfway through the

utility's market development period but not later than December 31, 2003. In no case may the PUCO establish a shopping incentive in an amount exceeding the unbundled generation component. Additionally, the PUCO may not establish a transition charge in an amount less than zero. (Sec. 4928.40(A).)

The bill authorizes the PUCO to conduct a periodic review, no more often than annually and, as it determines necessary, adjust the transition charges of the electric utility. Any such adjustment must be in accordance with the transition charge provisions of the bill described above and may reflect changes in the relevant market. (Sec. 4928.40(B).)

***Residential rate reduction***

(sec. 4928.40(C))

The bill requires the PUCO to issue an order approving a transition plan under the bill that contains a rate reduction for residential customers of the utility, provided the rate reduction does not increase the rates or transition cost responsibility of any other customer class of the utility. The rate reduction is to be in effect only for such portion of the utility's market development period as the PUCO must specify.

The rate reduction must be applied to the unbundled generation component established under the bill subject to the price cap for residential customers required under the bill (see "***Transition plan approval***," above). The amount of the reduction must be 5% of the amount of that unbundled generation component, but must not unduly discourage market entry by alternative suppliers seeking to serve the residential market in Ohio. After reasonable notice and opportunity for hearing, the PUCO may terminate the rate reduction by order upon a finding that the rate reduction is unduly discouraging market entry by such alternative suppliers. However, no such termination may occur before the midpoint of the utility's market development period. (Sec. 4928.40(C).)

***Resale of generation service***

(sec. 4928.40(D))

Beginning on the starting date of competitive retail electric service, the bill prohibits an electric utility in Ohio from prohibiting the resale of electric generation service or imposing unreasonable or discriminatory conditions or limitations on the resale of that service (sec. 4928.40(D).)

***Nonfirm electric service***

(secs. 4928.01(A)(12) and (21) and 4928.44)

The bill authorizes the PUCO, by order, after reasonable notice and hearing, to determine that customers that are nonfirm electric service customers of electric utilities on the bill's effective date would be assisted by the implementation by each such utility of a service schedule that provides for both of the following:

(1) For service and billing purposes, conjunctive metering for a group of customers that are nonfirm customers on the bill's effective date;

(2) Direct, comparable and nondiscriminatory access to the transmission and distribution services, capacities, functions, and facilities of the electric utility by any customer that is a nonfirm electric service customer on the bill's effective date or by a group of such customers, for the purpose of securing from a supplier or suppliers of the customer's or group's own choice all or a portion of the customer's or group's electric power and energy requirements not served by an electric utility during a time of nonemergency curtailment or interruption in excess of any requirements supplied by an electric utility on a firm basis.

In the order, the PUCO must specify the period of time, ending not later than December 31, 2005, during which the service offering would be available to any nonfirm electric service customers or group of such customers. Upon the issuance of the order, any such nonfirm electric service customer or group of such customers are eligible customers in each utility's transmission tariff subject to FERC jurisdiction for the period specified in the order. To effectuate the service offering, each electric utility with nonfirm customers must file a service schedule pursuant to existing law regarding the initiation of rate-making proceedings (sec. 4909.18). (Sec. 4928.44(A) and (B).)

The bill defines "nonfirm electric service" as electric service provided pursuant to a schedule filed with the PUCO under existing filing law (sec. 4905.30) or pursuant to an arrangement authorized under existing law regarding special arrangements (sec. 4905.31), which schedule or arrangement includes conditions that may require the customer to curtail or interrupt electric usage during nonemergency circumstances upon notification by an electric utility (sec. 4928.01(A)(21)). "Firm electric service" means any electric service other than nonfirm electric service (sec. 4928.01(A)(12)).

The bill provides that the failure of an electric utility to file the requisite nonfirm service schedule described above constitutes inadequate service under Public Utility Law (Title 49).

It also provides that the nonfirm service offering is in addition to any service options otherwise available to a nonfirm electric service customer or group of such customers. If a customer that is a nonfirm customer on the bill's effective date or a group of such customers elects to meet all or a portion of the customer's or group's electric power and energy requirements in excess of any requirements supplied by an electric utility on a firm basis, by purchasing electricity and related services from a supplier or suppliers other than that electric utility, any existing service arrangement under existing special arrangement law (sec. 4905.31) or any existing schedule under filing law (sec. 4905.30) must be modified to permit this election to occur without economic penalty and to facilitate the customer's or group's access to the electric market for the purpose of managing supply and price volatility risks. (Sec. 4928.44(C).)

Additionally, the bill states that its nonfirm service provisions do not affect any obligation of an electric utility to curtail or interrupt electric transmission or distribution service to the extent required to protect the interests of firm electric service customers from an injury that is otherwise unavoidable but for the curtailment or interruption.

Further, under the bill, the nonfirm service provisions must not be construed or applied to increase the rates and charges of firm electric service customers including residential firm electric service customers. (Sec. 4928.44(D).)

***Transitional revenues for electric cooperatives***

(sec. 4928.41)

The bill states that the transition revenue authority it provides for electric utilities does not affect the authority of an electric cooperative in Ohio to receive transition revenues (sec. 4928.41).

***Consumer education plan of an electric utility***

(sec. 4928.42)

The bill requires the PUCO, prior to the starting date of competitive retail electric service and in consultation with OCC and other state agencies as considered necessary, to adopt by order a general plan by which each electric utility must provide during its market development period consumer education on electric restructuring under the bill. The general plan must require the utilities to spend on such consumer education within their respective certified territories in the aggregate up to $16 million in the first year of that period and an additional $17 million in the aggregate in declining amounts over the remaining years of each

utility's market development period, with the aggregate amounts divided among the utilities based on their respective number of customers as of December 31, 1997. The general plan must prohibit such consumer education from occurring in combination with marketing for the utility's or its affiliate's retail electric services. (Sec. 4928.42.)

***Employee assistance***

(sec. 4928.43)

The bill requires each state agency that provides employment assistance and job training programs, including the Bureau of Employment Services and the Department of Development, to provide concentrated attention through those programs to assisting employees whose employment in electric generation-related activities and other related areas is affected by electric industry restructuring under the bill (sec. 4928.43).

***Residential pilot program***

(Section 15)

The bill authorizes the PUCO to establish by order a residential market pilot program prior to the starting date of competitive retail electric service. The program must enable the PUCO and the General Assembly to make an initial evaluation of the effect of competitive retail electric service on the residential market. The program must allow at least 5% but not more than 15% of the residential customers of electric utilities in Ohio to select their electric generation supplier. Every residential customer must be eligible to participate in a lottery or similar arrangement, as prescribed in the order, for the final selection of customer participants. In the order, the PUCO must establish transition charges as contemplated under the bill, to be in effect for the duration of the program, with shopping incentives sufficient to allow for market development during the program. The PUCO must report to the General Assembly not later than November 1, 2000, its findings and recommendations about the program and the effect of competitive retail electric service on the residential market. (Section 15.)

## TAX AND REPLACEMENT PAYMENT PROVISIONS

***Assessment of taxable property, assessment rate reductions applicable to the true value of that property, and apportionment of it to taxing districts***

Electric companies and rural electric companies pay taxes on their tangible personal property.[1] To determine the personal property taxes an electric company or rural electric company must pay, the Tax Commissioner first must ascertain what property is taxable and its true value. That taxable property is assessed each year by the Commissioner at a percentage of true value established in statute. The assessed value is the portion of true value to which the local tax rate is applied to determine the taxes due. The bill changes aspects of the true value and assessment determinations.

***Taxable property and determination of its true value***

(secs. 5727.01(E), (I), (J), and (K), 5727.06, and 5727.11)

***Taxable property***. For electric companies and rural electric companies, "taxable property" is all tangible personal property, other than certain property that is part of a pollution control facility, that on December 31 of the preceding year was both located in Ohio and owned by the company or leased by the company under a sale and leaseback transaction. Current law defines "sale and leaseback transaction" as a transaction in which a public utility or interexchange telecommunications company sells any tangible personal property to a person other than a public utility or interexchange telecommunications company, and within the same calendar year, leases that property back from the buyer.

The bill removes the "within the same calendar year" standard from the "sale and leaseback transaction" definition, but does not otherwise change what constitutes the taxable property of an electric or rural electric company.

***True value***. After determining that an electric or rural electric company's tangible personal property is taxable, the true value of that property must be determined. Under existing law, the true value of an electric company's taxable property, except its production equipment, is determined by a method of valuation

---

[1] *Existing law applicable to the assessment of property provides that any person is an "electric company" when engaged in the business of generating, transmitting, or distributing electricity within this state for use by others. A "rural electric company" is any nonprofit corporation, organization, association, or cooperative engaged in the business of supplying electricity to its members or persons owning an interest therein in an area, the major portion of which is rural.*

using cost as capitalized on the company's books and records, less composite annual allowances prescribed by the Tax Commissioner. The true value of an electric company's production equipment, and of all taxable property of a rural electric company, is the equipment's or property's cost as capitalized on the company's books and records less 50% of that cost as an allowance for depreciation and obsolescence. Existing law defines "production equipment" as all taxable steam, nuclear, hydraulic, and other production plant equipment, and all taxable steam equipment that is located at a production plant.

The true value of an electric or rural electric company's taxable property excludes an allowance for funds used during construction or interest during construction (AFUDC) that has been capitalized on the company's books and records as part of the total cost of the taxable property.

The bill revises the true value determination of the production equipment of an electric company or rural electric company purchased, transferred, or placed into service after the bill's effective date. The true value of that equipment is its purchase price as capitalized on the company's books and records less composite annual allowances prescribed by the Tax Commissioner. The definition of "production equipment" is amended to mean all taxable steam, nuclear, hydraulic, and other production plant equipment used to generate electricity. For tax years prior to 2001, it includes taxable station equipment that is located at a production plant.[2]

The bill provides that the AFUDC exclusion does not apply to the taxable property of an electric company or rural electric company, excluding transmission and distribution property, first placed into service after December 31, 2000, or to the taxable property a person purchases, which includes transfers, if that property was used in business by the seller prior to the purchase.

***Reduced assessment rates***

(sec. 5727.111; Section 3)

After determining taxable property's true value, the assessed value of the property must be calculated. This assessed value is the portion of true value to which the local tax rate is applied to determine the tangible personal property taxes due. Beginning in tax year 2001, the bill reduces the percentages used to

---

[2] *The bill defines "tax year" as the year for which property or gross receipts are subject to assessment under the public utility property and excise tax law. The definition does not limit the Tax Commissioner's ability to assess and value property or gross receipts outside the tax year.*

determine the assessed value of electric company and rural electric company personal property. Under current law, an electric company's taxable production equipment is assessed at 100% of true value, while all of its other taxable property is assessed at 88% of true value. Under the bill, the assessment rate for the taxable transmission and distribution property of an electric company remains at 88% of true value, but all other taxable property of the electric company is assessed at 25% of true value.

Current law assesses all taxable property of a rural electric company at 50% of true value. Under the bill, the assessment rate for taxable transmission and distribution property of a rural electric company remains at 50% of true value, but all other taxable property of a rural electric company is assessed at 25% of true value.

The bill provides that the assessment rate for personal property listed and assessed under the general taxpayer personal property tax law is not reduced until January 1, 2002. The property treated in this manner is (1) personal property leased to an electric or rural electric company and used directly in the rendition of a public utility service and (2) boilers, machinery, equipment, and personal property used to generate or distribute electricity where some of the electricity is not distributed to others. General taxpayers pay their property taxes in the year assessed, but electric companies and rural electric companies pay the taxes the year after they are assessed, so the delayed rate reduction date for this type of personal property has the same effect as dropping the rates on electric and rural electric company personal property beginning in tax year 2001.

***Apportionment of electric or rural electric company personal property***

(sec. 5727.15; Section 3)

When the taxable property of an electric or rural electric company is located in more than one taxing district, the Tax Commissioner apportions its taxable value among the taxing districts. Under current law, a rural electric company's tangible personal property is apportioned to each taxing district in proportion to the entire value of the property within Ohio. For an electric company, 70% of the taxable value of its production equipment and all station equipment that is not production equipment is apportioned to the taxing district in which the property is physically located. The remaining 30% of that type of equipment and all other taxable personal property of the electric company is apportioned to each taxing district in the percentage that the cost of all transmission and distribution property physically located in the taxing district is of the total cost of all transmission and distribution property physically located in Ohio. There is an exception to this apportionment formula in instances where an electric company's taxable value includes the value

of production equipment at a plant at which the equipment's initial cost exceeded $1 billion. In that case, the Tax Commissioner must complete a calculation that apportions the value in excess of a specified level of value according to the transmission and distribution base.

The bill changes the apportionment formula so that the taxable value of all production equipment of an electric company is apportioned to the taxing district in which the property is physically located and the value of all other taxable personal property is apportioned to each taxing district in the proportion that the cost of the taxable property physically located in each taxing district is of the total cost of all taxable personal property physically located in Ohio. The bill does not change how rural electric company personal property is apportioned.

The bill eliminates the exception to the apportionment formula for $1-billion-plus production plant equipment.

***Effect of reduction in assessment rates on certain state aid calculations***

(sec. 3317.028)

Each year before May 15, the Tax Commissioner must determine for each school district whether the taxable value of all tangible personal property, including utility tangible personal property, subject to taxation by the district in the preceding tax year was less or greater than the taxable value of the property during the second preceding tax year. If there is a decrease that exceeds 5% of the district's tangible personal property taxable value included in the total taxable value used in the district's state aid computation, or an increase that exceeds 5% of the district's total taxable value used in that computation, the Commissioner certifies to the Department of Education the taxable value of the increase or decrease, and the decrease or increase in taxes charged and payable due to the change in taxable value. The Department, by the respective amount certified, reduces or increases the taxable value and the taxes charged and payable that were used to compute the district's state aid for the fiscal year that ends in the current calendar year, recomputes the state aid for the fiscal year, and during the last six months of the fiscal year, pays the district a sum equal to ½ of the recomputed payments.

The bill provides that notwithstanding this computation, when determining in calendar year 2002 whether the taxable value of tangible personal property subject to taxation by each school district in the preceding tax year was less or greater than the taxable value of the property during the second preceding tax year, the Tax Commissioner must exclude from the taxable value for both years the "tax

value loss" as defined and determined under the bill in computing property tax replacement payments (see "***Tax value loss***," below).

***The kilowatt-hour tax***

***Application of the new tax***

(secs. 5727.80, 5727.81, and 5727.88; Sections 14 and 16)

On and after May 1, 2001, the bill levies a new excise tax on electric distribution companies for the purpose of raising revenue for public education and state and local government operations. The tax is levied at a rate that decreases as more kilowatt hours (1,000 watt-hours) of electricity are distributed through the "meter of an end user in this state."[3] The rate for the first 2,000 kilowatt hours distributed to an end user in a 30-day period is $.00465 per kilowatt hour; for the next 2,001 through 15,000 kilowatt hours, the rate is $.00419; and for 15,001 and above, the rate is $.00301.

The bill defines an "electric distribution company" as either (1) a person, including a political subdivision of the state, that distributes electricity through a meter of an end user in this state (this includes a municipal electric utility), or (2) the end user of electricity in Ohio, if the end user obtains electricity that is not distributed or transmitted to the end user by an electric distribution company that is required to remit the kilowatt-hour tax.[4] An "electric distribution company" does not include the end user of electricity in Ohio who self-generates electricity that is used directly by that end user on the same site that the electricity is generated.

The tax for usage for less than a 30-day period is calculated by dividing the days in the measurement period into the total kilowatt hours measured during the measurement period to obtain a daily average usage. The tax must be determined by obtaining the sum of (1), (2), and (3) and multiplying that amount by the number of days in the measurement period:

---

[3] *The "meter of an end user in this state" means the last meter used to measure the kilowatt hours distributed by an electric distribution company to a location in Ohio, the last meter located outside of Ohio that is used to measure the kilowatt hours consumed at a location in Ohio, or, if no meter is used, the estimated kilowatt hours distributed to an unmetered location in Ohio.*

[4] *Under the bill, a "municipal electric utility" means a municipal corporation that owns or operates a system for the distribution of electricity.*

(1) Multiplying $0.00465 per kilowatt hour for the first 67 kilowatt hours distributed using a daily average;

(2) Multiplying $0.00419 for the next 68 to 500 kilowatt hours distributed using a daily average;

(3) Multiplying $0.00301 for the remaining kilowatt hours distributed using a daily average.

Only the distribution of electricity through a meter of an end user in this state may be used by the electric distribution company to compute the amount or estimated amount of tax due. Except where a self-assessing purchaser is involved (see "***Self-assessing purchasers***," below), an electric distribution company must pay the kilowatt-hour tax in all of the following circumstances:

(1) The electricity is distributed by the company through a meter of an end user in Ohio;

(2) The company is distributing electricity through a meter located in another state, but the electricity is consumed in Ohio in the manner prescribed by rule of the Tax Commissioner;

(3) The company is distributing electricity in Ohio without the use of a meter, but the electricity is consumed in this state as estimated and in the manner prescribed by rule of the Commissioner.

The bill authorizes the Commissioner to administer the tax and adopt such rules as are necessary for its administration and enforcement. Upon request of the Commissioner, the Public Utilities Commission must provide assistance by furnishing information regarding any electric distribution company that is subject to regulation by the Commission.

***Self-assessing purchasers***

(sec. 5727.81(C); Section 16)

The bill allows certain electricity purchasers, defined as self-assessing purchasers under the bill, to elect to self-assess the kilowatt-hour tax and pay it directly to the Treasurer of State, rather than having the electric distribution company pay the tax. A “self-assessing purchaser” is a commercial or industrial purchaser that receives electricity through a meter of an end user in Ohio and consumes on the average, over the course of the previous calendar year, more than 20 megawatts of electricity during a 30-day period. A self-assessing purchaser

pays the excise tax at the rate of 7% of the total price of electricity delivered through a meter of an end user in Ohio.[5]

If the electric distribution company serving the self-assessing purchaser is a municipal electric utility, and the purchaser is within the municipal corporation's corporate limits, the self-assessing purchaser pays the kilowatt-hour tax to the municipality's general fund. Upon paying the tax to the Treasurer of State or municipality, the self-assessing purchaser is not required to pay the excise tax to the electric distribution company from which its electricity is delivered.

Application for registration as a self-assessing purchaser must be made on a form prescribed by the Tax Commissioner. The registration remains in effect until canceled by the registrant upon written notification to the Commissioner of the election to pay the tax to the electric distribution company. A self-assessing purchaser must give written notice of its self-assessing status to the electric distribution company from which its electricity is delivered, and that electric distribution company is relieved of the obligation to pay the tax for electricity distributed to that self-assessing purchaser.

***Exemptions from the tax***

(sec. 5727.81(D))

The kilowatt-hour tax does not apply to the distribution of any kilowatt hours that are distributed to the federal government or to an end user who for any day is a "qualified end user." A "qualified end user" means an end user of electricity that uses more than 3,000,000 kilowatt hours of electricity at one manufacturing location in this state for a calendar day for use in a manufacturing process that features an electrochemical reaction in which electrons from direct current electricity remain a part of the product being manufactured.

***Payment of the tax***

(secs. 113.061, 5727.82, and 5727.83)

***Filing a return***. Except where an end user is a qualified end user (see "***Reports by qualified end users***," below), an electric distribution company must pay the kilowatt-hour tax to the Treasurer of State by the 20th day of each month. A company must file with the Treasurer a return as prescribed by the Tax

[5] *The bill states in Section 16 that the intent of the self-assessing tax provision is to craft a revenue neutral solution for all customer classes, with any margin of error being resolved in favor of residential customers.*

Commissioner and make payment of the full amount of tax due for the preceding month. The first payment of this tax must be made on or before June 20, 2001.

If the electric distribution company required to pay the kilowatt-hour tax is a municipal electric utility, it may retain in its general fund that portion of the tax on the kilowatt hours distributed to end users located within the boundaries of the municipal corporation. But the municipal electric utility must pay to the Commissioner the tax due on any kilowatt hours distributed to end users located outside the boundaries of the municipal corporation.

A self-assessing purchaser that pays the kilowatt-hour tax directly to the Treasurer of State also must file a return with the Treasurer by the 20th day of each month and make payment of the full amount of the tax due for the preceding month.

As prescribed by the Tax Commissioner, the return must be signed by the company or self-assessing purchaser required to file it, or the company's or purchaser's authorized employee, officer, or agent. The Treasurer must mark on the return the date it was received and indicate payment or nonpayment of the tax shown to be due on the return, and immediately transmit it to the Tax Commissioner. A return is deemed filed when received by the Treasurer.

Any electric distribution company or self-assessing purchaser that is required to file a return and fails to file it and pay the tax within the period prescribed must pay an additional charge of $50 or 10% of the tax required to be paid for the reporting period, whichever is greater. The Tax Commissioner may collect the additional charge by assessment (see "***Assessments for failure to file a return or pay the tax, interest, or charges***," below). The Commissioner may abate all or a portion of the additional charge and adopt rules governing such abatements.

If any tax due is not paid timely, the electric distribution company or self-assessing purchaser liable for the tax must pay interest, calculated at the federal short-term rate determined each year by the Tax Commissioner, from the date the tax payment was due to the date of payment or to the date an assessment is issued, whichever occurs first.[6] Interest must be paid in the same manner as the tax, and the Commissioner may collect the interest by assessment.

---

[6] *On October 15, 1998, the Tax Commissioner determined that the interest rate for 1999 is 8% per annum.*

***Reports by qualified end users***. Since the kilowatt-hour tax does not apply to electricity distributed to end users for days the end user is a qualified end user, a modified tax payment schedule applies with respect to them. Not later than the tenth day of each month, a qualified end user must report in writing to the electric distribution company that distributes electricity to the end user the non-taxable kilowatt hours that were consumed (as a qualified end user) for the prior month and the number of days, if any, on which the end user was not a qualified end user. For each calendar day the end user was not a qualified end user, the end user is required to report in writing to the electric distribution company the number of kilowatt hours used on that day, and the electric distribution company must pay the kilowatt-hour tax on each kilowatt hour that was not distributed to a qualified end user. The company may rely in good faith on a qualified end user's report filed in accordance with this provision, and if it is determined that the end user was not a qualified end user for any calendar day or the quantity of electricity used by the qualified end user was overstated, the Tax Commissioner must assess and collect any kilowatt-hour tax directly from the qualified end user. As requested by the Commissioner, each end user reporting to an electric distribution company that it is a qualified end user must provide documentation that establishes the daily volume of electricity it consumed.

***Filing by electronic funds transfer***. If the tax required to be remitted by an electric distribution company or self-assessing purchaser for any calendar year equals or exceeds $50,000, the company or self-assessing purchaser must remit each monthly tax payment in the second ensuing and each succeeding tax year by electronic funds transfer. For the first year the kilowatt-hour tax is imposed, any electric distribution company that, prior to the electronic funds transfer provision's effective date, was an electric company or a rural electric company required to remit taxes by electronic funds transfer under the public utility excise tax law, must remit the kilowatt-hour tax in that manner.

If the tax payment for each of two consecutive years is less than $50,000, the company or self-assessing purchaser need not remit taxes by electronic funds transfer, unless the tax payment in a subsequent year equals or exceeds $50,000.

The Tax Commissioner must notify each electric distribution company and self-assessing purchaser required to remit taxes by electronic funds transfer of the obligation to do so, maintain an updated list of those companies and purchasers, and timely certify to the Treasurer of State the list and any additions thereto or deletions therefrom. Failure by the Commissioner to notify a company or self-assessing purchaser to remit taxes by electronic funds transfer does not relieve the company or purchaser of its obligation to remit taxes in that manner.

An electric distribution company or self-assessing purchaser required to remit payments in this manner must remit them to the Treasurer of State on or before the 20th day of each month in the manner prescribed by rules adopted by the Treasurer under existing law that governs the acceptable modes of electronic funds transfer. The payment of taxes by electronic funds transfer does not affect a company's or purchaser's obligation to file the monthly return.

An electric distribution company or self-assessing purchaser required to remit taxes by electronic funds transfer may apply to the Treasurer of State in the manner prescribed by the Treasurer to be excused from that requirement. The Treasurer may excuse the company or purchaser from remittance by that method for good cause shown for the period of time requested by the company or for a portion of that period. The Treasurer must notify the Tax Commissioner and the company or purchaser of the Treasurer's decision as soon as is practicable.

If an electric distribution company or self-assessing purchaser required to remit taxes by electronic funds transfer remits those taxes by some means other than by that method, and the Treasurer of State determines that the failure was not due to reasonable cause or was due to willful neglect, the Treasurer must notify the Tax Commissioner of the failure and provide the Commissioner with any information used in making that determination. The Commissioner may collect an additional charge, by assessment, that is equal to 5% of the amount of the taxes required to be paid by electronic funds transfer, not exceeding $5,000. The charge assessed is in addition to any other penalty or charge imposed under the kilowatt-hour tax law, and must be considered as revenue arising from the tax. The Commissioner may abate all or a portion of the charge and may adopt rules governing such abatements.

No additional charge may be assessed under this provision against an electric distribution company or self-assessing purchaser that has been notified of its obligation to remit taxes by electronic funds transfer and that remits its first two tax payments after notification by some means other than electronic funds transfer. The additional charge may be assessed upon the remittance of any subsequent tax payment that the company or purchaser remits by some means other than electronic funds transfer.

***School District and Local Government Property Tax Replacement Funds***

(secs. 5727.84(B) and 5727.85(A)(1))

The bill requires that all money arising from the kilowatt-hour tax be credited to various funds, as follows:

(1) 59.976% of the tax, plus the amount of the "state education aid offset," must be credited to the General Revenue Fund (GRF);

(2) 2.646% must be credited to the Local Government Fund;

(3) .378% must be credited to the Local Government Revenue Assistance Fund;

(4) 11.1% of the tax must be credited to the Local Government Property Tax Replacement Fund, created in the state treasury by the bill for the purpose of making property tax replacement payments to local governments (see "***Property tax replacement payments***," below);

(5) 25.9% of the tax, less an amount equal to the "state education aid offset," must be credited to the School District Property Tax Replacement Fund, created in the state treasury by the bill for the purpose of making property tax replacement payments to school districts and joint vocational school districts.

The "state education aid offset" is deposited in the GRF. It represents the additional money paid by the state to school districts through the Foundation Formula attributable to the reduced assessment rates. The offset is determined by the Department of Education and is the amount by which state education aid computed for school districts for the current fiscal year **exceeds** the amount of state education aid that would be computed for the current fiscal year if the district's adjusted total taxable value included the tax value loss certified by the Tax Commissioner (see "***Tax value loss***," below).[7] The Department certifies the state education aid offset to the Director of Budget and Management.

***Assessments for failure to file a return or pay the tax, interest, or charges***

(secs. 5727.89 and 5727.90)

***Assessment procedure***. The bill permits the Tax Commissioner to make an assessment, based on any information in the Commissioner's possession, against any electric distribution company, self-assessing purchaser, or qualified end user that fails to file a return or pay any tax, interest, or additional charge required by the kilowatt-hour tax. A 15% penalty must be added to all amounts assessed. The Commissioner may adopt rules providing for the remission of penalties.

---

[7] *Under the bill, "state education aid" means the sum of the state basic aid and state special education aid amounts computed for a school district under the school foundation program law. "Adjusted total taxable value" has the same meaning as in existing school foundation program law (R.C. § 3317.02).*

When information in the possession of the Commissioner indicates that a person liable for the tax has not paid it in full, the Commissioner may audit a representative sample of the person's business and may issue an assessment based on the audit. The Commissioner must give the person a written assessment notice by personal service or certified mail.

The Commissioner may issue an assessment for which the kilowatt-hour tax was due and unpaid on the date the person was informed by an agent of the Commissioner of an investigation or audit of the person. Any payment of the tax for the period covered by the assessment, after the person is so informed, must be credited against the assessment.

Unless the party assessed files with the Tax Commissioner within 30 days after service of the notice of assessment, either personally or by certified mail, a written petition for reassessment signed by the party assessed or the party's authorized agent having knowledge of the facts, the assessment is final and the amount of the assessment is due and payable. The petition must indicate the objections of the party assessed, but additional objections may be raised in writing prior to the date shown on the final determination of the Commissioner. The Commissioner must grant the petitioner a hearing on the petition, unless waived by the petitioner.

The Commissioner may make any correction to the assessment that the Commissioner finds proper and must issue a final determination thereon. The Commissioner is required to serve a copy of the final determination on the petitioner either by personal service or certified mail, and the Commissioner's decision in the matter is final, subject to existing law regarding appeals from final determinations of the Commissioner.

After an assessment becomes final, if any portion of it, including accrued interest, remains unpaid, a certified copy of the Commissioner's entry making the assessment final may be filed in the office of the common pleas court clerk in the county in which the party assessed resides or in which the party's business is conducted. If the party assessed maintains no place of business in Ohio and is not a resident of Ohio, the certified copy of the entry may be filed in the office of the Clerk of the Court of Common Pleas of Franklin County.

The clerk, immediately upon the filing of the entry, must enter a judgment for the state against the person assessed in the amount shown on the entry. The judgment may be filed by the clerk in a loose-leaf book entitled "Special Judgments for the Kilowatt-Hour Tax," and has the same effect as other judgments. Execution issues upon the judgment at the request of the Tax Commissioner, and all laws applicable to sales on execution apply to sales made

under the judgment (execution of judgments against property is regulated by R.C. Chapter 2329.).

The portion of the assessment not paid within 30 days after the day it was issued bears interest at the federal short-term rate from the day the Commissioner issues the assessment until the day the assessment is paid. Interest must be paid in the same manner as the tax and may be collected by the issuance of an assessment.

***Jeopardy assessments***. If the Tax Commissioner believes that collection of the kilowatt-hour tax will be jeopardized unless proceedings to collect or secure collection of the tax are instituted without delay, the Commissioner may issue a jeopardy assessment against the electric distribution company, self-assessing purchaser, or qualified end user liable for the tax. Upon issuance of the jeopardy assessment, the Commissioner immediately must file a certified copy of the entry making the assessment final with the common pleas court clerk in the manner prescribed above for final assessments. Notice of the jeopardy assessment must be served on the party assessed or the party's legal representative within five days of the filing of the entry with the clerk. The total amount assessed is immediately due and payable, unless the party assessed files a petition for reassessment and provides security in a form satisfactory to the Commissioner and in an amount sufficient to satisfy the unpaid balance of the assessment. Full or partial payment of the assessment does not prejudice the Commissioner's consideration of the petition for reassessment.

All money collected by the Tax Commissioner by assessment must be paid to the Treasurer of State, and when paid must be considered as revenue arising from the kilowatt-hour tax.

***Limitation on assessments***. The Tax Commissioner is prohibited from making an assessment for the kilowatt-hour tax more than four years after the date on which the return for the period assessed was due or filed, whichever date is later. This prohibition does not bar an assessment when the party assessed failed to file a return or knowingly filed a false or fraudulent return, or the party assessed and the Commissioner waived the time limitation in writing.

***Tax refunds***

(secs. 5703.052, 5703.053, and 5727.91)

Under the bill, the Treasurer of State is required to refund any amount of the kilowatt-hour tax paid that was paid illegally or erroneously, or paid on an illegal or erroneous assessment. An electric distribution company or self-assessing purchaser must file an application for a refund with the Tax Commissioner on a

form prescribed by the Commissioner, within fours years of the illegal or erroneous tax payment.

Upon the filing of the application, the Commissioner must determine the amount of refund due and certify that amount to the Director of Budget and Management and the Treasurer of State for payment from the existing Tax Refund Fund. If the application for refund is for taxes paid on an illegal or erroneous assessment, the Commissioner must include in the certified amount interest calculated at the federal short-term rate, from the date of overpayment to the date of the Commissioner's certification.

If an electric distribution company entitled to a refund of taxes is indebted to the state for any tax or fee administered by the Tax Commissioner that is paid to the state, or for any charge, penalty, or interest arising from that tax or fee, the amount refundable may be applied in satisfaction of the debt. If the amount refundable is less than the amount of the debt, it may be applied in partial satisfaction of the debt. If the amount refundable is greater than the amount of the debt, the amount remaining after satisfaction of the debt must be refunded. If the company has more than one such debt, any debt arising from failure to file or pay the state sales tax or the state income tax must be satisfied first. The refund provision of the bill applies only to debts that have become final.

An electric distribution company that can substantiate to the Commissioner that the kilowatt-hour tax was paid on electricity distributed via wires and consumed at a location outside Ohio may claim a refund by filing an application therefor within the four-year period prescribed above.

Before a refund is issued, an electric distribution company must certify, as prescribed by the Tax Commissioner, that it either did not include the kilowatt-hour tax in its distribution charge to an electric customer upon which a refund of the tax is claimed, or it has refunded or credited to the electric customer the excess distribution charge related to the tax that was erroneously included in the electric customer's distribution charge.

***Record-keeping requirements***

(sec. 5727.92)

Every person liable for the kilowatt-hour tax must keep complete and accurate records of all electric distributions and other records as required by the Tax Commissioner. The records must be preserved for four years after the return for the taxes to which the records pertain is due or filed, whichever is later. The

records must be available for inspection by the Tax Commissioner or the Commissioner's authorized agent, upon request of the Commissioner or agent.

***Mandatory registration with the Tax Commissioner***

(sec. 5727.93; Section 14)

The bill prohibits a person from distributing electricity to a meter of an end user in this state if the person is not registered with the Tax Commissioner as an electric distribution company before May 1, 2001. Each person required to register must do so prior to distributing electricity. The Commissioner must prescribe the form of the registration application, assign an identification number to each registration, and notify the registrant of that number. The registration remains in effect until canceled in writing by the registrant upon the cessation of distributing electricity to a meter of an end user in this state, or until such registration is denied, revoked, or canceled by the Commissioner.

A registration may be revoked or canceled by the Commissioner in accordance with the Administrative Procedure Act, which requires notice and a hearing, for failure of an electric distribution company to pay the kilowatt-hour tax or comply with the law that created the tax. An electric distribution company whose registration is denied may petition for a hearing, in accordance with the procedures set forth for a petition for reassessment (see "***Assessments for failure to file a return or pay the tax, interest, or charges***," above), not later than 30 days after receiving the denial, and the final determination is subject to appeal in accordance with existing law regarding appeals of the Commissioner's final determinations.

The Commissioner must maintain a list containing the name and address of each electric distribution company registered by the Commissioner. The list and subsequent updates of it must be open to public inspection.

***Notice of tax in customers' bills***

(secs. 4933.33 and 5727.94)

Each electric distribution company required to pay the kilowatt-hour tax must distribute annually to its customers in Ohio a statement notifying them that the amount they are being billed for electricity includes an amount for payment of the kilowatt-hour tax. The statement must list the current dollar figure of the kilowatt-hour taxes levied.

***Prohibitions***

(secs. 5727.95 and 5727.99)

The bill prohibits an electric distribution company from failing to file any return or report required to be filed pursuant to the kilowatt-hour tax law, or filing or causing to be filed any incomplete, false, or fraudulent return, report, or statement, or aiding or abetting another in the filing of any false or fraudulent return, report, or statement. The bill also prohibits a person from distributing electricity to a meter of an end user in this state without holding a valid registration from the Tax Commissioner.

Whoever violates the kilowatt-hour tax law or any rule of the Tax Commissioner adopted under that law is guilty of a first degree misdemeanor on the first offense. On each subsequent offense, the person is guilty of a fourth degree felony.

***Payment of tax considered a normal expense***

(sec. 4909.161(B))

Notwithstanding existing law regarding the Public Utilities Commission's general power to regulate public utilities and fix their rates, the payment of the kilowatt-hour tax must be considered a normal expense incurred by an electric distribution utility in the course of rendering service to the public, and may be recovered as such in accordance with an order of the Commission. The bill defines an "electric distribution utility" as an electric utility that supplies at least retail electric distribution service. An "electric utility" means an electric light company that is engaged, on a for-profit basis in the business of supplying a noncompetitive retail electric service in this state or in the businesses of supplying both a noncompetitive and a competitive retail electric service in this state. "Electric utility" does not include a municipal electric utility or a billing or collection agent. (R.C. § 4928.01, as enacted by the bill.)

An electric distribution utility required to pay the tax may file with the Commission revised rate schedules that will permit full recovery on a permanent basis in its rates, of the amount of any resultant tax payments, and the Commission must act promptly to approve those schedules. In approving them, the Commission must provide that the rate effect of the kilowatt-hour tax does not vary by customer and is equal for each customer based solely on kilowatt hours of electricity distributed.

***Property tax replacement payments***

The bill requires that school districts, joint vocational school districts, and other local governments receive property tax replacement payments for revenues lost due to the reduction in the tangible personal property tax assessment rates for electric companies and rural electric companies. The payments are to be made from the Local Government Property Tax Replacement Fund and the School District Property Tax Replacement Fund, into which a portion of the revenues from the kilowatt-hour tax are deposited. The bill also requires that county auditors and county treasurers receive replacement payments for losses incurred in their administrative fees.

***Determination of tax value loss, fixed-rate levy loss, and fixed-sum levy loss used in replacement payment computations***

(secs. 5727.01 and 5727.84(A), (C), (D), and (E))

Under the bill, not later than January 1, 2002, the Tax Commissioner is required to determine the tax value loss for each taxing district.[8] At the same time, the Commissioner must determine for each school district, joint vocational school district, and local taxing unit its fixed-rate levy loss and fixed-sum levy loss. All of these amounts are used to compute property tax replacement payments for those entities.

***Tax value loss***. The tax value loss is the **sum** of the amounts described in (1) and (2):

(1)(a) The value of electric company and rural electric company tangible personal property as assessed by the Tax Commissioner for tax year 1998 on a preliminary assessment, or an amended preliminary assessment if issued prior to March 1, 1999, and as apportioned to the taxing district for tax year 1998; **minus**

(b) The value of such property as assessed by the Tax Commissioner for tax year 1998 had the property been apportioned to the taxing district for tax year 2001, and assessed at the rates in effect for tax year 2001 (25% for all such tangible personal property, except transmission and distribution property).

(2)(a) The three-year average for tax years 1996, 1997, and 1998 of the assessed value from nuclear fuel materials and assemblies assessed against a person under the general taxpayer personal property tax law from the leasing of

---

[8] *Under existing law (R.C. § 5727.01), a "taxing district" is a municipal corporation or township, or part thereof, in which the aggregate rate of taxation is uniform.*

them to an electric company for those respective tax years, as reflected in the preliminary assessments; **minus**

(b) The three-year average assessed value of that same property for tax years 1996, 1997, and 1998, as reflected in the preliminary assessments, using an assessment rate of 25%.

The Tax Commissioner may request that electric companies and rural electric companies file a report to help determine the tax value loss. The report must be filed within 30 days of the Commissioner's request. A company that fails to file the report or does not timely file the report is subject to the penalty in R.C. § 5727.60, discussed in "***Miscellaneous***," below.

***Fixed-rate levy loss***. The fixed-rate levy loss for a school district, joint vocational school district, and local taxing unit is its tax value loss **multiplied** by the tax rate in effect in tax year 1998 for fixed-rate levies. The bill defines "fixed-rate levies" as any tax levied on property other than a fixed-sum levy.

***Fixed-sum levy loss***. The bill defines a "fixed-sum levy" as a tax levied on property at whatever rate is required to produce a specified amount of tax money or to pay debt charges, including school district emergency levies. The fixed-sum levy loss for a school district, joint vocational school district, and local taxing unit is the amount obtained by **subtracting** the total taxable value in tax year 1998 in each school district, joint vocational school district, and local taxing unit multiplied by one-fourth of one mill **from** the tax value loss **multiplied** by the tax rate in effect in tax year 1998 for fixed-sum levies for all taxing districts within each school district, joint vocational school district, and local taxing unit.

For years 2002 through 2006, the computation of the fixed-sum levy loss includes school district emergency levies that existed in 1998, and all other fixed-sum levies that existed in 1998 and continue to be charged in the tax year preceding the distribution year. For years 2007 through 2016, this computation excludes all school district emergency levies and all other fixed-sum levies that existed in 1998 but are no longer in effect in the tax year preceding the distribution year.

If the computation for any school district, joint vocational school district, or local taxing unit is greater than zero, the one-fourth of one mill that would otherwise be subtracted instead must be apportioned among all contributing fixed-sum levies in the proportion of each levy to the sum of all fixed-sum levies within each school district, joint vocational school district, or local taxing unit.

***Replacement revenues for school districts and joint vocational school districts***

(secs. 5727.84 and 5727.85)

***Payments to school districts for fixed-rate levy losses***. Under the bill, city, local, and exempted village school districts receive property tax replacement payments for tax revenue losses incurred in their fixed-sum levies and fixed-rate levies. By July 31 of each year, beginning in 2002 and ending in 2016, the Department of Education is required to determine for each school district eligible for property tax replacement payments its state education aid offset (discussed above in "***School District and Local Government Property Tax Replacement Funds***") and its **adjusted fixed-rate levy loss**, which is the difference obtained by **subtracting** the state education aid offset from the fixed-rate levy loss for all taxing districts in each school district. The Department must certify the amount of the adjusted fixed-rate levy loss to the Director of Budget and Management.

Not later than October 31 of years 2006 through 2016, the Department of Education also must determine all of the following for each school district:

(1) The amount obtained by **subtracting** the district's state education aid computed for fiscal year 2002 from the district's state education aid computed for the current fiscal year;

(2) The inflation-adjusted property tax loss. The inflation-adjusted property tax loss equals the fixed-rate levy loss for all taxing districts in each school district **plus** the product obtained by **multiplying** that loss by the cumulative percentage increase in the consumer price index from January 1, 2002, to June 30 of the current year (using the consumer price index, all items, all urban consumers, prepared by the Bureau of Labor Statistics of the United States Department of Labor).

(3) The difference obtained by **subtracting** the amount computed under (1) from the amount of the inflation-adjusted property tax loss. If this difference is zero or a negative number, no further property tax replacement payments are to be made to a school district from the School District Property Tax Replacement Fund. If the difference is greater than zero, the district continues to qualify for replacement payments, and not later than December 31 of each year, beginning in 2006 and ending in 2016, the Department of Education must certify to the Director of Budget and Management the adjusted fixed-rate levy loss for each district.

For all taxing districts in each school district, the Director must pay from the School District Property Tax Replacement Fund to the county undivided income tax fund in the proper county treasury all of the following:

(1) In February of 2002, one-half of the fixed-rate levy loss on or before February 15;

(2) From August 2002 through August 2006 (and through August 2016 for those districts that continue to qualify for payments), one-half of the adjusted fixed-rate levy loss certified for that fiscal year on or before each of the days prescribed for the settlements between the county treasurer and the county auditor, which occur on or before February 15 and on or before August 10 each year.

The county treasurer distributes these amounts to the proper school district as if they had been levied and collected as taxes, and the school district must apportion the amounts so received among its funds in the same proportions as if those amounts had been levied and collected as taxes.

***Payments to school districts for fixed-sum levy losses***. Not later than January 1, 2002, for each school district, the Tax Commissioner must certify to the Director of Budget and Management the fixed-sum levy loss. The certification must cover a time period sufficient to include all fixed-sum levies in effect in 1998 until they are due to expire. The Director must pay from the School District Property Tax Replacement Fund to the county undivided income tax fund in the proper county treasury one-half of the fixed-sum levy loss so certified for each year on or before each of the days prescribed for settlements. The county treasurer must distribute the amounts to the proper school district as if they had been levied and collected as taxes, and the district must apportion the amounts so received among its funds in the same proportions as if those amounts had been levied and collected as taxes. No further payments may be made once all fixed-sum levies in effect in 1998 have expired.

Beginning in 2003 and ending in 2016, by January 31 of each year, the Tax Commissioner must review the original certification of the fixed-sum levy loss. If the Commissioner determines that a fixed-sum levy that had been scheduled to be reimbursed in the current year has expired, a revised certification for that and all subsequent years must be made to the Director of Budget and Management.

***Payments to joint vocational school districts for fixed-rate levy losses***. Under the bill, like school districts, joint vocational school districts, which include cooperative education school districts and county financing school districts, receive property tax replacement payments for tax revenue losses incurred in their fixed-sum levies and fixed-rate levies. From February 2002 to August 2016, the

Director must pay from the School District Property Tax Replacement Fund to the county undivided income tax fund in the proper county treasury, one-half of the fixed-rate levy loss certified for each year on or before each of the days prescribed for settlements. The county treasurer must distribute such amounts to the proper joint vocational school district as if they had been levied and collected as taxes, and the joint vocational school district is required to apportion the amounts so received among its funds in the same proportions as if those amounts had been levied and collected as taxes.

***Payments to joint vocational school districts for fixed-sum levy losses***. Not later than January 1, 2002, for each joint vocational school district, the Tax Commissioner must certify to the Director of Budget and Management the fixed-sum levy loss. The certification must cover a time period sufficient to include all fixed-sum levies in effect in 1998 until they are due to expire. The Director pays the fixed-sum levy loss and distributes the payments in the same manner as for school districts. No payments are to be made once all fixed-sum levies in effect in 1998 have expired.

***Early payoffs***. By August 5, 2002, the Tax Commissioner is required to estimate the amount of money in the School District Property Tax Replacement Fund in excess of the amount necessary to make payments in that month. The Department of Education, in consultation with the Tax Commissioner and from those excess funds, may pay any school district four and one-half times the adjusted fixed-rate levy loss. Payments must be made in order from the smallest annual loss to the largest annual loss. An early payoff payment made in this manner is in lieu of the payment to be made in August of 2002. No payments may be made in this manner to any school district with annual losses from permanent improvement fixed-rate levies in excess of $20,000, or annual losses from any other fixed-rate levies in excess of $20,000. A school district receiving an early payoff payment is no longer entitled to any further fixed-rate levy loss payments.

***Excess moneys***. If, on July 31 of 2003, 2004, 2005, and 2006, and on the thirty-first day of January and July of 2007 and each year thereafter, the amount credited to the School District Property Tax Replacement Fund exceeds the amount needed to make payments from the fund in the following month, the Director of Budget and Management must distribute the excess among school districts and joint vocational school districts. The amount distributed to each district must bear the same proportion to the excess remaining in the fund as the ADM of the district bears to the ADM of all of the districts.[9] The excess amounts

---

[9] *"ADM" means the formula ADM for school districts, and the average daily membership for joint vocational school districts.*

distributed in this manner must be used exclusively for capital improvements. If, in the opinion of the Director, the excess remaining in the School District Property Tax Replacement Fund in any year is not sufficient to warrant distribution, the excess remains to the credit of the Fund.

***Insufficient funds***. If the total amount in the School District Property Tax Replacement Fund is insufficient to make all payments, the fixed-sum levy loss payments must be made first in their entirety. After all of those payments are made, fixed-rate levy loss payments to school districts and joint vocational school districts must be made from the balance of money available in the proportion of each school district's or joint vocational school district's payment amount to the total amount of fixed-rate levy loss payments.

***Mergers***. If all or a part of the territory of a school district or joint vocational school district is merged with or transferred to another district, the Tax Commissioner must adjust the property tax replacement payments to each of the districts in proportion to the tax value loss apportioned to the merged or transferred territory.

***Electric Property Tax Study Committee***. The bill creates the Electric Property Tax Study Committee, effective January 1, 2011. The Committee consists of the following seven members: the Tax Commissioner, three members of the Senate appointed by the Senate President, and three members of the House of Representatives appointed by the House Speaker. The appointments must be made not later than January 31, 2011. The Commissioner is the chairperson of the Committee.

The Committee is required to study the extent to which each school district or joint vocational school district has been compensated under the bill and any subsequent acts, for the property tax loss caused by the reduction in the assessment rates for electric and rural electric company tangible personal property. Not later than June 30, 2011, the Committee must issue a report of its findings, including any recommendations for providing additional compensation for the property tax loss or regarding remedial legislation, to the Senate President and the House Speaker, at which time the Committee ceases to exist.

The Department of Taxation and Department of Education must provide such information and assistance as is required for the Committee to carry out its duties.

***Replacement revenues for other local governments***

(sec. 5727.86)

Under the bill, each local taxing unit receives property tax replacement payments for tax revenue losses incurred in its fixed-sum levies and fixed-rate levies due to the reduction in the assessment rates for electric company and rural electric company tangible personal property.[10] Not later than January 1, 2002, the Tax Commissioner must certify to the Director of Budget and Management, for all taxing districts in each local taxing unit, the fixed-rate levy loss and the fixed-sum levy loss determined as above in "***Determination of tax value loss, fixed-rate levy loss, and fixed-sum levy loss used in replacement payment computations***." The certification of the fixed-sum levy loss must cover a period of time sufficient to include all fixed-sum levies in effect in 1998 until they are due to expire. Based on the Commissioner's certification, the Director computes the payments to be made to each local taxing unit for each year according to (1) and (2), below.

(1) For **fixed-rate levy losses**, payments are to be made in each of the following years at the following percentage of the certified fixed-rate levy loss:

| Year | Percentage |
|---|---|
| 2002 | 100% |
| 2003 | 100% |

[10] *The bill defines "local taxing unit" as any subdivision, as defined in existing law, which is any county; municipal corporation; township; township police or fire district; joint fire, ambulance, emergency medical service, or recreation district; fire and ambulance district; township waste disposal or road district; community college district; technical college district; detention home district; a district organized for juvenile facilities; a combined district detention home or juvenile facility; a joint-county alcohol, drug addiction, and mental health service district; a drainage improvement district; or a union cemetery district. "Local taxing unit" excludes school districts and joint vocational school districts.*

| | |
|---|---|
| 2004 | 100% |
| 2005 | 100% |
| 2006 | 100% |
| 2007 | 80% |
| 2008 | 80% |
| 2009 | 80% |
| 2010 | 80% |
| 2011 | 80% |
| 2012 | 66.7% |
| 2013 | 53.4% |
| 2014 | 40.1% |
| 2015 | 26.8% |
| 2016 | 13.5% |
| 2017 and thereafter | 0% |

(2) For **fixed-sum levy losses**, 100% of the certified fixed-sum levy loss is paid to the local taxing unit in 2002 and thereafter. Beginning in 2003, by January 31 each year, the Tax Commissioner must review the original certification of the fixed-sum levy loss. If the Commissioner determines that a fixed-sum levy that had been scheduled to be reimbursed in the current year has expired, a revised certification for that and all subsequent years has to be made.

The bill provides for special payments to a local taxing unit in a county of less than 250 square miles that receives 80% or more of its combined general fund and bond retirement fund revenues from property taxes and rollbacks based on 1997 actual revenues as presented in its 1999 tax budget, and in which electric companies and rural electric companies comprise over 20% of its property valuation. That local taxing unit will receive 100% of its certified fixed-rate levy losses in years 2002 through 2016.

The Director pays from the Local Government Property Tax Replacement Fund to the county undivided income tax fund in the proper county treasury one-half of the amount of the fixed-sum and fixed-rate levy losses, on or before each of the days prescribed for the settlements between the county treasurer and the county auditor, which occur on or before February 15 and on or before August 10 each year. The county treasurer distributes the amounts to the proper local taxing unit

as if they had been levied and collected as taxes, and the local taxing unit must apportion the amounts so received among its funds in the same proportions as if those amounts had been levied and collected as taxes.

***Early payoffs***. By February 5, 2002, the Tax Commissioner is required to estimate the amount of money in the Local Government Property Tax Replacement Fund in excess of the amount necessary to make payments to local taxing units in that month. The Commissioner may pay any local taxing unit, from those excess funds, nine and four-tenths times the amount computed for 2002 under (1), above. An early payoff payment made in this manner is in lieu of the payment to be made in February 2002 under (1). A local taxing unit receiving a payment in this manner will no longer be entitled to any further fixed-rate levy loss payments.

***Excess moneys***. On July 31, 2002, 2003, 2004, 2005, and 2006, and on the 31st day of January and July of 2007 and each year thereafter, if the amount credited to the Local Government Property Tax Replacement Fund exceeds the total amount of property tax replacement payments required to be paid to local taxing units, the Director of Budget and Management must distribute the excess to each county as follows:

(1) One-half is distributed to each county in proportion to each county's population;

(2) One-half is distributed to each county in the proportion that the amount of the total levy loss in 2002 for all taxing districts in the county is of the amounts so determined in 2002 for all taxing districts to which property tax replacement payments are required to be made.

These excess amounts must be distributed each year by the county budget commission to each local taxing unit in the county in the proportion that the unit's current taxes charged and payable are of all taxing units' current taxes charged and payable in the county. The amounts received must be credited to the general fund of the local taxing unit that receives them. "Current taxes charged and payable" means the taxes charged and payable as most recently determined for local taxing units in the county.

If, in the opinion of the Director, the excess remaining in the Local Government Property Tax Replacement Fund in any year is not sufficient to warrant distribution in this manner, the excess must remain to the credit of the Fund.

***Insufficient funds***. If the total amount in the Local Government Property Tax Replacement Fund is insufficient to make all payments, the fixed-sum levy

loss payments must be made first in their entirety. After all of those payments are made, fixed-rate levy loss payments must be made from the balance of money available in the proportion of each local taxing unit's payment amount to the total amount of fixed-rate (the bill wrongly refers to fixed-sum) levy loss payments.

***Mergers***. If all or a part of the territories of two or more local taxing units are merged, or unincorporated territory of a township is annexed by a municipal corporation, the Tax Commissioner must adjust the payments made to each of the local taxing units in proportion to the tax value loss apportioned to the merged or annexed territory, or as otherwise provided by a written agreement between the legislative authorities of the local taxing units certified to the Commissioner not later than June 1 of the calendar year in which the payment is to be made.

***Net indebtedness of political subdivisions***

(sec. 133.04)

Existing law limits the amount of net indebtedness a political subdivision ultimately may incur, and establishes a lower maximum amount that the subdivision may incur with a vote of its electors. "Net indebtedness" generally means the principal amount of the outstanding securities of a subdivision less the amount held in a bond retirement fund. Certain securities listed in existing law are excluded from the calculation of net indebtedness.

The bill provides that securities issued in an amount equal to the property tax replacement payments received from the School District Property Tax Replacement Fund or the Local Government Property Tax Replacement Fund must be excluded from the calculation of net indebtedness.

***Replacement of administrative fees***

(sec. 5727.87)

Under existing law, county auditors and county treasurers collect administrative fees for services rendered in collecting personal property and classified property taxes. The fees are imposed at a percentage of the moneys collected in the county. A portion of the fees are paid to the credit of the real estate assessment fund. Since the bill reduces assessment rates on electric and rural electric company tangible personal property, the amount of personal property taxes paid to the county will decrease, causing the administrative fees to decrease. The bill establishes a formula to reimburse those losses.

Not later than June 1, 2002 through 2011, the county auditor must determine the administrative fee loss for each county and certify it to the county

budget commission. The "administrative fee loss" is a county's loss of administrative fees due to its tax value loss, determined as follows:

(1) For years 2002 through 2006, the administrative fee loss is determined by **multiplying** the fixed-rate levy loss and fixed-sum levy loss determined for all taxing districts in the county by .9659%, if total taxes collected in the county in tax year 1998 exceeded $150,000,000, or 1.1159%, if total taxes collected in the county in tax year 1998 were $150,000,000 or less.

(2) For years 2007 through 2011, the administrative fee loss is determined by **subtracting from** the dollar amount of administrative fees collected in the county in tax year 1998, the dollar amount of administrative fees collected in the county in the current calendar year.

Not later than June 1, 2002 through 2011, the county auditor must determine the administrative fee loss for the county and certify it to the county budget commission. Prior to distribution by the county treasurer of property tax replacement payments to school districts and joint vocational school districts, the county budget commission must deduct from those payments 70% of the administrative fee loss certified by the county auditor. Likewise, before distributing property tax replacement payments to local taxing units, the county budget commission must deduct from those payments 30% of the loss.

On or before each of the days prescribed for property tax replacement payments in years 2002 through 2011, the county budget commission pays one-half of the amount of the administrative fee loss to the county auditor, county treasurer, or real estate assessment fund as if the amount had been allowed as administrative fees, and must deposit the amount in the same funds as if allowed as administrative fees.

After payment of the administrative fee loss on or before August 10, 2011, all administrative fee loss payments cease.

***Removal of electric companies and rural electric companies from the public utility excise tax***

***Such companies are no longer subject to the excise tax***

(secs. 5727.01, 5727.02, 5727.05, 5727.30, 5727.31, 5727.311, 5727.32, 5727.33, 5727.38, 5727.42, 5727.53, 5727.61, and 5727.72; Sections 4 and 11)

Current law requires that electric companies and rural electric companies pay an excise tax on their gross receipts. The tax is computed by multiplying gross receipts by 4¾%. The bill removes electric companies and rural electric

companies from the public utility excise tax and subjects electric companies, but not rural electric companies, to the corporation franchise tax (see "***Corporation franchise tax***," below). The bill also amends the current definition of gross receipts to include any receipts received under Chapter 4928., the new retail electric service provisions of the bill.

Under the bill, each electric company and rural electric company must continue to pay the public utility excise tax imposed on gross receipts it receives during the period of May 1, 2000, through May 1, 2001. The tax for this period is to be assessed by the Tax Commissioner on or before the first Monday of November, 2001. Unless the company is a combined company under the bill (see "***Combined companies***," below), after payment of this last assessment, electric companies and rural electric companies cease being subject to the tax.

Regardless of the existing payment schedule for the public utility excise tax, the first payment of the tax liability for this period must be made on or before October 15, 2000, and equal one-third of the estimated liability shown in the company's report filed on or before August 1, 2000. The second payment must be made on or before March 1, 2001, and equal one-third of the tax assessed by the Tax Commissioner on or before the first Monday in November, 2000. The last payment must be made on or before June 1, 2001, and equal one-fourth of the tax assessed by the Commissioner. The final report for the period of May 1, 2000, through May 1, 2001, must be filed on or before August 1, 2001, in accordance with existing public utility excise tax law.

***Repeal of Ohio coal tax credit***

(sec. 5727.391; Section 8)

Effective January 1, 2002, the bill repeals the Ohio coal tax credit in the public utility excise tax law and reestablishes the credit in the corporation franchise tax law, to be applied against an electric company's corporation franchise tax liability. A full discussion of the credit follows in "***Ohio coal tax credit***."

***Combined companies***

(secs. 5727.01 and 5727.03)

The bill provides that any person engaged in the activity of an electric company or rural electric company that is also engaged in the activity of a heating

company[11] or natural gas company,[12] or any combination thereof, is a combined company. A combined company must file a separate report of its taxable property under existing law governing the taxation of public utility property for each listed activity of the combined company, continues to be subject to the public utility excise tax, and must file a separate statement of gross receipts. The Tax Commissioner must separately value, apportion, and assess the company's property and exclude taxable gross receipts directly attributable to the activity of an electric company or a rural electric company. The formula described below in "***Calculation of taxable property***" must be used to identify the taxable property that cannot be directly attributed to providing one of the listed activities of a combined company. The formula described in "***Calculation of taxable gross receipts***" must be used to exclude the portion of taxable gross receipts that cannot be attributed to a listed combined public utility activity.

***Calculation of taxable property***. Under the bill, the taxable property to attribute to an electric company or a rural electric company activity, or a heating company or natural gas company, is the taxable cost of the property that cannot be directly attributed to a listed activity of a combined company **multiplied** by a numerator that is the taxable cost of property that can be directly attributed to the activity of an electric company, a rural electric company, a heating company, or a natural gas company, and a denominator that is the sum of the taxable cost that can be directly attributed to all the listed activities of a combined company.

***Calculation of taxable gross receipts***. Under the bill, beginning with the public utility excise tax assessed by the Tax Commissioner on or before the first Monday in November, 2002, the Commissioner must separate the gross receipts of a combined company attributed to the activity of an electric company or a rural electric company. From the report of gross receipts filed by a combined company, the Commissioner must exclude the taxable gross receipts directly attributable to the activity of an electric company or a rural electric company. In addition, the Commissioner must exclude the portion of taxable gross receipts that cannot be attributed to a listed combined public utility activity or another public utility activity subject to the public utility excise tax by **multiplying** those taxable gross receipts by a numerator that is the taxable gross receipts that can be attributed to an

---

[11] *A "heating company" is defined in existing law as a person engaged in the business of supplying water, steam, or air through pipes or tubing to consumers within this state for heating purposes.*

[12] *Under existing law, a "natural gas company" is a person engaged in the business of supplying natural gas for lighting, power, or heating purposes to consumers within this state.*

electric company or a rural electric company activity, and a denominator that is the sum of the taxable gross receipts that can be directly attributed to a listed combined company activity or another public utility activity subject to the public utility excise tax. For purposes of determining the taxable gross receipts for providing electric company or rural electric company service, the taxable gross receipts as reported and determined under the public utility excise tax law, prior to its amendment by this bill, must be used.

***Corporation franchise tax***

***Electric companies must pay the tax***

(secs. 5733.04(P) and 5733.09; Section 12)

Current law provides that incorporated companies that own and operate a public utility in Ohio and pay the public utility excise tax are not subject to the corporation franchise tax. Since the bill removes electric companies from the public utility excise tax law and no longer requires that they pay that tax, they thus become subject to the corporation franchise tax. For purposes of the corporation franchise tax law, the bill defines any person as an "electric company" when engaged in the business of generating, transmitting, or distributing electricity within Ohio for use by others. A "combined company" has the same meaning as in the public utility property and excise tax law.

The bill provides that an electric company subject to the requirement under existing law to file an annual report with the Tax Commissioner of its taxable property or otherwise having nexus with or in Ohio under the United States Constitution, or any other corporation having any gross receipts directly attributable to providing public utility service as an electric company or having any property directly attributable to providing public utility service as an electric company, is subject to the corporation franchise tax. Electric companies are first subject to the tax for tax year 2002. For that tax year, an electric company is required to pay only two-thirds of its total corporation franchise tax liability.

***Adjustments to net income***

(sec. 5733.04(I)(7) and (16))

Under the corporation franchise tax law, net income is the corporation's taxable income before operating loss deductions and special deductions, subject to certain adjustments. In determining its net income under existing law, a corporation may deduct dividends or distributions received from a public utility if the corporation owns at least 80% of the utility's common stock. The bill provides

that these dividends or distributions are not deducted from net income if the stock is electric company stock.

The bill adds to existing law an adjustment to net income for an electric company that was subject to the public utility excise tax with respect to its gross receipts received during the period of May 1, 2000, through May 1, 2001. The bill requires that the allowance for depreciation and the computation of gain or loss on the sale or other disposition of all assets placed in service prior to January 1, 2002, must be made with reference to the Ohio tax basis of those assets in accordance with rules prescribed by the Tax Commissioner. "Ohio tax basis" means the adjusted book basis less the adjusted tax basis of the assets as recorded on the company's books of accounts as of December 31, 2001. The Ohio tax basis must be amortized over 40 years at 1% per year in years 1 to 10, 2% per year in years 11 to 20, 3% per year in years 21 to 30, and 4% per year in years 31 to 40.

These adjustments continue to apply to assets transferred under a reorganization within the meaning of Section 368A of the Internal Revenue Code, or on the organization of a corporation principally in consideration for the issuance of its stock.

***Determination of the sales factor in calculating net income and treatment of the sale of electricity***

(sec. 5733.05(B)(2)(c))

The value of a corporation's issued and outstanding shares of stock is the base or measure of franchise tax liability. Existing law requires that in determining the value of such stock, the corporation's net income must be calculated and allocated or apportioned to the state. As part of that calculation, property, payroll, and sales factors are determined. The sales factor is the ratio of the corporation's total sales in Ohio during the taxable year to its total sales everywhere during the year. In determining the sales factor under current law, receipts received by a corporation from a public utility are eliminated from the equation where the reporting corporation owns at least 80% of the issued and outstanding common stock of the public utility. The bill specifies that an electric company is not a public utility for this purpose, thus stock owned in an electric company is included in the calculation of the sales factor.

Continuing law addresses when sales must be considered as being made in Ohio, basing the determination on the type of property involved in a sale. For instance, sales of tangible personal property are in Ohio where such property is received in the state by the purchaser. The bill provides that for the purposes of this provision and for filing the annual corporation report of capital and net income

with the Tax Commissioner, sales of electricity and the transmission and distribution of electricity by an electric company must be treated as a sale of a service and not as a sale of tangible personal property.

***Computation of the corporation franchise tax***

(sec. 5733.06)

Under current law, the corporation franchise tax charged each corporation (but not a financial institution) is the sum of (1) and (2), below, or (3), whichever is greater:

(1) Subject to certain ownership requirements in existing law, five and one-tenth per cent on the first $50,000 of the value of the corporation's issued and outstanding shares of stock as determined under the calculation of the corporation's net income; and

(2) Subject to certain ownership requirements in existing law, 8½% on that value so determined, in excess of $50,000; or

(3) Subject to a cap of $150,000, four mills times that portion of the value of the issued and outstanding shares of stock as determined under the calculation of the net book value of the corporation's assets less the net carrying value of its liabilities.

The bill requires that the tax be the greater of the sum of (1) and (2), or (3), above, after the reduction, if any, provided by the following adjustments that apply solely to a combined company:

(1) The total tax calculated in (1) and (2), above, must be reduced by an amount calculated by multiplying such tax by a fraction, the numerator of which is the total taxable gross receipts attributed to providing public utility activity other than as an electric company under the combined company provision discussed above (see "***Combined companies***"), for the year upon which the taxable gross receipts are measured immediately preceding the tax year, and the denominator of which is the total gross receipts from all sources for the year upon which the taxable gross receipts are measured immediately preceding the tax year. The bill provides that nothing in this provision is to be construed to exclude from the denominator any item of income described in existing law regarding the taxation of the net income of a corporation (R.C. § 5733.051, not in the bill).

(2) The total tax calculated in (3), above, must be reduced by an amount calculated by multiplying such tax by the fraction described immediately above in (1).

In no event may these reductions exceed the amount of the public utility excise tax paid in accordance with existing law, for the year upon which the taxable gross receipts are measured immediately preceding the tax year. Existing law regarding the inclusion of items of allocable income or loss from pass-through entities where a corporation has a direct or indirect ownership interest applies when calculating the adjustments (R.C. § 5733.057, not in the bill).

***Ohio coal tax credit***

(secs. 4909.15(A)(4)(b), 5727.01(I), 5727.45, 5733.39, and 5733.98; repeal of sec. 5727.391; Sections 8, 12, and 13)

Current law allows an electric company to claim a tax credit against the public utility excise tax for using Ohio coal. The credit is $1 per ton of Ohio coal burned in a coal-fired electric generating unit during the taxable year. The bill repeals the credit in the public utility excise tax law and transfers it, with certain changes, to the corporation franchise tax law, beginning in tax year 2002 for Ohio coal used in coal-fired generating units after April 30, 2001. The Ohio coal tax credit that was granted under the public utility excise tax law only applies through the last excise tax assessment issued by the Tax Commissioner on or before the first Monday in November, 2001.

Under the public utility excise tax law, the credit could be carried forward. Under the bill, it is a nonrefundable credit that must be claimed in a particular order under existing corporation franchise tax law, after other tax credits are claimed. If the credit exceeds the corporation franchise tax after all other nonrefundable credits for the tax year, the excess cannot be allowed as a credit either against the corporation franchise taxes due for any other year or against any other tax or fee. Additionally, the bill provides that an electric company entitled to carry forward the credit against its public utility excise tax liability before the repeal of the credit cannot carry forward any amount remaining after its last public utility excise tax payment and claim that amount as a credit against its corporation franchise tax liability.

The bill provides that nothing in the tax credit provision may be construed to provide for carryover or carryback of any unused credit provided by any other state law or for the application of any unused credit provided by any other state law against any other tax or fee, if such law does not expressly provide either for a carryover or carryback of any unused credit or for the application of an unused credit against any other tax or fee. Additionally, existing law requiring inclusion of items of allocable income or loss from pass-through entities applies to calculation of the credit.

Under current law, the credit is allowed if certain conditions are met, one of which is that the coal-fired electric generating unit is owned by the company claiming the credit or leased by that company under a sale and leaseback transaction. The bill requires that the unit be owned and used by the company claiming the credit or leased and used by that company under a sale and leaseback transaction. Due to the bill's change in the definition, the sale and leaseback transaction no longer has to occur within the same calendar year (see "***Taxable property***," above).

The sum of the Ohio coal tax credits allowed for all years the credit existed in the public utility excise tax law, and the sum of the credits allowed for all tax years under the credit created by the bill in the corporation franchise tax law, cannot exceed 20% of the cost of the compliance facility attached to, incorporated in, or used in conjunction with the unit. If a compliance facility is used in conjunction with more than one generating unit, the Tax Commissioner must prorate its cost among the units.

Under current public utility excise tax law, the Treasurer of State is required to annually credit from the GRF to the Local Government Fund and the Local Government Revenue Assistance Fund an amount that equals the sum that would have been credited during the year if the Ohio coal tax credit did not exist. The bill eliminates this provision.

Existing law applicable to the credit as it existed in the public utility excise tax law continues to limit the use of the credit under the corporation franchise tax law. The law provides that credits cannot be retained by the company, used to fund any dividend or distribution, or utilized for any purposes other than the defrayal of the expenses of the company in connection with the installation, acquisition, construction, and use of a compliance facility.

***Municipal income tax***

(secs. 715.013 and 718.01(F)(6))

Existing law authorizes municipal corporations to levy an income tax on taxpayers and businesses within the corporation's boundaries, but no municipal corporation may levy a tax that is the same as or similar to certain other state taxes, including the public utility excise tax or the sales and use tax. Additionally, a municipal corporation cannot tax the income of a public utility when the utility is subject to the public utility excise tax.

The bill provides that this existing law does not prohibit a municipal corporation from levying a tax on the income of an electric company or combined

company on and after January 1, 2002. Thus, if a municipal corporation has a municipal income tax, it is applicable to the income of electric companies and combined companies on and after that date. For a combined company, only the income attributed from the activity of an electric company is subject to taxation by a municipal corporation.

***Sales of electricity continue to be exempt from the sales tax***

(secs. 5701.03, 5739.011(B)(8), and 5739.02(B)(43))

Under existing law, sales in which the purpose of the consumer is to incorporate the "thing transferred" as a material or a part, into tangible personal property to be produced for sale by manufacturing, assembling, processing, or refining, or to use or consume the "thing transferred" directly in the rendition of a public utility service, are exempt from the state sales and use tax (R.C. § 5739.01(E)(2), not in the bill). The definition of "thing transferred" includes electricity, and machinery, equipment, and other tangible personal property used to transport or transmit electricity used in the manufacturing operation from the point of generation, if produced by the manufacturer, or from the point where the substance enters the manufacturing facility, if purchased by the manufacturer, to the manufacturing operation. Existing law also mandates that the state sales tax does not apply to the sale of electricity by an electric company.

The bill maintains these exemptions from the state sales and use tax, but changes the way the exemptions are reflected in the law due to the possible restructuring of electric companies and the services they will offer after deregulation is complete. The bill excludes electricity from the definition of "personal property," except to the extent that the value of the electricity is included in the valuation of inventory produced for sale, for purposes of all of Ohio's tax laws, and adds to the definition of "thing transferred" machinery and equipment used to produce electricity for use in the manufacturing operation.

The bill further specifies that the sales and use tax does not apply to sales of tangible personal property and services to a provider of electricity used or consumed directly and primarily in generating, transmitting, or distributing electricity for use by others, including property that is or is to be incorporated into and will become a part of the consumer's production, transmission, or distribution system and that retains its classification as tangible personal property after incorporation; fuel or power used in the production, transmission, or distribution of electricity; and tangible personal property and services used in the repair and maintenance of the production, transmission, or distribution system, including only those motor vehicles as are specially designed and equipped for such use. The exemption provided in this provision is in lieu of all other exceptions in R.C. §

5739.01(E)(2), discussed immediately above, to which a provider of electricity may otherwise be entitled based on the use of the tangible personal property or service purchased in generating, transmitting, or distributing electricity.

***Miscellaneous***

(secs. 5727.47, 5727.53, and 5727.60; repeal of secs. 5727.231 and 5727.73)

Current law (R.C. § 5727.53) requires that taxes, fees, and penalties under the public utility excise tax law may be recovered in a civil action brought by the Attorney General, and when recovered, must be paid into the state treasury to the credit of the General Revenue Fund. The bill provides that only such taxes, fees, and penalties that are remitted to the Treasurer of State may be recovered in that manner and, when recovered, must be paid into the state treasury in the same manner as the tax.

Existing law (R.C. § 5727.60) penalizes public utilities for failure to file a report with the Tax Commissioner under the public utility property assessment and excise tax law. The penalty for not making the report is $10 per day for each day's omission. The bill provides that if a person fails to file a report of its taxable property and a statement of it gross receipts within the time prescribed under the provisions requiring the report or statement, including any extensions of time granted by the Tax Commissioner, a penalty of $50 per month, not to exceed $500, may be imposed for each month or fraction of a month elapsing between the due date of the report, including any extensions, and the date the report was filed. The penalty for failing to file the report of taxable property must be paid into the GRF. If the penalty is not paid within 15 days after notice of the penalty is mailed to the person, the Commissioner must certify the penalty as a claim to the Attorney General for collection. The penalty for failing to file the statement of its gross receipts must be deposited into the state treasury in the same manner as the public utility excise tax is deposited, and the Commissioner may collect the penalty by assessment. The Commissioner may abate this penalty in full or in part.

The bill repeals an outdated provision (R.C. § 5727.231) that in 1990 and 1991 provided supplemental property tax assessments for school districts.

The bill also repeals a provision (R.C. § 5727.73) that is duplicative of R.C. § 5727.72, as amended by the bill, regarding the duty of officers, employees, and agents of public utilities to attend before the Department of Taxation, present documents, and answer questions.

## HISTORY

| ACTION | DATE | JOURNAL ENTRY | |
|---|---|---|---|
| Introduced | 01-20-99 | p. | 25 |
| Reported, S. Ways & Means | 05-18-99 | pp. | 434-435 |
| Passed Senate (20-12) | 05-18-99 | pp. | 437-447 |

S0003-PS.123/rss