

As Introduced

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H. B. No. 56

Representative Cera

Cosponsors: Representatives Rogers, Lepore-Hagan, Crawley

A BILL

To amend sections 1513.37, 1561.24, and 5727.81 of
the Revised Code to allocate 3.75% of kilowatt-
hour excise tax revenue for mine reclamation,
mine drainage abatement, and mine safety.

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

Section 1. That sections 1513.37, 1561.24, and 5727.81 of
the Revised Code be amended to read as follows:

Sec. 1513.37. (A) There is hereby created in the state
treasury the abandoned mine reclamation fund, which shall be
administered by the chief of the division of mineral resources
management. The fund shall consist of kilowatt-hour excise tax
revenue credited to the fund under section 5727.81 of the
Revised Code, any money transferred from the acid mine drainage
abatement and treatment fund, and grants from the secretary of
the interior from the federal abandoned mine reclamation fund
established by Title IV of the "Surface Mining Control and
Reclamation Act of 1977," 91 Stat. 445, 30 U.S.C.A. 1201,
regulations adopted under it, and amendments to the act and
regulations. Expenditures from the abandoned mine reclamation

fund shall be made by the chief for the following purposes: 19

(1) Reclamation and restoration of land and water 20
resources adversely affected by past coal mining, including, but 21
not limited to, reclamation and restoration of abandoned strip 22
mine areas, abandoned coal processing areas, and abandoned coal 23
refuse disposal areas; sealing and filling of abandoned deep 24
mine entries and voids; planting of land adversely affected by 25
past coal mining; prevention of erosion and sedimentation; 26
prevention, abatement, treatment, and control of water pollution 27
created by coal mine drainage, including restoration of 28
streambeds and construction and operation of water treatment 29
plants; prevention, abatement, and control of burning coal 30
refuse disposal areas and burning coal in situ; and prevention, 31
abatement, and control of coal mine subsidence; 32

(2) Acquisition and filling of voids and sealing of 33
tunnels, shafts, and entryways of noncoal lands; 34

(3) Acquisition of land as provided for in this section; 35

(4) Administrative expenses incurred in accomplishing the 36
purposes of this section; 37

(5) All other necessary expenses to accomplish the 38
purposes of this section. 39

The chief may transfer money from the abandoned mine 40
reclamation fund to the acid mine drainage abatement and 41
treatment fund. The total amount transferred in a fiscal year 42
shall not exceed the amount credited in that year to the 43
abandoned mine reclamation fund from kilowatt-hour excise tax 44
revenue under section 5727.81 of the Revised Code. 45

(B) Expenditures of money from the fund on land and water 46
eligible pursuant to division (C) of this section shall reflect 47

the following priorities in the order stated:	48
(1) The protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices;	49 50 51
(2) The protection of public health, safety, and general welfare from adverse effects of coal mining practices;	52 53
(3) The restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices, including measures for the conservation and development of soil and water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity;	54 55 56 57 58 59
(4) Research and demonstration projects relating to the development of coal mining reclamation and water quality control program methods and techniques;	60 61 62
(5) The protection, repair, replacement, construction, or enhancement of public facilities such as utilities, roads, recreation facilities, and conservation facilities adversely affected by coal mining practices;	63 64 65 66
(6) The development of publicly owned land adversely affected by coal mining practices, including land acquired as provided in this section for recreation and historic purposes, conservation and reclamation purposes, and open space benefits.	67 68 69 70
(C) (1) Lands and water eligible for reclamation or drainage abatement expenditures under this section are those that were mined for coal or were affected by such mining, wastebanks, coal processing, or other coal mining processes and that meet one of the following criteria:	71 72 73 74 75

(a) Are lands that were abandoned or left in an inadequate 76
reclamation status prior to August 3, 1977, and for which there 77
is no continuing reclamation responsibility under state or 78
federal laws; 79

(b) Are lands for which the chief finds that surface coal 80
mining operations occurred at any time between August 4, 1977, 81
and August 16, 1982, and that any money for reclamation or 82
abatement that are available pursuant to a bond, performance 83
security, or other form of financial guarantee or from any other 84
source are not sufficient to provide for adequate reclamation or 85
abatement at the site; 86

(c) Are lands for which the chief finds that surface coal 87
mining operations occurred at any time between August 4, 1977, 88
and November 5, 1990, that the surety of the mining operator 89
became insolvent during that time, and that, as of November 5, 90
1990, any money immediately available from proceedings relating 91
to that insolvency or from any financial guarantee or other 92
source are not sufficient to provide for adequate reclamation or 93
abatement at the site. 94

(2) In determining which sites to reclaim pursuant to 95
divisions (C) (1) (b) and (c) of this section, the chief shall 96
follow the priorities stated in divisions (B) (1) and (2) of this 97
section and shall ensure that priority is given to those sites 98
that are in the immediate vicinity of a residential area or that 99
have an adverse economic impact on a local community. 100

(3) Surface coal mining operations on lands eligible for 101
remining shall not affect the eligibility of those lands for 102
reclamation and restoration under this section after the release 103
of the bond, performance security, or other form of financial 104
guarantee for any such operation as provided under division (F) 105

of section 1513.16 of the Revised Code. If the bond, performance 106
security, or other form of financial guarantee for a surface 107
coal mining operation on lands eligible for remining is 108
forfeited, money available under this section may be used if the 109
amount of the bond, performance security, or other form of 110
financial guarantee is not sufficient to provide for adequate 111
reclamation or abatement, except that if conditions warrant, the 112
chief immediately shall exercise the authority granted under 113
division (L) of this section. 114

(D) The chief may submit to the secretary of the interior 115
a state reclamation plan and annual projects to carry out the 116
purposes of this section. 117

(1) The reclamation plan generally shall identify the 118
areas to be reclaimed, the purposes for which the reclamation is 119
proposed, the relationship of the lands to be reclaimed and the 120
proposed reclamation to surrounding areas, the specific criteria 121
for ranking and identifying projects to be funded, and the legal 122
authority and programmatic capability to perform the work in 123
accordance with this section. 124

(2) On an annual basis, the chief may submit to the 125
secretary an application for support of the abandoned mine 126
reclamation fund and implementation of specific reclamation 127
projects. The annual requests shall include such information as 128
may be requested by the secretary. 129

(3) The costs for each proposed project under this section 130
shall include actual construction costs, actual operation and 131
maintenance costs of permanent facilities, planning and 132
engineering costs, construction inspection costs, and other 133
necessary administrative expenses. 134

(4) The chief may submit annual and other reports required 135
by the secretary when funds are provided by the secretary under 136
Title IV of the "Surface Mining Control and Reclamation Act of 137
1977," 91 Stat. 445, 30 U.S.C.A. 1201, regulations adopted under 138
it, and amendments to the act and regulations. 139

(E) (1) There is hereby created in the state treasury the 140
acid mine drainage abatement and treatment fund, which shall be 141
administered by the chief. The fund shall consist of kilowatt- 142
hour excise tax revenue credited to the fund under section 143
5727.81 of the Revised Code, any money transferred from the 144
abandoned mine reclamation fund, and grants from the secretary 145
of the interior from the federal abandoned mine reclamation fund 146
pursuant to section 402(g) (6) of Title IV of the "Surface Mining 147
Control and Reclamation Act of 1977," 91 Stat. 445, 30 U.S.C.A. 148
1201. All investment earnings of the acid mine drainage 149
abatement and treatment fund shall be credited to the fund. 150

(2) The chief shall make expenditures from the fund, in 151
consultation with the United States department of agriculture, 152
soil conservation service, to implement acid mine drainage 153
abatement and treatment plans approved by the secretary. The 154
plans shall provide for the comprehensive abatement of the 155
causes and treatment of the effects of acid mine drainage within 156
qualified hydrologic units affected by coal mining practices and 157
shall include at least all of the following: 158

(a) An identification of the qualified hydrologic unit. As 159
used in division (E) of this section, "qualified hydrologic 160
unit" means a hydrologic unit that meets all of the following 161
criteria: 162

(i) The water quality in the unit has been significantly 163
affected by acid mine drainage from coal mining practices in a 164

manner that has an adverse impact on biological resources.	165
(ii) The unit contains lands and waters that meet the eligibility requirements established under division (C) of this section and any of the priorities established in divisions (B) (1) to (3) of this section.	166 167 168 169
(iii) The unit contains lands and waters that are proposed to be the subject of expenditures from the reclamation forfeiture fund created in section 1513.18 of the Revised Code or the mining regulation and safety fund created in section 1513.30 of the Revised Code.	170 171 172 173 174
(b) The extent to which acid mine drainage is affecting the water quality and biological resources within the hydrologic unit;	175 176 177
(c) An identification of the sources of acid mine drainage within the hydrologic unit;	178 179
(d) An identification of individual projects and the measures proposed to be undertaken to abate and treat the causes or effects of acid mine drainage within the hydrologic unit;	180 181 182
(e) The cost of undertaking the proposed abatement and treatment measures;	183 184
(f) An identification of existing and proposed sources of funding for those measures;	185 186
(g) An analysis of the cost-effectiveness and environmental benefits of abatement and treatment measures.	187 188
(3) The chief may make grants of money from the acid mine drainage abatement and treatment fund to watershed groups for conducting projects to accomplish the purposes of this section. A grant may be made in an amount equal to not more than fifty	189 190 191 192

per cent of each of the following:	193
(a) Reasonable and necessary expenses for the collection	194
and analysis of data sufficient to do either or both of the	195
following:	196
(i) Identify a watershed as a qualified hydrologic unit;	197
(ii) Monitor the quality of water in a qualified	198
hydrologic unit before, during, and at any time after completion	199
of the project by the watershed group.	200
(b) Engineering design costs and construction costs	201
involved in the project, provided that the project is conducted	202
in a qualified hydrologic unit and the chief considers the	203
project to be a priority.	204
A watershed group that wishes to obtain a grant under	205
division (E) (3) of this section shall submit an application to	206
the chief on forms provided by the division of mineral resources	207
management, together with detailed estimates and timetables for	208
accomplishing the stated goals of the project and any other	209
information that the chief requires.	210
For the purposes of establishing priorities for awarding	211
grants under division (E) (3) of this section, the chief shall	212
consider each project's feasibility, cost-effectiveness, and	213
environmental benefit, together with the availability of	214
matching funding, including in-kind services, for the project.	215
The chief shall enter into a contract for funding with	216
each applicant awarded a grant to ensure that the money granted	217
are <u>is</u> used for the purposes of this section and that the work	218
that the project involves is done properly. The contract is not	219
subject to division (B) of section 127.16 of the Revised Code.	220
The final payment of grant money shall not be made until the	221

chief inspects and approves the completed project. 222

The chief shall require each applicant awarded a grant 223
under this section who conducts a project involving construction 224
work to pay workers at the greater of their regular rate of pay, 225
as established by contract, agreement, or prior custom or 226
practice, or the average wage rate paid in this state for the 227
same or similar work performed in the same or a similar locality 228
by private companies doing similar work on similar projects. 229

As used in division (E) (3) of this section, "watershed 230
group" means a charitable organization as defined in section 231
1716.01 of the Revised Code that has been established for the 232
purpose of conducting reclamation of land and waters adversely 233
affected by coal mining practices and specifically for 234
conducting acid mine drainage abatement. 235

(4) The chief may transfer money from the acid mine 236
drainage abatement and treatment fund to the abandoned mine 237
reclamation fund. The total amount transferred in a fiscal year 238
shall not exceed the amount credited in that year to the acid 239
mine drainage abatement and treatment fund from kilowatt-hour 240
excise tax revenue under section 5727.81 of the Revised Code. 241

(F) (1) If the chief makes a finding of fact that land or 242
water resources have been adversely affected by past coal mining 243
practices; the adverse effects are at a stage where, in the 244
public interest, action to restore, reclaim, abate, control, or 245
prevent the adverse effects should be taken; the owners of the 246
land or water resources where entry must be made to restore, 247
reclaim, abate, control, or prevent the adverse effects of past 248
coal mining practices are not known or are not readily 249
available; or the owners will not give permission for the state, 250
political subdivisions, or their agents, employees, or 251

contractors to enter upon the property to restore, reclaim, 252
abate, control, or prevent the adverse effects of past coal 253
mining practices; then, upon giving notice by mail to the 254
owners, if known, or, if not known, by posting notice upon the 255
premises and advertising once in a newspaper of general 256
circulation in the municipal corporation or county in which the 257
land lies, the chief or the chief's agents, employees, or 258
contractors may enter upon the property adversely affected by 259
past coal mining practices and any other property to have access 260
to the property to do all things necessary or expedient to 261
restore, reclaim, abate, control, or prevent the adverse 262
effects. The entry shall be construed as an exercise of the 263
police power for the protection of the public health, safety, 264
and general welfare and shall not be construed as an act of 265
condemnation of property nor of trespass on it. The money 266
expended for the work and the benefits accruing to any such 267
premises so entered upon shall be chargeable against the land 268
and shall mitigate or offset any claim in or any action brought 269
by any owner of any interest in the premises for any alleged 270
damages by virtue of the entry, but this provision is not 271
intended to create new rights of action or eliminate existing 272
immunities. 273

(2) The chief or the chief's authorized representatives 274
may enter upon any property for the purpose of conducting 275
studies or exploratory work to determine the existence of 276
adverse effects of past coal mining practices and to determine 277
the feasibility of restoration, reclamation, abatement, control, 278
or prevention of such adverse effects. The entry shall be 279
construed as an exercise of the police power for the protection 280
of the public health, safety, and general welfare and shall not 281
be construed as an act of condemnation of property nor trespass 282

on it.	283
(3) The chief may acquire any land by purchase, donation,	284
or condemnation that is adversely affected by past coal mining	285
practices if the chief determines that acquisition of the land	286
is necessary to successful reclamation and that all of the	287
following apply:	288
(a) The acquired land, after restoration, reclamation,	289
abatement, control, or prevention of the adverse effects of past	290
coal mining practices, will serve recreation and historic	291
purposes, serve conservation and reclamation purposes, or	292
provide open space benefits.	293
(b) Permanent facilities such as a treatment plant or a	294
relocated stream channel will be constructed on the land for the	295
restoration, reclamation, abatement, control, or prevention of	296
the adverse effects of past coal mining practices.	297
(c) Acquisition of coal refuse disposal sites and all coal	298
refuse thereon will serve the purposes of this section or public	299
ownership is desirable to meet emergency situations and prevent	300
recurrences of the adverse effects of past coal mining	301
practices.	302
(4) (a) Title to all lands acquired pursuant to this	303
section shall be in the name of the state. The price paid for	304
land acquired under this section shall reflect the market value	305
of the land as adversely affected by past coal mining practices.	306
(b) The chief may receive grants on a matching basis from	307
the secretary of the interior for the purpose of carrying out	308
this section.	309
(5) (a) Where land acquired pursuant to this section is	310
considered to be suitable for industrial, commercial,	311

residential, or recreational development, the chief may sell the 312
land by public sale under a system of competitive bidding at not 313
less than fair market value and under other requirements imposed 314
by rule to ensure that the lands are put to proper use 315
consistent with local and state land use plans, if any, as 316
determined by the chief. 317

(b) The chief, when requested, and after appropriate 318
public notice, shall hold a public meeting in the county, 319
counties, or other appropriate political subdivisions of the 320
state in which lands acquired pursuant to this section are 321
located. The meetings shall be held at a time that shall afford 322
local citizens and governments the maximum opportunity to 323
participate in the decision concerning the use or disposition of 324
the lands after restoration, reclamation, abatement, control, or 325
prevention of the adverse effects of past coal mining practices. 326

(6) In addition to the authority to acquire land under 327
division (F)(3) of this section, the chief may use money in the 328
fund to acquire land by purchase, donation, or condemnation, and 329
to reclaim and transfer acquired land to a political 330
subdivision, or to any person, if the chief determines that it 331
is an integral and necessary element of an economically feasible 332
plan for the construction or rehabilitation of housing for 333
persons disabled as the result of employment in the mines or 334
work incidental to that employment, persons displaced by 335
acquisition of land pursuant to this section, persons dislocated 336
as the result of adverse effects of coal mining practices that 337
constitute an emergency as provided in the "Surface Mining 338
Control and Reclamation Act of 1977," 91 Stat. 466, 30 U.S.C.A. 339
1240, or amendments to it, or persons dislocated as the result 340
of natural disasters or catastrophic failures from any cause. 341
Such activities shall be accomplished under such terms and 342

conditions as the chief requires, which may include transfers of 343
land with or without monetary consideration, except that to the 344
extent that the consideration is below the fair market value of 345
the land transferred, no portion of the difference between the 346
fair market value and the consideration shall accrue as a profit 347
to those persons. No part of the funds provided under this 348
section may be used to pay the actual construction costs of 349
housing. The chief may carry out the purposes of division (F) (6) 350
of this section directly or by making grants and commitments for 351
grants and may advance money under such terms and conditions as 352
the chief may require to any agency or instrumentality of the 353
state or any public body or nonprofit organization designated by 354
the chief. 355

(G) (1) Within six months after the completion of projects 356
to restore, reclaim, abate, control, or prevent adverse effects 357
of past coal mining practices on privately owned land, the chief 358
shall itemize the money so expended and may file a statement of 359
the expenditures in the office of the county recorder of the 360
county in which the land lies, together with a notarized 361
appraisal by an independent appraiser of the value of the land 362
before the restoration, reclamation, abatement, control, or 363
prevention of adverse effects of past coal mining practices if 364
the money so expended result in a significant increase in 365
property value. The statement shall constitute a lien upon the 366
land as of the date of the expenditures of the money and shall 367
have priority as a lien second only to the lien of real property 368
taxes imposed upon the land. The lien shall not exceed the 369
amount determined by the appraisal to be the increase in the 370
fair market value of the land as a result of the restoration, 371
reclamation, abatement, control, or prevention of the adverse 372
effects of past coal mining practices. No lien shall be filed 373

under division (G) of this section against the property of any 374
person who owned the surface prior to May 2, 1977, and did not 375
consent to, participate in, or exercise control over the mining 376
operation that necessitated the reclamation performed. 377

(2) The landowner may petition, within sixty days after 378
the filing of the lien, to determine the increase in the fair 379
market value of the land as a result of the restoration, 380
reclamation, abatement, control, or prevention of the adverse 381
effects of past coal mining practices. The amount reported to be 382
the increase in value of the premises shall constitute the 383
amount of the lien and shall be recorded with the statement 384
provided in this section. Any party aggrieved by the decision 385
may appeal as provided by state law. 386

(3) The lien provided in division (G) of this section 387
shall be recorded and indexed, under the name of the state and 388
the landowner, in the official records in the office of the 389
county recorder of the county in which the land lies. The county 390
recorder shall impose no charge for the recording or indexing of 391
the lien. If the land is registered, the county recorder shall 392
make a notation and enter a memorial of the lien upon the page 393
of the register in which the last certificate of title to the 394
land is registered, stating the name of the claimant, amount 395
claimed, volume and page of the record where recorded, and exact 396
time the memorial was entered. 397

(4) The lien shall continue in force so long as any 398
portion of the amount of the lien remains unpaid. If the lien 399
remains unpaid at the time of conveyance of the land on which 400
the lien was placed, the conveyance may be set aside. Upon 401
repayment in full of the money expended under this section, the 402
chief promptly shall issue a certificate of release of the lien. 403

Upon presentation of the certificate of release, the county 404
recorder of the county in which the lien is recorded shall 405
record the lien as having been discharged. 406

(5) A lien imposed under this section shall be foreclosed 407
upon the substantial failure of a landowner to pay any portion 408
of the amount of the lien. Before foreclosing any lien under 409
this section, the chief shall make a written demand upon the 410
landowner for payment. If the landowner does not pay the amount 411
due within sixty days, the chief shall refer the matter to the 412
attorney general, who shall institute a civil action to 413
foreclose the lien. 414

(H) (1) The chief may fill voids, seal abandoned tunnels, 415
shafts, and entryways, and reclaim surface impacts of 416
underground or strip mines that the chief determines could 417
endanger life and property, constitute a hazard to the public 418
health and safety, or degrade the environment. 419

(2) In those instances where mine waste piles are being 420
reworked for conservation purposes, the incremental costs of 421
disposing of the wastes from those operations by filling voids 422
and sealing tunnels may be eligible for funding, provided that 423
the disposal of these wastes meets the purposes of this section. 424

(3) The chief may acquire by purchase, donation, easement, 425
or otherwise such interest in land as the chief determines 426
necessary to carry out division (H) of this section. 427

(I) The chief shall report annually to the secretary of 428
the interior on operations under the fund and include 429
recommendations as to its future uses. 430

(J) (1) The chief may engage in any work and do all things 431
necessary or expedient, including the adoption of rules, to 432

implement and administer this section. 433

(2) The chief may engage in cooperative projects under 434
this section with any agency of the United States, any other 435
state, or their governmental agencies or with any state 436
university or college as defined in section 3345.27 of the 437
Revised Code. The cooperative projects are not subject to 438
division (B) of section 127.16 of the Revised Code. 439

(3) The chief may request the attorney general to initiate 440
in any court of competent jurisdiction an action in equity for 441
an injunction to restrain any interference with the exercise of 442
the right to enter or to conduct any work provided in this 443
section, which remedy is in addition to any other remedy 444
available under this section. 445

(4) The chief may construct or operate a plant or plants 446
for the control and treatment of water pollution resulting from 447
mine drainage. The extent of this control and treatment may be 448
dependent upon the ultimate use of the water. Division (J)(4) of 449
this section does not repeal or supersede any portion of the 450
"Federal Water Pollution Control Act," 70 Stat. 498 (1965), 33 451
U.S.C.A. 1151, as amended, and no control or treatment under 452
division (J)(4) of this section, in any way, shall be less than 453
that required by that act. The construction of a plant or plants 454
may include major interceptors and other facilities appurtenant 455
to the plant. 456

(5) The chief may transfer money from the abandoned mine 457
reclamation fund and the acid mine drainage abatement and 458
treatment fund to other appropriate state agencies or to state 459
universities or colleges in order to carry out the reclamation 460
activities authorized by this section. 461

(K) The chief may contract for any part of work to be 462
performed under this section, with or without advertising for 463
bids, if the chief determines that a condition exists that could 464
reasonably be expected to cause substantial physical harm to 465
persons, property, or the environment and to which persons or 466
improvements on real property are currently exposed. 467

The chief shall require every contractor performing 468
reclamation work under this section to pay its workers at the 469
greater of their regular rate of pay, as established by 470
contract, agreement, or prior custom or practice, or the average 471
wage rate paid in this state for the same or similar work as 472
determined by the chief under section 1513.02 of the Revised 473
Code. 474

(L) (1) The chief may contract for the emergency 475
restoration, reclamation, abatement, control, or prevention of 476
adverse effects of mining practices on eligible lands if the 477
chief determines that an emergency exists constituting a danger 478
to the public health, safety, or welfare and that no other 479
person or agency will act expeditiously to restore, reclaim, 480
abate, control, or prevent those adverse effects. The chief may 481
enter into a contract for emergency work under division (L) of 482
this section without advertising for bids. Any such contract or 483
any purchase of materials for emergency work under division (L) 484
of this section is not subject to division (B) of section 127.16 485
of the Revised Code. 486

(2) The chief or the chief's agents, employees, or 487
contractors may enter on any land where such an emergency 488
exists, and on other land in order to have access to that land, 489
in order to restore, reclaim, abate, control, or prevent the 490
adverse effects of mining practices and to do all things 491

necessary or expedient to protect the public health, safety, or welfare. Such an entry shall be construed as an exercise of the police power and shall not be construed as an act of condemnation of property or of trespass. The money expended for the work and the benefits accruing to any premises so entered upon shall be chargeable against the land and shall mitigate or offset any claim in or any action brought by any owner of any interest in the premises for any alleged damages by virtue of the entry. This provision is not intended to create new rights of action or eliminate existing immunities.

(M) (1) The chief shall adopt policies and procedures that establish incentives for contractors to employ coal miners who qualify as dislocated workers for the purposes of projects conducted under division (D) or (E) of this section.

(2) For the purposes of this section, a "dislocated worker" has the same definition as in 29 U.S.C. 3102.

Sec. 1561.24. For purposes of this chapter, Chapters 1563., 1565., and 1567., and sections 1514.40 to 1514.50 of the Revised Code, there is hereby created in the state treasury the mine safety fund. The fund shall consist of kilowatt-hour excise tax revenue credited to the fund under section 5727.81 of the Revised Code and money transferred to it by the administrator of workers' compensation from the coal-workers pneumoconiosis fund established in section 4131.03 of the Revised Code. All investment earnings of the mine safety fund shall be credited to the fund. The chief of the division of mineral resources management shall use money in the fund for all of the following purposes:

(A) Mine safety and health inspections and audits;

- (B) The purchase and maintenance of mine rescue and inspection equipment; 521
522
- (C) The purchase or lease of facilities for use as mine rescue stations and for mine rescue and safety training; 523
524
- (D) Mine rescue and safety and health training of miners; 525
- (E) Certification and recertification of mine officials; 526
- (F) Infrastructure, programming, and personnel costs 527
relating to mine safety training. 528

Sec. 5727.81. (A) For the purpose of raising revenue to 529
fund the needs of this state and its local governments and for 530
the purposes of mine reclamation, mine drainage abatement, and 531
mine safety, an excise tax is hereby levied and imposed on an 532
electric distribution company for all electricity distributed by 533
such company at the following rates per kilowatt hour of 534
electricity distributed in a thirty-day period by the company 535
through a meter of an end user in this state: 536

KILOWATT HOURS DISTRIBUTED	RATE PER	537
TO AN END USER	KILOWATT HOUR	538
For the first 2,000	\$.00465	539
For the next 2,001 to 15,000	\$.00419	540
For 15,001 and above	\$.00363	541

If no meter is used to measure the kilowatt hours of 542
electricity distributed by the company, the rates shall apply to 543
the estimated kilowatt hours of electricity distributed to an 544
unmetered location in this state. 545

The electric distribution company shall base the monthly 546
tax on the kilowatt hours of electricity distributed to an end 547

user through the meter of the end user that is not measured for 548
a thirty-day period by dividing the days in the measurement 549
period into the total kilowatt hours measured during the 550
measurement period to obtain a daily average usage. The tax 551
shall be determined by obtaining the sum of divisions (A) (1), 552
(2), and (3) of this section and multiplying that amount by the 553
number of days in the measurement period: 554

(1) Multiplying \$0.00465 per kilowatt hour for the first 555
sixty-seven kilowatt hours distributed using a daily average; 556

(2) Multiplying \$0.00419 for the next sixty-eight to five 557
hundred kilowatt hours distributed using a daily average; 558

(3) Multiplying \$0.00363 for the remaining kilowatt hours 559
distributed using a daily average. 560

Except as provided in division (C) of this section, the 561
electric distribution company shall pay the tax to the tax 562
commissioner in accordance with section 5727.82 of the Revised 563
Code, unless required to remit each tax payment by electronic 564
funds transfer to the treasurer of state in accordance with 565
section 5727.83 of the Revised Code. 566

Only the distribution of electricity through a meter of an 567
end user in this state shall be used by the electric 568
distribution company to compute the amount or estimated amount 569
of tax due. In the event a meter is not actually read for a 570
measurement period, the estimated kilowatt hours distributed by 571
an electric distribution company to bill for its distribution 572
charges shall be used. 573

(B) Except as provided in division (C) of this section, 574
each electric distribution company shall pay the tax imposed by 575
this section in all of the following circumstances: 576

(1) The electricity is distributed by the company through a meter of an end user in this state;	577 578
(2) The company is distributing electricity through a meter located in another state, but the electricity is consumed in this state in the manner prescribed by the tax commissioner;	579 580 581
(3) The company is distributing electricity in this state without the use of a meter, but the electricity is consumed in this state as estimated and in the manner prescribed by the tax commissioner.	582 583 584 585
(C) (1) As used in division (C) of this section:	586
(a) "Total price of electricity" means the aggregate value in money of anything paid or transferred, or promised to be paid or transferred, to obtain electricity or electric service, including but not limited to the value paid or promised to be paid for the transmission or distribution of electricity and for transition costs as described in Chapter 4928. of the Revised Code.	587 588 589 590 591 592 593
(b) "Package" means the provision or the acquisition, at a combined price, of electricity with other services or products, or any combination thereof, such as natural gas or other fuels; energy management products, software, and services; machinery and equipment acquisition; and financing agreements.	594 595 596 597 598
(c) "Single location" means a facility located on contiguous property separated only by a roadway, railway, or waterway.	599 600 601
(2) Division (C) of this section applies to any commercial or industrial purchaser's receipt of electricity through a meter of an end user in this state or through more than one meter at a single location in this state in a quantity that exceeds forty-	602 603 604 605

five million kilowatt hours of electricity over the course of 606
the preceding calendar year, or any commercial or industrial 607
purchaser that will consume more than forty-five million 608
kilowatt hours of electricity over the course of the succeeding 609
twelve months as estimated by the tax commissioner. The tax 610
commissioner shall make such an estimate upon the written 611
request by an applicant for registration as a self-assessing 612
purchaser under this division. For the meter reading period 613
including July 1, 2008, through the meter reading period 614
including December 31, 2010, such a purchaser may elect to self- 615
assess the excise tax imposed by this section at the rate of 616
\$.00075 per kilowatt hour on the first five hundred four million 617
kilowatt hours distributed to that meter or location during the 618
registration year, and a percentage of the total price of all 619
electricity distributed to that meter or location equal to three 620
and one-half per cent. For the meter reading period including 621
January 1, 2011, and thereafter, such a purchaser may elect to 622
self-assess the excise tax imposed by this section at the rate 623
of \$.00257 per kilowatt hour for the first five hundred million 624
kilowatt hours, and \$.001832 per kilowatt hour for each kilowatt 625
hour in excess of five hundred million kilowatt hours, 626
distributed to that meter or location during the registration 627
year. 628

A qualified end user that receives electricity through a 629
meter of an end user in this state or through more than one 630
meter at a single location in this state and that consumes, over 631
the course of the previous calendar year, more than forty-five 632
million kilowatt hours in other than its qualifying 633
manufacturing process, may elect to self-assess the tax as 634
allowed by this division with respect to the electricity used in 635
other than its qualifying manufacturing process. 636

Payment of the tax shall be made directly to the tax 637
commissioner in accordance with divisions (A) (4) and (5) of 638
section 5727.82 of the Revised Code, or the treasurer of state 639
in accordance with section 5727.83 of the Revised Code. If the 640
electric distribution company serving the self-assessing 641
purchaser is a municipal electric utility and the purchaser is 642
within the municipal corporation's corporate limits, payment 643
shall be made to such municipal corporation's general fund and 644
reports shall be filed in accordance with divisions (A) (4) and 645
(5) of section 5727.82 of the Revised Code, except that 646
"municipal corporation" shall be substituted for "treasurer of 647
state" and "tax commissioner." A self-assessing purchaser that 648
pays the excise tax as provided in this division shall not be 649
required to pay the tax to the electric distribution company 650
from which its electricity is distributed. If a self-assessing 651
purchaser's receipt of electricity is not subject to the tax as 652
measured under this division, the tax on the receipt of such 653
electricity shall be measured and paid as provided in division 654
(A) of this section. 655

(3) In the case of the acquisition of a package, unless 656
the elements of the package are separately stated isolating the 657
total price of electricity from the price of the remaining 658
elements of the package, the tax imposed under this section 659
applies to the entire price of the package. If the elements of 660
the package are separately stated, the tax imposed under this 661
section applies to the total price of the electricity. 662

(4) Any electric supplier that sells electricity as part 663
of a package shall separately state to the purchaser the total 664
price of the electricity and, upon request by the tax 665
commissioner, the total price of each of the other elements of 666
the package. 667

(5) The tax commissioner may adopt rules relating to the 668
computation of the total price of electricity with respect to 669
self-assessing purchasers, which may include rules to establish 670
the total price of electricity purchased as part of a package. 671

(6) An annual application for registration as a self- 672
assessing purchaser shall be made for each qualifying meter or 673
location on a form prescribed by the tax commissioner. The 674
registration year begins on the first day of May and ends on the 675
following thirtieth day of April. Persons may apply after the 676
first day of May for the remainder of the registration year. In 677
the case of an applicant applying on the basis of an estimated 678
consumption of forty-five million kilowatt hours over the course 679
of the succeeding twelve months, the applicant shall provide 680
such information as the tax commissioner considers to be 681
necessary to estimate such consumption. At the time of making 682
the application and by the first day of May of each year, a 683
self-assessing purchaser shall pay a fee of five hundred dollars 684
to the tax commissioner, or to the treasurer of state as 685
provided in section 5727.83 of the Revised Code, for each 686
qualifying meter or location. The tax commissioner shall 687
immediately pay to the treasurer of state all amounts that the 688
tax commissioner receives under this section. The treasurer of 689
state shall deposit such amounts into the kilowatt hour excise 690
tax administration fund, which is hereby created in the state 691
treasury. Money in the fund shall be used to defray the tax 692
commissioner's cost in administering the tax owed under section 693
5727.81 of the Revised Code by self-assessing purchasers. After 694
the application is approved by the tax commissioner, the 695
registration shall remain in effect for the current registration 696
year, or until canceled by the registrant upon written 697
notification to the commissioner of the election to pay the tax 698

in accordance with division (A) of this section, or until 699
canceled by the tax commissioner for not paying the tax or fee 700
under division (C) of this section or for not meeting the 701
qualifications in division (C) (2) of this section. The tax 702
commissioner shall give written notice to the electric 703
distribution company from which electricity is delivered to a 704
self-assessing purchaser of the purchaser's self-assessing 705
status, and the electric distribution company is relieved of the 706
obligation to pay the tax imposed by division (A) of this 707
section for electricity distributed to that self-assessing 708
purchaser until it is notified by the tax commissioner that the 709
self-assessing purchaser's registration is canceled. Within 710
fifteen days of notification of the canceled registration, the 711
electric distribution company shall be responsible for payment 712
of the tax imposed by division (A) of this section on 713
electricity distributed to a purchaser that is no longer 714
registered as a self-assessing purchaser. A self-assessing 715
purchaser with a canceled registration must file a report and 716
remit the tax imposed by division (A) of this section on all 717
electricity it receives for any measurement period prior to the 718
tax being reported and paid by the electric distribution 719
company. A self-assessing purchaser whose registration is 720
canceled by the tax commissioner is not eligible to register as 721
a self-assessing purchaser for two years after the registration 722
is canceled. 723

(7) If the tax commissioner cancels the self-assessing 724
registration of a purchaser registered on the basis of its 725
estimated consumption because the purchaser does not consume at 726
least forty-five million kilowatt hours of electricity over the 727
course of the twelve-month period for which the estimate was 728
made, the tax commissioner shall assess and collect from the 729

purchaser the difference between (a) the amount of tax that 730
would have been payable under division (A) of this section on 731
the electricity distributed to the purchaser during that period 732
and (b) the amount of tax paid by the purchaser on such 733
electricity pursuant to division (C) (2) of this section. The 734
assessment shall be paid within sixty days after the tax 735
commissioner issues it, regardless of whether the purchaser 736
files a petition for reassessment under section 5727.89 of the 737
Revised Code covering that period. If the purchaser does not pay 738
the assessment within the time prescribed, the amount assessed 739
is subject to the additional charge and the interest prescribed 740
by divisions (B) and (C) of section 5727.82 of the Revised Code, 741
and is subject to assessment under section 5727.89 of the 742
Revised Code. If the purchaser is a qualified end user, division 743
(C) (7) of this section applies only to electricity it consumes 744
in other than its qualifying manufacturing process. 745

(D) The tax imposed by this section does not apply to the 746
distribution of any kilowatt hours of electricity to the federal 747
government, to an end user located at a federal facility that 748
uses electricity for the enrichment of uranium, to a qualified 749
regeneration meter, or to an end user for any day the end user 750
is a qualified end user. The exemption under this division for a 751
qualified end user only applies to the manufacturing location 752
where the qualified end user uses electricity in a chlor-alkali 753
manufacturing process or where the qualified end user uses more 754
than three million kilowatt hours per day in an electrochemical 755
manufacturing process. 756

~~(E) All revenue arising from the tax imposed by this~~ 757
~~section shall be credited to the general revenue fund except~~ 758
Except as provided by division (C) of this section and section 759
5727.82 of the Revised Code, revenue arising from the tax 760

<u>imposed by this section shall be credited to the following funds</u>		761
<u>in the prescribed percentages:</u>		762
<u>General revenue fund</u>	<u>96.25%</u>	763
<u>Abandoned mine reclamation fund</u>	<u>1.50%</u>	764
<u>Acid mine drainage abatement and treatment fund</u>	<u>1.50%</u>	765
<u>Mine safety fund</u>	<u>0.75%</u>	766
Section 2. That existing sections 1513.37, 1561.24, and		767
5727.81 of the Revised Code are hereby repealed.		768