

**As Introduced**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**H. B. No. 657**

**Representatives Rezabek, Celebrezze**

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**A BILL**

To amend sections 4911.18 and 4927.03 of the 1  
Revised Code to exempt wireless service 2  
providers and resellers from the Ohio Consumers' 3  
Counsel operating assessment. 4

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

**Section 1.** That sections 4911.18 and 4927.03 of the 5  
Revised Code be amended to read as follows: 6

**Sec. 4911.18.** (A) For the sole purpose of maintaining and 7  
administering the office of the consumers' counsel and 8  
exercising the powers of the consumers' counsel under this 9  
chapter, an amount equal to the appropriation to the office of 10  
the consumers' counsel in each fiscal year shall be apportioned 11  
among and assessed against each public utility within this 12  
state, as defined in section 4911.01 of the Revised Code, by 13  
first computing an assessment as though it were to be made in 14  
proportion to the intrastate gross earnings or receipts of the 15  
public utility for the calendar year next preceding that in 16  
which the assessment is made, excluding earnings or receipts 17  
from sales to other public utilities for resale. The office may 18  
include in that first computation any amount of a public 19

utility's intrastate gross earnings or receipts underreported in 20  
a prior year. In addition to whatever penalties apply under the 21  
Revised Code to such underreporting, the office shall assess the 22  
public utility interest at the rate stated in division (A) of 23  
section 1343.01 of the Revised Code. The office shall deposit 24  
any interest so collected into the consumers' counsel operating 25  
fund. The office may exclude from that first computation any 26  
such amounts that were over-reported in a prior year. 27

The final computation of the assessment shall consist of 28  
imposing upon each public utility whose assessment under the 29  
first computation would have been one hundred dollars or less an 30  
assessment of one hundred dollars and recomputing the assessment 31  
of the remaining companies by apportioning an amount equal to 32  
the appropriation to the office of consumers' counsel in each 33  
fiscal year less the total amount to be recovered from those 34  
paying the minimum assessment, in proportion to the intrastate 35  
gross earnings or receipts of the remaining companies for the 36  
calendar year next preceding that in which the assessments are 37  
made, excluding earnings or receipts from sales to other public 38  
utilities for resale. 39

In the case of an assessment based on intrastate gross 40  
receipts under this section against a public utility that is an 41  
electric utility as defined in section 4928.01 of the Revised 42  
Code, or an electric services company, electric cooperative, or 43  
governmental aggregator subject to certification under section 44  
4928.08 of the Revised Code, such receipts shall be those 45  
specified in the utility's, company's, cooperative's, or 46  
aggregator's most recent report of intrastate gross receipts and 47  
sales of kilowatt hours of electricity, filed with the public 48  
utilities commission pursuant to division (F) of section 4928.06 49  
of the Revised Code, and verified by the commission. 50

In the case of an assessment based on intrastate gross receipts under this section against a retail natural gas supplier or governmental aggregator subject to certification under section 4929.20 of the Revised Code, such receipts shall be those specified in the supplier's or aggregator's most recent report of intrastate gross receipts and sales of hundred cubic feet of natural gas, filed with the commission pursuant to division (B) of section 4929.23 of the Revised Code, and verified by the commission. However, no such retail natural gas supplier or such governmental aggregator serving or proposing to serve customers of a particular natural gas company, as defined in section 4929.01 of the Revised Code, shall be assessed under this section until after the commission, pursuant to section 4905.26 or 4909.18 of the Revised Code, has removed from the base rates of the natural gas company the amount of assessment under this section that is attributable to the value of commodity sales service, as defined in section 4929.01 of the Revised Code, in the base rates paid by those customers of the company that do not purchase that service from the natural gas company.

(B) Through calendar year 2005, on or before the first day of October in each year, the office of consumers' counsel shall notify each public utility of the sum assessed against it, whereupon payment shall be made to the counsel, who shall deposit it into the state treasury to the credit of the consumers' counsel operating fund, which is hereby created. Beginning in calendar year 2006, on or before the fifteenth day of May in each year, the consumers' counsel shall notify each public utility that had a sum assessed against it for the current fiscal year of more than one thousand dollars that fifty per cent of that amount shall be paid to the consumers' counsel

by the twentieth day of June of that year as an initial payment 82  
of the assessment against the company for the next fiscal year. 83  
On or before the first day of October in each year, the 84  
consumers' counsel shall make a final determination of the sum 85  
of the assessment against each public utility and shall notify 86  
each public utility of the sum assessed against it. The 87  
consumers' counsel shall deduct from the assessment for each 88  
public utility any initial payment received. Payment of the 89  
assessment shall be made to the consumers' counsel by the first 90  
day of November of that year. The consumers' counsel shall 91  
deposit the payments received into the state treasury to the 92  
credit of the consumers' counsel operating fund. Any such 93  
amounts paid into the fund but not expended by the office shall 94  
be credited ratably by the office to the public utilities that 95  
pay more than the minimum assessment, according to the 96  
respective portions of such sum assessable against them for the 97  
ensuing fiscal year, after first deducting any deficits 98  
accumulated from prior years. The assessments for such fiscal 99  
year shall be reduced correspondingly. 100

(C) Within five days after the beginning of each fiscal 101  
year through fiscal year 2006, the director of budget and 102  
management shall transfer from the general revenue fund to the 103  
consumers' counsel operating fund an amount sufficient for 104  
maintaining and administering the office of the consumers' 105  
counsel and exercising the powers of the consumers' counsel 106  
under this chapter during the first four months of the fiscal 107  
year. Not later than the thirty-first day of December of the 108  
fiscal year, the same amount shall be transferred back to the 109  
general revenue fund from the consumers' counsel operating fund. 110

(D) (1) As used in this section, "public utility" includes: 111

~~(1)~~ (a) In addition to an electric utility as defined in 112  
section 4928.01 of the Revised Code, an electric services 113  
company, an electric cooperative, or a governmental aggregator 114  
subject to certification under section 4928.08 of the Revised 115  
Code, to the extent of the company's, cooperative's, or 116  
aggregator's engagement in the business of supplying or 117  
arranging for the supply in this state of any retail electric 118  
service for which it must be so certified; 119

~~(2)~~ (b) In addition to a natural gas company as defined in 120  
section 4929.01 of the Revised Code, a retail natural gas 121  
supplier or governmental aggregator subject to certification 122  
under section 4929.20 of the Revised Code, to the extent of the 123  
supplier's or aggregator's engagement in the business of 124  
supplying or arranging for the supply in this state of any 125  
competitive retail natural gas service for which it must be 126  
certified. 127

(2) As used in this section, "public utility" does not 128  
include a wireless service provider or reseller as defined in 129  
section 128.01 of the Revised Code, to the extent either of them 130  
are providing wireless service as defined under section 128.01 131  
of the Revised Code. 132

**Sec. 4927.03.** (A) Except as provided in divisions (A) and 133  
(B) of section 4927.04 of the Revised Code and except to the 134  
extent required to exercise authority under federal law, the 135  
public utilities commission has no authority over any 136  
interconnected voice over internet protocol-enabled service or 137  
any telecommunications service that is not commercially 138  
available on September 13, 2010, and that employs technology 139  
that became available for commercial use only after September 140  
13, 2010, unless the commission, upon a finding that the 141

exercise of the commission's authority is necessary for the 142  
protection, welfare, and safety of the public, adopts rules 143  
specifying the necessary regulation. A consumer purchase of a 144  
service that is not commercially available on September 13, 145  
2010, and that employs technology that became available for 146  
commercial use only after September 13, 2010, shall constitute a 147  
consumer transaction for purposes of sections 1345.01 to 1345.13 148  
of the Revised Code, notwithstanding any provision of those 149  
sections to the contrary, unless the commission exercises 150  
jurisdiction over the service in accordance with this division. 151  
Notwithstanding any contrary provision of Chapter 4911. of the 152  
Revised Code, to the extent that the commission adopts rules 153  
under division (A) of this section regarding any interconnected 154  
voice over internet protocol enabled service provided to 155  
residential customers or regarding any telecommunications 156  
service that is provided to residential customers, that is not 157  
commercially available on September 13, 2010, and that employs 158  
technology that became available for commercial use only after 159  
September 13, 2010, the office of the consumers' counsel shall 160  
have authority to assist and represent residential customers in 161  
the implementation and enforcement of those rules. 162

(B) (1) The commission has no authority over wireless 163  
service, resellers of wireless service, or wireless service 164  
providers, except as follows: 165

(a) As provided under section 4905.84 of the Revised Code; 166

(b) With respect to division (C) of section 4927.15 of the 167  
Revised Code; 168

(c) As provided in divisions (B) (2), (3), and (4) of this 169  
section. 170

(2) The commission has authority over wireless service and wireless service providers as follows, but only to the extent authorized by federal law, including federal regulations:

(a) To the extent that the commission carries out the acts described in divisions (A), (B), (C), (D), and (F) of section 4927.04 of the Revised Code;

(b) As provided in sections 4927.05, 4927.20, and 4927.21 of the Revised Code.

(3) The requirements of sections 4905.10, ~~and~~ 4905.14, ~~and~~ ~~4911.18~~ of the Revised Code shall apply to a wireless service provider.

(4) The commission has such authority as is necessary to enforce division (B) of this section.

(C) For purposes of sections 4927.01 to 4927.21 of the Revised Code, sections 4903.02, 4903.03, 4903.24, 4903.25, 4905.04, 4905.05, 4905.06, 4905.13, 4905.15, 4905.16, 4905.17, 4905.22, 4905.26, 4905.27, 4905.28, 4905.29, 4905.31, 4905.32, 4905.33, 4905.35, 4905.37, 4905.38, 4905.39, 4905.48, 4905.54, 4905.55, 4905.56, and 4905.60 of the Revised Code do not apply to a telephone company or, as applicable, to an officer, employee, or agent of such company or provider, except to the extent necessary for the commission to carry out sections 4927.01 to 4927.21 of the Revised Code.

(D) Except as specifically authorized in sections 4927.01 to 4927.21 of the Revised Code, the commission has no authority over the quality of service and the service rates, terms, and conditions of telecommunications service provided to end users by a telephone company.

(E) The commission shall initially adopt the rules

required by this chapter not later than one hundred twenty days 200  
after September 13, 2010. Subject to the authority granted to 201  
the commission under this chapter, the commission may adopt 202  
other rules, including rules regarding the removal from tariffs 203  
of services that were required to be filed in tariffs prior to 204  
September 13, 2010, as it finds necessary to carry out this 205  
chapter. 206

**Section 2.** That existing sections 4911.18 and 4927.03 of 207  
the Revised Code are hereby repealed. 208