



Ohio Revised Code

Section 4928.2312 Security interest in phase-in-recovery property.

Effective: March 22, 2012

Legislation: House Bill 364 - 129th General Assembly

(A) Except as provided in division (C) of this section, the creation, perfection, and enforcement of any security interest in phase-in-recovery property under a final financing order to secure the repayment of the principal of and interest on phase-in-recovery bonds, amounts payable under any ancillary agreement, and other financing costs are governed by this section and not Chapters 1301. to 1309. of the Revised Code.

(B) The description of the phase-in-recovery property in a transfer or security agreement and a financing statement is sufficient only if the description refers to this section and the final financing order creating the property. This section applies to all purported transfers of, and all purported grants of, liens on or security interests in that property, regardless of whether the related transfer or security agreement was entered into, or the related financing statement was filed, before or after the effective date of this section.

(C)(1) A security interest in phase-in-recovery property under a final financing order is created, valid, and binding at the latest of the date that the security agreement is executed and delivered or the date that value is received for the phase-in-recovery bonds.

(2)(a) The security interest shall attach without any physical delivery of collateral or other act, and, upon the filing of the financing statement with the office of the secretary of state, the lien of the security interest shall be valid, binding, and perfected against all parties having claims of any kind in tort, contract, or otherwise against the person granting the security interest, regardless of whether the parties have notice of the lien. Also upon this filing, a transfer of an interest in the phase-in-recovery property shall be perfected against all parties having claims of any kind, including any judicial lien or other lien creditors or any claims of the seller or creditors of the seller, other than creditors holding a prior security interest, ownership interest, or assignment in the property previously perfected in accordance with this division.

(b) The secretary of state shall maintain any financing statement filed under division (C)(2) of this



section in the same manner that the secretary maintains financing statements filed by transmitting utilities under division (B) of section 1309.501 of the Revised Code. The filing of any financing statement under division (C)(2) of this section shall be governed by the provisions regarding the filing of financing statements in Chapter 1309. of the Revised Code.

(D)(1) A security interest in phase-in-recovery property under a final financing order is a continuously perfected security interest and has priority over any other lien, created by operation of law or otherwise, that may subsequently attach to that property or those rights or interests unless the holder of any such lien has agreed in writing otherwise.

(2) The priority of a security interest in phase-in-recovery property is not affected by the commingling of phase-in-recovery revenues with other amounts. Any pledgee or secured party shall have a perfected security interest in the amount of all phase-in-recovery revenues that are deposited in any cash or deposit account of the electric distribution utility in which phase-in-recovery revenues have been commingled with other funds. Any other security interest that may apply to those funds shall be terminated when the funds are transferred to a segregated account for an assignee or a financing party.

(3) No application of the adjustment mechanism as described in section 4928.238 of the Revised Code shall affect the validity, perfection, or priority of a security interest in or the transfer of phase-in-recovery property under the final financing order.